

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC File No. 1512220
Appellate Case No. 2017-001947

RECEIVED

JUN 25 2018

SC Court of Appeals

Rico Dorsey, Employee, ... Appellant,

v.

Allwaste Services, Inc., Employer,
and Bridgefield Casualty Insurance,
c/o Summit Holding, Inc., Carrier, ... Respondents.

RECORD ON APPEAL - VOLUME I

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BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. 1512220

Rico Dorsey,	EMPLOYEE,	)
		)
	CLAIMANT,	)
VS.		)
		)
Allwaste Services, Inc.,	EMPLOYER,	)
		)
AND		)
		)
Bridgefield Casualty Insurance Co.,		)
	CARRIER,	)
		)
	DEFENDANTS,	)

ADMINISTRATIVE ORDER

This matter was scheduled to be heard by the undersigned on Friday April 15, 2016 on Defendants' Form 21 Request for Hearing. Prior to the hearing, Claimant requested a postponement due to preparation for trial in circuit court as well as "legislative duties", which did not allow time for his to prepare for this matter. Defendants' filed a response objecting to the postponement citing their statutory right to have a hearing within 60 days of their request. Based on the arguments of counsel as noted in the correspondence to the Commission, there undersigned hereby finds as follows:

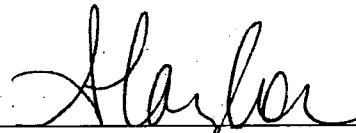
1. I find the Administrative Order of The Supreme Court of South Carolina dated April 21, 2010 is controlling as Claimant's counsel has cited his "legislative duties" as at least one reason for his inability to adequately prepare for this hearing.
2. I find the Supreme Court's Administrative Order provides full protection at any and all times

during the legislative session absent consent from the Lawyer-legislator. I find this protection is not subject to Defendants' 60-Day Hearing Request.

3. Notwithstanding the above finding, Claimant's counsel has consented to proceed with the hearing in the beginning of May. As such, this matter will be set for May 9, 2016 before the undersigned here in Columbia, South Carolina. A formal RESET Notice will follow.

AND IT IS SO ORDERED.

April 15, 2016



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).

April 18, 2016

By: Renee Smith, Administrative Assistant to Commissioner Taylor

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1512220

Rico Dorsey,	)	
	)	
Employee,	)	
	)	
	)	
Claimant,	)	
v.	)	
	)	
Allwaste Services, Inc.,	)	<u>INTERIM ORDER</u>
	)	
	)	
Employer,	)	
	)	
And	)	
	)	
Bridgefield Casualty Insurance Company c/o	)	
Summit Holdings, Inc.,	)	
	)	
Defendants.	)	
	)	

A Hearing in this matter was scheduled to be held before the undersigned Commissioner on July 22, 2016, at 10:00 a.m., in Columbia, South Carolina, pursuant to defendants' Form 21. The claimant appeared and was represented by Creighton B. Coleman, Esquire, and Andrew N. Safran, Esquire. The defendants were represented by Nicolas L. Haigler, Esquire. Prior to the call of the case, the undersigned held a lengthy conference with the parties wherein counsel for the claimant requested a continuance of the Hearing due to an personal emergency situation. The defendants objected to the continuance in good faith.

In addition, the defendants objected to the evidence submitted by the claimant pursuant to the Administrative Procedures Act (APA) as well as the testimony from the witnesses identified by the claimant on his Pre-Hearing Brief. The basis for the objection was the undisputed untimeliness of the Pre-Hearing Brief and APA Submissions pursuant to Regulations 67-611 and 612. The defendants also requested that if the Hearing were postponed, the undersigned Commissioner close the record as to any documentary evidence produced or created after July 22, 2016.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED, that this Hearing is postponed and shall be rescheduled before the undersigned Commissioner on August 3, 2016, in Columbia, South Carolina.

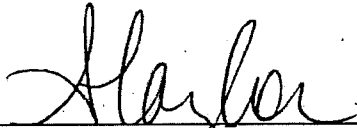
IT IS FURTHER ORDERED that the defendants' objection to the claimant's APA Submissions pursuant to Regulation 67-612 shall be held in abeyance until the Hearing on August 3, 2016. However, the defendants' objection to the testimony of the witnesses identified by the claimant on his Pre-Hearing Brief pursuant to Regulation 67-611 is sustained.

IT IS FURTHER ORDERED that additional documentary evidence under the APA produced or secured after July 22, 2016, shall not be considered and/or admitted as part of the record in this case. All other issues not addressed herein will be held in abeyance pending the Hearing on August 3, 2016.

AND IT IS SO ORDERED.

August 2, 2016

SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION



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).
August 2, 2016

By: Renee Smith, Administrative Assistant to Commissioner Taylor

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1512220

Rico Dorsey,

Employee,

Claimant,

v.

Allwaste Services, Inc.,

Employer,

and

Bridgefield Casualty Insurance Company c/o
Summit Holdings, Inc.,

Carrier,

Defendants.

DECISION AND ORDER

HEARING:

Hearing held in Columbia, South Carolina, on August 3, 2016

APPEARANCES:

Claimant appeared and was represented by Coleman & Tolen, L.L.C., with Creighton B. Coleman, Esquire, appearing, and by Andrew N. Safran, Esquire

Defendants represented by Sowell Gray Stepp & Laffitte, L.L.C., with Nicolas L. Haigler, Esquire, appearing

PURPOSE OF HEARING:

To determine if employer/carrier may stop payment and, if so, to determine if claimant is entitled to any further benefits. Carrier also request credit for temporary total benefits in excess of award.

DECISION AND ORDER:

By Honorable Aisha Taylor, Commissioner

FILED:

_____, 2016

APA SUBMISSIONS

Pursuant to the Administrative Procedures Act, the defendants submitted records, reports, and correspondence from the following into evidence:

	Physician	Practice	Dates of Service	Page Numbers
1.		Palmetto Health Richland	01/96/98 – 02/11/16	1 – 5
2.	Mark D. Locke, M.D.	Moore Orthopedics	08/14/03 – 04/19/05	6 – 10
3.		Fairfield Memorial Hospital	12/28/08 – 09/10/15	11 – 25
4.		Providence Hospital Family Care	04/28/09	26 – 27
5.		Doctor's Care	07/17/15 – 08/25/15	28 – 40
6.		Midlands Orthopedics	09/22/15 – 02/17/16	41 – 77
7.		Palmetto Imaging	10/07/15	78 – 79
8.		Southeastern Spine Institute	04/07/16	80 – 88

	Exhibits	Date of Reports	Page Numbers
A.	Portions of Claimant's personnel file	05/17/13	1 – 4
B.	Deposition of Sammie Bell	07/01/16	
C.	Deposition of Cathy Odom	07/01/16	
D.	Claimant's deposition	03/28/16	

Pursuant to the Administrative Procedures Act, the claimant submitted records, reports, and correspondence from the following into evidence:

	Physician	Practice	Dates of Service	Page Numbers
1.		Doctor's Care	07/17/15 – 08/25/15	1 – 18
2.		Fairfield Memorial Hospital	08/23/15 – 02/04/16	19 – 41
3.		Midlands Orthopedics	09/22/15 – 02/17/16	42 – 69
4.		Palmetto Health Orthopedics	11/03/15 – 03/04/16	70 – 83
5.		Palmetto Health Richland	02/08/16 – 02/11/16	84 – 144

6.		Palmetto Health Spine Center	03/01/16	145 – 149
7.		Southeastern Spine Institute	04/27/16 – 05/05/16	150 – 185
8.		Work Status Information	07/17/15 – 05/05/16	186 – 196
9.	Leonard Forrest, M.D.		Affidavit	197
10.		Southeastern Spine Institute	05/11/16 – 06/08/16	198 – 199

	Exhibits	Date of Reports	Page Numbers
A.	Deposition of Sammie Bell	07/01/16	

STIPULATIONS

At the call of the claim, the parties stipulated to the following issues:

1. The South Carolina Workers' Compensation Commission has jurisdiction over this claim;
2. Venue in the County of Richland is proper for this claim;
3. The claimant sustained a compensable injury to his low back on July 17, 2015;
4. The claimant's average weekly wage and compensation rate is \$550.45 and \$366.99, respectively; and
5. With the exception of any self-serving statements or unstipulated medical reports, the Commission file was made part of the record.

STATEMENT OF THE CASE

The undersigned held a Hearing in this matter at the date and location referenced above. All parties of Interest were timely and properly notified of the Hearing, and the parties and/or their representatives appeared at the Hearing. The claimant appeared and was represented by Creighton B. Coleman, Esquire, and Andrew N. Safran, Esquire. The defendants were represented by Nicolas L. Haigler, Esquire. Of note, the Hearing in this matter was originally scheduled for July 22, 2016, but was postponed by way of an Interim Order from the undersigned Commissioner. The Interim Order, filed on August 2, 2016, ordered the defendants' objection to the claimant's APA Submissions pursuant to

Regulation 67-612 to be held in abeyance pending the Hearing on August 3, 2016, and that further documentary evidence under the APA would not be considered as part of the record.

This claim was before the South Carolina Workers' Compensation Commission pursuant to the Form 21 filed by the defendants on February 25, 2016. It is the position of the defendants that the claimant reached maximum medical improvement (MMI) with regard to the admitted low back injury on February 4, 2016, and therefore, the defendants are entitled to terminate temporary total disability benefits. The defendants also requested a determination as to whether the claimant sustained any permanent partial disability to his low back, requested a credit for any temporary total disability benefits paid to the claimant after the date of MMI, and requested the undersigned make a determination as to the credibility of the claimant.

Additionally, the defendants raised numerous objections. First, the defendants objected to the admission of the claimant's APA and the testimony of the identified witnesses, both as untimely under Regulation 67-612. The defendants further objected to page 197 of claimant's APA on the ground of authentication. Finally, the defendants requested the right to decide, at the conclusion of the Hearing, whether to proceed with the depositions of Dr. Dennis and Dr. Forrest. The claimant provided a counter-argument to each of these assertions and objections. After hearing all positions on these issues, the undersigned overruled the objection of the defendants as to the claimant's APAs and allowed the evidence into the record. Moreover, the undersigned asked that the defendants state their position as to the aforementioned depositions before the close of the record.

Regarding the merits of the claim, the claimant asserts he has not reached MMI for his low back injury and, moreover, requests a determination as to the compensability of the alleged injuries to the legs, neck and right elbow, for which he has also not reached MMI. The claimant further contends he

is entitled to continued temporary total disability benefits and causally-related medical treatment until such time as MMI is achieved.

Accordingly, the primary issues for determination are: (1) whether claimant has reached MMI with regard to the low back; (2) if so, the date of MMI; (3) whether the claimant sustained compensable injuries to his legs, neck and/or right elbow, as alleged; (4) whether defendants are entitled to terminate TTD benefits; (5) whether claimant sustained permanent partial disability to his low back pursuant to Section 42-9-30; (6) whether defendants are entitled to credit for the extent of TTD paid to the claimant after the date of MMI; (7) whether claimant is entitled to future medical treatment pursuant to Section 42-15-60; and (8) credibility of the claimant.

EVIDENCE OF THE CASE

The undersigned has carefully considered all of the evidence presented by the parties in this claim, including the Hearing and deposition testimony of the claimant, the deposition testimony of Sammie Bell and Cathy Odom, the medical records and exhibits submitted through the APA, and my personal observations of the claimant. From this evidence, the following is specifically noted:

A. HEARING TESTIMONY

The claimant testified on his own behalf. The claimant testified his job is to load and unload the curbside trash onto the garbage truck. See H.T., p. 31. The claimant then testified that Cathy Odom "lied" when she testified she did not know about the incident until two months later. See H.T., p. 32. The claimant was then asked about the nature of the contact his body made with the garbage truck. After much back and forth, the claimant finally admitted he testified during his deposition on March 2016 that he "flew through the air about 10 feet." See H.T., pp. 34-40. The claimant further admitted he testified that he "fell to the ground" after being struck by the truck. See H.T., p. 42. Regarding Mr. Bell's testimony, the claimant admitted that Mr. Bell testified the claimant did not fly through the air or land on

the ground." See H.T., pp. 45-46. The claimant, however, questioned Mr. Bell's memory on the matter. See H.T., p. 47. The claimant further testified the initial report from Doctor's Care from July 17, 2015, indicating the claimant did not fall to the ground, was incorrect. See H.T., p. 54.

The claimant then admitted that he denied having prior back problems and/or receiving prior back treatment in his deposition because "it was never something serious." See H.T., p. 57. However, the claimant later admitted that his physician from his 2003 injury reported "the significant injury to [the claimant's] lower back has led to chronic back pain." See H.T., p. 62. The claimant then denied being aware that Dr. Locke, his doctor from his 2003 motorcycle accident, reported that "because of these injuries including the back and right arm, [the claimant] is going to be unable to work for his entire life." See H.T., p. 64. The claimant was then questioned regarding an insurance application he completed in May 2013, wherein he denied prior back problems, fractures, smoking, and prior alcohol abuse. The claimant admitted he had prior back problems, fractures and smoked, but denied abusing alcohol, despite a report to the contrary. See H.T., pp. 69-70.

The claimant then testified he did not remember going to Fairfield Medical Center in 2012 with 8/10 severe back pain which occurred very frequently in the past. See H.T., p. 74. He also denied remembering being referred to an orthopedist as a result of that visit. See H.T., p. 75.

The claimant then denied telling the attending physician at Fairfield Medical Center in January 2016 that he was "Norco dependent." See H.T., p. 79. The claimant denied leaving Dr. LaMotta's office on February 4, 2016, and going directly to Fairfield Medical Center requesting more pain medication, and further denied failing to advise the hospital he was already taking pain medication. See H.T., pp. 84-85. The claimant then testified he did not remember going to Palmetto Health Richland four days later again requesting pain medications, while failing to admit to the attending physician that he was already on pain medication. See H.T., p. 87. The claimant then proceeded to advise the undersigned

that not only was he not abusing his pain medication, but he has "a dresser full - - I've got a dresser full of pills." See H.T., p. 89.

Under cross-examination, the claimant testified his motorcycle accident in 2003 had no effect on his ability to perform his job as a trash man. See H.T., p. 119. He also admitted having to go to the hospital on occasion for strains to his back. See H.T., p. 119. The claimant then proceeded to describe his accident at length, but specifically noted that after the truck made contact with his body, "I remember like this. I was up in the air. It lifted - - It lifted me. I'm glad it didn't knock me over." See H.T., p. 124.

The claimant then proceeded to describe his medical treatment with Dr. O'Leary, Dr. LaMotta and Dr. Peelle. See H.T., pp. 131-135. He testified the injection he received at Midlands Orthopedics did not provide any benefit. See H.T., p. 132. The claimant testified he then received a second injection from Southeastern Spine Institute, which provided some relief. See H.T., p. 137. The third injection was on July 28, 2016.

Regarding his alleged neck injury, the claimant testified he has been "telling all of his doctors since day one about his neck." See H.T., p. 139. The claimant then testified that was the case even though none of the reports from Doctor's Care or the emergency room reference neck pain. See H.T., p. 144. Under redirect examination, the claimant was questioned regarding his alleged complaints of neck pain to numerous physicians, but was nonresponsive. See H.T., pp. 148-151.

B. APA SUBMISSIONS:

1. Medical Evidence

On January 26, 1998, the claimant presented to Palmetto Health Richland with complaints of low back pain with pain radiating down his left leg. See Defendants' APA #1, p. 1. On August 14, 2003, the claimant underwent an operation to repair a right shaft open humerus fracture at the direction of Dr. Mark Locke. See Defendants' APA #2, p. 6. The injury occurred after a motorcycle accident on

that date. On April 12, 2005, the claimant returned to Dr. Locke with complaints of low back, arm and leg pain. See Defendants' APA #2, p. 9. On April 19, 2005, Dr. Locke authored a "to whom it may concern" letter stating, in part, that "[the claimant's] significant back injury has now led to chronic back pain which is making him unable to work." Dr. Locke further stated that "[the claimant] is going to be unable to work for his lifetime." See Defendants' APA #2, p. 10.

On December 28, 2008, the claimant presented to Fairfield Memorial Hospital with back pain and was provided Flexeril and Voltaren for treatment. See Defendants' APA #3, p. 11. On April 28, 2009, the claimant presented to Providence Northeast Family Care and was reported to have "heavy alcohol consumption, 6 beers per day and a half to a whole pint of Vodka daily." See Defendants' APA #4, p. 26. The claimant also reported left flank pain after "pulling a muscle." See Defendants' APA #4, p. 27. On June 3, 2010, the claimant returned with continued back pain after lifting something heavy at home. He reported the pain was "severe and burning." See Defendants' APA #3, p. 14. On January 16, 2012, the claimant returned to the hospital with "8/10 moderate to severe" pain in his low back. See Defendants' APA #3, p. 18. The claimant admitted "very frequently" having prior back pain. See Defendants' APA #3, p. 18. X-rays of his lumbar spine which revealed "facet arthropathy at L4-5 and L5-S1." See Defendants' APA #3, p. 17. On June 25, 2013, the claimant returned to Fairfield Memorial with low back pain believed to have occurred at work. See Defendants' APA #3, p. 20.

On July 17, 2015, the claimant reported to Doctor's Care that he had been struck on the back and right arm by a truck while it was backing up. He denied falling as a result of the incident. See Defendants' APA #5, p. 28. The claimant admitted having right arm and upper back pain but denied any numbness. He was prescribed Mobic. See Defendants' APA #5, p. 28. On September 22, 2015, the claimant returned with primary complaints of back and left-sided rib pain. See Defendants' APA #5, p. 34. The claimant was referred to physical therapy. See Defendants' APA #5, p. 36. The claimant

returned to Fairfield Memorial on August 23, 2015, and was prescribed Norco. See Claimant's APA #2, pp. 19-21. Two days later, on August 25, 2015, the claimant reported to Doctor's Care that the physical therapy was not helping and, in fact, was making his condition worse. The claimant reported the pain was going into his left leg but his right arm was "better". The attending physician referred the claimant for an orthopedic evaluation of his low back. See Defendants' APA #5, p. 40.

On September 2, 2015, the claimant presented to Fairfield Memorial with lumbar pain and a groin abscess and hemorrhoid. See Claimant's APA #2, p. 23. The claimant was prescribed Toradol. See Claimant's APA #2, p. 25. On September 10, 2015, the claimant returned to Fairfield Memorial with acute low back pain stemming from a car-pedestrian collision 7 weeks prior. See Defendants' APA #3, p. 22. The claimant was prescribed Flexeril and Prednisone.

On September 22, 2015, the claimant presented to Dr. James O'Leary of Midlands Orthopedics with 10/10 pain in his low back radiating into the buttocks and burning pain in both legs. See Defendants' APA #6, p. 41. The claimant reported that the medications and physical therapy had not worked, and that he attempted to return to light duty but was unable to continue. He also reported right arm and back pain of such severity that he could not be examined. Dr. O'Leary further found the claimant's gait to be abnormal and his low back pain to be "severe with any manipulation." See Defendants' APA #6, p. 43. O'Leary recommended a MRI, placed him out of work, and refilled his pain medication. He also noted he would evaluate and treat the right arm if it were approved. The claimant's low back MRI on October 7, 2015, revealed mild to moderate lumbar spondylosis at L4-5 and L5-S1 with "no distinct post-traumatic sequela." See Defendants' APA #7, p. 78. Of note, the radiologist reported the claimant "was hit by a garbage truck and thrown several feet." See Defendants' APA #7, p. 78.

The claimant returned to Dr. O'Leary on October 8, 2015, complaining that his pain was worse and lying in the fetal position on the exam table. See Defendants' APA #6, p. 46. Dr. O'Leary reported

the MRI "is not terribly impressive" and did not reveal a disc herniation or stenosis. See Defendants' APA #6, p. 48. The claimant was referred for non-operative treatment to including injections and physical therapy. O'Leary also recommended an EMG nerve conduction study. See Defendants' APA #6, p. 48.

On October 15, 2015, the claimant presented to Dr. Guillaume Dumont for an unauthorized orthopedic consultation at Fairfield Memorial Hospital. Dr. Dumont reported the claimant "has had pain for a while but was struck in July and the pain has been worse." See Claimant's APA #2, p. 31. Neck pain was not mentioned in the report.

On October 28, 2015, the EMG revealed "mild left L5 nerve root irritation." See Defendants' APA #6, p. 57. On November 5, 2015, Dr. O'Leary recommended a lumbar epidural steroid injection and kept the claimant out of work pending the injection, which occurred on December 18, 2015. See Defendants' APA #6, p. 68.

On November 3, 2015, the claimant reported to Jessamyn Bartley, PA, at Palmetto Health Orthopedics with numbness and tingling in her right arm. The claimant was diagnosed with tendinitis and some low-grade arthritis of the elbow and possible cubital tunnel entrapment. See Claimant's APA #4, p. 72. He was prescribed Prednisone.

On January 21, 2016, Dr. O'Leary referred the claimant for a surgical consultation after the injection did not provide relief. He also prescribed Norco. One day later, on January 22, 2016, the claimant returned to Fairfield Memorial and was reported to be Norco dependent with a history of alcohol abuse and chronic back pain. See Claimant's APA #2, p. 34.

The claimant was evaluated by Dr. Ivan LaMotta, a spine surgeon, on February 4, 2016. Dr. LaMotta examined the claimant and reported "significant tenderness left trochanteric bursa with light touch, out of proportion." See Defendants' APA #6, p. 76. He further reported the claimant's MRI

revealed only "very mild lumbar facet arthropathy." See Defendants' APA #6, p. 76. After concluding the claimant was not a surgical candidate, Dr. LaMotta placed the claimant at MMI with no permanent impairment and no medical restrictions. See Defendants' APA #6, p. 76. These opinions were confirmed in a Form 14B dated February 17, 2016. See Defendants' APA #6, p. 77. Immediately following the appointment with Dr. LaMotta, the claimant returned to the Emergency Department of Fairfield Memorial for additional treatment. The attending physician noted the claimant received 50 tablets of 10mg Norco on January 21, 2016, and now wants "some more for pain." See Claimant's APA #2, p. 37. He was denied further medications. See Claimant's APA #2, p. 40.

On February 8, 2016, the claimant went to Palmetto Health Richland with 10/10 lower back pain. The attending physician reported "patient notes he has been taking Motrin for his pain about 3 times a day and nothing else. However, per our records patient has been prescribed multiple narcotics over the last month including 50 Percocets as recently as 01/21 for which he has not admitted to me." See Claimant's APA #5, p. 97. The attending physician also noted the claimant "ambulated without difficulty." See Claimant's APA #5, p. 97. No narcotics were prescribed due to the claimant's failure to admit his recent narcotic prescription. See Claimant's APA #5, p. 98.

On February 11, 2016, the claimant presented to Dr. William Richardson at Palmetto Health Richland with a worsening of his low back and left leg symptoms. See Claimant's APA #5, p. 125. The claimant denied prior chronic back pain. See Claimant's APA #5, p. 126. Dr. Richardson referred him for another MRI, which revealed only "minor early degenerative changes" with no stenosis or acute findings. See Defendants' APA #1, p. 5. On March 4, 2016, the claimant presented to Dr. Michael Peelle of Palmetto Health Orthopedics for an unauthorized surgical consultation. He complained of 9/10 back pain and lateral thigh pain. Dr. Peelle reported the MRI from February 11, 2016, did not reveal evidence of disc herniation or neural foraminal narrowing at any level. See Claimant's APA #4, p. 78.

Dr. Peelle concluded the "physical exam findings and subjection symptoms far exceed what we're seeing on MRI today." See Claimant's APA #4, p. 79. The claimant was prescribed Gabapentin and placed on light duty pending a functional capacity evaluation. The claimant never returned to Dr. Peelle.

On April 7, 2016, the claimant presented to Southeastern Spine Institute. In his intake form, he reported being struck by a garbage truck "knocking me at least 10 feet." See Defendants' APA #8, p. 82. The claimant saw Dr. Blake Dennis and made complaints of back pain with left-sided radiating pain. He also complained of left-sided neck pain. See Claimant's APA #6, p. 157. Dr. Dennis recommended a cervical and lumbar MRI.

On April 21, 2016, the claimant had his third MRI, which revealed "mild non-compressive spondylosis." See Defendants' APA #8, p. 87. Dr. Blake Dennis reviewed the MRI and noted "normal disc signals at every level and no areas of nerve root compression." See Defendants' APA #8, p. 86. He further reported that "I overall do not see any evidence of a spine abnormality that might cause his lateral thigh pain." See Defendants' APA #8, p. 86. Dr. Dennis confirmed the claimant was not a surgical candidate but recommended he consider further non-operative care. He was released with no restrictions. See Defendants' APA #8, p. 86.

On April 27, 2016, the claimant presented to Dr. Leonard Forrest with symptoms which "start in the neck on the left side and down into the low back and then into the buttock and down the left leg." See Claimant's APA #6, p. 165. He reported the symptoms started when he was struck by a garbage truck and knocked to the ground. The claimant denied any history of similar symptoms. See Claimant's APA #6, p. 165. Dr. Forrest reported the claimant's lumbar spine MRI did not reveal anything that would cause nerve damage, but nonetheless recommended a L4-5 injection. Regarding the neck, Dr. Forrest again recommended a MRI. See Claimant's APA #6, p. 166.

On May 5, 2016, Dr. Forrest authored a letter to counsel for the claimant indicating the claimant needs to continue to be off work and needed to be off of work since his injury. See Claimant's APA #6, p. 178. On May 11, 2016, the claimant reported receiving good benefit from the initial injection; his pain was reported as low as 2/10. See Claimant's APA #6, p. 179. Dr. Forrest also reported the claimant's neck MRI revealed some mild spondylosis but no compression. Dr. Forrest, however, recommended the claimant focus on the low back and receive a second injection. Regarding the right arm, Dr. Forrest reported "that is not my area of expertise so I recommended that he pursue treatment for this perhaps starting with his primary care physician." See Claimant's APA #6, p. 179. On June 8, 2016, the claimant reported that he did not have his second injection and, therefore, was in 8/10 pain in his low back. The claimant was referred for the injection and provided Norco for pain relief. See Claimant's APA #6, p. 199. On or about July 18, 2016, Dr. Forrest completed a questionnaire indicating the "claimant's spondylosis without myelopathy or radiculopathy lumbar region was aggravated by the accident and caused to become symptomatic," and "that his right arm systems of pain and numbness to a reasonable degree of medical certainty were most likely caused by his work related accident on July 15, 2015". See Claimant's APA #6, p. 197.

1. Exhibits

On May 17, 2013, the claimant completed insurance registration forms from Coventry wherein he denied any prior back pain, cigarette use, fractures of any limbs, or alcohol or drug problems. See Defendants' Exhibit A, p. 3.

C. DEPOSITION TESTIMONY:

1. Claimant

The claimant denied ever having back problems or receiving back treatment before July 17, 2015. See Deposition of Claimant, pp. 29-30. He did admit to having prior right arm problems resulting from a motorcycle accident in 2003.

Regarding the accident on July 17, 2015, the claimant testified as follows:

A: And the lady, she just - - I went to go grab a can, I had my back turned. I went to go grab a can like I normally do, and all the sudden, by the time one of the coworkers got ready to holler, it was too late, yep. And she knocked me - - she knocked me from maybe like - - she knocked me from about that wall through that wall, through a little bit through that wall.

Q: Did you fly through the air?

A: Yeah. You get hit with a big piece of steel like that.

Q: How far did you go?

A: I went from about that wall to that - - to that - - to that wall to wall.

Q: What ten, 12 feet? Longer? Shorter?

A: Just - - just - -

Q: I'm asking you. I'm not trying to put words in your mouth.

A: I want to say about from - - much as I got throwed from here from that wall right there to that, however - - however many feet that is, yeah.

Q: I'm going to guess that's 12 feet - - ten, 12 feet?

A: About ten - - I'd say about ten feet.

Q: Okay.

A: Yeah.

Q: And did you - - were you in the air for that long, or did you just - - did it just - - I mean tell me how you - -

A: It mostly pushed me. It mostly pushed me and like throwed me up in the air like - - yeah, it pushed me and throwed me up in the air like. Because see, I - - I got hit with the back of the truck.

Q: And that was about ten feet you went?

A: Yeah.

Q: All right. Did you fall on the ground?

A: Yes, sir.

Deposition of Claimant, p. 42, ll. 1-23; p. 43, l. 8-p. 44, l. 1. The claimant then testified that Sammie Bell witnessed the accident. See Deposition of Claimant, p. 49.

2. Sammie Bell

Sammie Bell is a co-worker with the claimant and has been employed by the defendants for 11 years. See Deposition of Sammie Bell, p. 8. Mr. Bell testified he and the claimant are friends outside of work and attend the same church. See Deposition of Sammie Bell, p. 10. He testified that having the claimant in the room during his deposition made him uncomfortable. See Deposition of Sammie Bell, p. 10. Mr. Bell testified he witnessed the accident on July 17, 2015. See Deposition of Sammie Bell, p. 12. Mr. Bell testified that when the truck hit the claimant, the claimant did not fly through the air and/or fall to the ground, and continued working for the rest of the day. See Deposition of Sammie Bell, pp. 13-14. He further testified he never told the driver of the truck to stop. See Deposition of Sammie Bell, p. 16.

3. Cathy Odom

Cathy Odom was the driver of the truck on July 17, 2015, but did not know she hit the claimant until around two months after the incident, with Rick Andrews questioned her about it. See Deposition of Cathy Odom, p. 12. She testified the claimant never advised her of the incident. See Deposition of Cathy Odom, p. 12.

FINDINGS OF FACT

After careful review of the evidence presented by the parties, including the Hearing and deposition testimony of the claimant, the deposition testimony of Sammie Bell and Cathy Odom, the medical records and exhibits submitted through the APA, and my personal observations of the claimant, IT IS FOUND AS A FACT THAT:

1. All parties to the proceeding are subject to and bound by the terms of the South Carolina Workers' Compensation Act with Rico Dorsey as employee, Allwaste Services, Inc., as employer, and Bridgefield Casualty Insurance Company c/o Summit Holdings, Inc., as carrier.
2. Prior to the hearing, the Defendants, the moving party in this case, requested the record be held open to depose the Claimant's experts, Drs. Deniris & Forrest. Additionally, Claimant also requested the record be held open to depose Dr. Dennis & Dr. Forrest, their own experts. Both requests are denied and the record is closed as of August 3, 2016.
3. I find the medical questionnaire from Dr. Forrest, although not timely filed, is admitted into the record over the Defendants' objection. This finding is made pursuant to the undersigned's discretion under R. 67-612.
4. I find Claimant sustained an admitted compensable injury to his lower back within the course and scope of his employment. This Finding is based upon the greater weight of the evidence in the record.
5. Based on the initial medical reports, I find Claimant sustained a minor injury to his right arm as a result of his work accident. Claimant complained of right arm pain for about 2 weeks after the initial injury after which there is no other medical evidence that supports a finding of a permanent injury to Claimant's right arm. Additionally, Claimant's deposition testimony is devoid of any complaints of continued right arm pain associated with the injury. Based on the evidence as a whole, I find Claimant's right arm injury has resolved with no permanency.
6. Claimant alleged an injury to his neck as a result of his work injury. Claimant's contention that references to pain in the "upper R back" noted in the medical records are referring to his neck are unpersuasive. Correlating medical records from those same visits note that Claimant was treated for his thoracic and lumbar spine only to the exclusion of the cervical spine. (See Claimant's APA pp. 10-15). Claimant also relies upon his IME referral examination from Dr. Forrest as well as the medical questionnaire as evidence in support of a compensable neck injury. In Claimant's IME report, even Dr. Forrest notes, "It

is not clear that the neck is playing a definite role here..." and basis his recommendation for a cervical MRI on Claimant's reported symptomology. (Claimant's APA pp. 166). Lastly, with regard to Claimant's complaints of symptoms in his neck, Claimant first alleged pain in his neck during his deposition on March 28, 2016 wherein he testified he told the doctors "from day one" his pain ran from "my neck all the way down my leg." (Claimant's Depo. p. 63, ll. 8-10). He again reiterated this testimony at the hearing. I find Claimant's contention that he complained of neck pain "since day one" is not supported by a preponderance of the evidence and his testimony in that regard cannot be relied upon. I find Claimant's reported symptomology and chronology with regard to his neck pain cannot be relied upon and as such Dr. Forrest's medical opinion, which he himself admitted was only based on Claimant's reported symptomology, is not afforded great weight in this instance. As such, claimant's request for benefits related to his neck is denied.

7. I find Claimant is at maximum medical improvement for his work related injury to his lower back as of February 4, 2016. This finding is based on the preponderance of the reliable medical evidence as a whole including the medical opinion of Dr. Lamotta, who reviewed Claimant's lumbar radiographs, MRI, and EMG study that showed "mild left L5 nerve irritation" and still placed Claimant at maximum medical improvement. (Defendants' APA pp. 65-68). Additionally, in the initial evaluation by Dr. Forrest on April 27, 2016, the issue of maximum medical improvement was not referenced and a follow-up letter dated May 5, 2016 from Dr. Forrest addressed Claimant's work status but not his MMI status. Claimant obtained a medical questionnaire from Dr. Forrest dated July of 2016; however, it is contradicted by a preponderance of the evidence in the record.
8. I find Claimant has sustained 8% permanent partial disability to his back for his compensable low back injury. This finding is based on the preponderance of the evidence as a whole.
9. I find Claimant is only entitled to future medical treatment in the form of epidural injections and corresponding follow-up office visits. Although not recommended by an authorized treating physician, Claimant has been receiving injections on his own and testified they have been of benefit.
10. Defendants are entitled to stop payment of temporary total disability benefits.
11. I find Defendants timely filed their Form 21 Request for Hearing – within 3 weeks of the authorized treating physician's MMI statement. As such, Defendants are entitled to a credit for overpayment of TTD dated back to February 4, 2016 – the date of maximum medical improvement.

12. After Claimant's award and Defendants' credit are calculated with finality as a result of this Order, Defendants may have a resulting net credit. This credit may be applied toward any future payments of permanency as ordered by this Commission or a higher court, if any; however, in no way shall this finding be construed to award Defendants reimbursement directly from the Claimant.
13. No hearing costs are assessed.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, and as provided by the Code of Laws of South Carolina, § 42-17-40, it is the determination of this Commissioner that:

1. Pursuant to Section 42-1-130, claimant was a covered employee at the time in question.
2. Pursuant to Section 42-1-140, defendant-employer was a covered employer under the Act.
3. Pursuant to Section 42-1-160, the claimant sustained compensable injuries to his low back and right arm, but did not sustain a compensable injury to his neck.
4. Pursuant to Curiel v. Environmental Management Services, 376 S.C. 23, 655 S.E.2d 482 (2007), the claimant reached maximum medical improvement with regard to his low back and right arm on February 4, 2016.
5. Pursuant to § 42-9-260, defendants are entitled to terminate temporary total disability benefits as the claimant has reached maximum medical improvement.
6. Pursuant to Curiel v. Environmental Management Services, 376 S.C. 23, 655 S.E.2d 482 (2007), defendants are entitled to a credit for all temporary total disability benefits paid after February 4, 2016; however, if the defendants have a resulting net credit, said credit shall be applied to future permanency related payment, but shall not be construed to require reimbursement directly from the claimant.
7. Pursuant to § 42-9-30, claimant did not sustain permanent partial disability to his right arm.
8. Pursuant to § 42-9-30, claimant sustained eight (8%) percent permanent partial disability to his back.

9. Pursuant to § 42-15-60, claimant is not entitled to further medical treatment for his right arm, but is entitled to future medical treatment for his back in the form of epidural injections and corresponding follow-up office visits.

ORDER

IT IS THEREFORE ORDERED that claimant has reached maximum medical improvement with regard to his right arm and low back as of February 4, 2016.

IT IS FURTHER ORDERED that defendants are entitled to terminate temporary total disability benefits and, moreover, are entitled to a credit for all temporary total disability paid to the claimant after February 4, 2016. However, if the result of the credit is a net to the defendants, the credit shall be applied for future permanency related payment, but shall not be applied as to require reimbursement directly from the claimant.

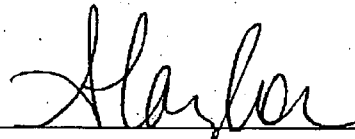
IT IS FURTHER ORDERED that claimant did not sustain permanent partial disability to his right arm, but is entitled to eight (8%) percent in permanent partial disability to the back, or 24 weeks, or \$8,807.76 in benefits.

IT IS FURTHER ORDERED that claimant is not entitled to future medical treatment under the Act for his right arm, but is entitled to future medical treatment for his back in the form of epidural injections and corresponding follow-up office visits.

IT IS SO ORDERED.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

BY:



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).

By rgsmith on October 4, 2016

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1512220

RICO DORSEY, EMPLOYEE CLAIMANT/APPELLANT

VS.

ALLWASTE SERVICES, INC., EMPLOYER

AND

BRIDGEFIELD CASUALTY INSURANCE, C/O SUMMIT HOLDING, INC.,

CARRIER DEFENDANTS/RESPONDENTS.

Appellate Panel Decision and Order

filed, June 14, 2017

APPEARANCES:

CLAIMANT/APPELLANT represented by Creighton B. Coleman, Esquire, of
Winnsboro, and Andrew N. Safran, Esquire, of Columbia, South Carolina; and

DEFENDANTS/RESPONDENTS represented by Nicolas L. Haigler, Esquire, of
Columbia, South Carolina

STATEMENT OF THE CASE

This is an appeal by Rico Dorsey (the Claimant) from the Decision and Order of Commissioner Aisha Taylor (the Hearing Commissioner), filed on October 4, 2016.

This claim was before the South Carolina Workers' Compensation Commission pursuant to the Form 21 filed by Allwaste Services, Inc. and Bridgefield Casualty Insurance Company c/o Summit Holdings, Inc. (the Defendants) on February 25, 2016. The Hearing in this matter was originally scheduled for April 15, 2016, but was then postponed to May 9, 2016, and finally to July 22, 2016, due to counsel for the Claimant's assertion of a legislative conflict. The Hearing on July 22, 2016, was postponed by way of an Interim Order from the Hearing Commissioner to August 3, 2016, over the Defendants' objection, due to a personal conflict of co-counsel for the Claimant, appointed the day prior to the Hearing. The Interim Order, filed on August 2, 2016, ordered the Defendants' objection to the Claimant's APA Submissions pursuant to Regulation 67-612 to be held in abeyance pending the Hearing on August 3, 2016, and that further documentary evidence under the APA would not be considered as part of the record.

It is the position of the Defendants that the Claimant reached maximum medical improvement (MMI) with regard to the admitted low back injury on February 4, 2016, and therefore, the Defendants are entitled to terminate temporary total disability benefits. The Defendants also requested a determination as to whether the Claimant sustained any permanent partial disability to his low back, requested a credit for any temporary total disability benefits paid to the Claimant after the date of MMI, and requested the undersigned make a determination as to the credibility of the Claimant.

Additionally, the Defendants raised numerous objections. First, the Defendants objected to the admission of the Claimant's APAs and the testimony of the identified witnesses, both as untimely under Regulation 67-612. The Defendants further objected to page 197 of the Claimant's APAs on the ground of authentication. Finally, the Defendants requested the right to decide, at the conclusion of the Hearing, whether to proceed with the depositions of Dr. Dennis and Dr. Forrest. The Claimant provided a counter

argument to each of these assertions and objections. After hearing all positions on these issues, the Hearing Commissioner overruled the objection of the Defendants as to the Claimant's APAs and allowed the evidence into the record. Moreover, the Hearing Commissioner asked that the Defendants state their position as to the aforementioned depositions before the close of the record.

Regarding the merits of the claim, the Claimant asserts he has not reached MMI for his low back injury and, moreover, requests a determination as to the compensability of the alleged injuries to the legs, neck and right elbow, for which he has also not reached MMI. The Claimant further contends he is entitled to continued temporary total disability benefits and causally-related medical treatment until such time as MMI is achieved.

By way of Decision and Order filed on October 4, 2016, the Hearing Commissioner made the following findings of fact:

1. All parties to the proceeding are subject to and bound by the terms of the South Carolina Workers' Compensation Act with Rico Dorsey as employee, Allwaste Services, Inc., as employer, and Bridgefield Casualty Insurance Company c/o Summit Holdings, Inc., as carrier.
2. Prior to the hearing, the Defendants, the moving party in this case, requested the record be held open to depose the Claimant's experts, Drs. Dennis & Forrest. Additionally, the Claimant also requested the record be held open to depose Dr. Dennis & Dr. Forrest, their own experts. Both requests are denied and the record is closed as of August 3, 2016.
3. I find the medical questionnaire from Dr. Forrest, although not timely filed, is admitted into the record over the Defendants' objection. This finding is made pursuant to the undersigned's discretion under R. 67-612.
4. I find the Claimant sustained an admitted compensable injury to his lower back within the course and scope of his employment. This Finding is based upon the greater weight of the evidence in the record.
5. Based on the initial medical reports, I find the Claimant sustained a minor injury to his right arm as a result of his work accident. The Claimant complained of right arm pain for about 2 weeks after the initial injury after which there is no other medical evidence that supports a finding of a permanent injury to the Claimant's right arm. Additionally, The Claimant's deposition testimony is devoid of any complaints of continued right arm pain

associated with the injury. Based on the evidence as a whole, I find the Claimant's right arm injury has resolved with no permanency.

6. The Claimant alleged an injury to his neck as a result of his work injury. The Claimant's contention that references to pain in the "upper R back" noted in the medical records are referring to his neck are unpersuasive. Correlating medical records from those same visits note that the Claimant was treated for his thoracic and lumbar spine only to the exclusion of the cervical spine. (See The Claimant's APA pp. 10-15). The Claimant also relies upon his IME referral examination from Dr. Forrest as well as the medical questionnaire as evidence in support of a compensable neck injury. In the Claimant's IME report, even Dr. Forrest notes, "It is not clear that the neck is playing a definite role here..." and basis his recommendation for a cervical MRI on The Claimant's reported symptomology. (The Claimant's APA pp. 166). Lastly, with regard to the Claimant's complaints of symptoms in his neck, the Claimant first alleged pain in his neck during his deposition on March 28, 2016, wherein he testified he told the doctors "from day one" his pain ran from "my neck all the way down my leg." (The Claimant's Depo. p. 63, ll. 8-10). He again reiterated this testimony at the hearing. I find the Claimant's contention that he complained of neck pain "since day one" is not supported by a preponderance of the evidence and his testimony in that regard cannot be relied upon. I find the Claimant's reported symptomology and chronology with regard to his neck pain cannot be relied upon and as such Dr. Forrest's medical opinion, which he himself admitted was only based on the Claimant's reported symptomology, is not afforded great weight in this instance. As such, the Claimant's request for benefits related to his neck is denied.
7. I find the Claimant is at maximum medical improvement for his work related injury to his lower back as of February 4, 2016. This finding is based on the preponderance of the reliable medical evidence as a whole including the medical opinion of Dr. Lamotta, who reviewed the Claimant's lumbar radiographs, MRI, and EMG study that showed "mild left L5 nerve irritation" and still placed The Claimant at maximum medical improvement. (The Defendants' APA pp. 65-68). Additionally, in the initial evaluation by Dr. Forrest on April 27, 2016, the issue of maximum medical improvement was not referenced and a follow-up letter dated May 5, 2016, from Dr. Forrest addressed the Claimant's work status but not his MMI status. The Claimant obtained a medical questionnaire from Dr. Forrest dated July of 2016; however, it is contradicted by a preponderance of the evidence in the record.
8. I find the Claimant has sustained 8% permanent partial disability to his back for his compensable low back injury. This finding is based on the preponderance of the evidence as a whole.
9. I find the Claimant is only entitled to future medical treatment in the form of epidural injections and corresponding follow-up office visits. Although not recommended by an authorized treating physician, the Claimant has been receiving injections on his own and testified they have been of benefit.

10. The Defendants are entitled to stop payment of temporary total disability benefits.
11. After the Claimant's award and the Defendants' credit are calculated with finality as a result of this Order, the Defendants may have a resulting net credit. This credit may be applied toward any future payments of permanency as ordered by this Commission or a higher court, if any; however, in no way shall this finding be construed to award the Defendants reimbursement directly from The Claimant.
12. No hearing costs are assessed.

In addition, the Hearing Commissioner made the following conclusions of law:

1. Pursuant to Section 42-1-130, the Claimant was a covered employee at the time in question.
2. Pursuant to Section 42-1-140, defendant-employer was a covered employer under the Act.
3. Pursuant to Section 42-1-160, the Claimant sustained compensable injuries to his low back and right arm, but did not sustain a compensable injury to his neck.
4. Pursuant to *Curriel v. Environmental Management Services*, 376 S.C. 23, 655 S.E.2d 482 (2007), the Claimant reached maximum medical improvement with regard to his low back and right arm on February 4, 2016.
5. Pursuant to § 42-9-260, the Defendants are entitled to terminate temporary total disability benefits as the Claimant has reached maximum medical improvement.
6. Pursuant to *Curriel v. Environmental Management Services*, 376 S.C. 23, 655 S.E.2d 482 (2007), the Defendants are entitled to a credit for all temporary total disability benefits paid after February 4, 2016; however, if the Defendants have a resulting net credit, said credit shall be applied to future permanency related payment, but shall not be construed to require reimbursement directly from the Claimant.
7. Pursuant to § 42-9-30, the Claimant did not sustain permanent partial disability to his right arm.
8. Pursuant to § 42-9-30, the Claimant sustained eight (8%) percent permanent partial disability to his back.
9. Pursuant to § 42-15-60, the Claimant is not entitled to further medical treatment for his right arm, but is entitled to future medical treatment for his back in the form of epidural injections and corresponding follow-up office visits.

Within the statutory period, counsel for the Claimant filed an Application for Review setting forth their reasons, copies of which were furnished to all interested parties, prior to oral argument presented before the Full Commission Appellate Panel (the Appellate Panel) on August 3, 2016. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the undersigned members of the Appellate Panel and has been under study and consideration. After careful review of all grounds raised, the evidence in the record, and oral arguments from both counsel, the Appellate Panel finds that, by unanimous vote, the Decision and Order of the Hearing Commissioner must be affirmed with amendments.

FINDINGS OF FACT

After careful review of the evidence and arguments presented by the parties, WE FIND AS A FACT THAT:

1. All parties to the proceeding are subject to and bound by the terms of the South Carolina Workers' Compensation Act with Rico Dorsey as employee, Allwaste Services, Inc., as employer, and Bridgefield Casualty Insurance Company c/o Summit Holdings, Inc., as carrier.
2. We find the Form 21 was filed on February 25, 2016. On March 8, 2016, the matter was set for a hearing on April 15, 2016. Due to conflicts reflected in the record, the matter was reset three times, and was eventually heard on August 3, 2016.
3. Prior to the hearing, the Defendants timely amended and filed their written Pre-hearing Brief pursuant to Regulation 67-611 on July 6, 2016, to add notice of the witness testimony of the Claimant's experts, Dr. Forrest and Dr. Dennis, by deposition. The Claimant's written Pre-hearing Brief was not amended and filed; the Claimant made an oral request at the August 3, 2016 hearing to leave the record open for testimony of Dr. Forrest and Dr. Dennis by deposition. The Defendants indicated that their desire to proceed with the depositions was contingent on whether the Claimant's oral request was to be granted. The request to leave the record open is denied and the record is closed as of August 3, 2016. We find Regulation 67-611 is applicable. Pursuant to Regulation 67-611(B), each attorney representing a party at a hearing shall file and serve a Form 58 at least ten days before the hearing with the Hearing Commissioner's office identified on the hearing notice. Additionally, pursuant to that section, a party is under a duty to promptly supplement a response with respect to any question directly addressed on Form 58 and amend a response if the party obtains information upon the basis

of which the party knows the response was incorrect when made, or the party knows the response thought correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

4. We find the medical questionnaire from Dr. Forrest, although not timely filed, is admitted into the record over the Defendants' objection. This finding is made pursuant to the undersigned's discretion under Regulation 67-612. We find Regulation 67-612 is applicable to reports of experts, and is not applicable to deposition testimony in lieu of live testimony. Pursuant to Regulation 67-612, the moving party must provide any written expert's reports to the opposing party at least fifteen days before the scheduled hearing. Further, the non-moving party must provide to the moving party any report not provided by the moving party at least ten days before the scheduled hearing. However, the Regulation "shall not be construed to limit the discretionary authority of a Hearing Commissioner to accept reports, depositions or other evidence at the conclusion of the scheduled hearing." See Regulation 67-612(E).
5. We find the Claimant sustained an admitted compensable injury to his lower back within the course and scope of his employment. This Finding is based upon the greater weight of the evidence in the record.
6. Based on the initial medical reports, we find the Claimant sustained a minor injury to his right arm as a result of his work accident. The Claimant complained of right arm pain for about two weeks after the initial injury after which there is no other medical evidence that supports a finding of a permanent injury to the Claimant's right arm. Additionally, the Claimant's deposition testimony is devoid of any complaints of continued right arm pain associated with the injury. Based on the evidence as a whole, we find the Claimant's right arm injury has resolved with no permanency.
7. The Claimant alleged an injury to his neck as a result of his work injury. The Claimant's contention that references to pain in the "upper R back" noted in the medical records are referring to his neck are unpersuasive. Correlating medical records from those same visits note that the Claimant was treated for his thoracic and lumbar spine only to the exclusion of the cervical spine. (See the Claimant's APA pp. 10-15). The Claimant also relies upon his IME referral examination from Dr. Forrest as well as the medical questionnaire as evidence in support of a compensable neck injury. In the Claimant's IME report, even Dr. Forrest notes, "It is not clear that the neck is playing a definite role here . . ." and basis his recommendation for a cervical MRI on The Claimant's reported symptomology. (The Claimant's APA pp. 166). Lastly, with regard to the Claimant's complaints of symptoms in his neck, the Claimant first alleged pain in his neck during his deposition on March 28, 2016, wherein he testified he told the doctors "from day one" his pain ran from "my neck all the way down my leg." (The Claimant's Depo. p. 63, ll. 8-10). He again reiterated this testimony at the hearing. We find the Claimant's contention that he complained of neck pain "since day one" is not supported by a preponderance of the evidence and his testimony in that regard cannot be relied upon. We find the Claimant's reported

symptomology and chronology with regard to his neck pain cannot be relied upon and as such Dr. Forrest's medical opinion, which he himself admitted was only based on the Claimant's reported symptomology, is not afforded great weight in this instance. As such, the Claimant's request for benefits related to his neck is denied.

8. We find the Claimant is at maximum medical improvement for his work related injury to his lower back as of February 4, 2016. This finding is based on the preponderance of the reliable medical evidence as a whole including the medical opinion of Dr. Lamotta, who reviewed the Claimant's lumbar radiographs, MRI, and EMG study that showed "mild left L5 nerve irritation" and still placed the Claimant at maximum medical improvement. (The Defendants' APA pp. 65-68). Additionally, in the initial evaluation by Dr. Forrest on April 27, 2016, the issue of maximum medical improvement was not referenced and a follow-up letter dated May 5, 2016, from Dr. Forrest addressed the Claimant's work status but not his MMI status. The Claimant obtained a medical questionnaire from Dr. Forrest dated July of 2016; however, it is contradicted by a preponderance of the evidence in the record.
9. We find the Claimant has sustained 8% permanent partial disability to his back for his compensable low back injury. This finding is based on the preponderance of the evidence as a whole.
10. We find the Claimant is only entitled to future medical treatment in the form of epidural injections and corresponding follow-up office visits. Although not recommended by an authorized treating physician, the Claimant has been receiving injections on his own and testified they have been of benefit.
11. The Defendants are entitled to stop payment of temporary total disability benefits.
12. We find the Defendants timely filed their Form 21 Request for Hearing—within three weeks of the authorized treating physician's MMI statement. As such, the Defendants are entitled to a credit for overpayment of TTD dated back to February 4, 2016—the date of maximum medical improvement.
13. After the Claimant's award and the Defendants' credit are calculated with finality as a result of this Order, the Defendants may have a resulting net credit. This credit may be applied toward any future payments of permanency as ordered by this Commission or a higher court, if any; however, in no way shall this finding be construed to award the Defendants reimbursement directly from the Claimant.
14. No hearing costs are assessed.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, and as provided by the Code of Laws of South Carolina, § 42-17-40, it is the determination of the Appellate Panel that:

1. Pursuant to Section 42-1-130, the Claimant was a covered employee at the time in question.
2. Pursuant to Section 42-1-140, defendant-employer was a covered employer under the Act.
3. Pursuant to Section 42-1-160, the Claimant sustained compensable injuries to his low back and right arm, but did not sustain a compensable injury to his neck.
4. Pursuant to *Curiel v. Environmental Management Services*, 376 S.C. 23, 655 S.E.2d 482 (2007), the Claimant reached maximum medical improvement with regard to his low back and right arm on February 4, 2016.
5. Pursuant to § 42-9-260, the Defendants are entitled to terminate temporary total disability benefits as the Claimant has reached maximum medical improvement.
6. Pursuant to *Curiel v. Environmental Management Services*, 376 S.C. 23, 655 S.E.2d 482 (2007), the Defendants are entitled to a credit for all temporary total disability benefits paid after February 4, 2016; however, if the Defendants have a resulting net credit, said credit shall be applied to future permanency related payment, but shall not be construed to require reimbursement directly from the Claimant.
7. Pursuant to § 42-9-30, the Claimant did not sustain permanent partial disability to his right arm.
8. Pursuant to § 42-9-30, the Claimant sustained eight (8%) percent permanent partial disability to his back.
9. Pursuant to § 42-15-60, the Claimant is not entitled to further medical treatment for his right arm, but is entitled to future medical treatment for his back in the form of epidural injections and corresponding follow-up office visits.

ORDER

IT IS, THEREFORE, ORDERED, that the Decision and Order of the Hearing Commissioner filed in the above-captioned matter on October 4, 2016, is hereby AFFIRMED with amendments as modified.

IT IS FURTHER ORDERED that the Claimant has reached maximum medical improvement with regard to his right arm and low back as of February 4, 2016.

IT IS FURTHER ORDERED that the Defendants are entitled to terminate temporary total disability benefits and, moreover, are entitled to a credit for all temporary total disability paid to the Claimant after February 4, 2016. However, if the result of the credit is a net to the Defendants, the credit shall be applied

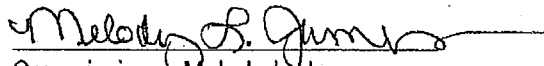
for future permanency related payment, but shall not be applied as to require reimbursement directly from The Claimant.

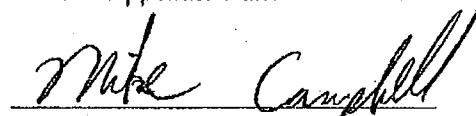
IT IS FURTHER ORDERED that the Claimant did not sustain permanent partial disability to his right arm, but is entitled to eight (8%) percent in permanent partial disability to the back, or 24 weeks, or \$8,807.76 in benefits.

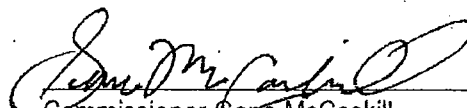
IT IS FURTHER ORDERED that the Claimant is not entitled to future medical treatment under the Act for his right arm, but is entitled to future medical treatment for his back in the form of epidural injections and corresponding follow-up office visits.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION


Commissioner Melody L. James
For The Appellate Panel


Commissioner R. Michael Campbell, II


Commissioner Gerie McCaskill

CERTIFICATE OF SERVICE

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

By Eugenia Hollmon on June 14, 2017

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

Rico A Dorsey v Allwaste Services Inc.

SCWCC: 1512220

Commissioner: Taylor

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference on a **Motion for Reconsideration**. 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 _____ Preserved for hearing

BEFORE THE;
_____ Hearing Comm. _____ Jurisdictional Comm. _____ Full Commission.

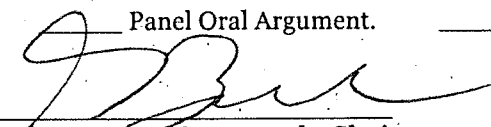
IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

_____ Remand to Panel as indicated below.
_____ Barden _____ James _____ Taylor
_____ Beck _____ Campbell _____ Wilkerson
_____ McCaskill

_____ 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
For the Commission

Columbia, South Carolina

8/21 2017

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

This 21 day of August, 2017.

By: 
SCWCC Judicial Department

(803) 737-5723 www.wcc.sc.gov



Employer FEIN #:

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



Rico Dorsey
Claimant's Name [REDACTED] SSN [REDACTED]
[REDACTED] Winnsboro, SC [REDACTED]
Address City State Zip
[REDACTED]
Home Phone Work Phone
Preparer's Name: Nicolas L. Haigler, Esquire

Allwaste Services, Inc.
Employer's Name
4715A Sunset Boulevard
Lexington, SC 29072
Address City State Zip
Summit Holdings, Inc./Bridgefield Casualty Insurance
Insurance Carrier

Law Firm: Sowell Gray Stepp & Laffitte, L.L.C.

Preparer's Phone #: (803) 929-1400

The date of injury reported on Form 12A is: 07/17/2015 (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 02/04/16 (m/d/yyyy) (copy of medical report must be attached).
Compensation payments are current as of 01/25/16 (m/d/yyyy) and shall continue until otherwise ordered or until Form 17 is signed by the claimant.
A Form 17 was offered and refused on 02/06/16 (m/d/yyyy).

- 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: No permanent impairment per the 02/04/16 report and 02/17/16 Form 14B of Dr. LaMotta.

Claimant reached maximum medical improvement on 02/04/16 (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.

- VI. ☐ **Mediation**

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

Failure to respond pursuant to Reg. 67-208 B in writing or by submission of a Form 22 may result in ordered mediation pursuant to Reg. 67-1801 B.
Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to R. 67-211 by delivering a copy to: Ms. Amy Bracy, Judicial Director, South Carolina Workers' Compensation

Commission, 1333 Main Street, Suite 500, Columbia, SC 29202-1715 (via hand delivery) and Creighton B. Coleman, Esquire, Coleman & Tolen, LLC, 120 W. Washington St., P.O. Box 1006, Winnsboro SC 29180, (via U.S. Mail)

on the 25th day of February, 2016 by ☒ first class mail, ☐ certified mail, ☐ personal service. A \$25.00 filing fee and updated Form 18 is required.

Attorney for The Employer/Carrier

nhaigler@sowellgray.com
Email

February 25, 2016
Date

Questions about the use of this form should be directed to the Judicial Department at (803) 737-5675, or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Refer to Regulations 67-211, 67-504, 67-505, 67-506; and 67-510.

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



Physician's Statement

Claimant's Name: RICO DORSEY

Employer's Name: Allwaste Services, Inc.

Physician's Name: Artis Healthcare

Insurance Carrier: Bridgefield Casualty Insurance Company

Practice/Clinic: _____

SCWCC File No: 1512220

Preparer's Name: Tracy Hayes

Phone: 800 963 2181

The undersigned physician has been authorized by the Employer/Carrier to treat this Claimant for his or her injury by accident pursuant to §§42-15-60, 42-1-172 or 42-11-10.

Date of Injury or Illness: 07-17-15

Date of first office visit: 7/22/2015

Date of last visit: 2/4/2016

Diagnosis or nature of injury or illness: Low back pain

Body part(s) injured: lumbar spine Body part(s) affected: _____

Date of Maximum Medical Improvement: 2/4/2016

Based on the AMA Guidelines, the claimant has sustained a 0 % medical impairment to lumbar spine injured body part(s) and a _____ % medical impairment to other affected body part(s).

☒ The claimant is able to return to work without restriction.

☐ The claimant is able to return to work with the following restrictions:

RECEIVED

FEB 25 2016

☐ The claimant is unable to return to work at his or her current employment.

☐ Claimant possesses retained hardware casually related to this injury.

(FRONT DESK)
SC Workers' Comp Comm.

As of the date I last saw this patient, it is my professional medical opinion the claimant:

☒ will not need future medical care related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not).

☐ will need future medical care and treatment related to his or her work related injury or illness based on a reasonable degree of medical certainty (more likely than not) and that medical care and treatment including medication is as follows:

Treating Physician: [Signature]

Date: 2/17/16

9/13

53-533-077842

14B

Physician's Statement

2/2

Feb-17-2016 11:17 AM Summit - SE Region Claims 8636687552



Rico Dorsey
Claimant's Name
Winnsboro, SC
Address City State Zip
Home Phone Work Phone
Preparer's Name: Nicolas L. Haigler, Esquire

Allwaste Services, Inc.
Employer's Name
4715A Sunset Boulevard
Lexington, SC 29072
Address City State Zip
Summit Holdings, Inc./Bridgefield Casualty Insurance
Insurance Carrier

Law Firm: Sowell Gray Stepp & Laffitte, L.L.C. Preparer's Phone #: (803) 929-1400

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$366.99 2. AWW: \$550.45 Date of Injury: 07/17/2015
3. Type of injury and body part(s): Low back.
4. Facts in controversy: STOP PAY HEARING. (1) Whether claimant has reached MMI for his low back; (2) Date of MMI (defendants contend 02/04/16); (3) Whether defendants are entitled to terminate TTD benefits; (4) Whether defendants are entitled to credit for TTD benefits paid after the date of MMI; (5) Extent of permanent partial disability, if any, sustained to the low back; and (6) Whether claimant is entitled to further benefits under the Act.
5. Legal issues involved: (1) See No. 4 above; (2) § 42-9-30; (3) § 42-9-260; (4) § 42-15-60; and (5) *Curiel v. Envtl. Management Servs.*, 655 S.E.2d 482 (2007).
6. Unusual aspects: As a result of the claimant's deposition on 03/28/16, defendants have subpoenaed medical records from numerous providers and reserve the right to submit those records immediately upon receipt and/or at the Hearing.
7. Witnesses (designate if expert):* (1) Claimant; and (2) Sammy Bell (co-worker).
8. Exhibits: (A) Claimant's deposition, if necessary.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): See attached Notice of Witnesses and Medical Reports to be Introduced as Evidence on Behalf of the Defendants.
10. Name, address, and specialty, if any, of the treating physician: James A. O'Leary, M.D., and Ivan E. LaMotta, M.D., Midlands Orthopedics, 1910 Blanding St., Columbia, SC 29201
11. Impairment rating(s); body part(s); physician and date of opinion: No permanent impairment to the lumbar spine per the 02/17/16 Form 14B of Dr. LaMotta.
12. I am amending my Form 50/51 in the following manner: N/A.

☐ Mediation

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

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 R. 67-211 by delivering a copy to: Honorable Susan S. Barden, Commissioner, South Carolina Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, SC 29202-1715 (via hand delivery) and Creighton B. Coleman, Esquire, Coleman & Tolen, LLC, 120 W. Washington St., P.O. Box 1006, Winnsboro SC 29180, (via U.S. Mail).

on the 31st day of March, 2016 by ☒ first class mail, ☐ certified mail, ☐ personal service.

Signature: Rico Dorsey Email: nhaigler@sowellgray.com

Date of hearing: April 15, 2016 Time needed for hearing: 1 hour

On behalf of ☐ Claimant ☒ Employer

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

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1512220

Rico Dorsey,

Claimant,

v.

Allwaste Services, Inc.,

Employer,

Summit Holdings, Inc./Bridgefield Casualty
Insurance,

Carrier,

Defendants.

)
)
)
)
) NOTICE OF WITNESSES AND
) WRITTEN MEDICAL REPORTS TO
) BE INTRODUCED AS DIRECT
) EVIDENCE ON BEHALF OF
) DEFENDANTS
)
)
)
)
)
)
)

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND CREIGHTON B. COLEMAN, ESQUIRE, ATTORNEY FOR THE CLAIMANT

YOU ARE HEREBY NOTIFIED THAT THE Defendants, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330, (1976, as amended), herewith submits the following medical reports as direct evidence on behalf of the Defendants, to-wit:

	Physician	Practice	Dates of Service	Page Numbers
1.		Doctor's Care	07/17/15 – 08/25/15	1 – 13
2.		Midlands Orthopedics	09/22/15 – 02/17/16	14 – 50
3.		Palmetto Imaging	10/07/15	51 – 52

	Exhibits	Date of Reports	Page Numbers
A.	Claimant's deposition, if necessary		

Unusual Problems: As a result of the claimant's deposition on 03/28/16, defendants have subpoenaed medical records from numerous providers and reserve the right to submit those records immediately upon receipt and/or at the Hearing.

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

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

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants: (1) Claimant; and (2) Sammy Bell (co-worker).

SOWELL GRAY STEPP & LAFFITTE, L.L.C.



Nicolas L. Haigler
1310 Gadsden Street
Post Office Box 11449 (29211)
Columbia, South Carolina 29201
(803) 929-1400

ATTORNEY FOR DEFENDANTS

Columbia, South Carolina

March 30, 2016

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1512220
Carrier File #: 0778422015
April 18, 2016

NOTICE OF HEARING RESET

RICO A DORSEY v. ALLWASTE SERVICES INC

Subject: To determine if employer/carrier may stop payment, and if so, to determine if claimant is entitled to any further benefits. Carrier also request credit for temporary total benefits paid in excess of award.

Date: May 9, 2016 at 12:30 PM

Location: SC Workers' Compensation Commission, 1333 Main Street, Suite 500 Hearing Room B
Columbia, SC 29202

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Aisha Taylor
803-737-5692, rgsmith@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Renee G Smith, SC Workers' Compensation, April 18, 2016

Party

Employee: RICO A DORSEY

Employer: ALLWASTE SERVICES INC
Carrier: Bridgefield Casualty Insurance Company

Attorney

Creighton B. Coleman
Creighton@colemantolen.com
803-635-6884

Nicolas L Haigler
nhaigler@sowellgray.com
803-929-1400



Rico Dorsey
Claimant's Name [redacted] SSN [redacted]
[redacted] Winnsboro, SC [redacted]
Address [redacted] City [redacted] State [redacted] Zip [redacted]
Home Phone [redacted] Work Phone [redacted]
Preparer's Name: Nicolas L. Haigler, Esquire

Allwaste Services, Inc.
Employer's Name:
4715A Sunset Boulevard
Lexington, SC 29072
Address [redacted] City [redacted] State [redacted] Zip [redacted]
Summit Holdings, Inc./Bridgefield Casualty Insurance
Insurance Carrier

Law Firm: Sowell Gray Stepp & Laffitte, L.L.C. Preparer's Phone #: (803) 929-1400

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$366.99 2. AWW: \$550.45 Date of Injury: 07/17/2015 (alleged)
3. Type of injury and body part(s): Low back.
4. Facts in controversy: STOP PAY HEARING. (1) Whether claimant has reached MMI for his low back; (2) Date of MMI (defendants contend 02/04/16); (3) Whether defendants are entitled to terminate TTD benefits; (4) Whether defendants are entitled to credit for TTD benefits paid after the date of MMI; (5) Extent of permanent partial disability, if any, sustained to the low back; and (6) Whether claimant is entitled to further benefits under the Act.
5. Legal issues involved: (1) See No. 4 above; (2) § 42-9-30; (3) § 42-9-260; (4) § 42-15-60; and (5) *Curriel v. Envtl. Management Servs.*, 655 S.E.2d 482 (2007).
6. Unusual aspects: As a result of the claimant's deposition on 03/28/16, defendants have subpoenaed medical records from numerous providers and reserve the right to submit those records immediately upon receipt and/or at the Hearing.
7. Witnesses (designate if expert):* (1) Claimant; and (2) Sammie Bell (co-worker).
8. Exhibits: (A) Claimant's deposition, if necessary.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): See attached Notice of Witnesses and Medical Reports to be Introduced as Evidence on Behalf of the Defendants.
10. Name, address, and specialty, if any, of the treating physician: James A. O'Leary, M.D., and Ivan E. LaMotta, M.D., Midlands Orthopedics, 1910 Blanding St., Columbia, SC 29201
11. Impairment rating(s); body part(s); physician and date of opinion: No permanent impairment to the lumbar spine per the 02/17/16 Form 14B of Dr. LaMotta.
12. I am amending my Form 50/51 in the following manner: N/A.

☐ Mediation

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

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 R. 67-211 by delivering a copy to: Honorable Aisha Taylor, Commissioner, South Carolina Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, SC 29202-1715 (via hand delivery) and Creighton B. Coleman, Esquire, Coleman & Tolen, LLC, 120 W. Washington St., P.O. Box 1006, Winnsboro SC 29180, (via U.S. Mail).

on the 22nd day of April 2016 by ☒ first class mail, ☐ certified mail, ☐ personal service.

Signature: Eve Goodstein

Email: nhaigler@sowellgray.com

Date of hearing: May 9, 2016

Time needed for hearing: 1.5 hours

On behalf of ☐ Claimant ☒ Employer

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

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1512220

Rico Dorsey,

Claimant,

v.

Allwaste Services, Inc.,

Employer,

Summit Holdings, Inc./Bridgefield Casualty
Insurance,

Carrier,

Defendants.

)
)
)
)
) NOTICE OF WITNESSES AND
) WRITTEN MEDICAL REPORTS TO
) BE INTRODUCED AS DIRECT
) EVIDENCE ON BEHALF OF
) DEFENDANTS
)
)
)
)
)

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND CREIGHTON B. COLEMAN, ESQUIRE, ATTORNEY FOR THE CLAIMANT

YOU ARE HEREBY NOTIFIED THAT THE Defendants, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330, (1976, as amended), herewith submits the following medical reports as direct evidence on behalf of the Defendants, to-wit:

	Physician	Practice	Dates of Service	Page Numbers
1.	Mark D. Locke, M.D.	Moore Orthopedics	08/14/03 – 04/19/05	1 – 5
2.		Fairfield Memorial Hospital	12/28/08 – 06/25/13	6 – 16
3.		Doctor's Care	07/17/15 – 08/25/15	17 – 29
4.		Midlands Orthopedics	09/22/15 – 02/17/16	30 – 66
5.		Palmetto Imaging	10/07/15	67 – 68

	Exhibits	Date of Reports	Page Numbers
A.	Claimant's deposition, if necessary		

Unusual Problems: As a result of the claimant's deposition on 03/28/16, defendants have subpoenaed medical records from numerous providers and reserve the right to submit those records immediately upon receipt and/or at the Hearing.

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

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

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants: (1) Claimant; and (2) Sammie Bell (co-worker).

SOWELL GRAY STEPP & LAFFITTE, L.L.C.



Nicolas L. Haigler
1310 Gadsden Street
Post Office Box 11449 (29211)
Columbia, South Carolina 29201
(803) 929-1400

ATTORNEY FOR DEFENDANTS

Columbia, South Carolina

April 22, 2016



Rico Dorsey
Claimant's Name
Winnsboro, SC
Address City State Zip
Home Phone Work Phone
Preparer's Name: Nicolas L. Haigler, Esquire

Allwaste Services, Inc.
Employer's Name
4715A Sunset Boulevard
Lexington, SC 29072
Address City State Zip
Summit Holdings, Inc./Bridgefield Casualty Insurance
Insurance Carrier

Law Firm: Sowell Gray Stepp & Laffitte, L.L.C. Preparer's Phone #: (803) 929-1400

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$366.99 2. AWW: \$550.45 Date of Injury: 07/17/2015 (alleged)
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7. Witnesses (designate if expert):* (1) Claimant; (2) Sammie Bell (co-worker); and (3) Cathy Odum (co-worker)
8. Exhibits: (A) Claimant's deposition, if necessary.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): See attached Notice of Witnesses and Medical Reports to be Introduced as Evidence on Behalf of the Defendants.
10. Name, address, and specialty, if any, of the treating physician: James A. O'Leary, M.D., and Ivan E. LaMotta, M.D., Midlands Orthopedics, 1910 Blanding St., Columbia, SC 29201
11. Impairment rating(s); body part(s); physician and date of opinion: No permanent impairment to the lumbar spine per the 02/17/16 Form 14B of Dr. LaMotta.
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☐ Mediation

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

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 R. 67-211 by delivering a copy to:

Honorable Aisha Taylor, Commissioner, South Carolina Workers' Compensation

Commission, 1333 Main Street, Suite 500, Columbia, SC 29202-1715 (via hand delivery) and Creighton B. Coleman, Esquire, Coleman & Tolen, LLC, 120 W. Washington St., P.O. Box 1006, Winnsboro SC 29180, (via U.S. Mail).

on the 2nd day of May, 2016 by ☒ first class mail, ☐ certified mail, ☐ personal service.

Signature:

Email: nhaigler@sowellgray.com

Date of hearing: May 9, 2016

Time needed for hearing: 1.5 hours

On behalf of ☐ Claimant ☒ Employer

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

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

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1512220

Rico Dorsey,

Claimant,

v.

Allwaste Services, Inc.,

Employer,

Summit Holdings, Inc./Bridgefield Casualty
Insurance,

Carrier,

Defendants.

)
)
)
)
) 2ND AMENDED NOTICE OF WITNESSES AND
) WRITTEN MEDICAL REPORTS TO
) BE INTRODUCED AS DIRECT
) EVIDENCE ON BEHALF OF
) DEFENDANTS
)
)
)
)
)

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND CREIGHTON B. COLEMAN, ESQUIRE, ATTORNEY FOR THE CLAIMANT

YOU ARE HEREBY NOTIFIED THAT THE Defendants, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330, (1976, as amended), herewith submits the following medical reports as direct evidence on behalf of the Defendants, to-wit:

	Physician	Practice	Dates of Service	Page Numbers
1.	Mark D. Locke, M.D.	Moore Orthopedics	08/14/03 – 04/19/05	1 – 5
2.		Fairfield Memorial Hospital	12/28/08 – 06/25/13	6 – 16
3.		Doctor's Care	07/17/15 – 08/25/15	17 – 29
4.		Midlands Orthopedics	09/22/15 – 02/17/16	30 – 66
5.		Palmetto Imaging	10/07/15	67 – 68
6.		Palmetto Health Richland	01/26/98	69 – 71

	Exhibits	Date of Reports	Page Numbers
A.	Claimant's deposition, if necessary		

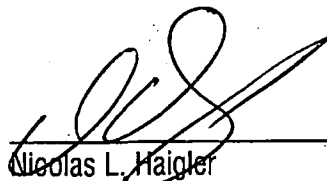
Unusual Problems: As a result of the claimant's deposition on 03/28/16, defendants have subpoenaed medical records from numerous providers and reserve the right to submit those records immediately upon receipt and/or at the Hearing.

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

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

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants: (1) Claimant; (2) Sammie Bell (co-worker); and (3) Cathy Odom (co-worker).

SOWELL GRAY STEPP & LAFFITTE, L.L.C.



Nicolas L. Haigler
1310 Gadsden Street
Post Office Box 11449 (29211)
Columbia, South Carolina 29201
(803) 929-1400

ATTORNEY FOR DEFENDANTS

Columbia, South Carolina
May 2, 2016

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1512220
Carrier File #: 0778422015
May 24, 2016

NOTICE OF HEARING RESET

RICO A DORSEY v. ALLWASTE SERVICES INC

Subject: To determine if employer/carrier may stop payment, and if so, to determine if claimant is entitled to any further benefits. Carrier also request credit for temporary total benefits paid in excess of award.

Date: July 22, 2016 at 10:00 AM

Location: SC Workers' Compensation Commission, 1333 Main Street, Suite 500, Hearing Room A
Columbia, SC 29202

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Aisha Taylor
803-737-5692, rgsmith@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Renee G Smith, SC Workers' Compensation, May 24, 2016

Party

Employee: RICO A DORSEY

Employer: ALLWASTE SERVICES INC
Carrier: Bridgefield Casualty Insurance Company

Attorney

Creighton B. Coleman
Creighton@colemantolen.com
803-635-6884

Nicolas L Haigler
nhaigler@sowellgray.com
803-929-1400

SC Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1512220
Carrier File #: 077842
Carrier Code #:
Employer FEIN #:

Rico Dorsey
Claimant's Name
Winnsboro, SC
Address
City
State
Zip
Home Phone
Work Phone
Preparer's Name: Nicolas L. Haigler, Esquire

Allwaste Services, Inc.
Employer's Name
4715A Sunset Boulevard
Lexington, SC 29072
Address
City
State
Zip
Summit Holdings, Inc./Bridgefield Casualty Insurance
Insurance Carrier
Law Firm: Sowell Gray Stepp & Laffitte, L.L.C.
Preparer's Phone #: (803) 929-1400

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$366.99
2. AWW: \$550.45
- Date of Injury: 07/17/2015 (alleged)
3. Type of injury and body part(s): Low back.
4. Facts in controversy: STOP PAY HEARING. (1) Whether claimant has reached MMI for his low back; (2) Date of MMI (defendants contend 02/04/16); (3) Whether defendants are entitled to terminate TTD benefits; (4) Whether defendants are entitled to credit for TTD benefits paid after the date of MMI; (5) Extent of permanent partial disability, if any, sustained to the low back; (6) Whether claimant is entitled to further benefits under the Act; and (7) Credibility of the claimant.
5. Legal issues involved: (1) See No. 4 above; (2) § 42-9-30; (3) § 42-9-260; (4) § 42-15-60; and (5) *Curiel v. Envtl. Management Servs.*, 655 S.E.2d 482 (2007).
6. Unusual aspects: Defendants are scheduled to depose Dr. Dennis on 08/18/16 and Dr. Forrest on 08/08/16 and have requested the record remain open to secure these depositions.
7. Witnesses (designate if expert): (1) Claimant; (2) Sammie Bell (co-worker) (via deposition); (3) Cathy Odom (co-worker) (via deposition); (4) Deposition of Blake Dennis, M.D. (via deposition on 08/18/16); and (5) Deposition of Leonard Forrest, M.D. (via deposition on 08/08/16).
8. Exhibits: (A) Portions of the claimant's personnel file (4 pages); (B) Deposition of Sammie Bell; (C) Deposition of Cathy Odom; (D) Claimant's deposition, if necessary.
9. Medical evidence (indicate report pursuant to R. 67-612; deposition or appearance): See attached Notice of Witnesses and Medical Reports to be Introduced as Evidence on Behalf of Defendants.
10. Name, address, and specialty, if any, of the treating physician: James A. O'Leary, M.D., and Ivan E. LaMotta, M.D., Midlands Orthopedics, 1910 Blanding St., Columbia, SC 29201
11. Impairment rating(s); body part(s); physician and date of opinion: No permanent impairment to the lumbar spine per the 02/17/16 Form 148 of Dr. LaMotta.
12. I am amending my Form 50/51 in the following manner: N/A

☐ Mediation

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

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 R. 67-211 by delivering a copy to: Honorable Aisha Taylor, Commissioner, South Carolina Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, SC 29202-1715 (via hand delivery) and Creighton B. Coleman, Esquire, Coleman & Tolen, LLC, 120 W. Washington St., P.O. Box 1006, Winnsboro SC 29180, (via U.S. Mail).

on the 7th day of July, 2015 by ☒ first class mail, ☐ certified mail, ☐ personal service.
Signature: [Signature] Email: nhaigler@sowellgray.com
Date of hearing: July 22, 2016 Time needed for hearing: 1.5 hours

On behalf of ☐ Claimant ☒ Employer

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

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1512220

Rico Dorsey,

Claimant,

v.

Allwaste Services, Inc.,

Employer,

Summit Holdings, Inc./Bridgefield Casualty
Insurance,

Carrier,

Defendants.

)
)
)
) NOTICE OF WITNESSES AND
) WRITTEN MEDICAL REPORTS TO
) BE INTRODUCED AS DIRECT
) EVIDENCE ON BEHALF OF
) DEFENDANTS
)
)
)
)
)

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND CREIGHTON B.
COLEMAN, ESQUIRE, ATTORNEY FOR THE CLAIMANT

YOU ARE HEREBY NOTIFIED THAT THE Defendants, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330, (1976, as amended), herewith submits the following medical reports as direct evidence on behalf of the Defendants, to-wit:

	Physician	Practice	Dates of Service	Page Numbers
1.		Palmetto Health Richland	01/26/98 – 02/11/16	1 – 5
2.	Mark D. Locke, M.D.	Moore Orthopedics	08/14/03 – 04/19/05	6 – 10
3.		Fairfield Memorial Hospital	12/28/08 – 09/10/15	11 – 25
4.		Providence Hospital Family Care	04/28/09	26 – 27
5.		Doctor's Care	07/17/15 – 08/25/15	28 – 40
6.		Midlands Orthopedics	09/22/15 – 02/17/16	41 – 77

7.		Palmetto Imaging	10/07/15	78 – 79
8.		Southeastern Spine Institute	04/07/16	80 – 88
9.	Leonard Forrest, M.D.		08/08/16	Deposition
10.	Blake Dennis, M.D.		08/18/16	Deposition

	Exhibits	Date of Reports	Page Numbers
A.	Portions of Claimant's personnel file	05/17/13	1 – 4
B.	Deposition of Sammie Bell	07/01/16	
C.	Deposition of Cathy Odom	07/01/16	
D.	Claimant's deposition, if necessary	03/28/16	

Unusual Problems: Defendants are scheduled to depose Dr. Dennis on 08/18/16 and Dr. Forrest on 08/08/16 and have requested the record remain open to secure these depositions.

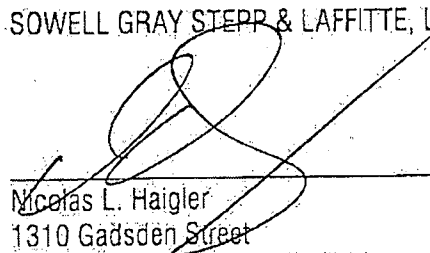
YOU ARE FURTHER HEREBY NOTIFIED that you have the right of cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians, whose reports are submitted, for the purposes of cross-examination.

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

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants: (1) Claimant; (2) Sammie Bell (co-worker) (via deposition); (3) Cathy Odom (co-worker) (via deposition); (4) Deposition of Blake Dennis, M.D. (via deposition on 08/18/16); and (5) Deposition of Leonard Forrest, M.D. (via deposition on 08/08/16).

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.



Nicolas L. Haigler
1310 Gadsden Street
Post Office Box 11449 (29211)
Columbia, South Carolina 29201
(803) 929-1400

ATTORNEY FOR DEFENDANTS

Columbia, South Carolina
July 6, 2016

South Carolina Workers' Compensation
Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5675 www.wcc.sc.gov



PRE-HEARING BRIEF
WCC File No: 1512220

Claimant's Name: Rico Dorsey Employer's Name: Allwaste Services, Inc.
Address: [REDACTED] Address: 4715A
City: Winnsboro State: SC Zip: [REDACTED] City: Lexington State: SC Zip: 29073
Home Phone: [REDACTED] Work Phone: () - Carrier: Summit Holdings, Inc./Bridgefield Casualty Insurance
Preparer's Name: Creighton B. Coleman, Esquire Preparer's Phone #: (803) 635-6884

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$366.99 2. AWW: \$550.45 Date of Injury: 07/17/2015
3. Type of injury and body part(s): back, legs, elbows
4. Facts in controversy: Does Claimant need additional medical treatment? Is claimant entitled to further benefits under the act?
5. Legal issues involved: Does Claimant need additional medical treatment? Is claimant entitled to further benefits under the act?
6. Unusual aspects: None
7. Witnesses (designate if expert):* Claimant, Caroline Dorsey (Mother), Henry Dorsey, Sammie Bell,
8. Exhibits: Deposition of Sammie Bell
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): Medical records and reports of Doctor's Care; Fairfield Memorial Hospital; Midlands Orthopedics; Palmetto Health Orthopedics; Palmetto Health Richland; Palmetto Health Spine Center; Southeastern Spine Institute
10. Name, address, and specialty, if any, of the treating physician: Doctor's Care; Fairfield Memorial Hospital; Midlands Orthopedics; Palmetto Health Orthopedics; Palmetto Health Richland; Amit Singh DO, Palmetto Health Spine Center; Leonard Forrest, MD Southeastern Spine Institute, 1106 Chuck Dawley Blvd, Suite 200, Mt. Pleasant, SC 29464
11. Impairment rating(s); body part(s); physician and date of opinion: None at this time
12. I am amending my Form 50/51 in the following manner: N/A

☐ **Mediation**

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

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

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

Address [REDACTED] on the day of 2016, by:

☐ first class postage ☐ certified mail ☐ personal service ☐ electronic service

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

Signature: [Signature]
Date of hearing: July 22, 2016

Email: creighton@colemantolen.com
Time needed for hearing: 1.5 hrs

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

WCC Form # 58
Revised 7/15

58

PRE-HEARING BRIEF

BEFORE THE
SOUTH CAROLINA WORKERS COMPENSATION COMMISSION
SCWCC FILE NO. 1512220

Rico Dorsey,

Claimant,

vs.

Allwaste Services, Inc.,

Employer,

and

Summit Holdings, Inc./Bridgefield Casualty
Insurance,

Carrier,

Defendants.

NOTICE OF WITNESSES AND WRITTEN
MEDICAL REPORTS TO BE
INTRODUCED AS DIRECT EVIDENCE
ON BEHALF OF CLAIMANT

TO: SC WORKERS COMPENSATION COMMISSION AND NICHOLAS L.
HAIGLER, ATTORNEY FOR EMPLOYER/DEFENDANT:

YOU ARE NOTIFIED that Claimant, pursuant to the provisions of the South Carolina
Workers Compensation Act and §1-23-330 of the South Carolina Code of Laws, submits the
following medical records and other documents as evidence:

Tab	Provider	Service Dates	Pages
1	Doctor's Care	07/17/2015-08/25/2015	1-18
2	Fairfield Memorial Hospital	8/23/2015-02/04/2016	19-41
3	Midlands Orthopedics	09/22/2015-02/17/2016	42-69
4	Palmetto Health Orthopedics	11/03/2015-03/04/2016	70-83
5	Palmetto Health Richland	02/08/2016-02/11/2016	84-144
6	Palmetto Health Spine Center	03/01/2016	145-149
7	Southeastern Spine Institute	04/27/2016-05-05-2016	150-185
8	Work Status Information	07/17/2015-05/05/2016	186-196

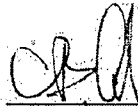
	Exhibit:	Dates:	Pages
A	Deposition of Sammie Bell	7/1/2016	

YOU ARE FURTHER NOTIFIED that you have the right to cross-examine or otherwise oppose this evidence and, should you desire to exercise this right, you are to promptly schedule the deposition of any provider whose records are submitted, for the purposes of cross-examination, or otherwise promptly submit opposing medical records into evidence.

YOU ARE FURTHER NOTIFIED that these records, or photocopies of same, will be provided to the South Carolina Workers Compensation Commission for insertion in their file and for consideration as evidence on behalf of the Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant:

- a. Claimant
- b. Caroline Dorsey (Mother)
- c. Henry Dorsey
- d. Sammie Bell



Creighton B. Coleman
COLEMAN & TOLEN, LLC
120 West Washington Street
PO Box 1106
Winnsboro, SC 29180
803-635-6884
creighton@colemantolen.com
ATTORNEY FOR CLAIMANT

JULY 12, 2016

BEFORE THE
SOUTH CAROLINA WORKERS COMPENSATION COMMISSION
SCWCC FILE NO. 1512220

Rico Dorsey,

Claimant,

vs.

Allwaste Services, Inc.,

Employer,

and

Summit Holdings, Inc./Bridgefield Casualty
Insurance,

Carrier,

Defendants.

SUPPLEMENTED
NOTICE OF WITNESSES AND WRITTEN
MEDICAL REPORTS TO BE
INTRODUCED AS DIRECT EVIDENCE
ON BEHALF OF CLAIMANT

TO: SC WORKERS COMPENSATION COMMISSION AND NICHOLAS L.
HAIGLER, ATTORNEY FOR EMPLOYER/DEFENDANT:

YOU ARE NOTIFIED that Claimant, pursuant to the provisions of the South Carolina Workers Compensation Act and §1-23-330 of the South Carolina Code of Laws, submits the following medical records and other documents as evidence:

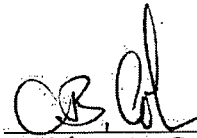
Tab	Provider	Service Dates	Pages
9	Dr. Forrest Affidavit		197
10	Southeastern Spine Institute	5/11/2016 and 6/8/2016	198-199

YOU ARE FURTHER NOTIFIED that you have the right to cross-examine or otherwise oppose this evidence and, should you desire to exercise this right, you are to promptly schedule the deposition of any provider whose records are submitted, for the purposes of cross-examination, or otherwise promptly submit opposing medical records into evidence.

YOU ARE FURTHER NOTIFIED that these records, or photocopies of same, will be provided to the South Carolina Workers Compensation Commission for insertion in their file and for consideration as evidence on behalf of the Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant:

- a. Claimant
- b. Caroline Dorsey (Mother)
- c. Henry Dorsey
- d. Sammie Bell



Creighton B. Coleman
COLEMAN & TOLEN, LLC
120 West Washington Street
PO Box 1106
Winnsboro, SC 29180
803-635-6884
creighton@colemantolen.com
ATTORNEY FOR CLAIMANT

JULY 20, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Rico Dorsey,)

Employee/Claimant,)

vs.)

Allwaste Services, Inc.,)

Employer,)

and)

Summit Holdings, Inc./Bridgefield Casualty)
Insurance,)

Carrier/Defendants.)

BEFORE THE
SOUTH CAROLINA

WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER: 1512220

CLAIMANT'S MEMORANDUM IN SUPPORT
OF APPLICATION FOR REVIEW

STATEMENT OF THE CASE

This is an appeal from the October 4, 2016 Order of the Honorable Aisha Taylor, which declined to allow completion/submission of two evaluating physician depositions that were: (a) scheduled to be completed within 5 and 15 days (August 8, 2016 and August 18, 2016), respectively, of the ultimate (August 3, 2016) hearing date; (b) specifically listed in Defendants', Allwaste Services, Inc.'s and Bridgefield Casualty Insurance Company's Pre-Hearing Brief/APA Submission Form as **evidentiary exhibits**; and (c) ultimately sought by not only Defendants, but also Claimant, Rico Dorsey.

After announcing this denial, the October 4, 2016 Order further: (a) declares Mr. Dorsey at maximum medical improvement, notwithstanding the presence of objectively verified lumbar nerve root irritation that improved following an epidural steroid injection obtained per Dr. Forrest's recommendation; (b) rejects his contention that the July 17, 2015 compensable accident had produced a neck injury component, presumably based upon the assumption Mr. Dorsey did not report the presence of

neck pain until his March 28, 2016 deposition; (c) assessed his residual degree of permanent disability at 8% of the back secondary to his lumbar injury component; (d) limited his receipt of further medical care to "epidural injections and corresponding follow-up office visits"; and (e) awarded Defendants an overpayment credit effective February 4, 2016, the date of his one-time evaluation by Dr. Ivan E. LaMotta.

In this regard, Mr. Dorsey respectfully submits the Hearing Commissioner's prohibiting completion/submission of Drs. Forrest's and Dennis' depositions is legally erroneous, as: (a) review of the hearing record, including Defendants' Pre-Hearing Brief, unequivocally confirms the depositions of these physicians had been noticed/scheduled for specific dates in August, 2016; (b) the record likewise reflects Mr. Dorsey's counsel was notified, through filing of this Pre-Hearing Brief and APA Submission Form, of these noticed/scheduled depositions prior to the deadline for his submission of documentary evidence in connection with the merits hearing; (c) counsel not only offered no objection, but also concurred with defense counsel as to the need for these depositions; (d) these requests were never withdrawn; (e) 8 S.C. Code Ann. Regs. 67-612(D)(2012) recognizes the right of a responding party to rely upon the intended evidentiary submissions of the moving party in determining the nature/content of its evidentiary submissions; (f) relying on Defendants' documented intention to depose these physicians, counsel justifiably intended to pursue additional necessary discovery in the context of the depositions; and (g) her denial of the parties' respective efforts to pursue/complete the depositions is not only inconsistent with the purpose/intent of Regulation 67-612, but also resulted in a denial of procedural due process.

Mr. Dorsey would further note: (a) the absence of any explanation as to the rationale for denying the parties' joint request for completion/submission of these depositions constitutes an error of law; (b) her predominant basis for denying the compensability of his cervical/neck symptoms ("first alleged pain

in his neck during his deposition on March 28, 2016”) not only inadvertently overlooks an authorized treater’s (Dr. James A. O’Leary’s) November 5, 2015 documentation of “pain . . . [that] starts in his neck and goes all the way down his left leg”, but also his report of “upper R back” pain to a medical provider on his accident date; and (c) the determination as to all disputed issues, absent introduction/consideration of the medical deposition testimony, was not only legally inappropriate, but also highly prejudicial.

RELEVANT FACTS

A. Medical Evidence

On July 17, 2015, Mr. Dorsey was struck by a backing garbage truck while performing his duties as a sanitation worker for Allwaste Services, Inc. Shortly thereafter (same day), he sought medical treatment through Doctor’s Care-Lexington, where the attending physician: (a) noted not only the occurrence of this trauma, but also the presence of “dull pain in the upper R back, L lower back and R forearm”; (b) observed he exhibited tenderness to palpation (“TTP”) over [his] . . . “R upper trap . . . and L latiss dorsi”; and (c) prescribed medication in conjunction with light duty work activities.

Upon returning to this facility on July 22, 2015, Mr. Dorsey: (a) again reported right upper back pain, which continued to be manifested through right upper trapezious tenderness on examination; (b) identified left lower back pain accompanied by tenderness in the left latiss dorsi; and (c) received additional medication, reiteration of the light duty work restriction and a prescription for physical therapy.

After again identifying this symptom pattern on August 25, 2015, the attending Doctor’s Care-Lexington physician recommended orthopaedic referral, which led to a September 22, 2015 evaluation by Dr. O’Leary. While Mr. Dorsey’s chief complaint on that date involved low back and radiating leg pain, he also described “numbness and tingling in the right hand as well.” (See, Defendants’ APA Exhibit 6, p. 41). Additionally, he displayed a shuffling gait, right upper extremity weakness, tenderness over the

lumbosacral junction, decreased lumbar range of motion and an equivocal straight leg raise test response. (See, Defendants' APA Exhibit 6, p. 43).

As an MRI scan did not demonstrate disc herniation or stenosis, Dr. O'Leary next ordered electrodiagnostic studies, **which verified the presence of "left L-5 nerve root irritation."** (See, Defendants' APA Exhibit 6, p. 57). Several days after completing this study, Mr. Dorsey returned to Dr. O'Leary (November 5, 2015), whose resulting report confirms: (a) the presence of "significant pain . . . [that] starts in his neck and goes all the way down his left leg"; (b) "some difficulty" with heel/toe walking, tenderness "over the lumbosacral junction", limited lumbar range of motion and continued equivocal straight leg raise response; (c) the L-5 nerve root irritation warranted performance of an epidural steroid injection, which was completed on December 18, 2015.

When this injection provided only limited relief and Dr. O'Leary elicited a "positive" straight leg raise response on the left during a January 21, 2016 examination, he facilitated a referral to Dr. LaMotta. While this physician's February 4, 2015 examination revealed the presence of spinal tenderness, "markedly" limited lumbar range of motion and decreased left leg sensation, Dr. LaMotta declared Mr. Dorsey at maximum medical improvement, while indicating "there is no permanent impairment."

As he remained symptomatic, Mr. Dorsey sought further assessment through Southeastern Spine Institute in April, 2016. Inspection of the records generated by this facility reveals: (a) references to not only the admittedly compensable low back and left radicular leg pain, but also ongoing complaints of cervical pain; (b) the presence of a "positive straight leg raise on the left" per Dr. Dennis (April 7, 2016); (c) Mr. Dorsey exhibited "give-way weakness in [the] . . . left leg" per Dr. Forrest's April 27, 2016 exam, which prompted this physician to order an L4-5 epidural steroid injection (completed on April 27, 2016);

and (d) this injection produced "a good response", which was characterized as "at least 50% relief for a couple of weeks following the" procedure.

Given this positive response, Dr. Forrest recommended proceeding with a second injection, while subsequently confirming: (a) Mr. Dorsey's cervical symptoms most likely aggravated preexisting cervical pathology, causing it to become symptomatic; and (b) the causal relationship of Mr. Dorsey's persistent right arm symptoms.

B. Procedural Course

Pursuant to their July 7, 2016 Pre-Hearing brief, Defendants (the moving parties) verified: (a) they were **"scheduled to depose Dr. Dennis on 08/18/16 and Dr. Forrest on 08/08/16 and have requested the record remain open to secure these depositions"**; and (b) their intention to submit these depositions into evidence through reference to an attached APA Submission Form which specifically identified these depositions **as APA Exhibits 9 and 10**, respectively.

While Defendants equivocated somewhat as to their desire to pursue these depositions during Pre-Hearing conferences conducted on July 22, 2016 and August 3, 2016, they neither renounced nor abandoned their previously acknowledged intention to submit this deposition evidence. In response to Defendants' proposed evidentiary submission, Mr. Dorsey not only offered no objection to completion/consideration of these depositions, but also (a) endorsed the need for obtaining this expert testimony; and (b) directed the Hearing Commissioner to Regulation 67-612 (D), including its requirement of mutual consent to withdraw any previously identified documentary evidence submissions.

Despite this consensus, the Hearing Commissioner: (a) made no ruling either prior to or during the hearing; (b) subsequently denied "both" parties' efforts to complete/submit the impending depositions;

and (c) offered no explanation as to rationale for this rejection of the parties' joint request to introduce this essential evidence.

LEGAL ANALYSIS

A. EXCLUSION OF DEPOSITION TESTIMONY.

8 S.C. Code Ann. Regs. 67-612 (D) provides in pertinent part that "[a]ny report submitted to the opposing party in accord with . . . [the provisions of this regulation] **shall** be submitted as an APA exhibit at the hearing unless withdrawn with the consent of the other party" (Emphasis added). This proviso clearly: (a) allows the non-moving party to reasonably presume all documentary evidence identified through the moving party's Pre-Hearing Brief/APA Submission Form will become part of the hearing record; and (b) prohibits the moving party from withdrawing any identified documentary evidence so as to prevent the non-moving party from suffering prejudice by the absence of this evidence from the hearing record.

Although the regulation uses the term "report", it cannot limit the nature of evidentiary submissions authorized by S.C. Code Ann. Section 1-23-330 (1976, as amended), which provides that "any part of the evidence may be received in written form" See also, Gadson v. Mikasa Corporation, 368 S.C. 214, 628 S.E. 2d 262, 269 (Ct. App. 2006). Consequently, deposition transcripts also fall within the purview of Regulation 67-612(D).

In this instance, Defendants: (a) obviously felt a legitimate need to depose Drs. Forrest and Dennis; (b) scheduled the depositions of these physicians several weeks prior to the ultimate hearing date; and (c) actually identified these deposition transcripts as evidentiary Exhibits 9 and 10 on their APA Submission Form. Once these scheduled depositions were identified through Defendants' Pre-Hearing Brief/APA Submission Form, Mr. Dorsey had: (a) no reason to assume they would not be

completed/submitted into evidence; and (b) an absolute right to rely on their submission per Regulation 67-612 (D)

Additionally, it is axiomatic that “[g]reat liberality is exercised in permitting the introduction of evidence in proceedings under” the Workers’ Compensation Act. Ham v. Mullins Lumber Company, 193 S.C. 66, 7 S.E. 2d 712, 719 (1940); Hamilton v. Bob Bennett Ford, 339 S.C. 68, 528 S.E. 2d 667, 668 (2000). It is equally certain that “[a]ministrative agencies are required to meet minimum standards of due process”, including cross examination of witnesses. See, Smith v. South Carolina Department of Mental Health, 329 S.C. 485, 494 S.E.2d 630, 638 (Ct. App. 1997).

Recognizing the applicability of these prevailing principles, as well as the fact these physicians’ testimony was essential to proper resolution of the contested issues, Mr. Dorsey: (a) offered no objection to obtaining this expert testimony; (b) reasonably relied upon the fact these depositions would afford him an opportunity to obtain confirmation and/or clarification as to several salient points; (c) formally concurred with Defendants’ determination to include this testimony in the hearing record; and (d) reasonably presumed these depositions would be completed/considered by the fact finder in determining the contested issues.

Given the parties’ concurrence as to the materiality of this deposition testimony, in light of controlling legal authorities requiring its inclusion, the Hearing Commissioner’s refusal to allow submission of this evidence constituted an error of law. Further: (a) the legal nature of this error dispels any notion exclusion of the evidence was a simple exercise of discretion, as “an abuse of discretion occurs when the ruling is based on an error of law” (See, Trotter v. Trane Coil Facility, 393 S.C. 637, 714 S.E. 2d 289 (2011) (Emphasis added)); and (b) the lack of explanation for this determination was likewise erroneous, as identification of the underlying reasoning behind any ruling is required. See, Able

Communications, Inc. v. South Carolina Public Service Commission, 290 S.C. 409, 351 S.E. 2d 151, 152 (1986); Kiawah Property Owners Group v. Public Service Commission of South Carolina, 338 S.C. 92, 525 S.E. 2d 863, 865 (1999).

The absence of this deposition testimony similarly precluded adjudication of the substantive matters raised in Defendants' Form 21 (attainment of maximum medical improvement, termination of temporary total disability, assessment of permanent disability, identification of additional medical entitlement, award of credit, etc.), as these rulings: (a) were the product of an arbitrary, capricious and illegal procedure; (b) violative of due process; and (c) rendered null/void. See, LaSalle Bank National Association v. Davidson, 386 S.C. 276, 688 S.E. 2d 122, 122 (2009); Adams v. H. R. Allen, Inc., 397 S.C. 652, 726 S.E. 9, 12 (Ct. App. 2012)

B. DENIAL OF NECK INJURY COMPONENT.

Inspection of the medical evidence confirms: (a) Mr. Dorsey reported the presence of upper back pain to his attending physician at the Doctor's Care-Lexington facility on the accident date; (b) this symptom was again documented on July 22, 2015 and August 25, 2015; (c) Dr. O'Leary specifically noted the presence of "significant pain . . . [that] starts in his neck and goes all the way down his left leg" on November 5, 2015; (b) neck pain was likewise reported to Drs. Dennis and Forrest at the time of their respective examinations and (e) Dr. Forrest attributed these cervical symptoms to the aggravating impact of Mr. Dorsey's July 17, 2015 compensable trauma.

In determining his neck symptoms were not the product of his compensable accident, the Hearing Commissioner focused on her belief: (a) the initial references to "upper R back" symptoms were not potentially consistent with a cervical injury; (b) Mr. Dorsey "first alleged pain in his neck during his deposition on March 28, 2016 wherein he testified he told doctors . . . his pain ran from 'my neck all the

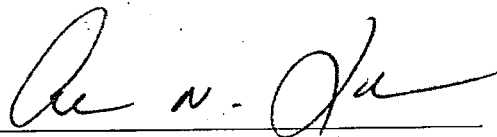
way down my leg””; and (c) Dr. Forrest’s reliance on this purportedly inaccurate aspect of Mr. Dorsey’s medical history necessitated giving this physician’s opinion limited weight.

However, as previously noted, Mr. Dorsey not only reported the presence of neck symptoms to an authorized treater long before his deposition date, but also described his symptoms in a manner consistent with his deposition testimony. This fact obviously/materially undermines the Hearing Commissioner’s stated rationale for declining to “afford . . . great weight” to Dr. Forrest’s causation opinion, which: (a) is actually quite consistent with Mr. Dorsey’s relevant medical history; and (b) now stands unrebutted.

While completion of Dr. Forrest’s deposition (which was set to proceed a mere five days following the August 3, 2016 hearing date) would have provided the parties an opportunity to obtain clarification as to the nature of/basis for his opinion, the absence of this material testimony results in a ruling which: (a) is inconsistent with the physical facts of record; and (b) impermissibly rejects a medical opinion that reflects the only reasonable inference which may be gleaned from the evidence.

Accordingly, Mr. Dorsey respectfully requests the Panel to: (a) vacate the Hearing Commissioner’s October 4, 2016 Order; (b) require completion/submission of Drs. Forrest’s and Dennis’ depositions; (c) remand this matter to the Jurisdictional Commissioner for rehearing; and (d) further instruct the Jurisdictional Commissioner to reject any contention Mr. Dorsey’s first report of neck symptoms did not occur until the time of his deposition.

Respectfully submitted,



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Attorneys for Employee/Claimant

January 3, 2016

**STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1512220**

Rico Dorsey,)
)
Claimant/Appellant,)
)
v.)
)
Allwaste Services, Inc.,)
)
Employer,)
)
and)
)
Bridgefield Casualty Insurance Company c/o)
Summit Holdings, Inc.,)
)
Carrier,)
)
Defendants/Respondents.)

**RESPONDENTS'
FULL COMMISSION BRIEF**

STATEMENT OF THE CASE

This is an appeal by Rico Dorsey ("Claimant" or "Appellant") from the Decision and Order of Commissioner Aisha Taylor ("Hearing Commissioner") filed on October 4, 2016. This brief is submitted in response to the claimant's appeal.

This claim was before the South Carolina Workers' Compensation Commission pursuant to the Form 21 filed by the defendants on February 25, 2016. The Hearing was originally scheduled for April 15, 2016, but was then postponed to May 9, 2016, and finally to July 22, 2016, due to counsel for the claimant's assertion of a legislative conflict. The Hearing on July 22, 2016, was postponed to August, 3, 2016, over the defendants' objection, due to a personal conflict of co-counsel for the claimant, appointed the day prior to the Hearing. The Hearing on August 3, 2016 before the Hearing Commissioner proceeded as scheduled.

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It was the position of the defendants that the claimant reached maximum medical improvement (MMI) with regard to the admitted low back injury on February 4, 2016, and therefore, the defendants were seeking to terminate temporary total disability (TTD) benefits. The defendants also requested a determination as to whether the claimant sustained any permanent partial disability to his low back, requested a credit for any temporary total disability (TTD) benefits paid to the claimant after the date of MMI, and requested the undersigned to make a determination as to the credibility of the claimant.

Additionally, the defendants raised numerous objections. First, the defendants objected to the admission of the claimant's APA as untimely under Regulation 67-612. The claimant did not dispute the untimeliness of the APAs. The defendants further objected to page 197 of claimant's APA on the ground of authentication. Finally, the defendants requested the right to decide, at the conclusion of the Hearing, whether to proceed with the depositions of Dr. Dennis and Dr. Forrest, the claimant's experts. After hearing all positions on these issues, the Hearing Commissioner overruled the objection of the defendants as to the claimant's APAs and allowed the evidence into the record. Moreover, the Hearing Commissioner asked that the defendants state their position as to the aforementioned depositions, specifically whether they wished to proceed with same, before the close of the record. At the conclusion of the Hearing, the defendants advised the Hearing Commissioner they wished to cancel the depositions only if the claimant was not allowed to proceed anyway. The Hearing Commissioner indicated she would address and rule on whether the depositions would be allowed in the Decision and Order.

By way of the Decision and Order filed on October 4, 2016, the Hearing Commissioner determined claimant reached MMI for his compensable right arm and low back injury on February 4, 2016, allowing for the immediate termination of TTD benefits. The Hearing Commissioner further found the defendants were entitled to a credit for all TTD benefits paid after February 4, 2016. Regarding permanency, the Hearing Commissioner determined the claimant sustained 8% permanent partial

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disability with regard to his low back but no permanent disability with regard to the right arm. She also ruled the claimant was only entitled to future medical treatment in the form of injections and corresponding office visits for the low back.

Claimant now appeals the Decision and Order of the Hearing Commissioner to the Full Commission Appellate Panel ("Full Commission"), based upon the following grounds:

1. Did the Hearing Commissioner err as a matter of law in closing the record without the depositions of Dr. Leonard E. Forrest and Dr. R. Blake Dennis; and
2. Did the Hearing Commissioner err in denying the compensability of the claimant's alleged neck injury.

STANDARD OF REVIEW

As an appellate body, the Full Commission is given great discretion to review decisions made at the Hearing Commissioner level and to make its own findings and conclusions.

Although it is logical for the Full Commission, which did not have the benefit of observing the witness, to give weight to the hearing commissioner's opinion, the Full Commission is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the hearing commissioner.

McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 414 S.E.2d 162 (1992) (citing Green v. Raybestos-Manhattan, Inc., 250 S.C. 58, 156 S.E.2d 318 (1967)). "The final determination of witness credibility and the weight to be accorded evidence is left to the Full Commission." McGuffin, 307 S.C. at 186, 414 S.E.2d at 163 (citing Ross v. American Red Cross, 298 S.C. 490, 381 S.E.2d 728 (1989)).

Accordingly, the Full Commission is the ultimate finder of fact and is not bound by the single Commissioner's Findings of Fact. Lanford v. Clinton Cotton Mills, 204 S.C. 423, 30 S.E.2d 36 (1944); Linnen v. Beaufort Co. Sheriff's Dep't, 305 S.C. 341, 408 S.E.2d 248 (Ct. App.1991). The defendants request that the Full Commission now exercise its discretion to review the evidence presented at the

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Hearing and provide an independent decision that the underlying Award, and specifically the issues raised on appeal, is supported by the greater weight of evidence or the law of South Carolina.

ARGUMENT

I. HEARING COMMISSIONER'S DECISION TO DENY THE REQUEST FOR THE DEPOSITIONS OF DR. DENNIS AND DR. FORREST DOES NOT CONSTITUTE AN ERROR OF LAW.

The claimant relies on the language in Regulation 67-612(D), Section 1-23-330 of the Administrative Procedures Act (APA), and the rationale of the South Carolina Court of Appeals in *Gadson v. Mikasa Corp.*, 368 S.C. 214, 628 S.E.2d 262 (Ct. App. 2006), to support his contention the Hearing Commissioner committed an error of law by denying his opportunity to secure the depositions of Dr. Dennis and Dr. Forrest. Essentially, the claimant asserts that these depositions constitute "reports" under the APA and, therefore, pursuant to Regulation 67-612 cannot be withdrawn as evidence without consent from both parties. Importantly, however, the claimant's reliance is both misplaced under the facts and predicated upon a misstatement of Regulation 67-612(D) and the Court's rationale in *Gadson*.

Regulation 67-612 addresses the "Admission of Expert's Report as Evidence," and under Reg. 67-612(B) provides that "A written expert's report to be admitted as evidence at the hearing must be provided to the opposing party as follows: (2) The non-moving party must provide to the moving party any report not provided by the moving party at least ten days before the scheduled Hearing." (emphasis added). In this case, the Hearing at which the parties' APAs were submitted was scheduled for July 22, 2016. The claimant, as the non-moving party, had the obligation to submit his expert evidence to the defendants, the moving party, by July 12, 2016. Despite executing a certificate of service indicating the service of the expert evidence on July 12, 2016, the claimant has conceded service did not actually occur until July 14, 2016, violating the requirement of Regulation 67-612(B)(2). Importantly, these evidentiary submissions included reports from Drs. Dennis and Forrest. Additionally, on July 20, 2016,

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just two days prior to the scheduled Hearing, the claimant served the defendants with an additional expert report from Dr. Forrest, which took the form of a medical questionnaire. See Claimant's APA, pp. 197-199. Again, this evidence was untimely under Regulation 67-612(B)(2). In fact, the medical questionnaire, which the defendants submit is at the crux of this appeal, was not even provided to Dr. Forrest until July 13, 2016, one day after the evidence was due to be served on the defendants in anticipation of the Hearing on July 22, 2016. Accordingly, the claimant violated the very regulation he is now citing in support of his appeal, and conveniently omitted this important point in the factual and legal analysis in his Brief to the Appellate Panel.¹

The first misstep by the claimant in this legal analysis is the argument that the post-Hearing depositions are "reports" as provided for in Regulation 67-612. In support of this position the claimant cites Section 1-23-330 and its language that "any part of the evidence may be received in written form." The claimant argues this language provides that depositions are reports. This is a fallacy. This section simply indicates that evidence may be submitted in lieu of live testimony due to the lenient evidentiary rules. The quantum leap the claimant is asking this Appellate Panel to make simply cannot be justified by this language.

The claimant then cites to *Gadson* to further support his assertion that a deposition is a report under Regulation 67-612. In fact, the only point of law made by the Court in reference to Regulation 67-612 and Section 1-23-330 was that a vocational report timely submitted under Regulation 67-612(B) was admissible in lieu of live testimony. At no point does the Court of Appeals, as indicated by the claimant, hold or suggest that a deposition of an expert constitutes a report for the purposes of

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¹ The depositions of Dr. Dennis and Dr. Forrest were scheduled several weeks in advance of the Hearing on July 22, 2016, to both occur after the Hearing, in anticipation of such evidence.

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Regulation 67-612. Accordingly, the claimant's reference to Section 1-23-330 of the APA is unfounded and not useful in deciding this appeal.

Additionally, the claimant directs the Appellate Panel to the language of Regulation 67-612(D) which further provides that "[a]ny report submitted to the opposing counsel in accord with (B)(1) or (B)(2) shall be submitted as an APA exhibit at the hearing unless withdrawn with the consent of the other party" Specifically, the claimant asserts the defendants cannot withdraw their intent to take the depositions without consent by the claimant. Assuming a deposition constitutes a report, which it does not, it would be fundamentally unfair and absurd to allow a party to knowingly and admittedly fail to comply with the rules pertaining to the admission of an expert report, and then dictate whether the opposing party must depose that expert. In truth, the only reason the claimant is arguing for an opportunity to depose these physicians is that he realized at the Hearing that the expert evidence he secured may not be (and turned out not to be) enough to prevail on the merits of the claim. The claimant should not be allowed to admittedly fail to comply with Regulation 67-612(D) and then ask for reprieve under the very same rule. Keep in mind the defendants only scheduled these depositions to protect their opportunity to review the expert evidence before deciding whether to cross-examine the expert. After reviewing the evidence and examining the claimant as to the evidence, the defendants decided the depositions were not necessary.

Finally, the claimant cites *Smith v. S.C. Dept. of Mental Health* in support of his argument that the Hearing Commissioner's refusal to require the depositions of Dr. Dennis and Dr. Forrest violated his right to due process. *Smith*, 329 S.C. 485, 494 S.E.2d 630 (Ct. App. 1998). This argument is also without merit, for two reasons. First, the facts in *Smith* are completely different from the facts in the matter at bar. In *Smith*, the Hearing Commissioner, after taking two hours of testimony, decided to question Smith, but then refused to allow either counsel for Smith or defense counsel to examine Smith

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afterwards. He also refused to consider the testimony of other corroborating witnesses. *Smith*, 329 S.C. at 497, 494 S.E.2d at 637. In this case, the Hearing Commissioner accepted the claimant's untimely expert evidence, submitted in lieu of expert testimony, over the objection of counsel for the defendants, and then decided that deposing the expert witnesses was not necessary.

In addition, Regulation 67-612(E) provides the Hearing Commissioner with discretion in this instance. Specifically, Regulation 67-612(E) provides that "[f]ailure to provide reports and notices as required under this section may result in the exclusion of such reports from the evidence of the case. This paragraph shall not be construed to limit the discretionary authority of a Hearing Commissioner to accept reports, depositions, or other evidence at the conclusion of the scheduled hearing pursuant to subsection (J) below (emphasis added)." Subsection (J)(1) provides the Commissioner "may" allow the deposition to be scheduled of a witness unable to appear. In this case, the Hearing Commissioner simply exercised her discretion to allow the report into evidence, over the defendants' objection, but deny either party the right to depose the witness. Again, the claimant is attempting to ambush the defendants with untimely expert evidence and then dictate whether the defendants must depose the expert. The only party whose due process rights were at jeopardy was the defendants.

II. HEARING COMMISSIONER'S DENIAL OF COMPENSABILITY AS TO THE ALLEGED NECK INJURY IS SUPPORTED BY THE GREATER WEIGHT OF THE EVIDENCE.

The claimant alleges the Hearing Commissioner erred in failing to find his alleged neck injury compensable. In support of this allegation the claimant relies upon two points. First, the claimant contends the Hearing Commissioner ignored and misstated the nature of the claimant's neck complaints during the claim. In addition, the claimant contends the Hearing Commissioner failed to give the proper weight to Dr. Forrest's causation opinion. The defendants, however, contend the claimant's contentions

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are predicated on a mischaracterization of the evidence and would require the Appellate Panel to ignore the preponderance of the evidence.

With regard to the medical evidence, the claimant asserts his complaints of "upper back pain" to Doctor's Care on the date of accident is synonymous with a complaint of neck pain. See Defendants' APA, p. 28. Importantly, the claimant neglects to acknowledge the physical exam performed by the attending physician did not reveal neck pain. Id. There was also no diagnosis related to neck pain. The claimant then proceeds to assert that the claimant made identical reports of "upper back pain" in subsequent visits on July 22, 2015 and August 25, 2015. However, that is simply not the case. In fact, on July 22, 2015, the claimant reported only having lower back, right arm and left-sided rib pain. See Defendants' APA, p. 34. Again, the neck exam did not reveal any abnormalities. Id. On August 25, 2015, the claimant only complained of low back, left leg, and right arm pain, the latter of which was improving. See Defendants' APA, p. 37. Contrary to the claimant, there is no mention of neck or upper back pain. Despite the misleading assertion the orthopedic referral was based on the alleged neck injury, the referral note clearly references a referral for the admitted back injury. See Defendants' APA, p. 40. Interestingly, the claimant fails to advise the Appellate Panel of the ten (10) other medical visits with Midlands Orthopedics, Fairfield Medical Center, Orthopedist Dr. Guillaume Dumont, Palmetto Health Orthopedics, and Palmetto Health Richland, between August 2015 and March 2016, when complaints of neck pain were never made and physical examinations of the neck were unremarkable. See Defendants' APA, pp. 22-25, 71-77; Claimant's APA, pp. 19-41, 78-82, 84-144.

The claimant then proceeds to cite the Appellate Panel to the November 5, 2015, report of Dr. O'Leary, but conveniently omits the prior reports from September 22, 2015, and October 8, 2015, during which a complaint of neck pain is never documented. Moreover, and perhaps of the utmost importance, the claimant filed a Form 50 on September 4, 2015, but does not allege a neck injury. Of course, this is

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wholly inconsistent with the claimant's testimony, cited by the claimant to the Appellate Panel, that he has been telling "everyone from day one about his neck pain." The November 5, 2015, report of Dr. O'Leary references pain which "starts in his neck and goes all the way down his left leg." See Defendants' APA, p. 58. However, Dr. O'Leary neither examines nor notes anything regarding the neck as injured or directly symptomatic. The defendants assert this cursory mention of pain traveling from the neck to his left leg is not sufficient to outweigh the greater weight of the evidence in the record, including the claimant's own Form 50.

It should also be noted these allegations are being made by the same claimant who denied under oath and to his own expert ever having back problems or treating with a physician for back problems before this accident on July 16, 2015, despite having a long and recent history of treating for substantially identical back problems. See Claimant's Deposition, pp. 29-30; Defendants' APA, pp. 1-27; See Claimant's APA, p. 165. In fact, in April 2005 Dr. Mark Locke opined that "his significant back injury has now led to chronic back pain which is making him unable to work," and that in part because of this significant back injury "he is going to be unable to work for his lifetime." See Defendants' APA, p. 10. Of course, the claimant returned to work shortly thereafter.

Finally, the claimant directs the Appellate Panel to the causation opinion of Dr. Forrest dated July 18, 2016, more than one year after the accident. In addition to causally-relating the claimant's neck problems to the accident, Dr. Forrest also causally-relates the claimant's right arm problems. Interestingly, just two months before Dr. Forrest stated "it is not clear that the neck is playing a definitive role here." See Claimant's APA, p. 166. More importantly, however, particularly as it pertains to the credibility of his causation questionnaire, Dr. Forrest reports in May 2016 that the right arm "is not my area of expertise" and referred him to an orthopedist specializing in upper extremities. See Claimant's

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APA, p. 179-180. In other words, Dr. Forrest gives an expert causation opinion on the right arm after declaring twice in the same report two months prior that he is not an upper extremity expert.

It is well established in South Carolina that once admitted, expert testimony, like Dr. Forrest's questionnaire, is to be considered just like any other testimony. *Tiller v. National Health Care Center of Sumter*, 334 S.C. 333, 513 S.E.2d 843 (1999) (citing *Smith v. Southern Builders*, 202 S.C. 88, 24 S.E.2d 109 (1943)). "Medical evidence should not be held conclusive irrespective of other evidence." *Id.* (quoting *Ballenger v. Southern Worsted Corp.*, 209 S.C. 463, 467, 40 S.E.2d 681, 682-83 (1946)). In this case, the Hearing Commissioner concluded after reviewing the causation questionnaire of Dr. Forrest that the greater weight of the evidence in the record, including but not limited to the numerous doctor visits during which the claimant made no complaints of neck pain, supported her finding that the claimant did not sustain a compensable neck injury under the Act. As such, the defendants request the Appellate Panel affirm the decision of the Hearing Commissioner denying the neck as compensable.

CONCLUSION

Based upon the foregoing, the defendants request the Full Commission Appellate Panel to affirm the Decision and Order of the Hearing Commissioner in its entirety.

Respectfully submitted,

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

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SC WORKERS' COMPENSATION

STATE OF SOUTH CAROLINA)
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COUNTY OF RICHLAND)
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Rico Dorsey,)
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Employee/Claimant,)
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vs.)
)
Allwaste Services, Inc.,)
)
Employer,)
)
and)
)
Summit Holdings, Inc./Bridgefield Casualty)
Insurance,)
)
Carrier/Defendants.)
_____)

BEFORE THE
SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER: 1512220

NOTICE OF MOTION AND
MOTION FOR RECONSIDERATION

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SC WORKERS' COMPENSATION

TO: NICHOLAS L. HAIGLER, ESQUIRE, COUNSEL FOR DEFENDANTS/RESPONDENTS.

YOU WILL PLEASE TAKE NOTICE that Claimant/Appellant, Rico Dorsey, by and through his undersigned counsel, hereby moves the South Carolina Workers' Compensation Commission (Commission), pursuant to S.C. Code Ann. Sections 1-23-380 (Supp. 2014) and 42-3-180 (2015) as well as the decisions of the South Carolina Supreme Court in Rhame v. Charleston County School District, 412 S.C. 273, 772 S.E.2d 759 (2015) and McCummings v. South Carolina Department of Corrections, 319 S.C. 440, 462 S.E.2d 271 (1995), for an Order granting him a reconsideration/rehearing of its June 14, 2017 Order affirming the Honorable Aisha J. Taylor's October 4, 2016 Order. This Motion is based upon the following grounds:

1) The June 14, 2017 Order, which does not effectively address, determine or pass upon the issues raised in exceptions 1-3, 6-19 and 21-28 of Mr. Dorsey's October 18, 2016 W.C.C. Form 30, overlooks, misapprehends and/or misconstrues the following factual and legal points:

(a) 8 S.C. Code Ann. Regs. 67-612 (2012) clearly encompasses the documentary evidence which the respective parties identify to constitute a portion of their evidentiary submissions per the Administrative Procedures Act, including “evidence . . . in the form of a deposition”;

(b) identification of documentary evidence “in the form of . . . [an expert witness’] deposition” testimony contained in this regulation is wholly consistent with the governing provisions of the Administrative Procedures Act (S.C. Code Ann. 1-23-330 (2005)), which prescribes that “any part of the evidence may be received in written form”;

(c) inspection of the Regulations relating to the Commission’s “Contested Case Procedure” likewise confirms the absence of any provisions which either distinguish or exclude expert depositions from the purview of Regulation 67-612;

(d) review of Defendants’ July 7, 2016 APA submission form similarly identified the scheduled depositions of Drs. Leonard E. Forrest and Blake Dennis as documentary evidentiary exhibit Nos. 9 and 10 that were being submitted pursuant to Section 1-23-330;

(e) once these scheduled depositions were identified as portions of the documentary evidence Defendants intended to submit per the Administrative Procedures Act, without objection, Mr. Dorsey’s counsel were entitled to presume the depositions would proceed, making it unnecessary and illogical to solicit further opinions from these physicians prior to the depositions;

(f) the unquestionable intent behind 8 S.C. Code Ann. Regs. 67-612 (D) (2012) is to disclose what materials will be offered into evidence; a disclosure designed to ensure fair play and to prevent unfair prejudice;

(g) while counsel identified/submitted a portion of Dr. Forrest's opinions through a supplemental Pre-hearing Brief/APA Submission Form, this action in no way vitiated his right to rely upon the safeguard established by 8 S.C. Code Ann. Regs. 67-612 (D) (2012);

(h) the Commission's acceptance of this supplemental documentary evidence submission into the hearing record likewise does not allow a departure from the procedure established through the Commission's promulgation of 8 S.C. Code Ann. Regs. 67-612 (D) (2012);

(i) failure to adhere to this governing procedure is not only violative of any obligation to "follow its own regulations and provisions of the Administrative Procedures Act" (See, Triska v. Department of Health and Environmental Control, 292 S.C. 190, 355 S.E.2d 531, 533 (1987)), but also the longstanding legal axiom that "[g]reat liberality is exercised in permitting the introduction of evidence in proceedings" under the Workers' Compensation Act (Ham v. Mullins Lumber Company, 193 S.C. 66, 7 S.E.2d 712, 719 (1940); Hamilton v. Bob Bennett Ford, 339 S.C. 68, 528 S.E.2d 667, 668 (2000));

(j) refusal to allow Mr. Dorsey's counsel to obtain expert evidence through completion of the previously scheduled depositions in this instance does not constitute an appropriate exercise of discretion, but rather "an abuse of discretion . . . based on an error of law" (See, Trotter v. Trane Coil Facility, 393 S.C. 637, 714 S.E.2d 289 (2011)); and

(k) this flawed procedural course, which is wholly inconsistent with the letter and spirit of 8 S.C. Code Ann. Regs. 67-612 (2012), also denied Mr. Dorsey procedural due process.

2) The June 14, 2017 Order overlooks, misapprehends, misconstrues and/or misapplies the following factual and legal points in connection with its reliance on 8 S.C. Code Ann. Regs. 67-611 (2012):

(a) while Finding of Fact #3 indicates “Defendants timely amended and filed their written Pre-hearing Brief pursuant to Regulation 67-611 on July 6, 2016,” the Commission record actually indicates a standard Pre-hearing Brief and APA Submission Form (“Notice of Witnesses and Written Medical Records to be Introduced as Direct Evidence on Behalf of Defendants”) was filed on July 7, 2016;

(b) in the space allocated for identification of “Medical evidence”, this Pre-hearing Brief referenced the APA Submission Form, which actually identified the scheduled depositions of “Leonard Forrest, M.D.” and “Blake Dennis, M.D.” as documentary exhibit Nos. 9 and 10;

(c) the finding of a timely amendment by Defendants is incorrect, as no amendments were made in the context of the hearing scheduled for July 22, 2016 (as opposed to Defendants’ simply supplementing information contained in previous Pre-hearing Briefs/APA Submission Forms, presumably to solicit opinions from Drs. Forrest and Dennis following their independent medical assessments of Mr. Dorsey;

(d) given Defendants’ affirmative determination to depose Drs. Forrest and Dennis, nothing contained in 8 S.C. Code Ann. Regs. 67-611 (2012) obliged Mr. Dorsey’s counsel to “supplement a response with respect to any question directly addressed on” his Pre-hearing Brief, especially in view of the absence of any objection to Defendants’ completion of these scheduled depositions or submission of this documentary evidence into the hearing record;

(e) the August 3, 2016 “oral request” to proceed with these depositions was premised upon the absolute right to rely upon the provisions of 8 S.C. Code Ann. Regs. 67-612 (2012), which obliged the moving party to submit documentary evidence identified on its Pre-hearing Brief/APA Submission Form into the record absent consent of the non-moving party;

(f) given Defendants' prior identification of these scheduled depositions as exhibits which they intended to submit into the hearing record per the Administrative Procedures Act, any notion it was somehow incumbent upon Mr. Dorsey's counsel to amend his Pre-hearing Brief to merely enforce the import of 8 S.C. Code Ann. Regs. 67-612 (2012) is not only misplaced, but inconsistent with the provisions of this regulation which instruct the non-moving party to only submit evidence that has not been submitted by the moving party;

(g) the Commission's construction of S.C. Code Ann. Regs. 67-611 (2012) is legally erroneous.

3. The June 14, 2017 Order overlooks, misapprehends, misconstrues and/or misapplies the following factual and legal points, particularly in terms of its construction of 8 S.C. Code Ann. Regs. 67-612 (2012):

(a) the plain language of this Regulation expressly acknowledges a party's "right to . . . present evidence . . . in the form of a deposition";

(b) S.C. Code Ann. Section 1-23-330 (2005) likewise recognizes "any part of the evidence may be received in written form";

(c) consideration of 8 S.C. Code Ann. Regs. 67-612 (2012), in light of S.C. Code Ann. Section 1-23-330 (2005), which is *in pari materia*, establishes expert opinion submitted through deposition certainly constitutes documentary evidence within the purview of this regulation, a fact acknowledged by Defendants' reference to the scheduled depositions of Drs. Forrest and Dennis as exhibit Nos. 9 and 10;

(d) while Regulation 67-612 (E) empowers "a Hearing Commissioner to accept reports, depositions or other evidence" that could be excluded for ". . . [f]ailure to provide reports and

notices” in accordance with the applicable time requirements, this proviso does not vest the Commission with discretion to nullify the mandatory provisions of subsection (D);

(e) the Commission’s interpretation of 8 S.C. Code Ann. Regs. 61-12 (2012) is not only inconsistent with the plain language of this regulation and overriding legislative determination that “any part of the evidence may be received in written form”, but also results in a denial of due process, rejection of the axiom that “[g]reat liberality is exercised in permitting the introduction of evidence in proceedings under” the Workers’ Compensation Act (Ham v. Mullins Lumber Company, 193 S.C. 66, 7 S.E.2d 712, 719 (1940); Hamilton v. Bob Bennett Ford, 339 S.C. 68, 528 S.E.2d 667, 668 (2000)) and a complete departure from “the guiding principle undergirding our workers’ compensation system that the Act is to be liberally construed in favor of the claimant.” (Hutson v. South Carolina State Ports Authority, 399 S.C. 381, 732 S.E.2d 500, 503 (2012)); and

(f) exercise of discretion in a fashion which is “based on an error of law . . . [constitutes] an abuse of discretion” (See, Trotter v. Train Coil Facility, 393 S.C. 637, 714 S.E.2d 289 (2011)).

4. The June 14, 2017 Order, which neither addresses, determines or passes upon the issue raised in exception Nos. 5, 6, 14 or 20 of Mr. Dorsey’s October 18, 2016 W.C.C. Form 30, overlooks, misapprehends and/or misconstrues the following facts and legal points:

(a) review of records generated by his initial authorized treater (Doctor’s Care – Lexington) indicate Mr. Dorsey reported right upper back pain shortly after sustaining the July 17, 2015 trauma;

(b) inspection of the November 5, 2015 report generated by Dr. James A.

O'Leary (authorized treating orthopaedic surgeon) specifically confirms Mr. Dorsey attributed neck symptoms to the consequences of this compensable accident by no later than that date;

(c) the finding "the Claimant first alleged pain in his neck during his deposition on March 28, 2016" is wholly inconsistent with this uncontradicted evidence, especially the contents of Dr. O'Leary's November 5, 2015 report, which, at a minimum, verifies a reference to neck pain associated with the consequences of his compensable accident nearly five months prior to the March 28, 2016 deposition date;

(d) any questions as to the relationship between this neck pain and the consequences of his compensable trauma would certainly have been addressed during the scheduled deposition of Dr. Leonard E. Forrest;

(e) as Mr. Dorsey's counsel was unquestionably entitled to rely upon the provisions of 8 S.C. Code Ann. Regs. 67-612(D)(2012), in conjunction with his consent and understanding these questions would be resolved through Dr. Forrest's deposition testimony, there was no obligation to either seek further written clarification from this physician or amend his Pre-hearing Brief (as nothing needed to be clarified or disclosed per 8 S.C. Ann. Regs. 67-611 (2012));

(f) identification of March 28, 2016 as the date upon which Mr. Dorsey "first alleged pain in his neck" is wholly inconsistent with the only reasonable inference which may be gleaned from the evidence contained in the hearing record; and

(g) the refusal to require completion of the depositions, identified as Defendants' documentary evidence exhibit Nos. 9 and 10 per the Administrative Procedures Act, not only constitutes an error of law (through ignoring both the letter and spirit of Regulation 67-612), but also an unconstitutional denial of due process.

5. The June 14, 2017 Order, which neither addresses, determines or passes upon the issue raised in exception Nos. 5, 6, 14 or 20 of Mr. Dorsey's October 18, 2016 W.C.C. Form 30, overlooks, misapprehends and/or misconstrues the following facts and legal points:

(a) review of records generated by his initial authorized treater (Doctor's Care – Lexington) indicate Mr. Dorsey reported right upper back pain shortly after sustaining the July 17, 2015 trauma;

(b) inspection of the November 5, 2015 report generated by Dr. James A. O'Leary (authorized treating orthopaedic surgeon) specifically confirms Mr. Dorsey attributed neck symptoms to the consequences of this compensable accident by no later than that date;

(c) the finding "the Claimant first alleged pain in his neck during his deposition on March 28, 2016" is wholly inconsistent with this uncontradicted evidence, especially the contents of Dr. O'Leary's November 5, 2015 report, which, at a minimum, verifies a reference to neck pain associated with the consequences of his compensable accident nearly five months prior to the March 28, 2016 deposition date;

(d) the only reasonable inference which may be gleaned from the evidence contained in the hearing record establishes Mr. Dorsey complained of neck symptoms during the early stages of his treatment;

(e) given this fact, the finding "Claimant's reported symptomatology and chronology with regard to his neck pain cannot be relied upon and as such Dr. Forrest's medical opinion, which he himself admitted was only based on the Claimant's reported symptomatology, is not afforded great weight" stems from a mistaken, inaccurate, arbitrary, capricious and incorrect analysis of the hearing record; and

(f) the failure to require completion of the scheduled deposition of Dr. Forrest (for the reasons outlined above) compounded this legal error in the manner specified through numbers 1-4 herein.

6. The June 14, 2017 Order, which neither addresses, determines or passes upon the issues raised in exceptions 8 – 13, 16 – 19 and 21 – 28, overlooks, misapprehends and/or misconstrues the following factual and legal points:

(a) 8 S.C. Code Ann. Regs. 67-612 (2012) clearly encompasses the documentary evidence which the respective parties identify to constitute a portion of their evidentiary submissions per the Administrative Procedures Act, including “evidence . . . in the form of a deposition”;

(b) identification of documentary evidence “in the form of . . . [an expert witness’] deposition” testimony contained in this regulation is wholly consistent with the governing provisions of the Administrative Procedures Act (S.C. Code Ann. 1-23-330 (2005)), which prescribes that “any part of the evidence may be received in written form”;

(c) inspection of the Regulations relating to the Commission’s “Contested Case Procedure” likewise confirms the absence of any provisions which either distinguish or exclude expert depositions from the purview of Regulation 67-612;

(d) review of Defendants’ July 7, 2016 APA submission form similarly identified the scheduled depositions of Drs. Leonard E. Forrest and Blake Dennis as documentary evidentiary exhibits Nos. 9 and 10 that were being submitted pursuant to Section 1-23-330;

(e) once these scheduled depositions were identified as portions of the documentary evidence Defendants intended to submit per the Administrative Procedures Act, without

objection, Mr. Dorsey's counsel were entitled to presume the depositions would proceed, to the extent it was unnecessary to solicit further opinions from these physicians;

(f) the unquestionable intent behind 8 S.C. Code Ann. Regs. 67-612 (D) (2012) was to prevent a non-moving party from experiencing prejudice through reliance on the movant's declared documentary evidence submissions;

(g) while counsel identified/submitted a portion of Dr. Forrest's opinions through a supplemental Pre-hearing Brief/APA Submission Form, this action in no way vitiated his right to rely upon the safeguard established by 8 S.C. Code Ann. Regs. 67-612 (D) (2012);

(h) the Commission's acceptance of this supplemental documentary evidence submission into the hearing record likewise does not allow a departure from the procedure established through the Commission's promulgation of 8 S.C. Code Ann. Regs. 67-612 (D) (2012);

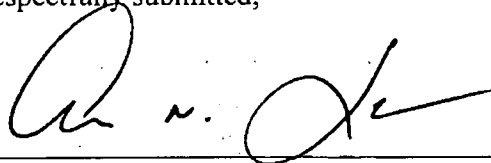
(i) failure to adhere to this governing procedure is not only violative of any obligation to "follow its own regulations and provisions of the Administrative Procedures Act" (See, Triska v. Department of Health and Environmental Control, 292 S.C. 190, 355 S.E.2d 531, 533 (1987)), but also the longstanding legal axiom that "[g]reat liberality is exercised in permitting the introduction of evidence in proceedings" under the Workers' Compensation Act (Ham v. Mullins Lumber Company, 193 S.C. 66, 7 S.E.2d 712, 719 (1940); Hamilton v. Bob Bennett Ford, 339 S.C. 68, 528 S.E.2d 667, 668 (2000));

(j) refusal to allow Mr. Dorsey's counsel to obtain expert evidence through completion of the previously scheduled depositions in this instance does not constitute an appropriate exercise of discretion, but rather "an abuse of discretion . . . based on an error of law" (See, Trotter v. Trane Coil Facility, 393 S.C. 637, 714 S.E.2d 289 (2011));

(k) given the controlling impact of the previously-cited legal authorities, entry of findings/determinations relative to maximum medical improvement, degree of residual permanent disability, future medical benefit entitlement, termination of temporary total disability compensation, propriety/assessment of overpayment credit, causal relationship of neck injury component and the source of Mr. Dorsey's right arm symptoms were legally premature, inconsistent with governing procedural rules, violative of due process and contrary to the only reasonable inference which may be gleaned from the evidence contained in the hearing record.

Accordingly, Mr. Dorsey respectfully requests the Commission to reconsider/rehear this matter, vacate its prior Order and remand this claim for *de novo* hearing before the jurisdictional commissioner following completion of the previously scheduled depositions of Drs. Forrest and Dennis.

Respectfully submitted,



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and

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Winnsboro, South Carolina 29180

Attorneys for Employee/Claimant

July 13, 2017

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1512220

EMPLOYEE/CLAIMANT: RICO A. DORSEY

EMPLOYER: ALLWASTE SERVICES, INC.

INSURER: BRIDGEFIELD CASUALTY INSURANCE COMPANY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 22ND DAY OF
JULY, 2016, COMMENCING AT THE HOUR OF 10:48 A.M., IN
COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE AISHA TAYLOR,
ATTENDED BY COUNSEL AS FOLLOWS:

JAN L. WHITWORTH
VERBATIM REPORTER

 COPY

JAN L. WHITWORTH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, S.C. 29376
(864) 494-2705

APPEARANCES

ANDREW N. SAFRAN, ESQUIRE, OF THE FIRM
ANDREW N. SAFRAN, L.L.C.
POST OFFICE BOX 12089
COLUMBIA, SOUTH CAROLINA 29211

ATTORNEY FOR THE EMPLOYEE/CLAIMANT,

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POST OFFICE BOX 1006
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ATTORNEY FOR THE EMPLOYEE/CLAIMANT

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POST OFFICE BOX 11449
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ATTORNEY FOR THE EMPLOYER/INSURER.

ALSO ATTENDING: EVE GOODSTEIN

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 COLUMBIA,
4 SOUTH CAROLINA.

5 * * * * * * * * * * * * * * * *

6 BY COMMISSIONER TAYLOR:

7 TODAY IS FRIDAY, JULY 22ND, 2016. WE ARE HERE
8 ON WORKERS' COMP FILE NUMBER 1512220. THIS IS THE
9 CLAIM OF MR. RICO A. DORSEY WHO IS PRESENT HERE
10 TODAY AND REPRESENTED BY MR. CREIGHTON COLEMAN.
11 PRIOR TO GOING ON THE RECORD TODAY, MR. ANDY SAFRAN
12 ALSO MADE AN APPEARANCE ON BEHALF OF THE CLAIMANT
13 FOR PURPOSES OF THIS CLAIM. I WILL ALLOW THE
14 PARTIES TO ADDRESS ANY OBJECTIONS AT A LATER POINT
15 IN TIME. THE EMPLOYER IN THIS MATTER IS ALLWASTE
16 SERVICE, INCORPORATED, AND THE CARRIER IS
17 BRIDGEFIELD CASUALTY INSURANCE COMPANY. BOTH THE
18 EMPLOYER AND CARRIER ARE REPRESENTED TODAY BY MR.
19 NICOLAS HAIGLER. I HAVE A DATE OF INJURY OF JULY
20 17TH, 2015. THE CLAIMANT HAS AN AVERAGE WEEKLY WAGE
21 OF \$550.45, WHICH YIELDS A COMPENSATION RATE OF
22 \$366.99. THIS MATTER IS SET HERE PURSUANT TO THE
23 EMPLOYER AND CARRIER'S FORM 21 REQUEST FOR HEARING.
24 PRIOR TO TODAY'S HEARING, I DID RECEIVE A MOTION FOR

1 A POSTPONEMENT ON BEHALF OF THE CLAIMANT. I WILL
2 ADDRESS THE ISSUE OF THE MOTION AT THIS TIME.

3 BY MR. SAFRAN:

4 YOUR HONOR, THE ONLY THING I WOULD PUT UP IS
5 BASICALLY THIS. I HAD EVERY INTENTION OF APPEARING
6 TODAY AND CERTAINLY NOT USING MY RELATIVELY RECENT
7 INVOLVEMENT IN THE CASE AS A REASON FOR
8 POSTPONEMENT. AS WE DISCUSSED PRIOR TO GOING ON THE
9 RECORD, I HAVE HAD A RATHER SIGNIFICANT AND
10 OBVIOUSLY UNEXPECTED SITUATION OCCUR WITH SOMEONE
11 WHO IS NOT ONLY A MEMBER OF MY STAFF FOR WELL OVER
12 20 YEARS BUT ALSO A VERY CLOSE FRIEND WHO IS NOW,
13 YOU KNOW, IN A SITUATION WHERE SHE IS ON LIFE
14 SUPPORT. THIS HAPPENED -- I BECAME AWARE OF IT
15 YESTERDAY, AND TO BE CANDID WITH YOU, YOU KNOW, I
16 TRY TO SEPARATE MY PERSONAL FEELINGS FROM WHAT I
17 FEEL LIKE I AM ABLE TO DO TODAY. THAT'S NOT ALWAYS
18 THE EASIEST THING TO DO. AND, SO, REALLY IT WAS
19 REALLY FOR A MATTER OF BEING ABLE TO MAKE SURE THAT
20 I AM PERSONALLY FULLY IN TUNE TO THE SITUATION THAT
21 WE HAVE HERE TODAY. IT'S CERTAINLY NOT FOR THE
22 PURPOSE OF UNNECESSARY DELAY. THAT'S WHY I PROPOSED
23 TO YOU ANOTHER DATE, WHICH WOULD BE THE 3RD WHERE I
24 AM ALREADY COMING OVER HERE. I AGREE THAT BASED
25 UPON THE DELAY THAT'S OCCURRED UP TO HERE, WHICH,

1 YOU KNOW, FRANKLY I THINK IS SOMETHING THAT IS
2 ALLOWED BY STATUTE, THAT MR. HAIGLER HAS EVERY RIGHT
3 TO BE ANXIOUS ABOUT MOVING FORWARD WITH GETTING THIS
4 HEARING DONE. I TRY TO MAKE SURE THAT WHENEVER I'M
5 PARTICIPATING IN ANYTHING THAT I GIVE IT MY BEST
6 EFFORT, AND, YOU KNOW, WHILE WE ALL HAVE DAILY
7 THINGS THAT GO ON, THIS IS A LITTLE MORE THAN WHAT
8 I'M NORMALLY DEALING WITH ON I GUESS A DAY-TO-DAY
9 BASIS. AND I DON'T WANT THERE TO BE ANY QUESTION
10 THAT I'M GOING TO BE COMPROMISED ABOUT THAT. THAT
11 SAID, YOU KNOW, I'LL DO THE BEST I CAN TO
12 PARTICIPATE TODAY TO THE EXTENT I CAN, AND CERTAINLY
13 MR. COLEMAN WILL BE INVOLVED BECAUSE HE CERTAINLY
14 HAS SOME BACKGROUND AND UNDERSTANDING WITH THIS
15 CASE. THAT WAS THE ONLY REASON. I THINK ANY NOTION
16 OR BELIEF THAT MY SHOWING UP HERE TODAY WAS SOMEHOW
17 CONTRIVED OF SOME MECHANISM TO PUSH THIS THING OFF
18 IS JUST MISTAKEN. I DON'T THINK THAT IT'S IN ANY
19 WAY VISCERAL OR BEING TAKEN IN AN INAPPROPRIATE WAY.
20 I JUST THINK MAYBE THERE WAS NOT A FULL
21 UNDERSTANDING OF THE CIRCUMSTANCES, BECAUSE I HAD
22 EVERY INTENTION OF BEING HERE WITH HOPEFULLY A
23 COMPLETE FOCUS TO DO WHAT I NEEDED TO DO TO ASSIST
24 MR. COLEMAN IN THIS CASE. I CAN PROMISE YOU THAT
25 WHAT HAS COME UP IS AGAIN, YOU KNOW, A LIFE ROCKER

1 FOR ME, AND, YOU KNOW, IT IS SOMETHING THAT I AM
2 TRYING TO DEAL WITH. I AM CERTAINLY NOT SHUTTING MY
3 OFFICE DOWN. I AM TRYING TO DEAL WITH WHAT I HAVE
4 TO DO TO BASICALLY MAKE SURE THINGS ARE MAINTAINED
5 AT LEAST FOR THE NEXT SEVERAL DAYS UNTIL THERE'S A
6 LITTLE BIT MORE BALANCE AND, YOU KNOW, UNDERSTANDING
7 FROM MY STANDPOINT OF WHERE THE LONG TERM OF THIS IS
8 GOING TO BE. AND THAT'S REALLY IT. SO, AGAIN, I DO
9 NOT WANT THERE TO BE ANY MISCONCEPTION THAT THERE
10 WAS SOME PLAN TO COME OVER HERE, BECAUSE WHAT'S
11 HAPPENED IN TERMS OF MY ASSISTANT AND FRIEND ROXANNE
12 MOORE IS OUT OF THE BLUE AND CERTAINLY NOT IN ANY
13 WAY ANTICIPATED OR EXPECTED.

14 BY COMMISSIONER TAYLOR:

15 ALL RIGHT. THANK YOU. MR. HAIGLER.

16 BY MR. HAIGLER:

17 THANK YOU, COMMISSIONER. I'M IN A TOUGH
18 POSITION. ANDY IS A FRIEND OF MINE, BOTH
19 PROFESSIONALLY AND PERSONALLY, I THINK, AND AS I
20 TOLD HIM AND I TOLD YOU BEFORE WE WENT ON THE
21 RECORD, AND I TOLD HIM YESTERDAY ON THE TELEPHONE AT
22 2:00, I SYMPATHIZE WITH HIS SITUATION. THAT'S PART
23 OF MY PREDICAMENT. THE OTHER PART OF MY PREDICAMENT
24 IS THIS CASE. LET ME FIRST GO AHEAD AND JUST PUT ON
25 THE RECORD THAT I HAVE NO INCLINATION WHATSOEVER

1 THAT THE REASON FOR THE POSTPONEMENT WAS CONTRIVED
2 OR THAT ANDY WAS ASKED TO PARTICIPATE TO CREATE A
3 POSTPONEMENT SITUATION. I'M NOT -- I WOULD NEVER GO
4 THERE WITH ANDY AND WON'T DO THAT TODAY. BUT
5 NONETHELESS, THE HISTORY OF THIS CASE IS TROUBLING
6 TO SAY THE LEAST. WE HAD THIS HEARING SET AS A
7 RESULT OF ME FILING A FORM 21 FIVE MONTHS AGO IN
8 FEBRUARY OF THIS YEAR ON APRIL THE 15TH, AND ON
9 APRIL THE 8TH -- NOW, OF COURSE, IT WAS BEFORE
10 COMMISSIONER BARDEN INITIALLY, AND DUE TO THE FACT
11 THAT CREIGHTON WAS BY WAY OF HIS SERVICE TO OUR
12 STATE WAS PARTICIPATING IN A REHEARING OR HEARING TO
13 BE REAPPOINTED, HE FELT AND I TOTALLY AGREED, I PUT
14 THAT IN THE EMAIL TO THE OFFICE, THAT ANOTHER
15 COMMISSIONER NEEDED TO HEAR THIS CASE. WELL, THAT'S
16 YOU, AND YOU PROBABLY HATE YOU GOT THAT EMAIL. BUT
17 NONETHELESS, YOU'RE HERE AND YOU SET IT FOR THE SAME
18 DAY, YOU JUST AGREED TO HEAR IT ON THE 15TH OF
19 APRIL, AND THEN ON THE 12TH OR 13TH OF APRIL, I'M
20 NOT EXACTLY SURE WHICH, IT DOESN'T REALLY MATTER,
21 THERE WERE ADDITIONAL EMAILS ABOUT WHETHER THE
22 HEARING WAS GOING TO BE POSTPONED PAST THE 15TH DUE
23 TO THE ISSUE WITH COMMISSIONER BARDEN. OF COURSE,
24 THE IMPORTANT THING THAT WASN'T MENTIONED TO YOU WAS
25 THAT CLAIMANT HAD NEVER FILED A PREHEARING BRIEF AND

1 WAS NOT GOING TO HAVE ANY EVIDENCE TO PRESENT AT THE
2 HEARING BECAUSE OF THAT. AT THE LAST MINUTE, THE
3 FIRST TIME LEGISLATIVE PROTECTION WAS STATED AND
4 GRANTED, I DIDN'T ARGUE ABOUT IT OTHER THAN TO SAY
5 IT VIOLATED MY 60 DAY RIGHT TO HAVE A HEARING IN 60
6 DAYS. THAT WAS THE ONLY POINT I MADE. I DID NOT
7 ARGUE ABOUT WHETHER HE WAS ENTITLED TO IT. WE THEN
8 AGREED THAT BY CONSENT, BY ORDER, AND YOU ACTUALLY
9 DRAFTED AN ORDER, COMMISSIONER, SAYING THAT WE WOULD
10 HAVE THIS HEARING ON MAY THE 9TH, AND UNDER THE
11 SUPREME COURT ORDER, CONSENT IS A WAY TO GET OUT OF
12 THAT. YOU CAN CONSENT TO WAIVE YOUR RIGHT TO
13 LEGISLATIVE PROTECTION. IT'S THE VERY LAST SENTENCE
14 IN THERE, AND THAT'S EXACTLY WHAT HAPPENED, AND YOU
15 SET A HEARING ON MAY THE 9TH, AND I PREPARED FOR
16 THAT HEARING, BROUGHT MY CLIENTS UP HERE. THE
17 WITNESSES THAT WE HAVE SUBMITTED DEPOSITIONS FOR
18 LEFT WORK TO COME UP HERE AND TESTIFY AS WELL AS
19 THEIR SUPERVISOR, AND TWO DAYS BEFORE THE HEARING
20 AGAIN BECAUSE A PREHEARING BRIEF HAD NOT BEEN FILED,
21 LEGISLATIVE PROTECTION WAS REQUESTED. AGAIN, THERE
22 WAS NO COMMUNICATION WITH ME EVER ON EITHER OF THESE
23 INSTANCES ABOUT WHAT WAS GOING ON DESPITE THE FACT
24 I'M EMAILING MR. COLEMAN'S OFFICE ABOUT WHERE HIS
25 PREHEARING BRIEF IS AND WHAT'S GOING ON, AND THEN

1 THE HEARING IS CANCELLED ON MAY THE 9TH AS WE ARE
2 ALL SITTING IN THE WAITING ROOM.

3 NOW, THAT WAS TWO-AND-A-HALF MONTHS AGO. SO, I
4 HAVE BEEN -- THAT WAS ALREADY OUTSIDE OF THE 60 DAYS
5 FROM THE DAY I FILED MY 21, AND WE'VE NOW BEEN
6 ANOTHER TWO-AND-A-HALF MONTHS. WE ARE NOW FIVE
7 MONTHS FROM THE DATE, 120 -- 90 DAYS PAST THE 60
8 DAYS, AND I'M HAVING TO STAND UP HERE IN A VERY
9 DIFFICULT SITUATION AND ASK YOU TO GO FORWARD WITH
10 THE HEARING, BUT I CANNOT AND WILL NOT CONSENT TO
11 MOVE THIS HEARING ONE MINUTE PAST 10:00 OR 11:00 AS
12 WE ARE NOW, BECAUSE MY CLIENTS HAVE PAID ME THREE
13 TIMES TO PREPARE FOR THIS CASE. I HAVE BEEN READY
14 FOR FIVE MONTHS. WE HAVE BEEN PAYING TEMPORARY
15 BENEFITS FOR FIVE MONTHS LONGER THAN I THINK WE
16 SHOULD HAVE HAD TO PAY THEM, AND THE PARTIES ARE
17 READY TO GO FORWARD. MR. DORSEY IS SITTING RIGHT IN
18 HERE. MR. SAFRAN IS HERE, AND HE HAS ALREADY TOLD
19 YOU THAT HE CAN GO FORWARD TODAY. MR. DORSEY'S
20 ATTORNEY FOR THE LAST MANY MONTHS IS SITTING RIGHT
21 HERE AND MORE THAN KNOWS THIS CASE. HE HAS
22 PARTICIPATED IN THREE DEPOSITIONS AND IS THE ONLY
23 ONE WHO HAS FILED ANY DOCUMENTS IN THIS CASE, ANY
24 PLEADINGS IN THIS CASE. SO, THERE WAS NEVER EVEN A
25 MOTION TO POSTPONE FILED. I MEAN, THERE'S BEEN

1 NOTHING OTHER THAN A PHONE CALL I RECEIVED YESTERDAY
2 AND THIS MOTION TODAY. THERE IS NO WAY THAT I CAN
3 GO BACK TO MY CLIENT WITH A STRAIGHT FACE AND TELL
4 THEM THAT I CONSENTED TO POSTPONE THIS HEARING. I
5 HAVE A RIGHT -- MY CLIENTS HAVE A RIGHT TO HAVE THIS
6 CASE HEARD TODAY. WE ARE ALL HERE TO DO SO, AND I
7 THINK -- AND, YOU KNOW, THE OTHER POINT IS SO WHAT
8 IF WE MOVE IT TO AUGUST 3RD, FROM WHAT I UNDERSTAND
9 AND I'M NOT GOING TO SPEAK FOR ANDY ON THIS, THIS
10 MAY BE GOING ON ON AUGUST 3RD. THIS ISSUE MAY NOT
11 HAVE BEEN RESOLVED WHERE HE IS PREPARED TO DO THIS
12 ON AUGUST 3RD OF AUGUST 15TH OR ANY OTHER DAY. WE
13 DON'T KNOW. SO, WE ARE ALL HERE. WHY SCHEDULE
14 ANOTHER DAY WHEN THERE COULD BE SOME OTHER ISSUE POP
15 UP. WE ARE ALL HERE AND READY TO DO IT. LET'S --
16 WE'VE GOT ONE HOUR. IT'S GOING TO TAKE AN HOUR,
17 HOUR-AND-A-HALF. LET'S KNOCK THIS OUT. WE DON'T
18 HAVE TO COME BACK UP HERE AGAIN. THERE'S JUST --
19 WE'VE GOT TO CONSIDER RESOURCES AT SOME POINT. WE
20 ARE WASTING THEM BY CONTINUING TO POSTPONE THIS
21 THING, AGAIN, WITH ALL DUE RESPECT TO ANDY'S
22 SITUATION. AS MUCH -- AND THAT PROBABLY SOUNDS
23 CONTRITE CONSIDERING THE SITUATION WHAT I'M TRYING
24 TO GET YOU TO DO, BUT I'M IN A TERRIBLE POSITION, A
25 TERRIBLE POSITION, AND -- BUT FRANKLY IT'S NOT ABOUT

1 ANYONE IN HERE. IT'S ABOUT MR. DORSEY AND ANDY'S
2 SECRETARY AT THE HOSPITAL, AND THERE ARE MORE
3 IMPORTANT THINGS, BUT I HAVE A RIGHT TO REPRESENT MY
4 CLIENT, AND I'M DOING THAT TODAY. SO, I WOULD ASK
5 THAT WE GO FORWARD TODAY, COMMISSIONER. THANK YOU.

6 BY COMMISSIONER TAYLOR:

7 ALL RIGHT. THANK YOU. DO YOU HAVE ANYTHING?

8 BY MR. SAFRAN:

9 YOUR HONOR, I THINK I'VE SAID ALL THAT I NEED
10 TO SAY. THANK YOU.

11 BY COMMISSIONER TAYLOR:

12 ALL RIGHT. THANK YOU. MR. HAIGLER, I
13 APPRECIATE THE POSITION THAT YOU ARE IN. AND IF YOU
14 THINK YOU ARE IN A DIFFICULT POSITION, I THINK MY
15 POSITION IS MORE DIFFICULT THAN YOURS. AT THE END
16 OF THE DAY, IT'S FOR ME IT COMES DOWN TO WHAT I'M
17 COMFORTABLE WITH RULING. WE ALL HAVE OUR JOBS TO
18 DO, AND I APPRECIATE YOU DOING YOUR JOB. I JUST
19 CAN'T LIVE WITH IT, SO I'M GOING TO POSTPONE IT.

20 BY MR. HAIGLER:

21 I NEED TO PUT SOMETHING ON THE RECORD WHEN
22 YOU'RE FINISHED.

23 BY COMMISSIONER TAYLOR:

24 GO AHEAD.

25 BY MR. HAIGLER:

1 I THINK IF WE ARE POSTPONING THIS, I THINK THE
2 RECORD NEEDS TO BE CLOSED. I THINK I HAVE A RIGHT
3 TO MAINTAIN MY OBJECTIONS ON TIMELINESS TO THE APAs
4 THAT WERE SUBMITTED AND ANY OTHER OBJECTION I HAVE
5 TO THE APAs, BECAUSE OTHERWISE MY CLIENT IS GOING TO
6 SUFFER. I'M GOING TO LOSE THE RIGHTS I SHOULD HAVE
7 HAD TO APPEAL, AND MY CLIENT IS GOING TO SUFFER
8 PREJUDICE THAT IS UNNECESSARY. IT IS UNNECESSARY.
9 THE INCIDENT THAT WE ARE POSTPONING THIS HEARING FOR
10 HAD NOTHING TO DO WITH THE TIMELINESS OF THE
11 EVIDENCE.

12 BY COMMISSIONER TAYLOR:

13 RIGHT.

14 BY MR. HAIGLER:

15 ZERO. SO, I SHOULD HAVE THE RIGHT TO HAVE THAT
16 ISSUE ADDRESSED. BECAUSE HERE'S MY FEAR,
17 COMMISSIONER, IS THERE'S GOING TO BE A NEW REPORT, A
18 NEW QUESTIONNAIRE, A NEW SOMETHING THAT COMES INTO
19 EVIDENCE, AND BY THE WAY, ALL OF THIS OLD EVIDENCE,
20 IT'S ALL GOING TO BE TIMELY NOW, AND I'M OKAY, AS
21 LONG AS THAT'S THE ISSUE -- AS LONG AS I HAVE THAT
22 RIGHT, I THINK THAT'S WHAT I'M MOST CONCERNED ABOUT
23 IS PROTECTING MY CLIENT'S RIGHTS, AND YOU CAN CALL
24 IT AN I GOT YOU MOMENT; IT'S NOT AN I GOT YOU
25 MOMENT. YOU DIDN'T DO WHAT YOU WERE SUPPOSED TO DO,

1 AND I'M CALLING YOU ON IT, AND I HAVE A RIGHT TO DO
2 SO. SO, AND I CAN'T REPRESENT MY CLIENT WHEN THIS
3 EVIDENCE COMES IT AT THE VERY LAST MINUTE. SO, I'M
4 ASKING THAT YOU AT LEAST LET ME HOLD THAT ISSUE IN
5 ABEYANCE AND CLOSE THE RECORD AS OF TODAY AS TO ANY
6 NEW EVIDENCE, AND AUGUST 3RD OR WHATEVER DAY WE
7 SCHEDULE THE HEARING AS IT PERTAINS TO THE
8 TIMELINESS OF THE EVIDENCE MAY AS WELL BE JULY 22ND,
9 AND IF THAT'S THE CASE, I'M OKAY.

10 **BY COMMISSIONER TAYLOR:**

11 WE DID HAVE THE ISSUE OF THE TWO DOCTORS
12 DEPOSITIONS THOUGH THAT WERE GOING TO TAKE PLACE
13 AFTER TODAY'S HEARING.

14 **BY MR. HAIGLER:**

15 WE REQUESTED AND AGREED TO LEAVE THE RECORD
16 OPEN FOR THAT PURPOSE.

17 **BY COMMISSIONER TAYLOR:**

18 FOR THAT PURPOSE, RIGHT.

19 **BY MR. SAFRAN:**

20 AND, YOUR HONOR, IF HE NEEDS ANY ASSURANCE, YOU
21 KNOW, AS A PRACTICAL MATTER, AUGUST 3RD DOESN'T GIVE
22 ME AN OPPORTUNITY TO SEND HIM ANYWHERE, AND I DON'T
23 INTEND ON IT, AND, YOU KNOW, FOR FAIRNESS SAKE, I
24 DON'T INTEND TO SEND HIM ANYWHERE. I MEAN, IF MR.
25 HAIGLER IS THINKING THAT I'M GOING TO GENERATE A NEW

1 QUESTIONNAIRE OR SOMETHING, ---

2 BY MR. HAIGLER:

3 WELL, THERE MAY BE ONE IS WHAT I'M SAYING.

4 BY MR. SAFRAN:

5 AND I DON'T BELIEVE THAT'S THE CASE, AND
6 FRANKLY, YOUR HONOR, AGAIN, AS I POINTED OUT EARLIER
7 BECAUSE OF THE FACT THAT THE DEPOSITIONS ARE SET AND
8 THEY ARE FROM DOCTORS, ONE OF WHOM ACTUALLY WAS THE
9 ONE WHO GENERATED WHAT HE IS OBJECTING TO. THE
10 THING IS IT KIND OF RENDERS THE OBJECTION MOOT IN
11 THE SENSE THAT THE WHOLE PURPOSE OF THE TIMELY
12 ELEMENT IS TO PROVIDE CROSS EXAMINATION. WHETHER
13 THEY PAY FOR IT OR WE PAY FOR IT, HE'S GOING TO HAVE
14 THAT OPPORTUNITY FOR CROSS EXAMINATION. SO, THAT'S
15 REALLY THE CRUX OF IT IS THAT, YOU KNOW, AGAIN, IF
16 IT WAS A MATTER WHERE THOSE THINGS WERE NOT ALREADY
17 SET AND NOT ALREADY GOING TO BE DONE THEN, FRANKLY,
18 YOU KNOW, AGAIN, WE GET IN TO ONE OF THESE TECHNICAL
19 THINGS, BUT I THINK THAT REALLY FOR THE CLEANLINESS
20 OF THE RECORD AND THE PURPOSES OF THE ADJUDICATION
21 THE FACT THAT THIS IS GOING TO BE AGAIN ADDRESSED BY
22 THE DOCTOR IN THE DEPOSITION SHOULDN'T BE SOME
23 REASON TO EXCLUDE SOMETHING THAT AGAIN, THE WHOLE
24 PURPOSE OF DEPOSITION IS TO GIVE HIM THE OPPORTUNITY
25 TO ASK THE QUESTION. WE'RE GOING TO HAVE THAT

1 OPPORTUNITY. I MEAN, WE CAN GET THESE DOCUMENTS IN
2 FRANKLY THROUGH THE DOCTOR TO JUST GET HIM TO
3 ACKNOWLEDGE THAT.

4 BY MR. HAIGLER:

5 I UNDERSTAND WHERE ANDY IS COMING FROM.
6 THERE'S A COUPLE OF THINGS THAT YOU'RE GOING TO BE
7 REMISS IF YOU DON'T UNDERSTAND. THE QUESTIONNAIRE
8 WE'RE TALKING ABOUT, IT WOULD BE DIFFERENT IF THAT
9 WERE SENT IN MAY OR JUNE, AND WE JUST DIDN'T GET IT.
10 IT WAS SENT FRIDAY. IT WAS SENT AFTER THE BRIEF WAS
11 DUE, SO THAT SHOULDN'T COME IN.

12 BY MR. SAFRAN:

13 AND LET ME JUST ---

14 BY MR. HAIGLER:

15 IF HE WANTS TO GET THAT EVIDENCE IN, WE NEED TO
16 TALK TO THE DOCTOR ABOUT THAT. THAT REPORT NEEDS TO
17 GO AWAY.

18 BY MR. SAFRAN:

19 AND, YOUR HONOR, I THINK THE QUESTIONNAIRE CAN
20 BE ADDRESSED THROUGH TESTIMONY.

21 BY MR. HAIGLER:

22 THAT'S FINE.

23 BY MR. SAFRAN:

24 SO, I DON'T HAVE A PROBLEM WITH THAT.

25 BY MR. HAIGLER:

1 BUT THE OTHER -- WELL, BUT THE OTHER POINT IS
2 THESE WITNESSES CANNOT TESTIFY. I MEAN, THAT'S -- I
3 SHOULDN'T BE PREJUDICED BY THE FACT WE ARE
4 POSTPONING THIS OUTSIDE OF THE FACT THAT I'M STILL
5 PAYING THIS GENTLEMAN T.T.D.

6 **BY MR. SAFRAN:**

7 THOSE WITNESSES BASICALLY DON'T NEED TO BE
8 HEARD. SO, AGAIN, IF THOSE ARE THE TWO ISSUES, WE
9 CAN ASK DR. FOREST THE EXACT QUESTIONS THAT ARE IN
10 HIS QUESTIONNAIRE, AND THE WITNESSES ARE NOT
11 NECESSARILY MATERIAL, YOU KNOW, IN ANY MAJOR SENSE.
12 SO, WE DON'T EVEN HAVE TO BRING THEM IN AT ANY TIME.
13 SO, I THINK THAT SHOULD RESOLVE THOSE TWO ISSUES.

14 **BY COMMISSIONER TAYLOR:**

15 OKAY. SINCE WE ARE ON THE RECORD, FOR PURPOSES
16 OF THE DEFENDANTS' REQUEST TO PRESERVE THEIR RIGHT
17 TO OBJECT TO THE EVIDENCE, THAT WILL BE GRANTED, AND
18 I'LL DO AN ORDER ON THAT. THE RECORD WILL BE CLOSED
19 AS TO WHAT WAS GOING TO GO FORWARD TODAY AS OF JULY
20 22ND; HOWEVER, THE RECORD WILL BE LEFT OPEN FOR
21 THOSE TWO ADDITIONAL DEPOSITIONS THAT ARE SCHEDULED
22 TO BE TAKEN ALREADY, AND THEN THE DEFENDANTS DO
23 RESERVE ALL RIGHTS TO OBJECT TO ANY AND ALL OTHER
24 MATTERS THAT THEY WERE PREPARED TO OBJECT TO TODAY.

25 **BY MR. SAFRAN:**

1 AND, OBVIOUSLY, WE WANT TO JUST BE ABLE TO
2 RESPOND TO THEM, AND THAT'S ALL.

3 BY MR. HAIGLER:

4 I -

5 BY COMMISSIONER TAYLOR:

6 LET'S GO OFF THE RECORD.

7 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
8 CONCLUDED AT THE HOUR OF 11:06 A.M.)

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1512220

EMPLOYEE/CLAIMANT: RICO DORSEY

EMPLOYER: ALLWASTE SERVICES, INC.

INSURER: BRIDGEFIELD CASUALTY INSURANCE COMPANY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 3RD DAY OF
AUGUST, 2016, COMMENCING AT THE HOUR OF 10:02 A.M., IN
COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE AISHA TAYLOR,
ATTENDED BY COUNSEL AS FOLLOWS:

JAN L. WHITWORTH
VERBATIM REPORTER

 COPY

JAN L. WHITWORTH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, S.C. 29376
(864) 494-2705

APPEARANCES

ANDREW N. SAFRAN, ESQUIRE, OF THE FIRM
ANDREW N. SAFRAN, L.L.C.
POST OFFICE BOX 12089
COLUMBIA, SOUTH CAROLINA 29211.

ATTORNEY FOR THE EMPLOYEE/CLAIMANT,

CREIGHTON B. COLEMAN, ESQUIRE, OF THE FIRM
COLEMAN & TOLEN, L.L.C.
POST OFFICE BOX 1006
WINNSBORO, SOUTH CAROLINA 29180

ATTORNEY FOR THE EMPLOYEE/CLAIMANT

NICOLAS L. HAIGLER, ESQUIRE, OF THE FIRM
EVE GOODSTEIN, ESQUIRE, OF THE FIRM
SOWELL, GRAY, STEPP & LAFFITTE
POST OFFICE BOX 11449
COLUMBIA, SOUTH CAROLINA 29211

ATTORNEY FOR THE EMPLOYER/INSURER.

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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 COLUMBIA,
4 SOUTH CAROLINA.

5 * * * * * * * * * * * * * * * *

6 BY COMMISSIONER TAYLOR:

7 TODAY IS WEDNESDAY, AUGUST 3RD, 2016. WE ARE
8 HERE ON WORKERS' COMP FILE NUMBER 1512220. THIS IS
9 THE CLAIM OF RICO DORSEY WHO IS PRESENT HERE TODAY
10 AND REPRESENTED BY MR. ANDREW SAFRAN AND MR.
11 CREIGHTON COLEMAN. THE EMPLOYER IS ALLWASTE
12 SERVICES, INCORPORATED, AND THE CARRIER IS
13 BRIDGEFIELD CASUALTY INSURANCE COMPANY. BOTH THE
14 EMPLOYER AND CARRIER ARE REPRESENTED TODAY BY MR.
15 NICOLAS HAIGLER AND MS. EVE GOODSTEIN. I HAVE A
16 DATE OF ACCIDENT OF JULY 17TH, 2015. THE CLAIMANT
17 HAS AN AVERAGE WEEKLY WAGE OF \$550.45, WHICH YIELDS
18 A COMPENSATION RATE OF \$366.99. WE ARE HERE TODAY
19 ON THE EMPLOYER AND CARRIER'S FORM 21 REQUEST FOR
20 HEARING.

21 I WILL ALLOW THE PARTIES TO PUT DETAILED
22 POSITION STATEMENTS ON THE RECORD; HOWEVER, PRIOR TO
23 DOING SO, ARE THERE ANY OBJECTIONS TO APAs,
24 JURISDICTION, VENUE, OR ANY OTHER ITEMS? MR.
25 HAIGLER?

1 BY MR. HAIGLER:

2 YES, COMMISSIONER. PURSUANT TO THE ORDER YOU
3 ISSUED -- WELL, FIRST OF ALL, WE OBJECT TO THEIR
4 PREHEARING BRIEF AND THEIR SUPPLEMENTAL APAs AS BOTH
5 BEING UNTIMELY, AND FOR THE RECORD, THE PREHEARING
6 BRIEF FROM THE CLAIMANT WAS DUE ON JULY THE 12TH
7 PURSUANT TO OUR LAST HEARING DATE OF JULY 22ND.
8 THEIR CERTIFICATE OF SERVICE SAYS THAT IT WAS FILED
9 ON JULY THE 12TH; HOWEVER, THE MAILING NOTICE
10 INDICATES THAT IT WAS ACTUALLY SERVED ON JULY 14TH,
11 WHICH CREATES QUITE AN ISSUE FOR US. BUT,
12 NONETHELESS, THAT BRIEF IS UNTIMELY, AND I DON'T
13 EVEN THINK THAT IS IN DISPUTE BY THE OTHER SIDE BY
14 THE CLAIMANT. BUT NONETHELESS, I OBJECT TO
15 EVERYTHING IN THERE INCLUDING THEIR WITNESSES, AND I
16 THINK PURSUANT TO THE ORDER THAT YOU ISSUED
17 YESTERDAY, THOSE WITNESSES WILL NOT BE ALLOWED TO
18 TESTIFY. WITH REGARD TO THEIR SUPPLEMENTAL APAs, I
19 OBJECT TO THOSE AS WELL AND ON THE SAME GROUNDS OF
20 TIMELINESS, BUT THEN THERE'S A QUESTIONNAIRE IN
21 HERE, THAT IS PAGE 197 OF CLAIMANT'S APA, THAT I
22 OBJECT TO ON THE BASIS THAT NOT ONLY WAS IT
23 UNTIMELY, COMMISSIONER, BUT IT WASN'T EVEN SENT TO
24 THE DOCTOR TO FILL OUT. WELL, I TAKE THAT BACK. I
25 DON'T ACTUALLY KNOW WHEN IT WAS SENT TO THE DOCTOR,

1 BUT IT APPEARS THAT IT WAS FAXED ON JULY 13TH OF '16
2 AND ON JULY 18TH OF '16. I CAN ONLY ASSUME THAT THE
3 FIRST FAX WAS WHEN IT WAS SENT TO HIM, AND I CAN
4 ONLY ASSUME THAT THE MONDAY THE 18TH FAX WAS WHEN IT
5 WAS SENT BACK TO THE CLAIMANT. AGAIN, I DON'T KNOW
6 THAT, BECAUSE THIS DOESN'T HAVE A DATE ON IT. THERE
7 IS NO OTHER DATE ON HERE WHEN MR. -- WHEN DR.
8 FORREST SIGNED THIS DOCUMENT ASSUMING HE EVEN SIGNED
9 THIS DOCUMENT. SO, I WOULD OBJECT TO THIS ON THE
10 BASIS OF TIMELINESS. WELL, IT'S JUST RIGHT OUT
11 UNTIMELY. IT DOESN'T MATTER WHAT DATE IT WAS SENT,
12 BUT THE OTHER ISSUE I HAVE IS AUTHENTICATION. THIS
13 IS NOT A MEDICAL RECORD. IT IS NOT A MEDICAL
14 RECORD. IT'S -- THIS IS A STATEMENT IN LIEU OF
15 DEPOSITION TESTIMONY, AND I OBJECT TO IT BECAUSE
16 IT'S NOT AUTHENTICATED AS THIS BEING ANYTHING SENT
17 FROM DR. FORREST. IN FACT, IF YOU LOOK ON THE SIDE
18 OF IT, THERE ARE RANDOM HANDWRITINGS ON THE SIDE,
19 CIRCLES OF CERTAIN THINGS. I DON'T KNOW WHO DID
20 THAT. I HAVE NO IDEA WHO WROTE THAT ON THERE. I
21 DON'T KNOW IF IT WAS DR. FORREST, HIS NURSE, ANDY OR
22 CREIGHTON OR MR. DORSEY. I HAVE NO IDEA. SO, THIS
23 IS WHAT YOU RUN INTO WITH A DOCUMENT LIKE THIS
24 THAT'S NOT A MEDICAL RECORD, IS THAT THERE IS NO WAY
25 TO AUTHENTICATE THAT. SO, I OBJECT TO THIS ON THE

1 BASIS OF AUTHENTICATION, AND IF YOU LET THIS IN FROM
2 THE UNTIMELINESS STANDPOINT, I WOULD ASK THAT YOU
3 NOT CONSIDER THE HANDWRITTEN NOTES ON HERE, BECAUSE
4 I CAN'T TELL YOU WHO WROTE THAT, AND I DON'T THINK
5 ANDY CAN EITHER. SO, THAT'S THE OBJECTION AS TO
6 THOSE DOCUMENTS. THE REST OF THIS IS SIMPLY
7 UNTIMELY, AND SO THOSE ARE OUR OBJECTIONS IN THIS
8 MATTER, COMMISSIONER. THANK YOU.

9 **BY COMMISSIONER TAYLOR:**

10 OKAY, THANK YOU.

11 **BY MR. SAFRAN:**

12 YOUR HONOR, IN RESPONSE, JUST VERY BRIEFLY,
13 LET'S START WHERE HE LEFT OFF. I THINK IF YOU LOOK
14 ON THE DOCUMENT, IT SAYS "NOT MY AREA OF EXPERTISE."
15 WELL, I THINK BOTH CREIGHTON AND I WOULD SAY THAT WE
16 DON'T HAVE AN AREA OF EXPERTISE IN TERMS OF DEALING
17 WITH HERNIAS EITHER.

18 **BY COMMISSIONER TAYLOR:**

19 I ACTUALLY DON'T HAVE THAT.

20 **BY MR. SAFRAN:**

21 AND THAT'S FINE. I THINK IT DIDN'T -- I'LL
22 GIVE IT TO YOU. BUT BASICALLY, FRANKLY, IF YOU READ
23 WHAT IT SAYS, IT'S COMPLETELY CONSISTENT WITH WHAT
24 THE QUESTIONS WERE AND HOW THE DOCTOR WOULD RESPOND,
25 BUT MORE IMPORTANTLY, HERE WE GO AGAIN TO KIND OF

1 THE INTERESTING PARADOX HERE. ON THE ONE HAND, YOU
2 KNOW, HE WANTS TO QUESTION AND WANTS SOME
3 CLARIFICATION OF WHAT'S ON THE DOCUMENT, BUT BY THE
4 SAME TOKEN, HE DOESN'T WANT TO ACKNOWLEDGE THAT HE'S
5 ALREADY SET THE DEPOSITION FOR THAT VERY PURPOSE,
6 AND AGAIN, IT'S A MATTER OF SAYING, YOU KNOW WHAT, I
7 WANT IT ALL MY WAY. THE TRAIN RUNS ONE WAY. WELL,
8 THE TRAIN RUNS BOTH WAYS, AND IN RUNNING BOTH WAYS,
9 CLEARLY IF HE'S GOT QUESTIONS THAT RELATE TO WHAT'S
10 ON THAT DOCUMENT, THAT'S WHY THAT DEPOSITION WAS
11 SCHEDULED IN THE FIRST PLACE. WE BELIEVE IN TERMS
12 OF THE RECORDS, THAT FRANKLY SOME OF THOSE RECORDS
13 WERE ONES THAT HAD ALREADY BEEN SENT. I CANNOT SIT
14 HERE AND TELL YOU EVERY DOCUMENT THAT HAD BEEN
15 PROVIDED SOME TIME BEFORE. ON THE OTHER HAND,
16 AGAIN, THE REMEDY TO ANY QUESTION ABOUT A COUPLE OF
17 DAYS OR AS MR. HAIGLER MIGHT SAY, HE'S SAYING
18 SOMEWHERE BETWEEN TWO AND FOUR, AGAIN, THOSE
19 DEPOSITIONS ARE SET. IN FACT, ONE OF THEM IS SET
20 FOR MONDAY. THAT'S A VERY QUICK AND EASY WAY TO GET
21 THIS RESOLVED. IT'S NOT LIKE WE'RE WAITING SIX
22 MONTHS FOR IT. I AM NOT GOING TO SIT HERE AND TELL
23 YOU THAT MR. HAIGLER HAS IN ANY WAY, SHAPE OR FORM
24 NO REASON TO BE FRUSTRATED. BY THE SAME TOKEN, I'VE
25 BEEN IN HIS SHOES. I'VE BEEN FRUSTRATED BEFORE, AND

1 FRANKLY, YOU KNOW, I'VE HAD SITUATIONS ARISE WHERE
2 THIS COMMISSION HAS ROUTINELY SAID "I WANT TO SEE
3 EVERYTHING." THAT'S SIMPLY WHAT WE'RE TRYING TO GET
4 DONE, AND AGAIN, I CAN SAY FROM MY OWN PERSONAL
5 EXPERIENCE, IT'S RUN BOTH DIRECTIONS, BECAUSE AGAIN,
6 IT ALWAYS IS THE TRAIN RUNS BOTH WAYS. SO, OUR
7 RESPONSE IS THAT THESE THINGS SHOULD BE ADMITTED.
8 THE DEPOSITIONS ARE SET. IF THERE IS ANY
9 CLARIFICATION THAT NEEDS TO BE MADE, WE CERTAINLY,
10 YOU KNOW, KNOW THAT THAT CAN BE DONE VERY QUICKLY,
11 AND AT THAT POINT, YOU'VE GOT EVERYTHING IN FRONT OF
12 YOU, AND YOU GO AHEAD AND MAKE WHATEVER RULING YOU
13 FEEL LIKE YOU NEED TO. FROM A LEGAL STANDPOINT, AS
14 WE SAID EARLIER, I BELIEVE THAT MY READING OF
15 REGULATION 67 -- AND I WANT TO MAKE SURE I'M SAYING
16 IT CORRECTLY THIS TIME, 612. THAT THE INTENT OF THE
17 REGULATION IS ONCE A DOCUMENT WHETHER IT BE ONE
18 THAT'S ALREADY CREATED OR ONE THAT WE HAVE NOW SAID
19 IS GOING TO BE CREATED IS LISTED, THAT THE SAFETY
20 GUARD OR PROVISIO KICKS IN, AND THAT BASICALLY THE
21 OTHER PARTY CAN REST IN SOME DEGREE ASSURED THAT
22 THAT IS GOING TO HAPPEN. IN THIS SITUATION, THOSE
23 DEPOSITIONS WERE NOTICED. THEY WERE LISTED AS
24 DOCUMENTS THAT WERE GOING TO COME IN, AND BASICALLY
25 I THINK UNDER THE CIRCUMSTANCES, WE FEEL LIKE IT'S

1 OUR RIGHT TO SAY THAT THEY NEED TO GO FORWARD, AND
2 THAT BASICALLY THAT DATA WILL BE COMING IN. I
3 UNDERSTAND THE POSITION OF MR. HAIGLER THAT HE
4 DOESN'T AGREE WITH THAT, BUT AS A PRACTICAL MATTER,
5 I THINK UNDER THE CIRCUMSTANCES OF THIS CASE DESPITE
6 ANY KIND OF FRUSTRATION HE MAY HAVE FROM PRIOR
7 ACTION, YOU KNOW, WE ARE MOVING FORWARD AS QUICKLY
8 AS WE CAN MOVE. IT WILL BE DONE, AND THERE WILL NOT
9 BE ANY FURTHER UNNECESSARY DELAY, AND HE WILL GET
10 WHATEVER DUE PROCESS AND JUSTICE THAT HE IS SEEKING.

11 BY MR. HAIGLER:

12 CAN I RESPOND QUICKLY?

13 BY COMMISSIONER TAYLOR:

14 SURE.

15 BY MR. HAIGLER:

16 UNFORTUNATELY, ANDY DIDN'T READ THE DATES VERY
17 WELL, BECAUSE HE SAID THESE DEPOSITIONS WERE NOTICED
18 SO I COULD GO OVER THIS QUESTIONNAIRE WITH THEM.
19 WELL, GUESS WHAT, I DIDN'T HAVE THE QUESTIONNAIRE
20 WHEN I NOTICED THOSE DEPOSITIONS. THAT'S THE WHOLE
21 POINT OF THE WHOLE REASON I NOTICED THEM. I KNEW
22 THIS WAS COMING. IN FACT, I HAD SENT THEM
23 INTERESTINGLY ENOUGH A SUBPOENA FOUR MONTHS AGO
24 ASKING FOR JUST THIS DOCUMENT, NEVER GOT A RESPONSE.
25 WELL, THE REASON I DIDN'T GET A RESPONSE WAS BECAUSE

1 IT HADN'T BEEN PRODUCED. . BUT WHEN I NOTICED THE
2 DEPOSITIONS, NEVER SEEN THIS. I HAD NEVER SEEN
3 THIS. SO, YOU CAN'T SIT THERE AND SAY "HE'S GOT A
4 CHANCE TO CLARIFY THIS DOCUMENT." I DIDN'T HAVE THE
5 DOCUMENT. I COULDN'T MAKE THE DECISION AS TO
6 WHETHER I WAS GOING TO NOTICE THESE OR NOT. I STILL
7 HAVEN'T MADE THE DECISION, BECAUSE I HAVEN'T HEARD
8 MR. DORSEY'S TESTIMONY YET. BUT TO SIT HERE AND SAY
9 THAT THAT WAS THE REASON I NOTICED THEM IS NOT TRUE,
10 BECAUSE I DIDN'T HAVE THE DOCUMENTS, SO I COULDN'T
11 HAVE POSSIBLY DONE THAT. IN FACT, I DIDN'T EVEN
12 HAVE THEIR APAs, COMMISSIONER, WHEN I NOTICED THE
13 DEPOSITION. I DIDN'T HAVE ANYTHING. I JUST HAD MY
14 EVIDENCE. I HAD NO IDEA WHAT THEY WERE GOING TO
15 PRODUCE. SO, I DID WHAT I HAVE TO DO TO PROTECT MY
16 CLIENT'S INTEREST AND NOTICE THOSE DEPOSITIONS. IN
17 FACT, I SUBPOENAED 'EM FOR THE HEARING, SENT YOU AN
18 EMAIL TELLING YOU I HAD DONE THAT AND SAID "DO YOU
19 MIND IF I JUST NOTICE THEIR DEPOSITIONS IF WE CAN
20 GET THEM SCHEDULED IN A REASONABLE AMOUNT OF TIME
21 AFTER THE HEARING?" YOU SAID THAT WAS FINE, AND SO
22 I TOOK THE SUBPOENAS AWAY. OTHERWISE, I WOULD HAVE
23 THEM SITTING HERE TODAY, BECAUSE THAT WAS WHAT I
24 WOULD HAVE LOVED TO HAVE HAPPEN, BUT I MEAN, IT'S
25 JUST -- IT DOESN'T MAKE ANY SENSE, AND AGAIN, AGAIN,

1 THE ONLY REASON WE ARE EVEN HAVING THIS DISCUSSION
2 IS BECAUSE THEY DON'T HAVE THE EVIDENCE THEY NEED TO
3 OVERCOME MY POSITION. THANK YOU.

4 BY COMMISSIONER TAYLOR:

5 THANK YOU.

6 BY MR. SAFRAN:

7 YOUR HONOR, JUST ONE QUICK THING. I DON'T
8 BELIEVE I SAID OR EVEN INTIMATED THAT THE
9 QUESTIONNAIRE WAS SOMETHING THAT HE ALREADY HAD. I
10 THINK THE DEPOSITIONS, AS I SAID, WERE SET TO BE
11 ABLE TO GET INFORMATION TO BE ABLE TO DEAL WITH
12 WHATEVER DR. FORREST'S OPINIONS WERE. YOU KNOW, IF
13 THE QUESTIONNAIRE WAS JUST SENT LITERALLY DAYS
14 BEFORE THE LAST HEARING, OBVIOUSLY HE DIDN'T HAVE
15 THE QUESTIONNAIRE. THEN I DON'T THINK I'VE EVER
16 SUGGESTED OTHERWISE. WHAT I'M SIMPLY SAYING IS THAT
17 HE HAS SET UP A MECHANISM TO AVAIL HIMSELF TO BE
18 ABLE TO GET ANY ANSWERS, ANY CLARIFICATION, ANY
19 RESOLUTION THAT HE WANTS ABOUT ANY PROBLEMS THAT HE
20 HAS WITH ANY OF THE DOCUMENTS, AND THAT'S IT.

21 BY MR. HAIGLER:

22 SHOULDN'T I HAVE THE RIGHT TO MAKE THAT
23 DECISION THOUGH? I MEAN, THAT'S MY CASE.

24 BY COMMISSIONER TAYLOR:

25 ALL RIGHT. THANK YOU. MR. CREIGHTON -- MR.

1 COLEMAN, MR. SAFRAN, ANY OTHER OBJECTIONS OTHER THAN
2 WHAT WE PREVIOUSLY DISCUSSED?

3 BY MR. COLEMAN:

4 NO, YOUR HONOR.

5 BY MR. SAFRAN:

6 I DON'T BELIEVE SO.

7 BY COMMISSIONER TAYLOR:

8 WITHOUT ANY FURTHER OBJECTION, WITH REGARD TO
9 THE ADMISSION OF THE QUESTIONNAIRE BASED ON
10 TIMELINESS, I WILL ADMIT THAT INTO THE RECORD. I
11 WILL HOLD THE ISSUE OF AUTHENTICATION IN ABEYANCE.
12 I WILL WAIT TO HEAR MORE TESTIMONY ON THE ISSUE
13 BEFORE I RULE ON THAT, AND THEN AS I HAVE NOTED
14 EARLIER, I BELIEVE BEFORE WE WENT ON THE RECORD, MR.
15 HAIGLER -- I WILL REQUEST THAT THE DEFENDANTS SUBMIT
16 THEIR POSITION BEFORE THE CLOSE OF THE RECORD WITH
17 REGARD TO THEIR STATUS OR THEIR POSITION FOR THE
18 TAKING OF THE DEPOSITIONS, AND THEN I WILL ALLOW THE
19 CLAIMANT'S COUNSEL TO RESPOND ACCORDINGLY.

20 ALL RIGHT, MADAM COURT REPORTER, WILL YOU
21 PLEASE SWEAR MR. DORSEY.

22 BY THE COURT REPORTER:

23 SIR, CAN YOU RAISE YOUR RIGHT HAND, PLEASE?

24 * * * * *

25 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE

1 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
2 MATTER HEREIN:

3 RICO DORSEY

4 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:

5 BY THE COURT REPORTER:

6 THANK YOU.

7 BY MR. SAFRAN:

8 COMMISSIONER, ONE --

9 BY COMMISSIONER TAYLOR:

10 MR. HAIGLER, WE ARE HERE ON YOUR FORM 21.

11 BY MR. HAIGLER:

12 I INTEND TO EXAMINE HIM FIRST.

13 BY COMMISSIONER TAYLOR:

14 OKAY.

15 BY MR. HAIGLER:

16 BUT, MY QUESTION FOR YOU IS WE ACTUALLY NEVER
17 PUT OUR MERITS, OUR POSITIONS ON THE RECORD FOR THIS
18 CASE. DO YOU MIND IF WE ---

19 BY COMMISSIONER TAYLOR:

20 HAVE A SEAT, MR. DORSEY.

21 I KNOW, I'M SORRY. OH, SURE, NO PROBLEM. MR.
22 HAIGLER.

23 BY MR. HAIGLER:

24 SORRY ABOUT THAT. I FIGURED YOU MIGHT WANT TO
25 ACTUALLY HEAR THE MERITS OF THE CASE AT SOME POINT.

1 BY COMMISSIONER TAYLOR:

2 YES. WE'VE HAD SO MANY WORDS ALREADY.

3 BY MR. HAIGLER:

4 I KNOW. I MEAN, I APOLOGIZE.

5 BY COMMISSIONER TAYLOR:

6 OKAY.

7 BY MR. HAIGLER:

8 I APOLOGIZE. I'M JUST TRYING TO MAKE SURE WE
9 ARE CLEAR.

10 BY COMMISSIONER TAYLOR:

11 OKAY.

12 BY MR. HAIGLER:

13 COMMISSIONER, WE ARE HERE ON -- WE ARE HERE ON
14 OUR FORM 21. MR. DORSEY HAD AN INJURY BY ACCIDENT
15 BACK IN JULY OF LAST YEAR. IT WAS ADMITTED BY MY
16 CLIENT. THERE IS CONFLICTING TESTIMONY AS TO WHAT --
17 - I BELIEVE THERE WILL BE CONFLICTING TESTIMONY AS
18 TO WHAT ACTUALLY OCCURRED, BUT NONETHELESS, THAT
19 SOMETHING OCCURRED IS ADMITTED BY MY CLIENT. WE
20 ACCEPTED THIS AS A LOW BACK INJURY BUT HAVE NOT
21 ACCEPTED ANY OTHER BODY PARTS. MR. DORSEY TREATED
22 CONSERVATIVELY FOR HIS LOW BACK WITH DR. O'LEARY,
23 HAD PHYSICAL THERAPY, HAD AN INJECTION AND
24 MEDICATIONS, ET CETERA, AND WAS STILL COMPLAINING OF
25 TEN OUT OF TEN PAIN AND WAS SENT TO DR. LAMOTTA,

1 SAME PRACTICE FOR SURGICAL EVALUATION. THEY
2 REVIEWED THE M.R.I.S, WHICH I THINK IS TELLING.
3 DESPITE THE FACT THAT MR. DORSEY WAS TELLING DR.
4 LAMOTTA HE WAS IN TEN OUT OF TEN PAIN, DR. LAMOTTA
5 RELEASED HIM SAYING HE WAS NOT A SURGICAL CANDIDATE
6 AND HE HAD NO RESTRICTIONS AND NO IMPAIRMENT. I
7 THINK THAT IS A PRETTY TELLING STORY RIGHT THERE,
8 BECAUSE WE ALL HAVE SEEN DR. LAMOTTA ENOUGH TO KNOW
9 THAT THAT IS TYPICALLY NOT HIS M.O. HE HAS SINCE
10 SEEN NUMEROUS OTHER SURGEONS: DR. PEELE, DR. DENNIS,
11 AND BOTH OF THEM HAVE INDICATED THAT THERE IS
12 NOTHING ON HIS SCANS OR HIS EXAM TO SUPPORT THE
13 COMPLAINTS THAT HE IS HAVING. THEY'VE ALSO SAID HE
14 IS NOT A SURGICAL CANDIDATE, AND THEY'VE ALSO
15 RELEASED HIM WITHOUT ANY RESTRICTIONS. SO -- AND
16 THOSE ARE -- THOSE TWO ARE ALL DOCTORS THAT MR.
17 DORSEY SAW ON HIS OWN. WHAT IS IMPORTANT TO NOTE
18 ABOUT THIS CASE, I THINK, IS THAT THERE HAS NEVER
19 BEEN A FORM 50 FILED SINCE I FILED MY 21 OR REALLY
20 EVER SINCE THE BEGINNING OF THE CASE, AND THAT WAS
21 JUST A NOTICE OF CLAIM, BUT THERE'S NEVER BEEN A
22 REQUEST FOR A HEARING REQUESTING ADDITIONAL MEDICAL
23 TREATMENT IDENTIFYING THE BODY PARTS HE WANTS TO BE
24 COMPENSABLE, NEVER, AND THIS CASE IS OVER A YEAR OLD
25 NOW, AND HE'S BEEN AT M.M.I. FOR FIVE-AND-A-HALF

1 MONTHS, AND THERE'S -- I TAKE THAT BACK. HE'S BEEN
2 AT M.M.I. NOW FOR SIX MONTHS, AND THERE'S NEVER BEEN
3 A REQUEST FOR A HEARING TO ASK FOR ANY ADDITIONAL
4 MEDICAL TREATMENT EVER OR TO DETERMINE ADDITIONAL
5 BODY PARTS. SO, WE ARE CONTENDING THAT HE IS AT
6 M.M.I. PER DR. LAMOTTA FROM FEBRUARY 4TH OF THIS
7 YEAR, AND WE INDICATE THAT HE HAS NO IMPAIRMENT PER
8 DR. LAMOTTA, AND WE WOULD ASK THAT WE BE ENTITLED TO
9 A CREDIT THAT WE HAVE PAID HIM THE T.T.D., THAT WE
10 ARE STILL PAYING HIM BACK TO FEBRUARY 4TH OF 2016.
11 NOW, WHAT I WILL TELL YOU IS THERE IS NOT A SINGLE
12 OPINION, NOT ONE FROM ANY DOCTOR THAT YOU WILL SEE
13 TODAY THAT INDICATES THAT HE IS NOT AT M.M.I., NOT
14 ONE. AND I DON'T THINK ANYONE HAS PRESENTED ANY
15 EVIDENCE TO YOU TO THE CONTRARY, AND I'VE SAID IT
16 SEVERAL TIMES. SO, -- AND LET'S BE CLEAR. THE FACT
17 THAT HE MAY NEED ADDITIONAL TREATMENT, WHICH WE DENY
18 HE'S ENTITLED TO IT, BUT EVEN IF HE DOES, HE CAN
19 STILL BE AT M.M.I. IT'S VERY CLEAR ABOUT THAT.
20 THAT'S WHAT WE HAD. WE HAD DODGE, AND NOW WE HAVE
21 42-15-60 THAT OUTLINES THE FACT THAT IF IN FACT HE
22 NEEDS ADDITIONAL MEDICAL TREATMENT, AND THERE'S A
23 DOCTOR THAT SAYS THAT TO A REASONABLE DEGREE OF
24 MEDICAL CERTAINTY TO LESSEN HIS PERIOD OF
25 DISABILITY, THEN HE'S ENTITLED TO IT. SO, THE FACT

1 THAT HE'S AT M.M.I. DOESN'T NECESSARILY PRECLUDE HIM
2 FROM ADDITIONAL MEDICAL TREATMENT. BUT WHAT'S
3 IMPORTANT ABOUT THAT IS THERE'S NO EVIDENCE THAT HE
4 NEEDS ADDITIONAL MEDICAL TREATMENT EITHER. HE IS
5 REQUIRED TO SHOW UNDER THE STATUTE TO A REASONABLE
6 DEGREE OF MEDICAL CERTAINTY THAT HE IS ENTITLED TO
7 ADDITIONAL MEDICAL TREATMENT. THERE'S NO OPINION ON
8 THAT EITHER. SO, THE ONLY CONCLUSION YOU CAN REACH
9 BASED ON THE EVIDENCE ACCORDING TO THE STATUTE AND
10 OUR CASE LAW IS ONE; THAT HE IS AT M.M.I., AND TWO,
11 HE DOESN'T HAVE ENTITLEMENT TO ADDITIONAL MEDICAL
12 TREATMENT. HE ALSO HAS A ZERO IMPAIRMENT, AND
13 THAT'S THE ONLY IMPAIRMENT THAT I'VE SEEN IN THE
14 RECORD, AND SO AS IT RELATES TO THIS INJURY, I DON'T
15 THINK HE HAS ANY DISABILITY. AND WHEN WE TAKE THAT
16 STEP, YOU KNOW, TAKE AN ADDITIONAL STEP ON THAT, WE
17 LEARN LATER AFTER DEPOSING MR. DORSEY AND AFTER
18 TALKING TO SOME OF THE PEOPLE WHO WERE ACTUALLY
19 THERE, THAT THERE ARE SERIOUSLY CONFLICTING STORIES
20 AS TO WHAT ACTUALLY TOOK PLACE.

21 BY MR. SAFRAN:

22 YOUR HONOR, I'M GOING TO HAVE TO OBJECT UNLESS
23 WE'RE GOING TO HAVE TESTIMONY COMING IN, I DON'T
24 THINK WHAT MR. HAIGLER IS SAYING NECESSARILY COMES
25 IN AS EVIDENCE.

1 BY COMMISSIONER TAYLOR:

2 IS THERE ANY EVIDENCE: STATEMENTS, PERSONNEL
3 FILE OR ANYTHING ---

4 BY MR. HAIGLER:

5 YES.

6 BY COMMISSIONER TAYLOR:

7 --- THAT HAS BEEN SUBMITTED REGARDING THAT?

8 BY MR. HAIGLER:

9 YES.

10 BY COMMISSIONER TAYLOR:

11 OKAY.

12 BY MR. HAIGLER:

13 THE DEPOSITIONS OF THE TWO WITNESSES HAVE BEEN
14 SUBMITTED.

15 BY COMMISSIONER TAYLOR:

16 OKAY, ALL RIGHT.

17 BY MR. HAIGLER:

18 SO, THERE'S SERIOUSLY -- AND I'LL LET YOU READ
19 THE DEPOSITIONS AND DRAW YOUR OWN CONCLUSIONS.

20 BY COMMISSIONER TAYLOR:

21 SURE.

22 BY MR. HAIGLER:

23 BUT I HOPE TO BRING THAT OUT THROUGH TESTIMONY
24 TODAY, BUT THERE'S SOME DIFFERENCES ON WHAT ACTUALLY
25 TOOK PLACE, WHICH WE DIDN'T KNOW FOR MONTHS DOWN THE

1 ROAD, UNTIL HE HAD BEEN AT M.M.I., I DIDN'T KNOW IT.
2 SO, WE DON'T THINK HE WAS ACTUALLY INJURED ALL THAT
3 SERIOUSLY, AND A COUPLE OF OTHER THINGS, AND I WILL
4 SIT DOWN. WE WOULD ASK -- EVEN IF YOU INDICATE THAT
5 HE OR FIND THAT HE NEEDS THIS TREATMENT OR THAT THIS
6 TREATMENT HAS HELPED HIM IN SOME WAY OR FORM OR
7 FASHION, IT'S ALL UNAUTHORIZED TREATMENT. HE'S
8 NEVER REQUESTED THAT WE PAY FOR THIS. HE'S NEVER
9 CALLED ME. CREIGHTON NEVER CALLED ME. ANDY NEVER
10 CALLED ME. THEY NEVER CALLED THE EMPLOYER, NEVER
11 CALLED THE CARRIER, NEVER DID ANYTHING TO ASK FOR
12 ANY OF THIS TREATMENT, NOTHING, NOT A FORM 50, NOT
13 ONE THING. I HAD NO IDEA HE HAD EVEN SEEN SOME OF
14 THESE DOCTORS UNTIL MONTHS AFTER M.M.I. SO, I WOULD
15 ASK THAT YOU NOT ASK US TO PAY FOR THAT TREATMENT.
16 AND THE FINAL THING IS, AND I DON'T THINK THERE'S A
17 CASE THAT LENDS ITSELF MORE TO THIS, I WOULD ASK
18 THAT YOU ADDRESS MR. DORSEY'S CREDIBILITY. NOW,
19 WHAT'S INTERESTING ABOUT -- AND THE REASON I SAY
20 THIS IT'S IMPERATIVE IS MR. DORSEY IN HIS DEPOSITION
21 FLAT OUT TOLD ME HE NEVER HAD A PRIOR BACK PROBLEM
22 EVER, NEVER TREATED WITH A DOCTOR FOR BACK PROBLEMS.
23 WELL, YOU WILL READ THROUGH THE RECORDS. HE'S BEEN
24 TREATING FOR BACK PROBLEMS FOR YEARS. IN FACT IN A
25 CAR ACCIDENT HE HAD IN 2003 WHERE HE INJURED

1 INTERESTINGLY ENOUGH THE TWO BODY PARTS THAT WE ARE
2 HERE TO TALK ABOUT TODAY, THE RIGHT ARM AND THE
3 BACK, HIS DOCTOR TOLD HIM IN HELPING HIM FILE FOR
4 DISABILITY, THAT BECAUSE OF HIS CHRONIC BACK PAIN
5 AND HIS RIGHT ARM INJURY, HE WILL NEVER EVER BE ABLE
6 TO GO BACK TO WORK AGAIN. THAT WAS IN 2003, AND YET
7 HE TESTIFIED IN MARCH THAT HE HAD NEVER HAD PRIOR
8 BACK PROBLEMS, NEVER SEEN A DOCTOR FOR PRIOR BACK
9 PROBLEMS. I DON'T KNOW HOW YOU RECTIFY THAT. I
10 DON'T KNOW HOW YOU EXPLAIN IT. WE'RE GOING TO FIND
11 OUT IN A FEW MINUTES, BUT I DON'T KNOW HOW YOU
12 EXPLAIN THAT. SO, I WOULD ASK -- AND THERE'S MORE
13 THAN THAT. THAT'S JUST THE TIP OF THE ICEBERG. SO,
14 I WOULD ASK THAT YOU MAKE A CREDIBILITY
15 DETERMINATION. ALL OF THIS PLAYS INTO WHAT WE ARE
16 HERE TO TALK ABOUT TODAY, WHICH IS WHY I'VE BEEN SO
17 ANXIOUS TO HAVE A HEARING. THAT IS OUR POSITION,
18 COMMISSIONER, AND I APPRECIATE YOUR TIME.

19 **BY COMMISSIONER TAYLOR:**

20 THANK YOU.

21 **BY MR. SAFRAN:**

22 YOUR HONOR, BASICALLY, AS MR. HAIGLER SAID BUT
23 THEN I GUESS DECIDED TO MAYBE KIND OF SEE IF HE
24 COULD WALK AROUND, THIS IS AN ADMITTED ACCIDENT.
25 THIS IS AN ACCIDENT THAT OCCURRED WHERE BASICALLY

1 THIS GENTLEMAN WAS STRUCK BY A GARBAGE TRUCK. I
2 THINK AGAIN THAT THE DEPOSITIONS THAT HAVE BEEN
3 SUBMITTED ARE ONES THAT HAVE SOME THINGS IN THERE
4 THAT CERTAINLY CAN AND DO LEND SOME CREDENCE TO WHAT
5 HAPPENED IN TERMS OF THE IMPACT. I THINK ON TOP OF
6 THAT, WE HAVE A SITUATION WHERE THERE'S NEVER BEEN
7 ANY DENIAL THAT THIS GENTLEMAN HAD AT LEAST FROM
8 THEIR STANDPOINT A LUMBAR PROBLEM THAT NEEDED
9 TREATMENT. NOW, HE DID SEE DR. O'LEARY SEVERAL
10 TIMES, TRIED AN INJECTION; IT DIDN'T HELP. WAS SENT
11 TO DR. LAMOTTA AT THAT POINT. WHAT WAS LEFT OUT IS
12 THAT THERE WAS A NERVE STUDY DONE. IT WAS -- THE
13 NERVE CONDUCTION PART OF IT WAS NORMAL. THE E.M.G.
14 PART OF IT SHOWED THAT THERE WAS AN ABNORMALITY.
15 AGAIN, I WOULD SUBMIT TO YOU THAT IF YOU LOOK AT
16 THAT REPORT, THERE'S NO INDICATION THAT THAT WAS
17 SOMETHING THAT MR. DORSEY IN ANY WAY WAS ABLE TO
18 CREATE ON HIS OWN. THAT WAS BASED UPON OBJECTIVE
19 TESTING. SO, AGAIN, THAT'S A PIECE OF EVIDENCE THAT
20 YOU'VE SEEN I'M SURE IN YOUR EXPERIENCE THAT IS
21 RATHER SIGNIFICANT WHEN YOU ARE TALKING ABOUT
22 WHETHER OR NOT SOMEBODY HAS SYMPTOMS THAT ARE
23 LEGITIMATE. YOU'VE GOT AN ABNORMAL E.M.G. DR.
24 LAMOTTA, I HAVE NO PROBLEMS WITH DR. LAMOTTA. ON
25 THE OTHER HAND, SAW HIM ONE TIME. HE LOOKED AT AN

1 M.R.I.. SCAN THAT I THINK BY ALL THE SURGEONS DOES
2 NOT GRAB HIM, DOESN'T SEEM TO THINK THAT -- MAKE HIM
3 THINK THAT HE NEEDS ANYTHING OPERATIVELY. ON THE
4 OTHER HAND, YOU CAN'T REALLY DISTANCE YOURSELF FROM
5 THE FACT THAT YOU RAN THE TESTS ON A GENTLEMAN, AND
6 THE TEST IS AN OBJECTIVE TEST, AND IT SHOWED THERE
7 WAS A PROBLEM, WHICH IS CONSISTENT WITH WHAT HIS
8 COMPLAINTS HAVE BEEN, WHICH IS DOWN THAT LEG PAIN.
9 THEY RELEASED HIM. HE ULTIMATELY WENT DOWN TO
10 SOUTHEASTERN SPINE. THEY HAVE PERFORMED INJECTIONS
11 ON HIM AS HE WILL EXPLAIN TO YOU. THOSE INJECTIONS,
12 HE WILL TELL YOU DIDN'T UNLIKE THE FIRST ONE DO
13 NOTHING BUT IN FACT HAVE BEEN VERY HELPFUL. AGAIN,
14 THAT PLUS NERVE STUDY PLUS NATURE OF THE TYPE OF
15 INJURY HE HAD, WHICH THEY HAVE ACKNOWLEDGED THROUGH
16 AUTHORIZING THE TREATMENT UP TO DATE, SHOWS THERE IS
17 SOMETHING THERE. THE FACT THAT HE IS RESPONDING TO
18 IT ALSO GIVES YOU AN INDICATION THAT IT IS MOVING
19 EXACTLY IN THE DIRECTION THAT THE STATUTE SPEAKS TO,
20 WHICH IS TENDING TO LESSEN HIS PERIOD OF DISABILITY.
21 THIS GENTLEMAN HAS WORKED WITH THESE FOLKS FOR
22 ROUGHLY THE LAST EIGHT YEARS, AND I THINK YOU WILL
23 UNDERSTAND FROM YOUR OWN EXPERIENCE PLUS WHAT HE
24 TELLS YOU, GARBAGE MEN DON'T NECESSARILY SIT ON
25 THEIR BEHINDS AND DO NOTHING. THEY HAVE TO DO A

1 RELATIVELY RIGOROUS JOB, AND WHILE THERE IS NO
2 QUESTION, AND I'M NOT GOING TO DOUBT THAT WHAT MR.
3 HAIGLER HAS PUT IN GOES BACK SOME PERIOD OF TIME
4 WHERE THERE WOULD HAVE BEEN INTERMITTENT THINGS
5 WHERE HE WOULD GO TO THE EMERGENCY ROOM AND HAVE A
6 BACK STRAIN, AND, YES, 2003, THERE WAS A TREMENDOUS
7 ACCIDENT, BUT I THINK WHEN YOU LOOK AT WHAT THE
8 RESIDUALS ARE, AND HE CAN SHOW THEM TO YOU, THE BACK
9 IN ALL HONESTY REGARDLESS OF WHAT THE DOCTOR PUT IN
10 HIS DISABILITY LETTER WAS A VERY SMALL PART OF IT.
11 BUT WHAT WE ARE SEEING IS, YOU KNOW, WE'VE GOT A
12 GENTLEMAN FRANKLY THAT IF YOU LOOK AT ALL OF THIS,
13 HE COULDN'T HAVE BEEN DOING THAT WORK WITH ANY
14 SERIOUS BACK PROBLEM BECAUSE IT IS NOT EASY WORK. I
15 MEAN, JUST IF NOTHING MORE THAN GRABBING AND PULLING
16 YOURSELF UP, YOU KNOW, HUNDREDS OF TIMES A DAY, YOU
17 CAN'T DO THAT WITH A BAD BACK AS THEY ARE PROBABLY
18 TRYING TO ALLEGE, YOU KNOW, TO A DEGREE THEY'RE
19 SAYING. THE POINT IS UNLIKE WHAT YOU HEAR A LOT,
20 HE'S GOING TO ACTUALLY TELL YOU, "I'VE HAD TWO
21 SHOTS, AND I FEEL A LOT BETTER." SO, BASICALLY, I
22 THINK WE'RE GETTING TO A POINT WHERE WHAT HE FOUND
23 IS ACTUALLY HAVING A POSITIVE EFFECT. THAT'S WHY
24 AGAIN, I THINK IT GOES TO DR. FORREST BEING ABLE TO
25 SAY "OKAY, HE'S DONE WELL WITH THE SHOTS. I MIGHT

1 BE WILLING TO SAY HE'S AT M.M.I. AT SOME TIME VERY
2 SOON." I DON'T KNOW. I HAVEN'T SPOKEN TO HIM.
3 BUT, AGAIN, WHEN YOU START LOOKING AT THE REALITIES
4 OF WHAT HAS HAPPENED, WE ARE IN A SITUATION WHERE
5 UNFORTUNATELY AS IT HAPPENS SO OFTEN, SOMETIMES THE
6 INITIAL TREATMENT DOESN'T PAN OUT, BUT LATER
7 TREATMENT ACTUALLY CAN HAVE SOME BENEFICIAL EFFECT,
8 AND IT HAS IN THIS SITUATION. SO, WE DON'T BELIEVE
9 THAT THE EVIDENCE IS ESTABLISHING HE IS AT MAXIMUM
10 MEDICAL. WE BELIEVE THAT HE HAS OBTAINED TREATMENT,
11 THAT IS DOING EXACTLY WHAT THE STATUTE SPEAKS TO,
12 AND THAT WHILE HE MAY NOT BE LIGHT YEARS AWAY, HE'S
13 NOT AT THAT PLATEAU YET. I THINK THE FACT THAT
14 YOU'VE GOT A NERVE STUDY THAT SHOWS -- OR, EXCUSE
15 ME, I WANT TO BE VERY CLEAR, AN E.M.G. THAT SHOWS --
16 HOW IS THAT IN ANY WAY CONSISTENT WITH A ZERO
17 IMPAIRMENT, AND, YOU KNOW, I JUST HEAR OVER HERE
18 THAT "OH, YEAH, THAT'S ROCK SOLID." WELL, YOU KNOW,
19 I'M NOT GOING TO SIT HERE AND TELL YOU THAT I'VE
20 EVER HAD ANY DOCTOR WHO'S GOTTEN IT 100 PERCENT
21 RIGHT IN TERMS OF HOW THEY ASSESS THOSE THINGS. BUT
22 WHEN YOU I THINK MAYBE OVERLOOK THE FACT THAT YOU'VE
23 GOT OBJECTIVE EVIDENCE THAT THERE'S A PROBLEM, I
24 DON'T KNOW HOW YOU CAN NECESSARILY PUT A ZERO ON IT.
25 BUT IT'S OUR POSITION THAT FRANKLY THE ZERO IS A

1 PREMATURE ISSUE. THAT BASICALLY WE MAY VERY WELL BE
2 COMING TO A POINT WHERE EXACTLY WHAT MR. HAIGLER
3 SAYS IS GOING TO COME TO FRUITION, WHICH IS THERE IS
4 A PLATEAU. THERE IS A DETERMINATION OF DISABILITY,
5 AND THERE WILL BE SOME OR MAY NOT BE SOME LONG-TERM
6 MEDICAL NEED. AS FAR AS THE NECK IS CONCERNED, I
7 THINK THE WAY THAT THE FORM 21 WORKS, IT'S VERY OPEN
8 ENDED. IF THEY ARE ASKING TO COME IN HERE TODAY AND
9 SAY "OKAY WE THINK EVERYTHING SHOULD STOP," THAT
10 NOTICE SAYS THAT ANYTHING -- ANY OTHER BENEFITS OF
11 WHICH THE CLAIMANT IS ENTITLED IS SOMETHING ON THE
12 TABLE. I THINK IF YOU LOOK AT THE RECORDS, THERE
13 HAVE BEEN REFERENCES TO NECK LONG BEFORE NOW. IT
14 HAS NOT BEEN A FOCUS OF TREATMENT BECAUSE THEY WERE
15 NOT AUTHORIZED TO DO IT. THEY, MEANING THE
16 DEFENDANTS, CHOSE TO SAY "WE'VE ACCEPTED THE BACK."
17 THAT HAPPENS FREQUENTLY. THAT DOESN'T MEAN IT'S TO
18 THE EXCLUSION OF EVER BEING ABLE TO COME IN AND SAY,
19 "WELL, YOU KNOW, THERE WAS ANOTHER BODY PART
20 INVOLVED," WHICH IS EXACTLY WHAT IS HAPPENING NOW.
21 SO, WE THINK AGAIN THAT STOP PAY IS PREMATURE,
22 TREATMENT SHOULD BE ALLOWED, AND TEMPORARY TOTAL
23 SHOULD CONTINUE..

24 BY MR. HAIGLER:

25 CAN I RESPOND QUICKLY?

1 BY COMMISSIONER TAYLOR:

2 SURE.

3 BY MR. HAIGLER:

4 WHAT'S INTERESTING, AND I UNDERSTAND ANDY'S
5 POSITION ABOUT HIM NOT BEING ABLE TO -- HOW IN THE
6 WORLD COULD HE DO HIS JOB IF HE WAS HAVING THIS KIND
7 OF BACK PROBLEMS. WELL, THE REALITY WAS HE WAS
8 DOING HIS JOB, AND HE DID HAVE THESE PROBLEMS. IN
9 FACT, WHEN I GO THROUGH THE RECORDS IN A MINUTE,
10 YOU'RE GOING TO SEE THAT HE WAS HAVING SEVERE
11 CHRONIC BACK PAIN PRETTY MUCH THROUGH THE ENTIRE
12 DECADE PRIOR TO THIS CLAIM. SO, YOU'LL HAVE TO ASK
13 HIM THAT QUESTION. I DON'T KNOW HOW HE DID HIS JOB,
14 BUT HE DID TO HIS CREDIT. WE CAN GIVE HIM CREDIT
15 FOR THAT, BUT THE BOTTOM LINE IS YOU CAN'T SAY ON
16 ONE HAND "I DIDN'T HAVE PRIOR BACK PROBLEMS," AND
17 THEN I PULL UP RECORDS FROM NUMEROUS DIFFERENT
18 PROVIDERS WHERE HE DID. IN FACT, HE HAD BEEN
19 TOTALLY DISABLED BASED ON THOSE. THE SECOND ISSUE I
20 NEED TO ADDRESS IS THE NECK. AGAIN, ANOTHER ATTEMPT
21 OF I GOT YOU. I MEAN, I DON'T KNOW WHAT RECORDS
22 ANDY IS READING THAT THIS NECK HAS BEEN IN THE CLAIM
23 THE WHOLE TIME. THE NECK WAS NEVER MENTIONED UNTIL
24 APRIL. THIS ACCIDENT WAS IN JULY OF LAST YEAR. I
25 NEVER SAW ONE RECORD ABOUT THE NECK. IT WAS NEVER

1 BROUGHT TO MY ATTENTION. THERE WAS NEVER A 50 FILED
2 FOR IT. IN FACT, THE BRIEF HE FILED LATE DIDN'T
3 EVEN MENTION THE NECK. SO, WHY NOT -- WHY NOT? IF
4 YOU'RE GOING TO ALLEGE IT, AT LEAST TELL ME. I
5 DON'T HAVE -- WE DON'T DO TRIAL BY AMBUSH HERE OR
6 ANY OTHER COURT. SO, YOU CAN'T SUBMIT -- OH, YEAH,
7 AND BY THE WAY, THE FIRST TIME THEY GIVE ME ANY
8 EVIDENCE ON THE NECK IS THE OLD QUESTIONNAIRE THAT
9 WE'VE BEEN TALKING ABOUT. THE FIRST TIME IT'S EVER
10 BEEN CAUSALLY RELATED WAS LATE, AND I GOT IT FOUR
11 DAYS -- I TAKE THAT BACK. I GOT IT TWO DAYS BEFORE
12 THE HEARING. SO, IF THAT'S NOT TRIAL BY AMBUSH ON A
13 BODY PART, I DON'T KNOW WHAT IT. AND IT STILL UNTIL
14 WE GOT HERE TODAY HAD NEVER BEEN ALLEGED, NEVER BEEN
15 ALLEGED. SO, NOT IN A FORM -- NOT IN ANY WAY, SHAPE
16 OR FORM WAS THE NECK ALLEGED UNTIL JUST NOW. SO, I
17 WOULD ASK THAT YOU NOT RULE ON THAT ISSUE, AND --
18 WELL, I WOULD ASK THAT YOU RULE THAT IT IS NOT
19 COMPENSABLE, BECAUSE THEY NEVER RAISED IT PROPERLY.
20 AND YEAH, THE FORM 21 IS OPEN, BUT THERE ARE
21 REMEDIES TO THAT NOW. WE HAVE A FORM 22. WE HAVE A
22 FORM 50. IT LOOKS TO ME BASED ON WHAT ANDY SAYS,
23 WE'LL JUST GO DO AN I GOT YOU MOMENT. I'M GOING TO
24 GET YOU RIGHT AT THE HEARING. I'M GOING TO SUBMIT
25 THIS QUESTIONNAIRE TWO DAYS BEFORE THE HEARING. I

1 GOT YA, BUDDY. NOTHING YOU CAN DO ABOUT IT. WELL,
2 I DON'T THINK THAT'S THE RULES WE PLAY BY, AND
3 THAT'S NOT HOW WE OPERATE IN THE JUDICIAL SYSTEM.
4 THANK YOU.

5 BY MR. SAFRAN:

6 YOUR HONOR, JUST QUICKLY.

7 BY COMMISSIONER TAYLOR:

8 OKAY.

9 BY MR. SAFRAN:

10 I DON'T BELIEVE I'M HEARING THERE'S NOTHING YOU
11 CAN DO ABOUT IT WHEN DR. FORREST CAN BE ASKED ON
12 MONDAY EXACTLY EVERYTHING THAT HE NEEDS TO BE ASKED
13 WHETHER, 'YOU KNOW, FOR MR. HAIGLER OR US IN TERMS OF
14 WHAT IS GOING ON WITH THE NECK. SO, AGAIN, YOU
15 KNOW, WE KIND OF SEEM LIKE WE'RE GOING IN A CIRCLE
16 ON THAT, SO I WON'T SAY ANYTHING OTHER THAN, YOU
17 KNOW, THAT OPPORTUNITY IS THERE. NOBODY -- NOBODY
18 IS IN ANY WAY, SHAPE OR FORM COMING IN HERE AND
19 SAYING GOTCHA. I THINK MR. HAIGLER HAS EVERY RIGHT
20 TO DEVELOP THAT. I AM NOT IN ANY WAY, SHAPE OR FORM
21 TRYING TO DENY THAT TO HIM. THIS IS NOT A TRIAL BY
22 AMBUSH. HE IS GOING TO HAVE AN OPPORTUNITY TO TALK
23 TO THE DOCTOR WHO HAS BASICALLY TALKED ABOUT THE
24 NECK. SO, AGAIN, IT'S ALL RIGHT THERE. YOUR HONOR,
25 I THINK ALSO IF YOU LOOK AT SOME OF THE OTHER

1 RECORDS, THEY ARE TALKING ABOUT UPPER BACK. I THINK
2 FRANKLY THAT'S WHERE THIS SYMPTOM HAS BEEN UP IN
3 HERE. SO, AGAIN, I'M NOT GOING TO NECESSARILY FEEL
4 LIKE IT'S INCUMBENT TO HOLD MR. DORSEY, YOU KNOW, TO
5 BEING A MEDICAL DOCTOR. PAIN THAT INVOLVES THE NECK
6 CAN CERTAINLY GET IN BETWEEN THE SHOULDERS AND BE
7 CHARACTERIZED AS UPPER BACK, AND THOSE REFERENCES TO
8 UPPER BACK, I BELIEVE, WERE IN SOME RECORDS GOING
9 WAY BACK. SO, AGAIN, I DON'T WANT TO GET HUNG UP ON
10 SEMANTICS, BUT IT CERTAINLY SEEMS LIKE THERE HAS
11 BEEN SOME REFERENCE IN THE PAST TO IT.

12 **BY COMMISSIONER TAYLOR:**

13 OKAY, ALL RIGHT. THANK YOU. MR. DORSEY HAS
14 ALREADY BEEN PLACED UNDER OATH. MR. HAIGLER.

15 **BY MR. HAIGLER:**

16 THANK YOU, COMMISSIONER.

17 **DIRECT EXAMINATION BY MR. HAIGLER:**

18 Q. MR. DORSEY, YOU SUSTAINED AN INJURY IN JULY OF 2015
19 INVOLVING A TRASH TRUCK YOU WERE WORKING ON; IS THAT
20 CORRECT?

21 A. YES, SIR.

22 Q. OKAY. AND YOUR JOB ---

23 A. JULY 17TH.

24 Q. --- AS I UNDERSTAND IT -- EXCUSE ME?

25 A. JULY 17.

- 1 Q. OKAY. AND YOUR JOB AS I UNDERSTAND IT, MR. DORSEY,
2 IS TO RIDE ON THE BACK OF THE TRUCK. IT'S A
3 TRADITIONAL TRASH TRUCK JOB WHERE YOU GET OFF, GET
4 THE TRASH RECEPTACLE, UNLOAD IT ON THE TRUCK, PUT IT
5 BACK ON THE CURB AND GET BACK ON THE TRUCK AND GO TO
6 THE NEXT STOP; IS THAT WHAT I UNDERSTAND?
- 7 A. NO, WE LIFT -- WE DO IT ALL. WE DO -- WHATEVER OUT
8 THERE ON THE CURB, LIKE IF SOMEBODY'S WHOLE HOUSE
9 GET THROWN OUT, WE HAVE TO LOAD THE WHOLE HOUSE UP.
- 10 Q. GOTCHA.
- 11 A. FURNITURE, WHATEVER, CHEST OF DRAWERS, NECESSITIES,
12 WHATEVER THEY GOT IN THE CANS, RECYCLES.
- 13 Q. OKAY. SO, WHATEVER THERE IS, YOUR JOB IS BASICALLY
14 TO PUT IT IN THE TRUCK? YOU'RE THE TRASH GUY; IS
15 THAT FAIR?
- 16 A. YEAH, I'M A LOADER AT THE BACK.
- 17 Q. OKAY.
- 18 A. I LOAD TRUCKS.
- 19 Q. AND I ASSUME YOU REMEMBER YOUR ACCIDENT; IS THAT
20 FAIR?
- 21 A. YEAH, I -- I REMEMBER.
- 22 Q. OKAY. AND MS. CATHY ODOM WHO WE DEPOSED A FEW WEEKS
23 AGO -- AND YOU WERE THERE FOR HER DEPOSITION?
- 24 A. (NO VERBAL RESPONSE)
- 25 Q. SHE TESTIFIED A FEW WEEKS AGO, DID SHE NOT AT MY

1 OFFICE; DO YOU REMEMBER THAT?

2 A. YEAH, I REMEMBER.

3 Q. ARE YOU SURE?

4 A. YEAH, I REMEMBER WHEN I WAS SITTING IN FRONT OF MS.
5 ODOM.

6 Q. OKAY. AND CATHY WAS THE DRIVER OF THE TRUCK THAT
7 DAY; IS THAT CORRECT?

8 A. YES, SIR.

9 Q. OKAY. AND I ASSUME YOU REMEMBER THAT WHEN CATHY
10 TESTIFIED, SHE TESTIFIED THAT SHE DIDN'T KNOW ABOUT
11 YOUR ACCIDENT FOR TWO MONTHS AFTER IT ACTUALLY
12 OCCURRED. DO YOU REMEMBER HER SAYING THAT, YES OR
13 NO?

14 A. I REMEMBER HER SAYING THAT, BUT THAT WAS A LIE.

15 Q. OKAY. BUT THAT'S NOT MY QUESTION, MR. DORSEY. MY
16 QUESTION IS DO YOU REMEMBER THAT THAT'S WHAT SHE
17 TESTIFIED TO?

18 A. THAT'S WHAT SHE TESTIFIED.

19 Q. OKAY. NOW, I TOOK YOUR DEPOSITION; I DON'T KNOW IF
20 YOU REMEMBER THIS OR NOT, BUT IN MARCH OF THIS YEAR,
21 IT'S BEEN A FEW MONTHS, BUT I TOOK YOUR DEPOSITION
22 AT YOUR ATTORNEY'S OFFICE ON MARCH 28TH. DO YOU
23 REMEMBER THAT?

24 A. YES, SIR.

25 Q. OKAY. AND YOU TOLD ME DURING YOUR DEPOSITION THAT

1 CATHY WAS DRIVING THE TRUCK AND WHEN IT HIT YOU, IT
2 HIT YOU WITH SUCH FORCE THAT, QUOTE, IT THREW YOU
3 UP IN THE AIR ABOUT TEN FEET AND YOU LANDED ON THE
4 GROUND.

5 A. I REMEMBER ---

6 Q. YES OR NO, IS THAT WHAT YOU TESTIFIED TO?

7 A. I REMEMBER TELLING YOU THAT IT PUSHED ME. YOU TRIED
8 TO PUT WORDS INTO MY MOUTH.

9 Q. OKAY. SO, YOU'RE SAYING THAT'S NOT WHAT ---

10 A. I SAID PUSHED ---

11 Q. --- YOU SAID?

12 A. THE TRUCK PUSHED ME ---

13 Q. MR. DORSEY, HOLD ON A SECOND.

14 BY MR. COLEMAN:

15 I OBJECT. IF HE ASKS A QUESTION, MY CLIENT HAS
16 A RIGHT TO ANSWER IT. I WISH HE WOULD GIVE HIM THE
17 CHANCE ---

18 BY THE CLAIMANT:

19 I ANSWERED AS TRUTHFULLY AS POSSIBLE.

20 BY COMMISSIONER TAYLOR:

21 OKAY.

22 BY MR. COLEMAN:

23 RICO -- RICO.

24 BY COMMISSIONER TAYLOR:

25 AND, MR. DORSEY.

1 BY THE CLAIMANT:

2 YES, SIR.

3 BY COMMISSIONER TAYLOR:

4 MR. DORSEY, THIS IS HOW WE DO IT. HE IS ASKING
5 YOU QUESTIONS.

6 BY THE CLAIMANT:

7 YES, MA'AM.

8 BY COMMISSIONER TAYLOR:

9 AND I'LL LET YOU EXPLAIN, BUT YOU HAVE TO FIRST
10 ANSWER THE QUESTION FIRST, AND THEN YOU CAN GIVE AN
11 EXPLANATION AFTER THAT. SO, IF YOU CAN TRY TO
12 ANSWER THE QUESTION WITH A YES OR NO. THEN YOU CAN
13 FEEL FREE TO ADD ON AFTER THAT, OKAY?

14 BY THE CLAIMANT:

15 YES, MA'AM. OKAY.

16 BY COMMISSIONER TAYLOR:

17 OKAY.

18 BY MR. HAIGLER:

19 AND I WILL RE-ASK THE QUESTION, COMMISSIONER.

20 BY COMMISSIONER TAYLOR:

21 THANK YOU.

22 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

23 Q. MR. DORSEY, YES OR NO, DID YOU TESTIFY -- DID YOU
24 SAY TO ME THAT "SHE HIT ME AND I WAS THROWEED UP IN
25 THE AIR AND LANDED TEN FEET AWAY"? DID YOU SAY

1 THAT, YES OR NO?

2 A. COULD I ---

3 BY COMMISSIONER TAYLOR:

4 YOU'VE GOT TO ANSWER YES OR NO FIRST, AND THEN
5 YOU CAN EXPLAIN.

6 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

7 A. YES, BUT I REMEMBER ME TELLING YOU IN MY DEPOSITION
8 THAT I TOLD YOU THAT "THE TRUCK PUSHED ME, AND THEN
9 WHEN IT HIT ME IN MY BACK, I WENT UP IN THE AIR, AND
10 I CAME OFF THE TRUCK WITH FORCE." YOU ASKED ME HOW
11 FAR DID IT PUSH ME. I SAID "IT PUSHED ME" -- WHILE
12 WE WERE SITTING IN CREIGHTON -- MR. COLEMAN'S
13 OFFICE, I TOLD YOU "IT PUSHED ME FROM ABOUT HERE TO
14 THAT WALL." YOU SAID "OH, THAT'S ABOUT 10 TO 12
15 FEET." YOU SAID, "OH, THAT'S ABOUT 10 TO 12 FEET,"
16 AND I SAY "WELL, HOWEVER MANY FEET IT WAS, THAT'S
17 HOW FAR THE TRUCK PUSHED ME," AND I TOLD YOU THAT
18 THE TRUCK PUSHED ME NUMEROUS TIMES, AND THEN YOU
19 KEPT COMING BACK WITH THE SAME QUESTION. AND YOU
20 SAY "DID YOU GO UP IN THE AIR?" I TOLD YOU "YES,"
21 BECAUSE IF I DIDN'T GO IN THE AIR, IT DIDN'T THROW
22 ME IN THE AIR NO 20 FEET HIGH. IT -- IT PUSHED ME
23 UP TO WHERE I GOT CAUGHT ON THE BACK OF THE MIDDLE
24 OF THE TRUCK, AND WHEN I CAME OFF, I CAME OFF WITH
25 FORCE, AND I REMEMBER CRINGING TO THE GROUND ON ONE

1 KNEE.

2 Q. OKAY. LET ME MAKE SURE I UNDERSTAND WHAT YOU'RE
3 SAYING. SO, YOU ARE TELLING ME THAT I PUT WORDS IN
4 YOUR MOUTH AS FAR AS HOW FAR YOU WENT WHETHER YOU
5 WERE THROWN, PUSHED, OR WHATEVER IT WAS. IS THAT
6 WHAT YOU'RE SAYING?

7 A. I WOULD NEVER TELL YOU THAT I WENT TEN FEET HIGH IN
8 THE AIR.

9 Q. THAT'S NOT WHAT I ASKED YOU. I SAID ARE YOU SAYING
10 THAT AS FAR AS HOW FAR YOU FLEW THROUGH THE AIR
11 WHETHER YOU FLEW OR WERE PUSHED, WHETHER IT WAS 10
12 FEET, 12 FEET OR 50 FEET, YOU'RE SAYING THAT I PUT
13 THOSE WORDS IN YOUR MOUTH. IS THAT WHAT YOU'RE
14 SAYING?

15 A. I SAY YOU WAS -- YOU WAS -- IT'S LIKE YOU WAS TRYING
16 TO PUT WORDS IN MY MOUTH, BECAUSE IF YOU LOOK AT THE
17 DEPOSITION, I TOLD YOU THREE TIMES THAT THE TRUCK
18 PUSHED ME. IT CAUGHT MY BODY, AND THAT'S HOW I
19 DIDN'T GET RAN OVER, BECAUSE THE TRUCK LIFTED ME UP
20 AND PUSHED ME.

21 Q. OKAY.

22 A. AND I TOLD YOU THAT WHILE WE WAS IN THE OFFICE.

23 **BY MR. HAIGLER:**

24 COMMISSIONER, I'M GOING TO SHOW HIM HIS
25 DEPOSITION.

DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

A. YOU KEPT ASKING ME THE QUESTION OVER AND OVER, AND I SAID "YES, SIR," BUT I DIDN'T MEAN THAT I WENT NO TEN FEET HIGH IN NO AIR.

Q. OKAY.

A. I TOLD YOU THAT THE TRUCK PUSHED ME ON DIFFERENT -- ABOUT THREE TIMES AFTER YOU KEPT ASKING ME THE QUESTION OVER AND OVER.

Q. OKAY, ALL RIGHT.

BY MR. HAIGLER:

MAY I APPROACH, COMMISSIONER?

BY COMMISSIONER TAYLOR:

YES.

DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

Q. MR. DORSEY, LET ME ACTUALLY JUST SHOW YOU YOUR DEPOSITION TESTIMONY.

A. OKAY.

BY MR. HAIGLER:

COMMISSIONER, I'M ON PAGES 42 AND 43 OF THIS DEPOSITION STARTING WITH LINE 10.

DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

Q. OBVIOUSLY, YOU ARE WELCOME TO READ ALL OF IT, BUT I'M STARTING WITH LINE TEN. ON LINE TEN, WHAT WAS THE QUESTION THAT I ASKED YOU? WILL YOU PLEASE READ THAT INTO THE RECORD?

1 A. YOU SAID "DID YOU -- DID YOU FLY THROUGH THE AIR?"

2 Q. OKAY, ALL RIGHT. THANK YOU. AND THEN YOU ANSWERED,
3 AND WHAT WAS THE VERY FIRST THING YOU SAID WHEN I
4 ASKED YOU "DID YOU FLY THROUGH THE AIR?" WHAT WAS
5 THE FIRST WORD YOU SAID?

6 A. I WAS ---

7 Q. JUST ANSWER ---

8 A. I WAS TRYING ---

9 Q. JUST READ WHAT IT SAYS, MR. DORSEY. WHAT IS THE
10 FIRST THING YOU SAID? WHEN I ASKED YOU "DID YOU FLY
11 THROUGH THE AIR?" WHAT DID YOU SAY?

12 A. IT SAY DID YOU -- I SAY WHEN YOU GET HIT WITH A BIG
13 PIECE OF STEEL LIKE THAT ---

14 Q. MR. DORSEY, WHEN I ASKED YOU "DID YOU FLY THROUGH
15 THE AIR?" WHAT WAS THE VERY FIRST WORD YOU SAID?

16 A. I SAY "YEAH, I ---

17 Q. DID I PUT ---

18 **BY MR. COLEMAN:**

19 YOUR HONOR, ---

20 **BY MR. HAIGLER:**

21 I'M JUST ASKING HIM ---

22 **BY MR. COLEMAN:**

23 YOUR HONOR, IF HE ASKS A QUESTION, LET HIM
24 FINISH. HE ASKED WHAT HE ANSWERED. LET HIM FINISH
25 WHAT HIS ANSWER IS.

1 BY COMMISSIONER TAYLOR:

2 LET HIM READ THE WHOLE ANSWER.

3 BY MR. HAIGLER:

4 FAIR ENOUGH. BUT, COMMISSIONER, MY QUESTION
5 WAS "WHAT WAS THE VERY FIRST WORD?"

6 BY COMMISSIONER TAYLOR:

7 OKAY.

8 BY THE CLAIMANT:

9 AND I UNDERSTAND ---

10 BY MR. HAIGLER:

11 I DIDN'T ASK HIM WHAT -- TO FINISH IT. I JUST
12 ASKED HIM WHAT WAS THE FIRST WORD.

13 BY THE CLAIMANT:

14 FLY THROUGH, I DIDN'T FLY. I DIDN'T FLY.

15 BY COMMISSIONER TAYLOR:

16 WELL, WE GOT IT. IT'S IN THERE.

17 BY MR. HAIGLER:

18 I UNDERSTAND.

19 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

20 Q. NOW, IF YOU WILL KEEP READING, MR. DORSEY, THE NEXT
21 ON LINE 13, I ASKED YOU "HOW FAR DID YOU GO?" AFTER
22 YOU TOLD ME "YEAH, I FLEW THROUGH THE AIR." I ASKED
23 YOU, OF COURSE, I SAID, "WELL, HOW FAR DID YOU GO?"

24 A. YES, SIR.

25 Q. AND YOU SAID "I WENT..." WHAT DID YOU SAY?

1 A. I SAID "I WENT FROM ABOUT -- FROM ABOUT WHERE I WAS
2 SITTING TO THAT WALL OVER THERE."

3 Q. AND, OF COURSE ---

4 A. AND YOU SAY "WHICH IS 10 TO 12 FEET, LONGER OR
5 SHORTER OR JUST?"

6 Q. NOW, DID I SAY THAT, OR DID I ASK YOU THAT, BECAUSE
7 THERE'S A DIFFERENCE? DID I SAY THAT TO YOU, OR DID
8 I ASK YOU THAT?

9 A. YOU SAY "WHAT 10, 12 FEET, LONGER OR SHORTER?"

10 Q. I'M ASKING YOU THE QUESTION, AM I NOT? AM I ASKING
11 YOU THE QUESTION OF HOW FAR YOU FLEW THROUGH THE
12 AIR?

13 A. AND I SAY -- AND I REMEMBER TELLING YOU THAT IT'S
14 ABOUT 10 FEET.

15 Q. OKAY.

16 A. THAT'S -- AND I'M NOT NO -- I JUST COULDN'T MEASURE
17 NO 10 FEET.

18 Q. ALL RIGHT. AND THEN ---

19 A. I DIDN'T HAVE NO RULER.

20 Q. I UNDERSTAND. FAIR ENOUGH, I DIDN'T EITHER. ON
21 PAGE 43, LINE 8, I ASKED YOU THE QUESTION, "I'M
22 GOING TO GUESS THAT'S..." WE'RE STILL TALKING ABOUT
23 THE DISTANCE THAT YOU FLEW, AND I SAID "I'M GOING TO
24 ASK YOU -- I'M GOING TO GUESS THAT THAT'S 12 FEET,
25 10, 12 FEET?" AND YOUR ANSWER IS WHAT?

1 A. WHAT LINE?

2 Q. LINE 10 RIGHT HERE, WHAT WAS YOUR ANSWER TO THAT
3 QUESTION?

4 A. "I SAY ABOUT 10 FEET."

5 Q. OKAY. AND THEN IF YOU KEEP READING, WHAT DID YOU
6 SAY ON LINE 16 THROUGH LINE 25, WHAT WAS YOUR ANSWER
7 THERE?

8 A. I TOLD YOU "IT MOSTLY -- IT MOSTLY PUSHED AND
9 THREW ME UP IN THE AIR LIKE."

10 Q. OKAY. AND THEN YOU SAY "IT PUSHED ME AND THREW ME
11 UP IN THE AIR." IS THAT WHAT YOU SAID?

12 A. YEAH.

13 Q. OKAY. AND THEN I SAID "AND THAT WAS ABOUT 10 FEET?"
14 AND YOU SAID "YES," CORRECT?

15 A. BUT I -- YES.

16 Q. THAT'S ALL I'M ASKING.

17 A. YES, SIR.

18 Q. ALL RIGHT.

19 A. BUT I DIDN'T MEAN LIKE NO 10 FEET JUST GOING IN NO
20 AIR LIKE THAT. ABOUT 10 FEET FROM THE SPOT WHERE
21 THE TRUCK HIT ME TO WHERE I GOT THROUGH, AND WHEN I
22 CAME OFF THE FORCE -- OFF THE FORCE OF THE TRUCK
23 AFTER BEING HIT, YEAH, IT WAS 10 FEET.

24 Q. I GOTCHA. OKAY. AND THEN THIS NEXT QUESTION, THIS
25 IS AN IMPORTANT QUESTION. I ASKED YOU "DID YOU FALL

1 TO THE GROUND?" AND WHAT DID YOU SAY?

2 A. I SAY YEAH, I CRINGED TO THE GROUND.

3 Q. WHAT DID YOU ACTUALLY SAY?

4 A. "YES, SIR."

5 Q. OKAY. SO, YOU SAID, YES, I DID FALL TO THE GROUND?

6 A. I SAID "YEAH."

7 Q. THANK YOU.

8 A. TRASH CAN FELL TO THE GROUND, TOO.

9 Q. SO YOUR TESTIMONY IS WITH REGARD TO MS. ODOM'S

10 TESTIMONY THAT WHEN SHE TESTIFIED THAT SHE DIDN'T

11 KNOW SHE HAD HIT YOU OR WHAT HAPPENED OR ANYTHING

12 FOR TWO MONTHS AFTER YOUR ACCIDENT, YOU'RE TELLING

13 ME THAT THAT'S A LIE; IS THAT CORRECT?

14 A. YES, SIR.

15 Q. OKAY. NOW, YOU ALSO SAT THERE WHEN SAMMY BELL

16 TESTIFIED; IS THAT CORRECT?

17 A. YES, SIR.

18 Q. AND SAMMY IS -- HE'S A FRIEND OF YOURS, ISN'T HE?

19 A. HE'S A CHURCH MEMBER OF MINE.

20 Q. Y'ALL ARE FRIENDS?

21 A. WE USED TO RIDE TO WORK TOGETHER, BUT AS FAR AS LIKE

22 HANGING OUT EVERY DAY OR BEING TOGETHER, NO, IT WAS

23 JUST WORK. IT WAS JUST WORK, HOME AND I SEE HIM AT

24 CHURCH EVERY NOW AND THEN.

25 Q. OKAY. ARE YOU AWARE HE TESTIFIED Y'ALL ARE FRIENDS.

1 I MEAN, WHATEVER FRIENDS MEANS, BUT HE SAID YOU WERE
2 FRIENDS; IS THAT FAIR?

3 A. I MEAN, YEAH, WE AIN'T NEVER HAD -- WE WORKED
4 TOGETHER.

5 Q. ALL RIGHT. SO, YOU RODE TO AND FROM -- EVEN AFTER
6 YOUR ACCIDENT, Y'ALL RODE TOGETHER, DIDN'T YOU?

7 A. FOR A COUPLE OF DAYS.

8 Q. HE WOULD PICK YOU UP.

9 A. FOR A COUPLE OF DAYS.

10 Q. ALL RIGHT.

11 A. YEAH, FOR A COUPLE OF DAYS WHILE -- WHILE I WAS
12 STILL FIGHTING TRYING TO GET UP. HE TOLD YOU THAT
13 HE HAD TO START HELPING ME GET UP IN THE MORNING.

14 Q. FAIR ENOUGH. HE WOULD TAKE YOU TO WORK, TAKE YOU
15 BACK, AND Y'ALL WOULD STILL GO TO CHURCH TOGETHER;
16 ISN'T THAT RIGHT?

17 A. NO, WE DIDN'T RIDE TO NO CHURCH TOGETHER.

18 Q. I JUST ASKED IF Y'ALL WENT TO THE SAME CHURCH.
19 Y'ALL GO TO CHURCH TOGETHER; YOU GO TO THE SAME
20 CHURCH?

21 A. WELL, HE GO TO MY CHURCH.

22 Q. FAIR ENOUGH.

23 A. OKAY.

24 Q. FAIR ENOUGH. NOW, HE'S NOT AN ENEMY OF YOURS, IS
25 HE, BEFORE JULY THE 1ST? IS HE AN ENEMY OF YOURS?

1 A. I'M A MAN OF GOD. I DON'T HATE NOBODY.

2 Q. OKAY. FAIR ENOUGH. AND YOU REMEMBER WHEN MR. BELL
3 TESTIFIED, WHEN I ASKED HIM THE QUESTION, "DID HE
4 FLY THROUGH THE AIR AND LAND ON THE GROUND, FLY
5 THROUGH THE AIR 10 FEET AND LAND ON THE GROUND?"
6 YOU KNOW HE TESTIFIED THAT THAT DIDN'T ACTUALLY
7 HAPPEN; ARE YOU AWARE OF THAT?

8 A. (NO VERBAL RESPONSE)

9 Q. IS THAT WHAT HE SAID?

10 A. I DON'T REMEMBER ALL WHAT HE SAID, BUT, I KNOW HE --
11 FROM MY POINT OF VIEW, I DON'T KNOW IF HE SEEN -- HE
12 SEEN WHAT HAPPENED, BUT AFTER THE TRUCK GOT OUT OF
13 HIS PERIPHERAL VIEW, I COULDN'T -- AND WHEN THE
14 TRUCK HIT ME, I COULDN'T SEE HIM. THAT'S WHY I'M
15 BELIEVING THAT HE JUST HEARD HOW HARD THE LICK WAS
16 AND HE DIDN'T -- WHEN MR. BELL -- WHEN I SEEN MR
17 BELL, MR. BELL TOLD HE WAS STARTING TO STOP THE
18 DRIVER. SHE GOT READY TO TAKE OFF IN THE TRUCK.
19 MR. BELL STOPPED HER. HE WAS HOLLERING "STOP THE
20 TRUCK. STOP THE TRUCK."

21 Q. OKAY.

22 A. AND HE TOLD ME THEN, HE SAY "YOU NEED TO GO TO THE
23 HOSPITAL." I SAY -- I SAY -- HE WAS LIKE "YOU'RE
24 HURT, YOU'RE HURT."

25 Q. OKAY. MR. DORSEY.

1 A. YES, SIR.

2 Q. CORRECT ME IF I'M WRONG, BUT DID I JUST UNDERSTAND
3 THAT YOU TOLD ME THAT SAMMY DIDN'T ACTUALLY SEE WHAT
4 HAPPENED?

5 A. HE SEEN -- HE SEEN IT, BUT HE SEEN IT, BUT WHEN THE
6 TRUCK -- WHEN THE TRUCK KEPT COMING, I COULDN'T SEE
7 SAMMY OUT OF MY PERIPHERAL VIEW.

8 Q. OKAY.

9 A. WHILE THE TRUCK WAS PUSHING ME. WHEN IT WAS OVER
10 WITH, THAT'S WHEN I SEEN MR. BELL COME BACK TO THE
11 BACK OF THE TRUCK, AND LIKE HE TRIED TO STOP THE
12 DRIVER, BECAUSE HE SAID "YOU HIT HIM. YOU HIT HIM."

13 Q. OKAY. NOW, YOU READ HIS DEPOSITION, DIDN'T YOU?

14 A. NO, SIR. I DIDN'T.

15 Q. YOU WERE THERE THOUGH; YOU WERE SITTING THERE?

16 A. YES, SIR.

17 Q. OKAY. AND SO YOU KNOW HE TESTIFIED -- NOW, HOLD ON
18 A SECOND. YOU KNOW HE TESTIFIED WHEN I TOLD HIM
19 WHAT YOU SAID ---

20 A. YES.

21 Q. --- IN YOUR DEPOSITION UNDER OATH THAT THAT'S NOT
22 WHAT HAPPENED? YOU KNOW THAT, DON'T YOU?

23 A. I'M TELLING THE HONEST GOD'S TRUTH. THE TRUTH WILL
24 SET YOU FREE.

25 Q. I'M NOT ASKING YOU IF YOU ARE TELLING THE TRUTH.

1 I'M ASKING YOU IF YOU REMEMBER HIM SAYING THAT, THAT
2 WHAT YOU SAID DIDN'T HAPPEN? DO YOU REMEMBER HIM
3 SITTING THERE SAYING THAT?

4 A. (NO VERBAL RESPONSE)

5 Q. IT'S THE WHOLE POINT WE WERE TAKING HIS DEPOSITION.
6 DO YOU REMEMBER HIM SITTING THERE SAYING "WHAT MR.
7 DORSEY SAID HAPPENED DIDN'T HAPPEN"?

8 A. SAY THAT AGAIN, NOW.

9 Q. DO YOU REMEMBER WHEN MR. BELL TESTIFIED WHEN I ASKED
10 HIM, I SAID, "NOW, MR. DORSEY TESTIFIED A FEW WEEKS
11 AGO THAT THIS IS WHAT HAPPENED, THAT HE FLEW THROUGH
12 THE AIR 10 FEET ---

13 A. YES, SIR.

14 Q. --- AND FELL ON THE GROUND."

15 A. YES, SIR.

16 Q. AND I SAID, "MR. BELL, IS THAT WHAT TOOK PLACE?" HE
17 SAID "NO." DO YOU RECALL THAT?

18 A. YEAH, I RECALL.

19 Q. OKAY.

20 A. OKAY.

21 Q. BUT MR. BELL -- WHEN I TOOK YOUR DEPOSITION BACK IN
22 MARCH, YOU TOLD ME THAT THERE WAS NO DOUBT IN YOUR
23 MIND THAT YOU KNOW HE SAW WHAT HAPPENED?

24 A. HE SEEN ME GET HIT.

25 Q. OKAY. SO, EITHER MR. BELL IS LYING OR YOU DIDN'T

1 ACTUALLY DO WHAT YOU SAID WHAT YOU DID IN YOUR
2 DEPOSITION; WOULD YOU AGREE WITH THAT?

3 A. I'M THINKING MR. BELL DON'T REMEMBER A LOT OF THINGS
4 'CAUSE ---

5 Q. CAN YOU ANSWER MY --

6 BY MR. COLEMAN:

7 OBJECT. LET HIM ANSWER THE QUESTION, YOUR
8 HONOR.

9 BY MR. HAIGLER:

10 I'M JUST ASKING -- HE CAN ANSWER ---

11 BY MR. COLEMAN:

12 YOUR HONOR, IF HE ASKS A QUESTION, MY CLIENT
13 HAS A RIGHT TO ANSWER.

14 BY THE CLAIMANT:

15 TO ANSWER.

16 BY MR. COLEMAN:

17 BUT I WILL REPEATEDLY ASK THAT HE NOT INTERRUPT
18 MY CLIENT ONCE HE IS ANSWERING.

19 BY COMMISSIONER TAYLOR:

20 IT IS SO NOTED FOR THE RECORD, BUT, AGAIN, MR.
21 DORSEY, YOU HAVE TO ANSWER THE SPECIFIC QUESTION.

22 BY THE CLAIMANT:

23 THAT'S WHAT I'M ANSWERING.

24 BY COMMISSIONER TAYLOR:

25 OKAY.

1 BY THE CLAIMANT:

2 THAT'S WHAT I'M ANSWERING THE SPECIFIC
3 QUESTION.

4 BY MR. HAIGLER:

5 LET ME ASK THE QUESTION AGAIN.

6 BY COMMISSIONER TAYLOR:

7 SURE.

8 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

9 Q. WOULD YOU AGREE, YES OR NO, AND THEN YOU CAN EXPLAIN
10 HOWEVER YOU NEED TO EXPLAIN, BUT WOULD YOU AGREE
11 WITH THIS, YES OR NO, THAT EITHER MR. BELL IS LYING
12 WHEN HE TESTIFIED THAT WHAT YOU SAID HAPPENED DIDN'T
13 HAPPEN, OR IT DIDN'T HAPPEN THE WAY YOU SAID IT
14 HAPPENED? WOULD YOU AGREE WITH THAT? IT'S ONE OR
15 THE OTHER; WOULD YOU AGREE WITH THAT, YES OR NO?

16 A. MR. BELL, HE DIDN'T -- YOU DIDN'T ---

17 BY THE CLAIMANT:

18 HE DIDN'T ASK THAT QUESTION LIKE THAT THE FIRST
19 TIME, YOUR HONOR.

20 BY MR. COLEMAN:

21 WELL, YOUR HONOR, I MEAN, THE DEPOSITION IS IN
22 EVIDENCE. I MEAN, HE'S GOING TO TESTIFY ABOUT WHAT
23 HAPPENED AND WHAT HE SAW. THE COURT CAN READ THE
24 DEPOSITION AND DETERMINE WHAT IS GOING ON.

25 BY MR. HAIGLER:

1 I'M SIMPLY ASKING -- I'M SORRY.

2 BY COMMISSIONER TAYLOR:

3 I THINK IT'S A PROPER QUESTION. HE JUST
4 REPHRASED IT A DIFFERENT WAY JUST TO CLARIFY IT FOR
5 YOU, AND I'LL LET YOU EXPLAIN IT AS LONG AS YOU NEED
6 TO GO, BUT FIRST YOU'VE GOT TO ANSWER THE QUESTION
7 FIRST. SO, IF HE'S ASKING FOR A YES OR NO QUESTION,
8 JUST GIVE HIM A YES OR NO ANSWER.

9 BY THE CLAIMANT:

10 YES, MA'AM, THAT'S WHAT I'M TRYING TO DO.
11 THAT'S WHAT I'M TRYING TO DO, AND HE KEEP -- EVERY
12 TIME I GET READY TO SPEAK, HE ---

13 BY COMMISSIONER TAYLOR:

14 WELL, BECAUSE I THINK YOU'RE NOT SAYING YES OR
15 NO FIRST.

16 BY MR. COLEMAN:

17 WELL, YOUR HONOR, SOME QUESTIONS -- I MEAN, HE
18 HAS TO ANSWER YES OR NO IF HE CAN. IF HE CAN'T, HE
19 HAS TO EXPLAIN WHY HE CAN'T.

20 BY COMMISSIONER TAYLOR:

21 BUT THEN HE SAYS I DON'T KNOW, AND THEN YOU CAN
22 EXPLAIN WHY.

23 BY THE CLAIMANT:

24 OKAY.

25 BY COMMISSIONER TAYLOR:

1 ALL RIGHT. FAIR ENOUGH.

2 BY MR. HAIGLER:

3 DO I NEED TO RE-ASK THE QUESTION?

4 BY COMMISSIONER TAYLOR:

5 NO, I THINK HE'S GOT IT.

6 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

7 Q. OKAY. GO AHEAD, SIR. DO YOU UNDERSTAND THE
8 QUESTION?

9 A. ARE YOU ASKING ME IS MR. BELL TELLING A LIE OR IS
10 I'M TELLING A LIE, THAT'S THE QUESTION?

11 Q. I'M ASKING YOU IT'S ONE OR THE OTHER, IS IT NOT?

12 A. I KNOW TRUTHFULLY FROM MY HEART WHAT HAPPENED TO ME
13 THAT DAY. MR. BELL, I CAN'T GIVE YOU -- I CAN'T
14 GIVE YOU WHAT MR. BELL COULD SAY. I KNOW WHAT
15 HAPPENED TO ME, AND I KNOW WHAT I'M GIVING YOU IS
16 THE HONEST GOD TRUTH.

17 Q. OKAY. AND I UNDERSTAND THAT, MR. DORSEY, BUT MY
18 QUESTION TO YOU WAS THE STATEMENT, THE TESTIMONY
19 THAT MR. BELL GAVE IS NOT THE SAME TESTIMONY THAT
20 YOU GAVE; IS THAT FAIR?

21 A. YES -- YES, SIR.

22 Q. OKAY. THAT'S ALL I'M ASKING.

23 A. YES, SIR.

24 Q. NOW, I ASKED YOU AND I SHOWED YOU THE DEPOSITION --
25 YOUR DEPOSITION IF YOU DIDN'T RECALL, AND THAT'S

1 OKAY, BUT I SHOWED YOU YOUR DEPOSITION BACK IN MARCH
2 WHERE YOU TESTIFIED THAT AFTER YOU DID WHATEVER YOU
3 DID THROUGH THE AIR, ON THE GROUND, OR HOWEVER YOU
4 DID IT, YOU FELL TO THE GROUND, AND THAT'S WHAT YOUR
5 TESTIMONY IS, IS IT NOT?

6 A. I CRINGED TO THE GROUND.

7 Q. I'M ASKING YOU -- I ASKED YOU THE QUESTION IN YOUR
8 DEPOSITION "DID YOU FALL TO THE GROUND?" AND YOU
9 SAID "YES"?

10 A. DID I TOUCH THE GROUND, YES, I DID TOUCH THE GROUND.

11 Q. AGAIN, MR. DORSEY, ---

12 A. I DIDN'T FALL OUT AND FALL OVER.

13 Q. OKAY. MY QUESTION TO YOU IN THE DEPOSITION WAS "DID
14 YOU FALL ON THE GROUND?"

15 A. YES, SIR.

16 Q. AND YOU SAID ---

17 A. I WAS -- I WAS ON THE GROUND, YES, SIR.

18 Q. OKAY, FAIR ENOUGH.

19 A. YES, SIR.

20 Q. NOW, ARE YOU AWARE, MR. DORSEY, THAT THE FIRST TIME
21 THAT YOU WENT TO A DOCTOR, AND THAT WAS JUST A
22 COUPLE OF HOURS AFTER THIS OCCURRED, THE FIRST TIME
23 YOU WENT TO A DOCTOR, YOU TOLD THEM YOU DIDN'T FALL
24 TO THE GROUND. ARE YOU AWARE OF THAT?

25 A. NO, SIR, I'M NOT AWARE OF THAT. I DON'T REMEMBER.

1 Q. OKAY.

2 A. THE FIRST TIME I WENT TO THE DOCTOR.

3 Q. YOU DON'T REMEMBER THAT?

4 A. WHEN I WENT TO ---

5 **BY MR. HAIGLER:**

6 MAY I APPROACH, COMMISSIONER?

7 **BY COMMISSIONER TAYLOR:**

8 YES.

9 **BY MR. HAIGLER:**

10 I'M ON PAGE 28 OF DEFENDANTS' APA.

11 **BY COMMISSIONER TAYLOR:**

12 OKAY.

13 **DIRECT EXAMINATION RESUMED BY MR. HAIGLER:**

14 Q. AND YOU WENT TO DOCTORS CARE RIGHT AFTER THIS,
15 DIDN'T YOU?

16 A. NO, NOT RIGHT AFTER, BECAUSE WHEN I GOT BACK TO THE
17 YARD ---

18 Q. LATER ON IN THE DAY?

19 A. YEAH -- NO, NOT LATER ON IN THE DAY. I HAD TO GET --
20 -- I HAD TO GET AUTHORIZATION FROM THE -- FROM THE
21 G.M. THE NEXT DAY TO GO TO THE DOCTOR.

22 Q. OKAY. WELL, I'VE GOT A REPORT THAT SAYS YOU WENT ON
23 THE 17TH OF JULY. IS THAT NOT RIGHT?

24 A. YEAH, THAT'S RIGHT.

25 Q. OKAY. WELL, I HAVE THE DATE OF YOUR ACCIDENT AS THE

1 17TH. DID IT NOT OCCUR ON THE 17TH?

2 A. IT HAPPENED ---

3 Q. I'M JUST READING THE RECORDS. I'M ASKING, IT SAYS

4 YOU WENT TO THE DOCTOR ON THE 17TH?

5 A. I WAS SEEN BY THE DOCTOR -- WELL, IF I WAS SEEN BY

6 THE DOCTOR ON THE 17TH, THAT WAS THE DAY AFTER.

7 Q. SO, IT HAPPENED ON THE 16TH?

8 A. YEAH.

9 Q. SO, THIS WHOLE TIME YOU'VE BEEN ALLEGING A WORKERS'

10 COMP CLAIM, YOU HAVEN'T EVEN HAD THE RIGHT DAY OF

11 INJURY; IS THAT RIGHT?

12 A. THAT'S THE DATE OF THE DOCTOR WHEN I SEEN THE

13 DOCTOR. SO, THAT'S THE DATE THAT I'VE BEEN ---

14 Q. ALL RIGHT, OKAY.

15 A. THAT'S THE DATE I WENT TO THE DOCTOR.

16 Q. OKAY. LET ME SHOW YOU THIS DOCUMENT. HAVE YOU SEEN

17 YOUR RECORDS?

18 A. YOU CAN -- YOU CAN, WHAT YOU CALL IT, YOU CAN SHOW

19 THEM TO ME.

20 Q. YEAH, BUT HAVE YOU EVER SEEN THEM; HAVE YOU SEEN ANY

21 OF YOUR MEDICAL RECORDS?

22 A. I'M NOT -- NOT NO LAWYER, DOCTORS ---

23 Q. I'M JUST ASKING YOU IF YOU'VE SEEN YOUR RECORDS?

24 A. NO, SIR.

25 Q. OKAY. ARE YOU AWARE THAT THE DOCTOR YOU SAW AT

1 DOCTORS CARE SAID -- WROTE IN HERE THAT YOU DID NOT
2 FALL?

3 A. I DID NOT -- I DO NOT REMEMBER THAT.

4 Q. DID YOU TELL THE DOCTOR THAT?

5 A. NO, SIR.

6 Q. OKAY. SO, YOU'RE SAYING WHAT'S IN HERE IS NOT TRUE?

7 A. WELL, I DON'T REMEMBER. NOT TO MY KNOWLEDGE, I
8 DON'T REMEMBER TELLING THE DOCTOR THAT I DID NOT
9 FALL.

10 Q. OKAY. WELL, YOU'VE TESTIFIED THAT YOU DID FALL, AND
11 THE FIRST THING -- THE FIRST DOCTOR YOU SEE AFTER
12 THE ACCIDENT SAYS YOU DIDN'T FALL. SO, EITHER HE'S
13 RIGHT OR ONE OF YOU -- ONE OF THIS -- EITHER YOU ARE
14 NOT TELLING THE TRUTH OR THIS REPORT IS WRONG; WOULD
15 YOU AGREE WITH THAT?

16 A. YEAH.

17 Q. OKAY, THANK YOU.

18 A. YES, SIR.

19 Q. GO AHEAD.

20 A. I CAN AGREE WITH THAT, BUT I -- BUT LIKE THE DOCTOR,
21 I DON'T REMEMBER HIM ASKING ME DID I FALL TO THE
22 GROUND OR NO SUCH THING LIKE THAT.

23 Q. OKAY. BUT ---

24 A. THE ONLY THING I CAN REMEMBER, HE ASKED ME DID THE
25 TRUCK LIKE RUN OVER ME. I TOLD HIM, "NO." THAT'S

1 THE ONLY THING I CAN EVER REMEMBER.

2 Q. OKAY. BUT YOUR TESTIMONY IS IF HE WROTE IN HERE YOU
3 DIDN'T FALL TO THE GROUND, YOU'RE SAYING THAT'S NOT
4 ACCURATE?

5 A. IF HE SAID -- NO ---

6 Q. YOU HAVE TO SAY THAT, BECAUSE YOU TESTIFIED THAT YOU
7 DID FALL; IS THAT FAIR?

8 A. I DID NOT -- YOU KNOW, A FALL, I TOLD YOU I CRINGED
9 TO THE GROUND, 'CAUSE I WAS STILL IN SHOCK. I
10 DIDN'T KNOW WHAT HAD HAPPENED TO ME. I WAS PULLING
11 A CAN. A TRUCK WEIGHING AT LEAST 35,000 POUNDS WITH
12 PROBABLY 10, 15 THOUSAND POUNDS OF GARBAGE ON IT TO
13 ADD TO THAT, WHEN I CAME OFF THE BACK OF THAT TRUCK,
14 I WENT DOWN -- I WENT DOWN ON MY KNEE HOLDING MY
15 STOMACH, BECAUSE I DIDN'T KNOW WHAT REALLY HAD
16 HAPPENED UNTIL I SEEN THE TRASH CAN LAYING OVER --
17 SHE HAD HIT THE TRASH CAN TOO THAT I WAS BRINGING TO
18 THE TRUCK, AND I WAS -- THE ONLY THING I COULD
19 REMEMBER IS SAMMY COMING TO ME AND SAYING "YOU ARE--
20 IS YOU ALL RIGHT? SHE DONE HIT YOU. SHE DONE HIT
21 YOU. SHE DONE HIT YOU." I WAS LIKE -- I WAS LIKE --
22 -- AND THEN THE TRUCK TOOK OFF. SO, I STOOD UP.
23 SAMMY STOPPED THE TRUCK. I STOOD UP, TOOK A COUPLE
24 OF DEEP BREATHS. SAMMY SAY "COME ON." I SAY -- HE
25 SAY -- I SAID "WAIT A MINUTE. JUST LET ME GRAB --

1 JUST LET ME GET ON THE BACK." I WENT INSIDE IN THE
2 TRUCK AFTER THAT, AND THE RADIO WAS NOT WORKING IN
3 THE TRUCK THAT I WAS ON, 661. THE RADIO WAS NOT
4 WORKING. SO, SAMMY TOLD ME "RICO, GO ON TO THE --
5 I'M GOING TO LET YOU GO ON TO THE YARD SO YOU CAN GO
6 SEE MR. RICK SO YOU CAN GO ON TO THE DOCTOR."

7 Q. OKAY.

8 A. AND THAT'S -- THAT'S...

9 Q. I GOTCHA. I UNDERSTAND ALL OF THAT, BUT DON'T YOU
10 UNDERSTAND, MR. DORSEY, THAT YOUR TESTIMONY OF WHAT
11 HAPPENED OF YOU FLYING THROUGH THE AIR AND YOU
12 FALLING ON THE GROUND IS DIFFERENT THAN WHAT MR.
13 BELL SAID; IT'S DIFFERENT THAN WHAT'S IN THAT FIRST
14 REPORT FROM DOCTORS CARE; IS IT NOT? ISN'T THAT
15 DIFFERENT? I MEAN, WHEN YOU READ IT, ISN'T IT
16 DIFFERENT?

17 A. YES, SIR, IT'S DIFFERENT -- IT'S DIFFERENT ON PAPER.

18 Q. OKAY.

19 A. IT'S DIFFERENT ON PAPER.

20 Q. NOW, LET'S CHANGE GEARS, MR. DORSEY. DO YOU
21 REMEMBER ME ASKING YOU VERY CLEARLY IF YOU EVER HAD
22 PRIOR BACK PROBLEMS ---

23 A. YEAH.

24 Q. --- WHEN I DEPOSED YOU?

25 A. YES, SIR.

1 Q. I ASKED YOU "HAVE YOU EVER HAD PRIOR BACK PROBLEMS?"

2 A. YES, SIR.

3 Q. AND THEN I ASKED YOU "HAVE YOU EVER BEEN TREATED BY
4 A DOCTOR FOR YOUR BACK?"

5 A. YES, SIR.

6 Q. AND YOU SAID "NO" TO BOTH OF THOSE, DIDN'T YOU? YES
7 OR NO?

8 A. I SAID -- I SAID "NO, SIR" BECAUSE IT WAS NEVER
9 NOTHING TO THE EXTENT WHERE I HAD TO HAVE ONGOING
10 TREATMENT DAY IN AND DAY OUT WHERE THE PAIN WOULD
11 NEVER -- YES, I HAVE SPRAINED -- I HAVE HAD MUSCLE
12 SPASMS AND WENT TO THE DOCTOR FOR -- I WENT TO THE
13 DOCTOR. I WENT TO THE EMERGENCY ROOM. THEY GAVE
14 YOU -- THEY GIVE YOU A LITTLE PILL, BUT IT WAS
15 SOMETHING NEVER TO THE SERIOUS OF THIS EXTENSION OF
16 PAIN.

17 Q. BUT YOU NEVER SAID THAT WHEN I ASKED YOU THE
18 QUESTION. YOU SAID ---

19 A. I NEVER ---

20 Q. --- "NO," DID YOU NOT?

21 A. I SAID "NO" 'CAUSE I HAVE NEVER EVER BEEN TO LIKE
22 TREATED LIKE -- LIKE HAVE ONGOING TREATMENTS THE WAY
23 I NEVER HAD TO HAVE A SURGERY ON MY BACK OR
24 SOMETHING LIKE THAT WHERE DOCTORS HAD TO DO ANYTHING
25 LIKE THAT. I NEVER -- I HADN'T NEVER BEEN THROUGH

1 NOTHING LIKE THIS IN MY LIFE.

2 Q. OKAY. MY QUESTION TO YOU WAS "DID YOU EVER HAVE
3 PRIOR BACK PROBLEMS?" AND YOU SAID "NO." AND THEN I
4 ASKED YOU "HAVE YOU EVER BEEN TREATED FOR BACK
5 PROBLEMS?" AND YOU SAID "NO" AND THEN I ASKED YOU
6 JUST TO MAKE SURE YOU UNDERSTOOD, "DID YOU
7 UNDERSTAND THESE QUESTIONS?" AND YOU SAID "YES."
8 DID YOU NOT SAY THAT? IS THAT EXACTLY WHAT TOOK
9 PLACE?

10 A. YES, SIR.

11 Q. OKAY.

12 A. I THOUGHT THAT YOU WAS MEANING TO WHERE I HAD TO GO
13 SEE A DOCTOR EVERY DAY OR THE NEXT DAY OR IT HAD TO
14 BE TREATED FOR DEGENERATIVE DISCS, NERVE DAMAGE OR
15 SOMETHING LIKE THAT. I HADN'T EVER HAD -- NEVER
16 ONCE HAD A PROBLEM WITH MY BACK WITH WORKING OR
17 NOTHING LIKE THAT.

18 Q. OKAY. BUT, AGAIN, MR. DORSEY, THAT'S NOT THE
19 QUESTION I ASKED YOU.

20 A. BESIDES A MUSCLE SPASM, I DIDN'T -- I DIDN'T
21 UNDERSTAND WHERE YOU WAS COMING FROM.

22 Q. I ASKED YOU ---

23 A. I THOUGHT YOU WAS MEANING TO THE EXTENT THAT I HAD
24 TO GET TREATMENT, WHERE I HAD TO GET TREATMENT AND
25 TREATMENT AFTER TREATMENT.

1 Q. OKAY. WELL, THAT'S INTERESTING ---

2 A. THAT'S WHAT I THOUGHT YOU MEANT LIKE WHEN YOU SAID
3 HAVE YOU EVER HAD ANY BACK PAIN TO WHERE YOU HAD TO
4 BE TREATED BY A DOCTOR OR SOMETHING LIKE THAT? I
5 THOUGHT YOU WAS TALKING ABOUT SOMETHING AS SERIOUS
6 AS THIS.

7 Q. I GOTCHA. SO, YOU MEAN LIKE MEDICATIONS AND X-RAYS
8 AND TREATMENT?

9 A. NO, I'M TALKING ABOUT LIKE X-RAYS, INJECTIONS, NERVE
10 DAMAGE -- YOU'VE GOT NERVE -- NERVE ROOT IRRITATION
11 AND STUFF LIKE THAT. I NEVER HAD THAT.

12 Q. OKAY. YOU'VE NEVER HAD AN X-RAY ON YOUR BACK?

13 A. YEAH, I DONE HAD AN X-RAY ON MY BACK.

14 Q. ALL RIGHT. HOW DID YOU ---

15 A. I SLIPPED AND FELL OUT OF A GARBAGE TRUCK AT WORK.

16 Q. WELL, WHY DIDN'T YOU TELL ME THAT, MR. DORSEY?

17 A. I MEAN, IT WAS -- IT WAS NOTHING SERIOUS TO WHERE I
18 HAD TO LAY OUT OF WORK OR NOTHING LIKE THAT. AFTER
19 -- DIESEL FUEL WAS LEFT ON THE STEP, GETTING IN THE
20 GARBAGE TRUCK. I WENT TO GO SEE -- MUSCLE SPASM.

21 Q. SO, LET ME BE CLEAR.

22 A. WHEN YOU WAS TALKING ABOUT BACK PAIN, I THOUGHT YOU
23 WAS TALKING ABOUT SOMETHING AS TO WHAT'S GOING --
24 WHAT'S GOING ON HERE OF BEING LIKE WHAT'S GOING ON
25 HERE NOW.

1 Q. OKAY.

2 A. I DIDN'T UNDERSTAND YOU FULLY WHEN -- YOU KNOW, YOU
3 IS A LAWYER. YOU -- YOU -- YOU KNOW MORE ABOUT
4 WORDS AND STUFF THAN I DO.

5 Q. MR. DORSEY, MY QUESTION TO YOU WAS "HAVE YOU EVER
6 HAD ANY PRIOR BACK PROBLEMS BEFORE THIS ACCIDENT?"

7 A. AND I SAID ---

8 Q. IS THERE ANYTHING LEGAL ABOUT THAT QUESTION?

9 BY MR. COLEMAN:

10 YOUR HONOR, I OBJECT, I MEAN, THIS THING --
11 ASKED AND ANSWERED.

12 BY COMMISSIONER TAYLOR:

13 SUSTAINED.

14 BY MR. HAIGLER:

15 FAIR ENOUGH.

16 BY COMMISSIONER TAYLOR:

17 I WAS WAITING FOR THAT OBJECTION. I THINK HE'S
18 DONE IT FOUR TIMES NOW. I GOT IT.

19 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

20 Q. NOW, DR. FORREST IS THE DOCTOR YOU'VE BEEN SEEING OR
21 HIS PRACTICE YOU'VE BEEN SEEING FOR THE LAST COUPLE
22 OF MONTHS; IS THAT FAIR?

23 A. YES, SIR.

24 Q. YOU ALSO TOLD DR. FORREST YOU NEVER HAD ANY PRIOR
25 BACK PROBLEMS; DIDN'T YOU?

1 A. NOT TO NONE OF THIS EXTENT.

2 Q. OKAY. FAIR ENOUGH. BUT WHEN HIS REPORT SAYS "NEVER
3 HAD ANY PRIOR PROBLEMS," YOU AGREE THAT THAT'S NOT
4 TRUE?

5 A. I MEAN, THE DOCTOR -- I DON'T ---

6 Q. YES OR NO?

7 A. SAY THAT AGAIN.

8 Q. IF HIS REPORT SAYS YOU NEVER HAD PRIOR PROBLEMS WITH
9 YOUR BACK, YOU AGREE THAT THAT IS NOT ACCURATE?

10 A. WHEN DR. FORREST -- WHEN YOU ASKED THAT QUESTION AND
11 DR. FORREST ASKED THAT QUESTION, I THOUGHT Y'ALL WAS
12 MEANING TO THE EXTENT, YOUR HONOR, TO WHERE I WAS
13 HAVING TO HAVE TREATMENT OR SOMETHING LIKE THAT. I
14 HAVE HAD MUSCLE SPASMS WHERE I GO BACK TO WORK THE
15 NEXT DAY, TAKE A FLEXERIL OR SOMETHING AND JUST WORK
16 IT OUT. BUT THIS -- I TOLD DR. FORREST, I TOLD YOU
17 THE SAME THING, THAT I -- AS FAR AS LIKE SOMEBODY
18 TELLING ME TO COME BACK NEXT WEEK TO SEE A DOCTOR
19 BECAUSE OF MY BACK, I NEVER WENT THROUGH THAT IN
20 LIFE. I NEVER HAVE.

21 Q. MR. DORSEY, ---

22 A. I MEAN, I WENT TO THE HOSPITAL ON DIFFERENT
23 OCCASIONS PROBABLY HERE AND THERE YEARS AND YEARS
24 APART FOR LIKE HAVING MUSCLE SPASM HERE, MUSCLE
25 SPASM THERE, 'CAUSE I DO EXSTRENUOUS (PHONETIC)

1 WORK, IF I'M SAYING THAT RIGHT, EXSTRENUOUS WORK,
2 HARD WORK.

3 Q. OKAY. WELL, I UNDERSTAND WHAT YOU'RE SAYING, MR.
4 DORSEY. HERE'S WHERE I'M TRIPPING UP THROUGH. IS
5 WHEN I REVIEW YOUR RECORDS PARTICULARLY FROM YOUR
6 ACCIDENT BACK IN 2003, WHICH WAS A SERIOUS INJURY,
7 WAS IT NOT? SERIOUS INJURY?

8 A. YES, SIR. YES, SIR.

9 Q. THERE'S A NOTE FROM YOUR DOCTOR, A LETTER THAT YOU
10 HAD HIM WRITE FROM DR. LOCKE ---

11 A. HOW CAN I HAVE MY DOCTOR WRITE A LETTER?

12 Q. LET ME JUST FINISH MY QUESTION -- THAT SAYS YOU
13 SUFFERED INJURIES TO YOUR ARMS -- YOUR ARMS, YOUR
14 LEGS AND YOUR BACK. HE SAYS THAT "THE SIGNIFICANT
15 INJURY TO YOUR BACK HAS NOW LED TO CHRONIC BACK
16 PAIN." HE DIDN'T SAY MILD INJURY TO YOUR BACK. HE
17 SAID "SIGNIFICANT INJURY." ARE YOU AWARE OF THAT?
18 ARE YOU AWARE OF THAT DOCUMENT? YES OR NO?

19 A. I JUST SEEN THAT DOCUMENT. I JUST ACTUALLY SEEN
20 THAT DOCUMENT, BUT IF YOU WANT TO GO LOOK IN DR.
21 MARK LOCKE -- DR. LOCKE HAS NEVER GAVE ME -- I
22 DIDN'T KNOW I HAD -- HE HAD INDUCED [SIC] ME WITH
23 CHRONIC BACK PAIN, 'CAUSE I NEVER HAD NO BACK PAIN.
24 THE ONLY THING I EVER HAD WAS WORRIED ABOUT WAS I
25 DONE HAD AT LEAST FIVE SURGERIES ON MY ARM, ALL OF

1 THIS IS STILL -- AND I BROKE BOTH OF MY LEGS -- I
2 MEAN, HAD PROBLEMS WITH BOTH OF MY LEGS. THEY TOLD
3 ME I WOULD NEVER USE MY ARM AGAIN.

4 Q. OKAY. HE WROTE IN HERE ---

5 BY MR. COLEMAN:

6 GO AHEAD AND FINISH ANSWERING IF YOU WOULD.

7 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

8 A. HE TOLD ME I WOULD NEVER USE MY ARMS AGAIN, NEVER
9 USE MY LEGS, BUT IT WAS -- IT WAS -- I COULDN'T --
10 YOU CAN CLAIM ME DISABLED, BUT I'M NOT GOING -- IT'S
11 BY THE GRACE OF GOD THAT -- AND I KNOW BY ME I
12 WASN'T GOING TO BE DISABLED FOR NOBODY.

13 Q. I UNDERSTAND.

14 A. SO, THAT'S WHY I -- WELL, I WENT -- I WENT TO JAIL.
15 I GOT PHYSICALLY FIT. I GOT MENTALLY FIT, AND I GOT
16 SPIRITUALLY FIT, AND I CAME HOME. I GAVE A.S.I. --
17 AS SOON AS I GOT HOME, I GAVE A.S.I. THE BEST -- THE
18 BEST EIGHT YEARS OF MY LIFE WITH THAT JOB WORKING
19 SIX, SOMETIMES SEVEN DAYS A WEEK FOR THEM.

20 Q. I UNDERSTAND, MR. DORSEY. MY SIMPLE QUESTION IS ---

21 BY MR. COLEMAN:

22 OBJECT, YOUR HONOR, LET HIM ANSWER THE
23 QUESTION.

24 BY COMMISSIONER TAYLOR:

25 HE ANSWERED THE QUESTION.

1 BY MR. HAIGLER:

2 I WAS ABOUT TO SAY, I DON'T KNOW THAT THIS HAS
3 ANYTHING TO DO WITH MY QUESTION.

4 BY COMMISSIONER TAYLOR:

5 HE'S ANSWERED THE QUESTION.

6 BY MR. HAIGLER:

7 HE'S JUST RAMBLING ON. I MEAN, I UNDERSTAND
8 WHAT HE'S SAYING, BUT HE'S JUST TALKING ABOUT HIS
9 HISTORY WITH THE COMPANY. THAT WAS NOT -- NOTHING
10 TO DO WITH MY QUESTION.

11 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

12 Q. MY QUESTION, MR. DORSEY, IS I DIDN'T WRITE THIS
13 DOCUMENT, BUT DR. LOCKE ON YOUR BEHALF, IT SAYS
14 "REGARDING MR. DORSEY," WROTE "THAT YOU HAD A
15 SIGNIFICANT BACK INJURY," AND THIS IS WHAT'S
16 IMPORTANT, "THAT LED TO CHRONIC BACK PAIN THAT IS
17 MAKING YOU UNABLE TO WORK," AND THEN HE GOES ON TO
18 SAY THAT "BECAUSE OF THESE INJURIES INCLUDING THE
19 BACK AND YOUR RIGHT ARM, YOU ARE GOING TO BE UNABLE
20 TO WORK FOR YOUR ENTIRE LIFE, AND I WOULD RECOMMEND
21 THAT HIS IMPAIRMENT FROM HIS MEDICAL SIDE AND HIS
22 DISABILITIES THAT HE BE GRANTED DISABILITY
23 COVERAGE." SOMEONE ASKED HIM TO WRITE THIS; WAS IT
24 YOU?

25 A. WOULD I -- WOULD I -- HOW COULD I ASK A DOCTOR TO

1 WRITE SOMETHING? I'M....

2 Q. YOU ASKED THE DOCTOR TO WRITE THIS?

3 A. WHAT IS THAT?

4 Q. THE QUESTIONNAIRE THAT DR. FORREST FILLED OUT, I
5 MEAN, DID SOMEONE ON YOUR BEHALF ASK HIM TO WRITE
6 THIS?

7 A. WHAT? WHEN I GO SEE MY DOCTORS, I TELL MY DOCTORS
8 WHAT'S GOING ON WITH ME.

9 Q. OKAY.

10 A. AND AS FAR AS DR. LOCKE, LIKE I TELL YOU, I -- I WAS
11 NEVER HAD TO SEE DR. LOCKE; I HAD TO TAKE NO SHOT IN
12 NO BACK ABOUT NO CHRONIC BACK PAIN. I DIDN'T EVEN
13 KNOW I HAD NO CHRONIC BACK PAIN. I WAS IN
14 TREMENDOUS -- I WAS IN TREMENDOUS PAIN. I WAS
15 HURTING ALL OVER, BUT AS FAR AS THE BACK, I -- IF IT
16 WAS SO SEVERE, WHY -- WHY DIDN'T DR. LOCKE TREAT ME
17 FOR MY BACK. YOU LOOK IN YOUR MEDICAL RECORDS FOR
18 THAT AND SEE DO YOU SEE WHERE I HAD ANY TREATMENT
19 FROM DR. LOCKE FOR A BACK.

20 Q. OKAY.

21 A. DR. LOCKE TREATED ME FOR THESE -- THESE LEGS, THESE
22 FEETS, AND THIS ARM.

23 Q. OKAY. NOW, SO, YOUR TESTIMONY IS THAT AFTER THIS
24 INJURY, YOUR BACK WAS -- NOT ONLY WAS IT NOT REALLY
25 INJURED EVEN THOUGH HE SAID YOU HAD A SIGNIFICANT

1 BACK INJURY AND CHRONIC BACK PAIN, NOT ONLY DID YOU
2 NOT HAVE ANY OF THAT, BUT YOU DIDN'T HAVE ANY
3 TREATMENT AFTER THAT EITHER, DID YOU?

4 A. FROM DR. LOCKE?

5 Q. YOU DIDN'T HAVE ANY ONGOING CHRONIC BACK PAIN, DID
6 YOU?

7 A. I NEVER -- I -- I...

8 Q. YES OR NO, MR. DORSEY?

9 A. I MAYBE CAN STRAIN MY BACK FROM WORKING. I DO
10 STRENUOUS WORK AT WORK. WE DO HARD WORK AT WORK.

11 Q. I'M NOT DISPUTING WHAT YOU DO. I'M JUST ASKING THE
12 QUESTION.

13 A. I MEAN, JUST WALKING ALONG WITH BACK PROBLEMS
14 KNOWING THAT MY BACK IS HURTING EVERY DAY, I
15 WOULDN'T EVEN HAVE WENT TO WORK. IF I KNOWED I WAS
16 DISABLED, WHY WOULD I GO TO WORK AND WORK FOR -- DO
17 THIS WORK FOR EIGHT, NINE YEARS?

18 Q. I'M JUST ASKING THE QUESTION, MR. DORSEY, YES OR NO,
19 DID YOU HAVE ONGOING BACK PAIN? YOU HAVEN'T
20 ANSWERED MY QUESTION.

21 A. ONGOING, I MEAN, NO. I PROBABLY -- PROBABLY BEEN IN
22 AN ACCIDENT HERE AND THERE, A YEAR OR TWO, HERE AND
23 THERE. I'M A HARD WORKER.

24 Q. OKAY.

25 A. I -- I STRAIN -- PEOPLE GOING TO STRAIN THEIR BACK,

1 BUT AS FAR AS JUST HAVING TO JUST SEE A DOCTOR EVERY
2 DAY TO BE IN PAIN SO MUCH INTENSE PAIN ALL DAY EVERY
3 DAY, NO, NO.

4 Q. OKAY. NOW, SO I GUESS YOUR TESTIMONY IS AND I THINK
5 YOU'VE MADE IT CLEAR ---

6 A. I AIN'T NEVER TOOK -- I WASN'T HAVE NEVER PUT ON NO
7 MEDICATIONS OR NOTHING.

8 Q. THANK YOU.

9 A. LIKE I AM NOW.

10 Q. ALL RIGHT. BUT I THINK YOUR TESTIMONY IS THAT WHEN
11 I ASKED YOU ABOUT YOUR PRIOR BACK PROBLEMS, YOU JUST
12 THOUGHT I WAS TALKING ABOUT SERIOUS BACK PROBLEMS --

13 -

14 A. YES, SIR.

15 Q. --- AND THAT'S WHY ---

16 A. YES, SIR.

17 Q. --- YOU TELL ---

18 A. AND I APOLOGIZE, MR. HAIGLER. I'M VERY SORRY ABOUT
19 THAT.

20 Q. THAT'S ALL RIGHT. NOW, MY QUESTION THOUGH, THE
21 REASON I ASKED YOU THAT AGAIN IS YOU -- YOU
22 COMPLETED FOR MY CLIENT WHEN YOU WENT TO GET HEALTH
23 INSURANCE A DOCUMENT.

24 **BY MR. HAIGLER:**

25 THIS IS THE ONLY EXHIBIT WE SUBMITTED,

1 COMMISSIONER.

2 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

3 Q. NOW, YOU SIGNED THIS DOCUMENT AND DATED IT MAY 17TH
4 OF 2013, AND IN THAT DOCUMENT, YOU WERE ASKED TO
5 COMPLETE A QUESTIONNAIRE OF YOUR PRIOR MEDICAL
6 PROBLEMS, AND YOU CHECKED NO TO EVERY SINGLE THING
7 ON HERE INCLUDING THE FOLLOWING: BACK PAIN, THAT'S
8 NOT TRUE, IS IT? THAT'S NOT TRUE, IS IT? YES OR
9 NO, HAVE YOU EVER HAD PRIOR BACK PAIN BEFORE THE
10 13TH OF MAY -- MAY 13, HAVE YOU EVER HAD BACK PAIN,
11 YES OR NO, EVER?

12 A. I HAVE HAD BACK PAIN FROM LIFTING AND STUFF TO WHERE
13 I CAN GO TO THE EMERGENCY -- BE SEEN BY THE
14 EMERGENCY ROOM, GET -- GET A PILL OR SOMETHING, A
15 MUSCLE RELAXER, AND BACK TO WORK I GO.

16 Q. LET'S MOVE ON FROM THE BACK. YOU ALSO WERE ASKED,
17 "DID YOU EVER USE CIGARETTES OR TOBACCO?" YOU
18 CHECKED "NO." I KNOW THAT'S NOT TRUE, IS IT?

19 A. I SMOKE CIGARETTES. WHAT?

20 Q. OKAY. WELL, YOU PUT "NO." I'M JUST SAYING WHAT YOU
21 PUT. YOU PUT I DON'T SMOKE. I DON'T USE
22 CIGARETTES. YOU ALSO PUT ---

23 A. WAIT, WHAT YEAR THIS WAS NOW?

24 Q. THIRTEEN -- MAY OF 2013. HOW LONG HAVE YOU BEEN
25 SMOKING CIGARETTES, FOR 20 YEARS?

1 A. I HAVE BEEN -- I'VE BEEN -- I'VE BEEN AN OFF AND ON
2 SMOKER LIKE PRACTICALLY LIKE ALL MY LIFE.

3 Q. I GOTCHA. ALL RIGHT.

4 A. I GOT -- MAYBE I WASN'T SMOKING AT THAT TIME, BUT.

5 Q. OKAY. NEXT QUESTION. NEXT QUESTION, "HAVE YOU EVER
6 HAD ANY PRIOR FRACTURES?" I ASSUME BASED ON YOUR
7 ARM THAT YOU SHOWED US EARLIER, THAT THAT'S NOT TRUE
8 EITHER?

9 A. THIS -- THERE'S NO BONE IN HERE.

10 Q. THAT WASN'T MY QUESTION, MR. DORSEY. YOU FRACTURED
11 THAT ARM, DID YOU NOT; YOU BROKE IT?

12 A. I BROKE MY ARM.

13 Q. OKAY. SO, YOU DIDN'T ANSWER THAT QUESTION
14 TRUTHFULLY EITHER, DID YOU? YES OR NO? I'M JUST
15 ASKING THE QUESTION. IF IT SAYS "HAVE YOU EVER
16 FRACTURED -- HAVE YOU EVER HAD A FRACTURED BONE?"
17 DID YOU ANSWER THE QUESTION --

18 A. I MEAN -- I MEAN, WHAT IS THAT YOU'RE LOOKING AT?

19 Q. IT'S AN APPLICATION FOR INSURANCE, THE SAME KIND OF
20 INSURANCE WE'RE TALKING ABOUT TODAY.

21 A. APPLICATION FOR INSURANCE? A FRACTURE? I DONE HAD
22 A FRACTURE. EVERYBODY KNOW I HAD A MOTORCYCLE
23 WRECK.

24 Q. FAIR ENOUGH. NOW, THE NEXT QUESTION IS "ANY DRUG OR
25 ALCOHOL PROBLEMS?" YOU ARE A -- YOU ABUSE ALCOHOL,

1 DO YOU NOT?

2 A. NO, SIR.

3 Q. YOU DON'T?

4 A. NO. WHY I ABUSE ALCOHOL? ALCOHOLICS GO TO
5 MEETINGS, AIN'T THEY?

6 Q. EXCUSE ME?

7 A. ALCOHOLICS GO TO MEETINGS, RIGHT?

8 Q. YOU WOULD HOPE.

9 **BY MR. HAIGLER:**

10 COMMISSIONER, I WOULD DIRECT YOU TO PAGE 34 OF
11 THE CLAIMANT'S APA, WHICH IS A FAIRFIELD MEDICAL
12 RECORD, FAIRFIELD MEDICAL HOSPITAL RECORD FROM
13 JANUARY 22ND, 2016.

14 **DIRECT EXAMINATION RESUMED BY MR. HAIGLER:**

15 Q. ARE YOU AWARE THAT THAT DOCUMENT INDICATES THAT YOU
16 HAVE A HISTORY OF ALCOHOL ABUSE? YOU DIDN'T TELL
17 THEM THAT?

18 A. I TOLD THEM I DRANK, BUT I DIDN'T HAVE NO ABUSE.
19 ABUSE IS WHERE YOU LET SOMETHING GET THE BEST OF
20 YOU. I MEAN, THAT'S NOT...

21 Q. YOU DIDN'T TELL THEM THAT?

22 A. I THOUGHT AN ALCOHOLIC -- NO, I DIDN'T TELL NO
23 PEOPLE AT NO HOSPITAL THAT I ABUSE NO ALCOHOL.

24 Q. OKAY. AND I ---

25 A. THE HOSPITAL ASKS "DO YOU DRINK OR DO YOU SMOKE?"

1 THAT'S THE ONLY THING THEY ASK YOU.

2 BY COMMISSIONER TAYLOR:

3 AND, MR. HAIGLER, I'M SORRY, ARE YOU REFERRING
4 TO ABUSE OR USE? BECAUSE I DON'T -- I JUST SEE BEER
5 AND LIQUOR ONE OR TWO TIMES.

6 BY THE CLAIMANT:

7 YEAH, THAT'S ALL.

8 BY MR. HAIGLER:

9 AT THE BOTTOM, COMMISSIONER.

10 BY THE CLAIMANT:

11 THAT'S ALL.

12 BY MR. HAIGLER:

13 AT THE VERY BOTTOM, IT SAYS "ACTIVE PROBLEMS:
14 HISTORY OF ALCOHOL ABUSE." AT THE VERY BOTTOM OF
15 PAGE 34, "GASTRIC ULCER, E.T.O.H. ABUSE."

16 BY COMMISSIONER TAYLOR:

17 OKAY.

18 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

19 Q. SO, YOU ARE DENYING YOU'VE ABUSED ALCOHOL? I ASSUME
20 YOU'RE GOING TO DENY YOU USE MARIJUANA AS WELL; IS
21 THAT CORRECT?

22 A. LOOK, I DONE -- I DON'T DRUNK. I DONE DRUNK, BUT
23 I'VE NEVER DRUNK TO WHERE I COULD BE IMPAIRED. LIKE
24 A DRUNK, HE WOULD GO OUT AND GET D.U.I.s AND ALL
25 KIND OF THINGS. I MEAN, I AM -- I HAVE -- I DRINK

1 SOCIALLY, NOT -- AND I DON'T EVEN DRINK TOO MUCH.

2 Q. WELL, THE REASON I'M ASKING, MR. DORSEY, IS I ALSO
3 HAVE A RECORD IN HERE, PAGE 26 OF DEFENDANTS' APAs,
4 FROM APRIL OF 2009, WHERE YOU TOLD THE DOCTOR THAT
5 YOU ARE A HEAVY ALCOHOL CONSUMPTION, SIX PACK OF
6 BEER DAILY AND HALF -- HALF TO A WHOLE PINT OF VODKA
7 DAILY. THAT'S WHAT YOU TOLD THE DOCTOR.

8 A. THAT WAS THEN.

9 Q. IF THAT'S NOT ABUSE. YOU DON'T THINK THAT'S ABUSE?

10 A. NO, THAT'S...

11 Q. ALL RIGHT. THEN FAIR ENOUGH. I DON'T HAVE ANY
12 OTHER QUESTIONS ABOUT THAT. BUT YOU DO ADMIT THAT
13 YOU HAVE A HISTORY OF ALSO SMOKING MARIJUANA; IS
14 THAT CORRECT?

15 A. I HAVE USED MARIJUANA IN THE PAST.

16 Q. ALL RIGHT. NOW, MOVING ON. I HATE TO DO THIS,
17 COMMISSIONER -- OR MR. DORSEY, BUT I'VE GOT TO GO
18 THROUGH A FEW OF YOUR RECORDS REGARDING YOUR BACK
19 PAIN. NOW, WE TALKED ABOUT SOME OF THESE, AND WE
20 TALKED ABOUT 2013.

21 BY MR. HAIGLER:

22 AND PAGES 11 AND 12, COMMISSIONER.

23 BY MR. COLEMAN:

24 OF WHOSE?

25 BY MR. HAIGLER:

1 OF MY APAs, SORRY.

2 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

3 Q. IN DECEMBER OF 2008, DO YOU REMEMBER GOING TO
4 FAIRFIELD HOSPITAL FOR BACK PAIN WHERE YOU WERE
5 PRESCRIBED MEDICATIONS TO TREAT THAT; DO YOU
6 REMEMBER DOING THAT, SAYING YOU HAD A MOTOR VEHICLE
7 ACCIDENT THAT CAUSED YOU BACK PAIN? DO YOU REMEMBER
8 THAT TRIP TO THE HOSPITAL?

9 A. I MEAN, I DONE BEEN TO THE HOSPITAL NUMEROUS OF
10 TIMES, TO REMEMBER EXACTLY REMEMBER THAT.

11 Q. YOU'RE NOT SURE?

12 A. I'M NOT SURE.

13 Q. OKAY. DO YOU REMEMBER GOING IN 2010 TO THE SAME
14 EXACT HOSPITAL COMPLAINING OF SEVERE BURNING BACK
15 PAIN AND BEING REFERRED TO AN ORTHOPAEDIC SAYING YOU
16 MAY HAVE LIFTED SOMETHING AT HOME AND YOU HAD SEVERE
17 AND BURNING BACK PAIN. DO YOU REMEMBER THAT?

18 A. YES, SIR.

19 Q. OKAY. BUT YOU DIDN'T REMEMBER THAT BACK WHEN I
20 ASKED YOU BACK IN MARCH, DID YOU?

21 A. I MEAN ---

22 Q. YES OR NO? YES OR NO?

23 BY MR. COLEMAN:

24 YOUR HONOR, WE'VE REHASHED THIS THING. COME

25 ON.

1 BY COMMISSIONER TAYLOR:

2 WE HAVE. SUSTAINED.

3 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

4 Q. AND THEN YOU REMEMBER GOING TO -- AND THIS WAS JUST
5 A COUPLE OF YEARS BEFORE YOUR ACCIDENT, YOU WENT
6 BACK TO FAIRFIELD FOR EIGHT OUT OF TEN SEVERE BACK
7 PAIN THAT REQUIRED YOU TO HAVE X-RAYS; ARE YOU AWARE
8 OF THAT? DO YOU REMEMBER THAT?

9 A. THAT'S WHEN I FELL OFF -- SLIPPED OFF THE GARBAGE
10 TRUCK?

11 Q. CORRECT.

12 A. YES, SIR.

13 Q. NOW, I'M ON PAGE 18. HAVE YOU READ ANY OF THESE
14 RECORDS I'M TALKING ABOUT RIGHT NOW? HAVE YOU EVER
15 SEEN THEM?

16 A. (NO VERBAL RESPONSE)

17 Q. MAYBE, MAYBE NOT?

18 A. MAYBE, MAYBE NOT.

19 Q. ALL RIGHT. NOW, THERE'S A QUESTION AT THE BOTTOM
20 THAT SAYS "SIMILAR SYMPTOMS PREVIOUSLY," AND YOU
21 WROTE ON HERE "YES, VERY FREQUENTLY." SO, YOU'VE
22 HAD MODERATE TO SEVERE EIGHT OUT OF TEN BACK PAIN
23 ACCORDING TO THIS REPORT IN 2012 VERY FREQUENTLY; IS
24 THAT CORRECT? DO YOU REMEMBER WRITING THAT TON
25 HERE?

1 A. NO, SIR, I DON'T.

2 Q. OKAY. AND THEN IN THE PAST MEDICAL HISTORY PORTION
3 OF THIS, YOU WROTE ON HERE OR IT'S CIRCLED "CHRONIC
4 PRIOR BACK PAIN." DO YOU REMEMBER THAT? DO YOU
5 REMEMBER TELLING THE PERSON HERE IN 2012 JUST THREE
6 YEARS BEFORE YOUR ACCIDENT THAT THAT'S WHAT YOU WERE
7 DEALING WITH? DO YOU REMEMBER THAT?

8 A. NO, SIR.

9 Q. OKAY. NOW, AND YOU WERE SENT TO AN ORTHOPAEDIC
10 DOCTOR, WERE YOU NOT? DO YOU REMEMBER BEING
11 REFERRED TO AN ORTHOPAEDIC BACK THEN ABOUT YOUR
12 BACK?

13 A. NO, SIR, I NEVER WENT TO NONE, NOT THEN.

14 Q. AND THEN ---

15 A. IT WASN'T THAT SERIOUS. IT MUST HAVE NOT -- IT
16 COULDN'T HAVE BEEN.

17 Q. OKAY. WELL, WHAT'S INTERESTING IS THE X-RAY -- ARE
18 YOU AWARE THAT THE X-RAY THEY TOOK BASED ON THE
19 IMPRESSION OF THE X-RAY, THE DIAGNOSIS THAT COMES
20 FROM THE X-RAY, IS EXACTLY THE SAME DIAGNOSIS YOU
21 CURRENTLY HAVE; ARE YOU AWARE OF THAT?

22 A. NO, SIR.

23 Q. OKAY. THEN IN 2013, JUNE OF 2013, YOU GO BACK, AND
24 I THINK THIS IS WHAT YOU WERE TALKING ABOUT EARLIER,
25 WHEN YOU SLIPPED, YOU WERE COMPLAINING OF BACK PAIN

1 AFTER SLIPPING IN -- I CAN'T READ WHAT IT IS, BUT IT
2 LOOKS LIKE ---

3 A. OUT THE GARBAGE TRUCK.

4 Q. YEAH. DOES THAT SOUND FAMILIAR, IN JUNE OF 2013?

5 A. YES, SIR.

6 Q. AND YOU WERE HAVING BACK PAIN. DO YOU REMEMBER
7 TELLING THEM THAT?

8 A. YES, SIR. I WENT TO THE EMERGENCY ROOM TO GO CHECK
9 AND MAKE SURE, SEE WHAT WAS GOING ON.

10 Q. OKAY. BUT, SO, YOU REMEMBER ALL OF THAT NOW, BUT
11 WHEN I ASKED YOU THE QUESTION, YOU DIDN'T REMEMBER
12 IT, CORRECT?

13 A. I DIDN'T KNOW YOU WAS -- AS I TOLD YOU EARLIER, I
14 DIDN'T KNOW YOU WAS TALKING ABOUT WITH THE -- WITH
15 THE EXTENT OF WHAT I'M GOING THROUGH NOW.

16 Q. I UNDERSTAND. BUT YOU'RE GOING THROUGH EIGHT OUT OF
17 TEN BACK PAIN, AREN'T YOU?

18 A. SIR?

19 Q. YOU'RE GOING THROUGH EIGHT -- WHAT KIND OF BACK PAIN
20 DO YOU HAVE NOW, AT AN EIGHT OUT OF TEN, SEVEN OUT
21 OF TEN?

22 A. WELL, I WENT AND GOT A SHOT LAST THURSDAY, AND I'M
23 GOING TO TELL YOU THAT MY BACK PAIN IS DOING A LOT
24 BETTER TODAY.

25 Q. OKAY, FAIR ENOUGH.

1 A. EVER SINCE I'VE BEEN GETTING THESE INJECTIONS, I'VE
2 BEEN FEELING A LOT AND A LOT BETTER.

3 Q. YOU KNOW WHAT ELSE IS INTERESTING, MR. DORSEY, AND
4 I'VE NEGLECTED TO SHOW THIS TO YOU, BUT DO YOU
5 REMEMBER 18 YEARS AGO, YOU WENT TO FAIRFIELD
6 REGIONAL HOSPITAL, AND YOU COMPLAINED OF LOW BACK
7 PAIN RADIATING DOWN YOUR LEFT LEG; DID YOU NOT? DO
8 YOU REMEMBER DOING THAT? YOU MIGHT NOT; IT'S BEEN A
9 LONG TIME.

10 A. NO, SIR. NO, SIR.

11 Q. OKAY. BUT TO BE CLEAR, THAT'S EXACTLY WHAT YOU'RE
12 COMPLAINING OF RIGHT NOW, IS IT NOT? BACK PAIN
13 RADIATING DOWN YOUR LEFT LEG?

14 A. NO.

15 Q. IT'S NOT?

16 A. I'M NOT -- I'M NOT COMPLAINING ABOUT THAT SAME
17 PROBLEM THAT YOU ARE TALKING ABOUT I'M COMPLAINING,
18 NO, SIR. I'VE NEVER BEEN IN THIS -- I NEVER FELT
19 THIS PAIN THAT I'M FEELING RIGHT NOW TO THIS DAY. I
20 NEVER EVER IN MY LIFE FELT THIS KIND OF PAIN BEFORE
21 LIKE THAT I'M FEELING BEFORE. THIS IS NOTHING LIKE
22 NOTHING I EVER WENT THROUGH IN LIFE.

23 Q. MR. DORSEY, YOU'VE BEEN TO -- SINCE THIS CLAIM
24 HAPPENED, SINCE THIS ACCIDENT HAPPENED, YOU'VE BEEN
25 TO MULTIPLE EMERGENCY ROOMS THROUGHOUT THE MIDLANDS,

1 HAVEN'T YOU?

2 A. YES, SIR, TRYING TO FIND SOMEBODY TO HELP ME OUT OF
3 THIS PAIN.

4 Q. OKAY. NOW, I'M GOING TO DIRECT YOU TO A FEW OF THEM
5 AND ASK YOU SOME QUESTIONS. YOU MAY OR MAY NOT
6 REMEMBER THESE, AND IF YOU DON'T, THAT'S FINE, BUT
7 IN JANUARY OF THIS YEAR, JUST SEVEN MONTHS, NOT EVEN
8 SEVEN MONTHS AGO, YOU WERE SEEN BY DR. O'LEARY. DO
9 YOU REMEMBER TREATING WITH DR. O'LEARY?

10 A. YES, SIR.

11 Q. OKAY.

12 BY MR. HAIGLER:

13 AND THEN THIS IS CLAIMANT'S APA PAGE 64,
14 COMMISSIONER.

15 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

16 Q. AND YOU WERE GIVEN 50 TABLETS OF NORCO, WHICH IS A
17 NARCOTIC. DO YOU REMEMBER GETTING THAT?

18 A. YES, SIR.

19 Q. OKAY. AND THEN THE VERY NEXT DAY, THE VERY NEXT
20 DAY, YOU WENT TO FAIRFIELD MEDICAL CENTER, AND YOU
21 TOLD THEM OR THE DOCTOR THERE, AND YOU MAY NOT
22 REMEMBER THIS EITHER, ---

23 BY MR. HAIGLER:

24 THIS IS CLAIMANT'S APA PAGE 33, COMMISSIONER.

25 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

1 Q. THE DOCTOR THERE SAID YOU WERE NORCO DEPENDENT. ARE
2 YOU AWARE OF THAT?

3 A. WHAT IS THAT?

4 Q. MEANING YOU ARE DEPENDENT UPON NORCO. YOU HAVE A
5 PROBLEM WITH TAKING NORCO. THAT'S JUST WHAT IT
6 SAYS. ARE YOU AWARE OF THAT?

7 A. NO, SIR.

8 Q. DID Y'ALL TALK ABOUT THAT?

9 A. NO, SIR.

10 Q. OKAY.

11 A. IF I'VE GOT THE PRESCRIPTION ONE DAY, THEY ASK YOU
12 ARE YOU ON ANY KIND OF MEDICATIONS OR ANYTHING LIKE
13 THAT.

14 Q. OKAY.

15 A. YOU HAVE TO TELL THEM WHAT THE DOCTOR PUT DOWN OR
16 SOMETHING LIKE THAT. LIKE THE DOCTOR PUT DOWN I WAS
17 ABUSIVE OF ALCOHOL. THAT -- THAT -- I'VE NEVER BEEN
18 ABUSIVE. I NEVER TOLD A DOCTOR I WAS ABUSIVE OF
19 ALCOHOL.

20 Q. OKAY.

21 A. IF I WAS ABUSIVE FOR ALCOHOL, I ---

22 Q. WE'RE NOT TALKING ABOUT THAT RIGHT NOW. WE'VE
23 ALREADY TALKED ABOUT THAT, MR. DORSEY. I'M ASKING
24 YOU ABOUT THAT PARTICULAR VISIT, DID YOU -- ARE YOU
25 AWARE THAT THE DOCTOR INDICATED YOU WERE NORCO

1 DEPENDENT?

2 A. NO, SIR.

3 Q. OKAY. NOW, YOU JUST TESTIFIED THOUGH THAT WHEN YOU
4 GO IN THERE, THEY ASK YOU ABOUT ALL THE MEDICATIONS
5 YOU ARE ON, AND YOU'VE GOT TO TELL THEM?

6 A. YEAH, YOU'VE GOT TO TELL THEM. YOU GOT TO -- YOU
7 DON'T WANT THE DOCTOR TO GIVE YOU SOMETHING WRONG,
8 AND IT COULD KILL YOU.

9 Q. I AGREE. VERY GOOD POINT. NOW, ON FEBRUARY THE
10 4TH, WHICH IS THE DAY YOU WERE RELEASED AT M.M.I. BY
11 DR. LAMOTTA, DO YOU REMEMBER SEEING DR. LAMOTTA? I
12 THINK YOU SAW HIM JUST ONE TIME; DO YOU REMEMBER
13 THAT?

14 A. I REMEMBER DR. LAMOTTA WALKING IN A ROOM WHERE I WAS
15 SITTING ON THE TABLE. I DIDN'T KNOW WHO I WAS GOING
16 TO SEE. I REMEMBER DR. LAMOTTA WALKING IN THE ROOM.
17 HE NEVER EVER LOOKED AT ME FOR THE FIRST TIME ---

18 Q. MR. DORSEY, ALL I'M ASKING IS ---

19 A. I'M TRYING TO EXPLAIN.

20 Q. HOLD ON A SECOND. I KNOW. BUT WHAT YOU'RE TRYING TO
21 EXPLAIN IS WHAT HAPPENED. MY QUESTION TO YOU WAS
22 VERY SIMPLE. DO YOU REMEMBER SEEING DR. LAMOTTA ON
23 FEBRUARY 4TH? THAT WAS ALL I ASKED YOU. I JUST
24 NEED YOU TO ANSWER THAT QUESTION, OR WE ARE GOING TO
25 BE HERE ALL AFTERNOON.

1 A. IT DON'T -- I MEAN...

2 Q. DO YOU REMEMBER SEEING HIM IN FEBRUARY?

3 A. I REMEMBER -- IF THAT'S WHO THAT WAS I SEEN DR.

4 LAMOTTA ON FEBRUARY 4TH, I REMEMBER SEEING THAT

5 DOCTOR FOR A ONE TIME AND ONE TIME ONLY.

6 Q. FAIR ENOUGH. AND ARE YOU AWARE THAT WHEN HE TOUCHED

7 YOU, YOUR REACTION WAS OUT OF PROPORTION TO HIS

8 EXPECTATIONS? DID HE TELL YOU THAT?

9 A. TOUCHED ME?

10 Q. WHEN HE EXAMINED YOU AND PUT HIS HANDS ON YOU, ARE

11 YOU AWARE THAT THAT'S WHAT HE SAID?

12 A. I DON'T EVEN REMEMBER HIM PUTTING HIS HANDS ON ME.

13 Q. OKAY. SO, YOU'RE SAYING THAT IF HE SAID HE EXAMINED

14 YOU AND HE PUT HIS HANDS ON YOU, ---

15 A. I REMEMBER DR. LAMOTTA -- SEE, YOU -- I'M TRYING TO

16 TELL YOU, I REMEMBER DR. LAMOTTA COMING THROUGH THE

17 DOOR AND TELLING ME, "WELL, SIR, THERE AIN'T NOTHING

18 I CAN DO FOR YOU. YOU'RE GOING TO HAVE TO GO BACK

19 TO WORK." I SAY "HOW CAN YOU SEND ME BACK TO WORK

20 WHEN I'M IN MORE PAIN NOW THAN WHAT I WAS THEN." I

21 LEFT OUT OF THE DOCTOR'S OFFICE CRYING, WENT TO MY

22 LAWYER'S OFFICE AND TOLD MY LAWYER THE SITUATION I

23 HAD BEEN GOING THROUGH NOT WITH -- NOT WITH JUST ONE

24 DOCTOR THAT I SEEN. I'VE BEEN CRYING TO THESE

25 DOCTORS FOR EVER SINCE -- EVER SINCE SEPTEMBER WHEN

1 THEY FIRST GOT ME TO THE DOCTOR, I'VE BEEN CRYING TO
2 THESE DOCTORS THE WHOLE TIME THAT I NEED HELP AND
3 WHAT WAS GOING ON. EVERY -- EVERY -- EVERYTHING I
4 EVER PUT ON PAPER, EVERY DOCTOR VISIT I EVER HAD, I
5 CHECKED EVERYTHING THAT WAS GOING ON WITH ME FROM MY
6 NECK TO MY ARM TO MY BACK TO THE LOWER PAIN -- TO
7 THE PAIN THROUGH MY LEGS.

8 Q. OKAY. MR. DORSEY, I UNDERSTAND, AND YOUR ATTORNEY
9 WILL HAVE ALL THE CHANCES HE NEEDS TO ASK YOU THE
10 QUESTIONS SO YOU CAN PROVIDE THOSE ANSWERS, BUT I
11 NEED YOU TO ANSWER THE QUESTIONS THAT I'M ASKING
12 YOU. I NEED YOU TO ANSWER THEM.

13 A. I'M ANSWERING THEM.

14 Q. FAIR ENOUGH.

15 A. I'M ANSWERING THEM TO THE BEST OF MY ABILITY, SIR.

16 Q. SO, YOU DON'T REMEMBER HIM TELLING YOU THAT YOU --
17 THAT WHEN HE TOUCHED YOU, YOUR REACTION WAS OUT OF
18 PROPORTION OF WHAT HE EXPECTED? YOU DON'T REMEMBER
19 ANYTHING ABOUT THAT? IS THAT WHAT YOU'RE SAYING?

20 A. I DON'T EVEN REMEMBER HIM TOUCHING ME.

21 Q. FAIR ENOUGH. NOW, ARE YOU AWARE THAT WHEN YOU SAW
22 HIM IN FEBRUARY, HE PLACED YOU AT M.M.I.; ARE YOU
23 AWARE OF THAT?

24 A. WHAT IS THAT?

25 Q. MAXIMUM MEDICAL IMPROVEMENT. DID Y'ALL TALK ABOUT

1 THAT?

2 A. NO, SIR.

3 Q. OKAY. ARE YOU AWARE THAT THAT HAS HAPPENED SITTING
4 HERE TODAY?

5 A. I JUST TOLD YOU THAT ALL THAT MAN, IF THAT WAS DR.
6 LAMOTTA, THAT WHAT ALL WE WENT THROUGH. I JUST SAT
7 HERE AND TOLD YOU. WE DIDN'T -- HE DID NOT TALK
8 ABOUT NO M.M.I. TO ME.

9 Q. OKAY.

10 A. HE JUST TOLD ME THAT I'M -- HE TOLD ME THAT "I'M
11 GOING TO HAVE TO RELEASE YOU." I LOOKED AT HIM LIKE
12 WHAT, WHAT DO YOU, RELEASE?" I WENT STRAIGHT TO MY
13 LAWYER'S OFFICE AND TOLD HIM -- TOLD HIM "MY DOCTOR
14 HAS RELEASED ME TO GO BACK TO WORK," AND I SAID,
15 "AND I'M IN MORE PAIN THAN WHAT I AM." I SAID, "I
16 HAVE BEEN SCREAMING TO THESE DOCTORS ABOUT -- ABOUT
17 EVERYTHING THAT'S BEEN GOING ON WITH ME."

18 Q. ALL RIGHT. AND WHEN YOU SAW DR. LAMOTTA, AND YOU
19 MAY NOT REMEMBER THIS, BUT YOU WERE STILL UNDER
20 MEDICATIONS THAT DR. O'LEARY HAD GIVEN YOU NOT EVEN
21 TWO WEEKS BEFORE; HE HAD GIVEN YOU ALL OF THOSE
22 NORCO PILLS. YOU STILL WERE TAKING THAT PAIN
23 MEDICATION, WERE YOU NOT?

24 A. I ONLY TAKE PAIN MEDICATION AS NEEDED. I TRY NOT TO
25 ABUSE ANYTHING.

1 Q. OKAY. ALL RIGHT. WELL, GETTING BACK TO TREATMENT,

2 ---

3 A. I'M NOT GOING TO TELL YOU THAT I WAS ON MEDICINE
4 THAT WAY.

5 Q. OKAY. YOU LEAVE DR. LAMOTTA'S OFFICE THAT DAY, AND
6 I DON'T KNOW IF YOU REMEMBER THIS OR NOT, BUT YOU
7 LEAVE HIS OFFICE THAT DAY, AND YOU GO DIRECTLY BACK
8 TO THE HOSPITAL REQUESTING MORE PAIN MEDICATION,
9 DIDN'T YOU?

10 A. WHO -- WHAT AM I GOING TO REQUEST PAIN MEDICATION
11 FOR IF I'VE GOT PAIN MEDICATION?

12 Q. THAT'S A GREAT QUESTION, MR. DORSEY.

13 A. WHO -- WHO DO THAT?

14 Q. I'M ASKING IF THAT'S WHAT HAPPENED.

15 A. THAT SOUNDS LIKE SOMEBODY WHO ABUSES PILLS, AIN'T
16 IT? I'M NOT GOING TO LET YOU SIT UP HERE -- I KNOW
17 -- I KNOW THE GODLY MAN THAT I AM, AND I'M NOT LIKE
18 GOING TO LET YOU JUST DO ME LIKE I'M JUST -- LIKE
19 YOU...

20 Q. OKAY. NOW, ACCORDING TO ---

21 **BY MR. HAIGLER:**

22 AND THIS IS CLAIMANT'S APAS, PAGE 37,
23 COMMISSIONER.

24 **DIRECT EXAMINATION RESUMED BY MR. HAIGLER:**

25 Q. ACCORDING TO THAT REPORT I JUST REFERENCED ON THE

1 FOURTH OF FEBRUARY, WHEN YOU LEFT DR. LAMOTTA'S
2 OFFICE AND WENT RIGHT TO FAIRFIELD MEDICAL CENTER,
3 YOU DID NOT TELL THEM WHEN THEY ASKED YOU THAT YOU
4 WERE UNDER A PRESCRIPTION FOR NORCO, DID YOU?

5 A. (NO VERBAL RESPONSE)

6 Q. IF THAT'S WHAT THE RECORD SAYS, DO YOU DISPUTE IT?

7 A. I DON'T REMEMBER NOTHING FROM THAT DAY. I WENT TO
8 THE HOSPITAL SEEKING HELP FOR THE PAIN THAT I WAS
9 IN, THE SAME THING THAT I DID WHEN I WENT TO DR.
10 LAMOTTA, SEEKING HELP TO GET OUT OF THE PAIN THAT I
11 WAS IN.

12 Q. OKAY. SO YOU DON'T ---

13 A. THE HOSPITAL -- THE HOSPITAL WOULD GIVE ME -- THE
14 HOSPITAL WOULD GIVE ME LIKE A B12 -- A B12 OR
15 WHATEVER KIND OF SHOT, AND THAT WOULD KEEP ME OUT OF
16 PAIN WHERE I WAS ABLE TO AT LEAST SLEEP FOR A NIGHT
17 OR SO. I DID NOT -- I DON'T -- HOW YOU -- WHY THEY
18 DO THAT AT, WHERE PEOPLE GO REQUESTING FOR PAIN
19 MEDICINE. IF THE DOCTOR GOING TO GIVE YOU PAIN
20 MEDICINE, THEY'RE GOING TO GIVE YOU PAIN MEDICINE,
21 BUT WHO GOING TO REQUEST IT. THE DOCTOR GOING TO
22 LOOK AT YOU CRAZY IF YOU REQUEST FOR PAIN MEDICINE.

23 Q. SO, ON PAGE 37 OF YOUR APAs, IF IT'S WRITTEN IN HERE
24 THAT YOU WANTED SOMETHING MORE THAN NORCO FOR PAIN -
25 - OR SOMETHING MORE FOR PAIN, EXCUSE ME, YOU'RE

1 SAYING YOU DIDN'T SAY THAT?

2 A. I WANTED...?

3 Q. SOMETHING MORE FOR PAIN. I'M JUST READING WHAT IT
4 SAYS. ARE YOU SAYING YOU DIDN'T ASK FOR MORE --
5 SOMETHING MORE FOR PAIN WHEN YOU WENT -- RIGHT AFTER
6 YOU LEFT LAMOTTA'S OFFICE AND YOU WENT TO FAIRFIELD,
7 ARE YOU SAYING YOU DIDN'T SAY THAT?

8 A. I TOLD HIM I WAS STILL IN PAIN. I DIDN'T WANT
9 NOTHING MORE FOR PAIN.

10 Q. OKAY. SO, YOU'RE SAYING THAT'S NOT WHAT YOU SAID?

11 A. NO, NOT TO MY KNOWLEDGE.

12 Q. OKAY.

13 A. NO, SIR.

14 Q. SO, THEN YOU DON'T GET ANY MORE PAIN MEDICATIONS
15 WHEN YOU GO TO FAIRFIELD, AND THEN YOU GO BACK TO A
16 NEW HOSPITAL; YOU GO TO PALMETTO HEALTH RICHLAND
17 RIGHT DOWN THE STREET HERE FOUR DAYS LATER.

18 A. SOMEBODY TO HELP ME ---

19 Q. HOLD ON A SECOND, MR. DORSEY. YOU WENT TO PALMETTO
20 HEALTH FOUR DAYS LATER BACK TO THE EMERGENCY ROOM,
21 AND THE DOCTOR ASKED YOU WHAT YOU WERE ON, "WHAT
22 PRESCRIPTIONS ARE YOU TAKING?" AND YOU TOLD THEM,
23 QUOTE, "I HAVE BEEN TAKING MOTRIN THREE TIMES PER
24 DAY AND NOTHING ELSE."

25 A. I TOOK...

1 Q. IS THAT WHAT YOU TOLD THEM? DO YOU REMEMBER THAT?

2 BY MR. HAIGLER:

3 THAT'S PAGE 97 OF THE CLAIMANT'S APA,
4 COMMISSIONER.

5 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

6 A. TOOK MOTRIN? I DON'T -- I DON'T -- TO MY KNOWLEDGE,
7 I DON'T REMEMBER THAT. I WENT TO THE HOSPITAL
8 SEEKING -- SEEKING HELP. THAT'S WHY I WENT. THAT'S
9 WHY I WAS GOING TO ALL OF THESE DOCTORS SEEKING
10 HELP, 'CAUSE WHEN I WENT -- FIRST WENT TO MIDLANDS,
11 ---

12 Q. MR. DORSEY, I'M SIMPLY SAYING IF THAT'S WHAT YOU
13 TOLD THE DOCTOR WHEN YOU WENT. EVEN THOUGH YOU ---

14 BY MR. COLEMAN:

15 HE'S ANSWERED HE DOESN'T REMEMBER, YOUR HONOR.

16 BY MR. HAIGLER:

17 FAIR ENOUGH.

18 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

19 Q. NOW, MR. DORSEY, ARE YOU AWARE THAT THE DOCTOR SAID
20 IN HIS REPORT THAT "PER OUR RECORDS, YOU'VE BEEN
21 PRESCRIBED MULTIPLE NARCOTICS OVER THE LAST MONTH
22 INCLUDING 50 PERCOCETS AS RECENTLY AS JANUARY 21ST
23 OF WHICH HE HAS NOT ADMITTED TO ME." ARE YOU AWARE
24 THAT'S WHAT HE SAID? DID Y'ALL TALK ABOUT THAT?

25 A. NO, SIR.

1 Q. OKAY. AND THAT YOU SAID THAT YOU WERE JUST TAKING
2 MOTRIN BUT YOU NEED SOMETHING MORE. YOU DON'T
3 REMEMBER TELLING HIM THAT?

4 A. NO, SIR.

5 Q. OKAY.

6 A. I DON'T REMEMBER THAT.

7 Q. ARE YOU AWARE, MR. DORSEY, THAT HE DIDN'T GIVE YOU
8 ANY MORE PAIN MEDICATION WITH HIM ON THAT PARTICULAR
9 VISIT BECAUSE YOU WEREN'T HONEST WITH HIM ABOUT YOUR
10 -- ABOUT THE FACT THAT YOU ALREADY HAD A NARCOTIC
11 PRESCRIPTION? ARE YOU AWARE THAT THAT'S WHY HE
12 DIDN'T GIVE YOU MORE PAIN MEDICATION? DID HE EVER
13 SAY "I CAN'T GIVE YOU MORE PAIN MEDICATION, MR.
14 DORSEY, BECAUSE YOU DIDN'T TELL ME ABOUT THIS
15 NARCOTIC YOU WERE ALREADY ON"?

16 A. NO, SIR, BUT IF YOU -- WITH DOCTORS, IF YOU GET A
17 PRESCRIPTION FILLED, THEY AUTOMATICALLY GOING TO SEE
18 AND CHECK AND SEE WHAT YOU'RE ON. WHEN I GO TO THE
19 DOCTOR, IT SHOWS EVERY MEDICATION THAT I TAKE.

20 Q. THEN WHY DID YOU LIE TO HIM AND TELL HIM YOU WERE
21 TAKING MOTRIN?

22 A. WHAT I GOT TO TELL A LIE FOR? I DON'T -- WHAT YOU
23 TALKING ABOUT, I DON'T EVEN KNOW WHAT YOU -- WHAT
24 YOU'RE TALKING ABOUT. WHERE THIS IS COMING FROM.

25 Q. AND THEN YOU GO BACK TO THE DOCTOR JUST A FEW DAYS

1 LATER ---

2 A. SEEKING HELP FOR THE SAME THING.

3 Q. --- SEEKING MORE PAIN MEDICATION, AND YOU WEREN'T
4 GIVEN PAIN MEDICATION, WERE YOU?

5 A. (NO VERBAL RESPONSE)

6 Q. WERE YOU?

7 A. IF YOU KNOW HOW MUCH PAIN MEDICATION THAT I HAVE AT
8 HOME, I COULD BRING IT ALL TO YOU. I'M NOT NO PILL
9 -- I'M NOT NO -- I DO NOT LIKE -- I TAKE -- I TAKE
10 PILLS WHEN I'M IN PAIN OR FOR SLEEP. I'M NOT NO
11 PILL, WHATEVER YOU WANT TO CALL THIS. I'M NOT --
12 YOU'RE TRYING TO MAKE IT LOOK LIKE I'M A -- JUST
13 LIKE I'M ABUSIVE JUST GOING AND HUNTING PILLS. I'VE
14 GOT -- I'VE GOT A DRESSER FULL -- I'VE GOT A DRESSER
15 FULL OF PILLS.

16 Q. REALLY?

17 A. YES, SIR, THAT I -- THAT I JUST -- I DON'T TAKE. I
18 CAN'T TAKE MEDICINE. I TAKE MEDICINE WHEN I'M IN
19 PAIN. I TAKE MEDICINE WHEN I'M IN PAIN. I'M NOT
20 GOING AROUND JUST EATING NO PILLS. THAT...

21 Q. BUT YOUR TESTIMONY OR YOUR ---

22 A. DON'T YOU KNOW THAT KILLS THE BODY?

23 Q. MR. DORSEY, THOUGH, YOU'VE BEEN TELLING THESE
24 DOCTORS FOR ALMOST -- FOR OVER A YEAR NOW THAT
25 YOU'VE BEEN IN ---

1 A. IN PAIN.

2 Q. --- EIGHT OR NINE PAIN.

3 A. IN PAIN.

4 Q. EIGHT TO NINE OUT OF TEN PAIN, ---

5 A. YES, SIR.

6 Q. --- AND YOU HAVEN'T BEEN TAKING ANY OF YOUR PAIN
7 MEDICATION?

8 A. YES, SIR. YES, I HAVE.

9 Q. YOU'VE GOT A DRAWER FULL OF IT?

10 A. YES, SIR. YES, SIR. YES, SIR, I TAKE PAIN -- I
11 TAKE PAIN PILLS BUT ONLY WHEN NEEDED.. DOCTOR --
12 THEY PUT ON THE BOTTLE "TAKE AS NEEDED. TAKE AS
13 NEEDED," NOT TO ABUSE.

14 Q. OKAY.

15 A. PAIN PILLS, IT KILLS -- IT KILLS THE BODY. IT KILLS
16 THE LIVER. IT KILLS ---

17 Q. I UNDERSTAND THAT.

18 A. OKAY. I WANT TO LIVE. I WANT TO LIVE. I WANT TO
19 GO BACK TO WORK. I WANT TO GO BACK TO WORK. IT'S
20 HARD -- I JUST WANT TO GET OUT OF THIS PAIN THAT I'M
21 IN.

22 Q. WELL, MR. DORSEY, IF YOU'RE INNOCENT, WHY DIDN'T YOU
23 JUST TELL THE DOCTORS WHEN THEY ASKED YOU WHAT ---

24 BY MR. COLEMAN:

25 YOUR HONOR, I WOULD OBJECT, IF HE'S INNOCENT,

1 WHAT IS HE TALKING ABOUT?

2 BY COMMISSIONER TAYLOR:

3 SUSTAINED.

4 BY MR. COLEMAN:

5 I MEAN, WE'VE ---

6 BY MR. HAIGLER:

7 OKAY.

8 BY MR. COLEMAN:

9 --- BEAT THIS DEAD HORSE.

10 BY MR. HAIGLER:

11 SHE SUSTAINED IT.

12 BY MR. COLEMAN:

13 HE DOESN'T --- HE DOESN'T REMEMBER EVERY TIME
14 HE'S GONE TO EVERY DOCTOR FOR EVERY PILL.

15 BY COMMISSIONER TAYLOR:

16 OKAY. WELL ---

17 BY MR. HAIGLER:

18 YOU KNOW, THAT'S INTERESTING, COMMISSIONER,
19 BECAUSE HE SURE DID REMEMBER EVERYTHING ABOUT DR.
20 LAMOTTA'S VISIT, EVERY SINGLE DETAIL, EVERY DETAIL.

21 BY COMMISSIONER TAYLOR:

22 I SUSTAINED THE OBJECTION TO THAT LAST
23 QUESTION. REPHRASE THE LAST QUESTION.

24 BY MR. HAIGLER:

25 FAIR ENOUGH.

DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

1
2 Q. NOW, YOU THINK YOU NEED MORE MEDICAL TREATMENT,
3 DON'T YOU?

4 A. I KNOW I NEED.

5 Q. OKAY. HAVE YOU NOT -- YOU'VE NEVER CALLED THE
6 INSURANCE COMPANY; YOU'VE NEVER ASKED ME OR ANYONE
7 ELSE THAT I REPRESENT FOR ANY MORE TREATMENT, HAVE
8 YOU? HAVE YOU, YES OR NO?

9 A. I ALWAYS LET THE DOCTORS KNOW. I DON'T -- I NEVER
10 KNEW YOU -- I NEVER KNEW YOU. I STILL DON'T KNOW
11 YOU. HOW MANY TIMES HAVE ME AND YOU EVER SEEN EACH
12 OTHER?

13 Q. TOO MANY.

14 A. SO, HOW -- I HAVEN'T GOT YOUR PERSONAL NUMBER TO
15 WHERE I CAN CALL YOU OR ANYTHING. HAVE YOU EVER
16 WROTE A LETTER TO MY HOUSE AND SAID "RICO, IF YOU
17 NEED HELP, IF YOU KNOW -- Y'ALL KNOW I'VE BEEN
18 NEEDING ALL OF THIS HELP ALL THIS TIME, MR. HAIGLER,
19 BUT I'VE BEEN TELLING THESE DOCTORS THAT Y'ALL HAVE
20 BEEN SENDING ME TO, THE INSURANCE, THAT FROM DAY ONE
21 AFTER THEY THOUGHT -- AFTER THEY THOUGHT IT WAS LIKE
22 A -- 'CAUSE MY JOB WAS GOING THROUGH A WHOLE BUNCH
23 OF STUFF AND ---

24 Q. WHY DIDN'T YOU ASK YOUR EMPLOYER FOR MORE MEDICAL
25 TREATMENT?

1 A. I ASKED MY -- I ASKED MY G.M., MY GENERAL MANAGER
2 FOR HELP, AND YOU KNOW WHAT HE TOLD ME, HE SAID
3 "RICO, IT'S NOTHING I CAN DO."

4 Q. I DON'T WANT TO KNOW WHAT HE TOLD YOU. ALL I'M
5 ASKING YOU ---

6 BY MR. COLEMAN:

7 YOUR HONOR, HE ASKED THE QUESTION. LET HIM
8 ANSWER IT.

9 BY COMMISSIONER TAYLOR:

10 LET HIM FINISH.

11 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

12 A. YOU TOLD ME THAT -- I TOLD MY G.M. MY G.M. SAID
13 "RICO." I SAID, "WHEN Y'ALL GOING TO GET ME TO A
14 DOCTOR?" MY G.M. SAID, "RICO, IT'S NOT IN MY HANDS.
15 IT'S UP TO -- IT'S UP TO ---

16 Q. WHEN DID ---

17 BY MR. COLEMAN:

18 LET HIM ANSWER, PLEASE.

19 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

20 A. "IT'S UP TO THE INSURANCE CASUALTY COMPANY FOR,
21 RICO, FOR THEM TO GET YOU TO THE DOCTOR. IT'S
22 NOTHING I CAN DO." I SAY "SO, Y'ALL JUST GOT ME
23 SITTING HERE IN ALL OF THIS PAIN, AND Y'ALL..." I
24 LOVE -- I LOVE A.S.I. SO MUCH ---

25 Q. OKAY.

1 A. --- TO WHERE I GAVE THEM MY ALL. I LIVED A.S.I.

2 Q. GOSH, MR. DORSEY, IF THAT'S TRUE WHAT HE SAID, WHERE
3 IS HE? HOW COME Y'ALL HAVEN'T GOTTEN HIM TO
4 TESTIFY? BECAUSE THAT'S GOOD EVIDENCE FOR YOU IF
5 THAT'S WHAT HE SAID. WHERE'S HE BEEN?

6 A. MR. RICK, HE BEEN ON YOUR SIDE. EVERY TIME I SEE
7 HIM, HE'S BEEN WITH YOU.

8 Q. WHY HAVEN'T YOU CALLED HIM TO TESTIFY?

9 A. I DONE ASKED MR. RICK NUMEROUS TIMES, TOLD HIM I
10 COULDN'T AFFORD TO GET OUT -- I COULDN'T EVEN HARDLY
11 GET OUT OF MY BED NO MORE.

12 Q. I GOTCHA.

13 A. SO, I WENT TO WORK, AND I HAD TO GO SEE A LAWYER TO
14 GET SOME HELP. IT WAS -- Y'ALL LET ME -- THEY LET
15 ME WALK AROUND FROM THAT HIT JULY THE 17TH. IT WAS
16 'TIL THE LATER PART OF SEPTEMBER BEFORE I EVER SEEN
17 A DOCTOR.

18 Q. OKAY. BUT YET, YOU'VE ---

19 A. AND I STILL ---

20 Q. YOU HAVE NOT CALLED MR. ANDREWS TO TESTIFY? YOU
21 HAVE NOT -- YOU'VE NOT FILED A DOCUMENT WITH THE
22 COMMISSION ASKING US FOR MORE TREATMENT. YOU'VE NOT
23 DONE ANYTHING, ANYTHING TO TELL ME THAT YOU NEED
24 MORE TREATMENT, ANYTHING UNTIL TODAY; ARE YOU AWARE
25 OF THAT?

1 A. HAVE I EVER SPOKEN TO YOU BEFORE BESIDES DURING THE
2 DEPOSITION? HAVE I EVER KNOWED YOU BEFORE?

3 Q. FAIR ENOUGH. FAIR ENOUGH, MR. DORSEY.

4 A. I MEAN, HOW I SUPPOSE TO KNOW TO ASK YOU FOR
5 SOMETHING. I'M NOT -- I'M NOT -- I DIDN'T GO -- I
6 AIN'T GOT NO COLLEGE EDUCATION LIKE YOU.

7 Q. OKAY.

8 A. I DON'T KNOW WHAT TO DO. I KNOW THAT I'M IN PAIN.
9 I KNOW WHAT'S HURTING ME, AND I'VE BEEN TELLING
10 THESE DOCTORS FROM DAY ONE. YOU CAN LOOK AT EVERY
11 DOCTOR REPORT. YOU CAN CHECK WHATEVER YOU'VE GOT TO
12 CHECK.

13 Q. OKAY, MR. DORSEY, THANK YOU.

14 A. OKAY.

15 Q. LET ME ASK YOU A QUESTION ABOUT THIS QUESTIONNAIRE.
16 AGAIN, I RESERVE MY OBJECTION TO IT, BUT THERE'S
17 SOME HANDWRITING ON THE SIDE OF THIS, AND THIS IS --
18 I DON'T KNOW; HAVE YOU EVER SEEN THIS DOCUMENT?

19 A. THAT'S AS FAR AS MY LAWYER. I DON'T SEE TOO MANY
20 DOCUMENTATIONS OR WHATEVER.

21 Q. DOES IT LOOK FAMILIAR; DO YOU WANT TO SEE IT? DOES
22 IT LOOK FAMILIAR TO YOU?

23 A. I CAN LOOK AT IT.

24 **BY MR. HAIGLER:**

25 CAN I APPROACH, COMMISSIONER?

1 BY COMMISSIONER TAYLOR:

2 YES.

3 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

4 A. OKAY (REVIEWS DOCUMENT).

5 BY MR. HAIGLER:

6 I CAN HEAR THAT, CREIGHTON.

7 BY MR. COLEMAN:

8 WHAT ARE YOU TALKING ABOUT?

9 BY MR. HAIGLER:

10 WHATEVER ONE OF YOU SAID.

11 BY MR. SAFRAN:

12 I'LL SAY IT OPENLY. YOUR HONOR, FOR THE

13 RECORD, THIS IS RIDICULOUS.

14 BY COMMISSIONER TAYLOR:

15 I HEARD IT.

16 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

17 Q. LET ME ASK YOU A QUESTION, MR. DORSEY.

18 A. YES, SIR.

19 Q. DID YOU READ THIS DOCUMENT? DID YOU LOOK AT IT?

20 A. YES, SIR.

21 Q. SOMEONE WROTE OFF TO THE SIDE THAT YOUR LUMBAR

22 ISSUES, YOUR LOWER BACK ISSUES ARE AGGRAVATED BY THE

23 ACCIDENT AND WERE CAUSED TO BECOME MORE SYMPTOMATIC.

24 A. YES, SIR, THEY ARE.

25 Q. IF YOU TOLD DR. FORREST THAT YOU DIDN'T HAVE PRIOR

1 BACK PROBLEMS, HOW IN THE WORLD COULD HE COME UP
2 WITH THAT OPINION? HOW COULD HE SAY THAT YOUR PRIOR
3 BACK PROBLEMS HAVE BEEN AGGRAVATED WHEN YOU TOLD HIM
4 YOU DIDN'T HAVE PRIOR BACK PROBLEMS? CAN YOU
5 EXPLAIN THAT?

6 A. LET ME EXPLAIN THIS.

7 BY MR. COLEMAN:

8 THAT IS A MEDICAL OPINION, AND I THINK WE
9 RESERVE THAT FOR THE DEPOSITION COMING UP.

10 BY COMMISSIONER TAYLOR:

11 WELL, I'M JUST GOING TO SUSTAIN THE OBJECTION
12 ON THAT IT CALLS FOR A MEDICAL OPINION.

13 BY MR. HAIGLER:

14 ONE SECOND, COMMISSIONER. I MAY BE DONE.

15 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

16 Q. NOW, WHEN YOU SAW DR. FORREST IN ---

17 BY MR. HAIGLER:

18 A COUPLE MORE QUESTIONS, COMMISSIONER.

19 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

20 Q. WHEN YOU SAW DR. FORREST FOR THE VERY FIRST TIME,
21 YOU TOLD HIM THAT YOU WERE OUT OF WORK. DO YOU
22 REMEMBER TELLING HIM THAT? DOES THAT SOUND LIKE
23 SOMETHING YOU WOULD HAVE SAID TO HIM?

24 A. I WAS OUT. I WAS OUT OF WORK. I'M STILL OUT OF
25 WORK.

1 Q. I GOTCHA. NOW, ARE YOU AWARE -- YOU ALSO WENT TO
2 SEE DR. DENNIS, THE SAME PRACTICE, DID YOU NOT?

3 A. I WENT TO ---

4 Q. YES OR NO? I'M JUST ASKING YES OR NO DID YOU ALSO
5 GO SEE DR. DENNIS? IT'S NOT A DIFFICULT QUESTION,
6 YES OR NO?

7 A. DR. DENNIS WAS -- I WENT TO THE SPINE INSTITUTE.
8 DR. DENNIS BY ME HAVING -- I TOLD -- WHEN I CALLED
9 THE PEOPLE FOR SEEKING THE HELP, THEY TOLD ME TO
10 BRING MY M.R.I. WITH ME. SO, DR. DENNIS WAS THE ONE
11 THAT GAVE THE M.R.I. TO US SINCE HE WAS THE SPINAL
12 DOCTOR, AND DR. DENNIS REFERRED ME TO DR. FORREST,
13 AND ME AND DR. DENNIS -- ME AND DR. DENNIS, WE
14 TALKED AND WE TALKED. HE WANTED TO FIND OUT WHAT
15 WAS GOING ON, AND HE REFERRED ME TO HIS DOCTOR, DR.
16 FORREST, TO HELP ME -- TO HELP ME, BECAUSE WHAT HE
17 SPECIALIZED IN, IT WASN'T WHAT -- WHAT I NEEDED.

18 Q. AGAIN, MY ONLY QUESTION TO YOU WAS DID YOU SEE DR.
19 DENNIS?

20 A. YES, SIR, I SPOKE WITH HIM.

21 Q. THANK YOU.

22 A. UH-HUH.

23 Q. NOW, DR. DENNIS RELEASED YOU WITHOUT ANY
24 RESTRICTIONS, DID HE NOT?

25 A. (NO VERBAL RESPONSE)

1 Q. ARE YOU AWARE HE DID THAT? HE RELEASED YOU TO GO
2 BACK TO WORK WITH NO RESTRICTIONS WHEN YOU SAW HIM.
3 ARE YOU AWARE OF THAT?

4 A. NO, SIR, I'M NOT AWARE OF THAT.

5 Q. OKAY. THAT WAS SEVEN DAYS BEFORE YOU SAW DR.
6 FORREST. ARE YOU AWARE OF THAT?

7 A. NO, SIR.

8 Q. OKAY, BUT WHEN YOU TOLD -- SAW DR. FORREST, YOU TOLD
9 HIM THAT YOU WERE OUT OF WORK EVEN THOUGH YOU HAD NO
10 RESTRICTIONS. IS THAT FAIR?

11 A. SAY THAT AGAIN.

12 Q. YOU TOLD DR. FORREST THAT YOU WERE OUT OF WORK?

13 A. I HAVEN'T BEEN TO WORK SINCE -- SINCE AUGUST
14 SOMETIME OF LAST YEAR.

15 Q. OKAY.

16 A. I MEAN, I'M NOT WORKING ON NOBODY'S JOB.

17 Q. YOU'RE GETTING A PAYCHECK, AREN'T YOU, THROUGH THE
18 MAIL?

19 A. IS THAT WORK, PHYSICALLY WORKING THOUGH?

20 Q. OKAY.

21 A. I MEAN, THAT DON'T CONSIDER ME TO PHYSICALLY WORK.
22 I DON'T MATTER ABOUT NO PAYCHECK. THAT LITTLE
23 PAYCHECK, THAT DON'T -- THAT'S -- I'M SUFFERING.

24 Q. I GOTCHA. A COUPLE MORE QUESTIONS, AND THEN I
25 PROMISE YOU I'M FINISHED. WHEN YOU SAW -- THE LAST

1 TIME YOU SAW DR. DENNIS -- EXCUSE ME, DR. FORREST --
2 THE LAST TIME YOU SAW DR. FORREST, Y'ALL WERE
3 TALKING ABOUT YOUR RIGHT ARM. DO YOU REMEMBER THAT?
4 YOU WERE TELLING HIM ABOUT YOUR RIGHT ARM PAIN.

5 A. I REMEMBER HIM TELLING ME ABOUT -- I REMEMBER HIM
6 TELLING ABOUT MY NECK.

7 Q. OKAY. YOU DON'T REMEMBER HAVING ANY CONVERSATION
8 ABOUT YOUR RIGHT ARM?

9 A. I TOLD HIM THAT MY ARM, I'VE BEEN HAVING NUMBNESS,
10 HOW THE NUMBNESS DONE GOT IN MY ARM.

11 Q. OKAY. AND YOU REMEMBER HIM TELLING YOU "I CAN'T
12 ADDRESS YOUR ARM, BECAUSE THAT'S NOT MY SPECIALTY"?
13 DO YOU REMEMBER THAT?

14 A. I DON'T NECESSARILY REMEMBER THAT; NO, I DON'T.

15 **BY MR. HAIGLER:**

16 COMMISSIONER, FOR YOU, THAT'S PAGES 179 AND 180
17 OF CLAIMANT'S APAs.

18 **DIRECT EXAMINATION RESUMED BY MR. HAIGLER:**

19 Q. YOU DON'T REMEMBER HIM SAYING THAT HE CAN'T REALLY
20 HELP YOU WITH THAT BECAUSE THAT'S NOT HIS SPECIALTY?

21 A. I MEAN, HE TOLD ME THAT HE'S GOING TO WORK ON MY
22 BACK. HE TOLD ME -- DR. FORREST TOLD ME HE'S GOING
23 TO WORK ON MY BACK SINCE THAT'S WHERE THEY STARTED
24 IT AND HE SEE WHAT'S GOING ON, AND THEN HE'S GOING
25 TO WORK ON MY NECK AFTER THAT, BECAUSE HE CAN'T DO

1 TWO -- THEY CAN'T DO TWO INFUSIONS AT ONCE, AND HE
2 TOLD ME THAT AFTER I GET THROUGH, AFTER THAT
3 TREATMENT WE'RE GOING TO THE NEXT.

4 Q. I'M TALKING ABOUT YOUR RIGHT ARM, MR. DORSEY. YOU
5 MENTIONED TO HIM RIGHT ARM PROBLEMS?

6 A. YES, SIR. I DONE MENTIONED TO MORE THAN DR. FORREST
7 ABOUT MY RIGHT ARM. I DONE MENTIONED TO Y'ALL ABOUT
8 THIS.

9 Q. I -- PLEASE LET ME JUST FINISH. YOU SAID TO HIM
10 THAT YOU WERE HAVING RIGHT ARM PROBLEMS THAT YOU
11 RELATED TO THIS ACCIDENT, AND HE SAID TO YOU THAT IS
12 IN HIS REPORT, "THAT IS NOT MY AREA OF EXPERTISE, SO
13 I RECOMMENDED HE SEE SOMEONE ELSE." ARE YOU AWARE
14 OF THAT?

15 A. FOR MY ARM? I MEAN, ---

16 Q. DID HE SAY THAT?

17 A. HE PROBABLY SAID THAT, YES, SIR.

18 Q. OKAY. THAT'S ALL I'M ASKING.

19 A. YES, SIR, HE PROBABLY SAID THAT.

20 Q. MR. DORSEY, THEN, I'M ALSO ASKING THIS -- WE'RE BACK
21 TO THIS QUESTIONNAIRE HERE.

22 A. OKAY.

23 Q. ARE YOU AWARE THAT DR. FORREST EVEN THOUGH HE SAID
24 THAT WAS NOT HIS AREA OF EXPERTISE THEN GIVES AN
25 OPINION STATED TO A REASONABLE DEGREE OF MEDICAL

1 CERTAINTY RELATING YOUR ARM PROBLEMS TO THE
2 ACCIDENT. ARE YOU AWARE THAT HAPPENED?

3 A. EVEN MR. RICK AND EVERYBODY AT MY JOB ---

4 Q. I'M JUST ASKING ARE YOU AWARE THAT'S WHAT HE DID,
5 YES OR NO? THAT HE SAID ON ONE HAND ON MAY THE
6 11TH, "THAT'S NOT MY SPECIALTY," AND THEN ON MAY --
7 SOMETIME IN JULY, HE SAID "IT'S RELATED EVEN THOUGH
8 IT'S NOT MY SPECIALTY." ARE YOU AWARE THAT HE DID
9 THAT?

10 BY MR. COLEMAN:

11 YOUR HONOR, HE DOESN'T KNOW WHAT THE DOCTOR'S
12 SPECIALTY IS. IT IS WHAT IT IS.

13 BY COMMISSIONER TAYLOR:

14 WELL, HE'S GOT TO ANSWER THE QUESTION THOUGH,
15 MR. COLEMAN.

16 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

17 Q. ARE YOU AWARE HE DID THAT, MR. DORSEY?

18 A. NOT TO MY KNOWLEDGE, I DIDN'T -- I DIDN'T. I MEAN,
19 I -- I MEAN, I KNOW HE TOLD ME HE WAS GOING TO GET
20 SOMEBODY TO HELP ME -- HELP ME WITH THAT, BUT THAT
21 WASN'T HIS MAIN SPECIALTY WITH THE ARM, BUT HE SAID
22 HE WAS GOING TO HELP ME WITH MY BACK AND MY NECK,
23 BUT HE WAS GOING TO GET SOMEBODY TO ALSO HELP ME
24 WITH MY ARM, BUT HE CAN ONLY TREAT ONE THING AT ONE
25 TIME.

1 Q. HE WAS GOING TO GET YOU SOMEBODY WHO DOES ARMS, WHO
2 WORKS WITH ARMS?

3 A. HE'S GOING -- THESE PEOPLE BEEN SO HELPFUL TO ME AND
4 MY PAIN.

5 Q. I GOTCHA. I UNDERSTAND. I UNDERSTAND THAT.
6 OUTSIDE OF THAT QUESTIONNAIRE FROM THE DOCTOR WHO IS
7 NOT SPECIALIZED IN ARMS ADMITTEDLY, DO YOU HAVE
8 ANYTHING FROM A DOCTOR THAT SAYS YOUR ARM IS RELATED
9 TO THIS ACCIDENT, ANY DOCUMENT?

10 A. I PROBABLY -- PROBABLY -- I MIGHT HAVE SOME AT HOME
11 SOMEWHERE, 'CAUSE DOCTORS CARE, THEY -- THEY HAD --
12 I'VE GOT PICTURES AND STUFF LIKE THAT. I GOT
13 PICTURES AND STUFF FROM HOW SWOLLEN MY ARMS AND
14 STUFF WAS FROM THE INITIAL HIT FROM THE TRUCK.

15 Q. OKAY. DO YOU HAVE ANYTHING THAT YOU'VE SUBMITTED
16 TODAY OTHER THAN THIS QUESTIONNAIRE FROM THE GUY WHO
17 ADMITTED HE IS NOT A SPECIALIST IN ARMS THAT SAYS
18 YOU HAVE -- THAT YOUR ARM IS RELATED TO THIS
19 ACCIDENT? DO YOU HAVE ANY DOCUMENTATION TO THAT
20 EFFECT THAT YOU HAVE SUBMITTED TO THE COMMISSIONER
21 TODAY?

22 A. I FELT LIKE IF I'M TELLING -- IF I'M TELLING THESE
23 DOCTORS THAT Y'ALL ARE SENDING ME TO, IF I'M TELLING
24 THEM EVERYTHING, THEY SUPPOSED TO ACKNOWLEDGE
25 EVERYTHING THAT I'M TELLING THEM, BUT THEY WASN'T

1 DOING THAT.

2 Q. OKAY. SO, YOU'RE SAYING YOU DON'T HAVE THAT
3 DOCUMENTATION?

4 A. NOT ON ME TODAY.

5 Q. OKAY. DO YOU HAVE ANYTHING THAT SAYS YOU HAVE NOT
6 REACHED MAXIMUM MEDICAL IMPROVEMENT; DO YOU HAVE ANY
7 DOCUMENT ABOUT THAT?

8 A. I DON'T -- I'M NOT SURE.

9 Q. OKAY. DO YOU HAVE ANYTHING THAT SAYS THAT TO A
10 REASONABLE DEGREE OF MEDICAL CERTAINTY YOU NEED
11 ADDITIONAL MEDICAL TREATMENT TO THE BACK; DO YOU
12 HAVE ANY DOCUMENT THAT SAYS THAT THAT YOU CAN GIVE
13 THE COMMISSIONER?

14 A. IF I KNOWED I NEEDED TO BRING MEDICAL PAPERWORK.

15 Q. OKAY. LET ME ASK IT THIS WAY: THAT DOCUMENT IS NOT
16 IN THE RECORD. IT'S NOT IN ANYTHING WE'VE GIVEN THE
17 COMMISSIONER TODAY. DO YOU HAVE IT ANYWHERE ELSE?

18 BY MR. COLEMAN:

19 YOUR HONOR, AGAIN, I MEAN, IT IS WHAT IT IS.

20 YOU'VE GOT THE RECORDS. IT IS ---

21 BY MR. HAIGLER:

22 ARE THEY STIPULATING THAT THEY DON'T HAVE IT?

23 BY COMMISSIONER TAYLOR:

24 NO, THEY'RE STIPULATING THAT ---

25 BY MR. HAIGLER:

1 WELL, THAT'S WHAT IT SOUNDED LIKE. IS THAT A
2 STIPULATION, BECAUSE IF IT IS, I NEED TO KNOW THAT.

3 BY COMMISSIONER TAYLOR:

4 IT'S JUST ---

5 BY MR. COLEMAN:

6 THE RECORD IS BEING SET. THAT'S WHAT WE ARE
7 SAYING.

8 BY COMMISSIONER TAYLOR:

9 THE CLAIMANT CAN'T TESTIFY TO THAT.

10 BY MR. HAIGLER:

11 FAIR ENOUGH.

12 BY COMMISSIONER TAYLOR:

13 I HAVE THE RECORDS BEFORE ME.

14 BY MR. HAIGLER:

15 COMMISSIONER, I'VE GOT TO ASK HIM ABOUT THE
16 NECK EVEN THOUGH I STRENUOUSLY OBJECT TO THAT EVEN
17 BEING A PART OF THIS CASE, BUT TO PROTECT THE
18 RECORD, I'VE GOT TO DO THAT.

19 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

20 Q. YOU'RE CLAIMING THAT YOU HAVE INJURED YOUR NECK IN
21 THIS ACCIDENT?

22 A. I'VE BEEN CLAIMING IT SINCE DAY ONE.

23 Q. REALLY?

24 A. EVER SINCE DOCTOR CARE.

25 Q. REALLY? ARE YOU AWARE THERE'S NOT A SINGLE MEDICAL

1 RECORD UNTIL APRIL OF THIS YEAR THAT EVEN BEGINS TO
2 REFERENCE THE NECK?

3 A. BECAUSE ---

4 Q. YES OR NO, ARE YOU AWARE OF THAT?

5 A. NOT TO MY KNOWLEDGE.

6 Q. ARE YOU AWARE THAT NOT ONE TIME IN ANY OF THE
7 DOCTORS CARE RECORDS, IN ANYTHING, YOU DIDN'T EVEN
8 TELL ME ABOUT THE NECK IN YOUR DEPOSITION. ARE YOU
9 AWARE OF THAT?

10 A. YES, I DID.

11 Q. ARE YOU SURE?

12 A. WHEN ME AND YOU WAS SITTING AT THAT TABLE, YOU ASKED
13 ME WHICH -- YOU ASKED ME, I'LL NEVER FORGET THIS.
14 YOU SAID "I DON'T WANT TO HEAR ABOUT" -- YOU TOLD
15 ME, "I DON'T WANT TO HEAR ABOUT YOUR NECK. I WANT
16 TO KNOW WHERE THE PAIN THE MOST."

17 Q. WHERE IN THE RECORDS DID YOU TELL ANY DOCTOR ---

18 A. WE MIGHT HAVE BEEN OFF RECORDS, BUT YOU -- YOU ASKED
19 ME THAT QUESTION.

20 Q. ALL RIGHT.

21 A. AND I ANSWERED IT TRUTHFULLY TO YOU. YOU WAS LIKE
22 "WELL, WE AIN'T GOT NOTHING ON YOUR NECK," AND --
23 AND YOU'RE UNDER OATH, TOO. SO, YOU MEAN TO TELL ME
24 YOU'RE GOING TO SIT UP HERE AND TELL ---

25 Q. NO. I'M JUST ASKING YOU ---

1 A. OKAY.

2 Q. I'M SIMPLY ASKING YOU THE QUESTION, MR. DORSEY,
3 WHERE IN THE MEDICAL RECORDS DID YOU SAY ANYTHING TO
4 A DOCTOR ABOUT THIS?

5 A. OH, YOU DON'T -- WE FILL CHARTS ---

6 BY MR. COLEMAN:

7 IT'S IN THE MEDICAL RECORDS.

8 BY MR. HAIGLER:

9 FAIR ENOUGH.

10 BY THE CLAIMANT:

11 YEAH.

12 BY MR. COLEMAN:

13 IT'S IN THE MEDICAL RECORDS.

14 BY THE CLAIMANT:

15 YES, SIR, IT IS.

16 DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

17 Q. OKAY. MR. DORSEY, ARE YOU -- YOU KNOW YOU SUBMIT
18 DOCUMENTS TO THE COMMISSION WHERE YOU ALLEGE WHAT
19 THE BODY PARTS ARE THAT YOU ARE ALLEGING YOU
20 INJURED. ARE YOU AWARE OF THAT, THAT Y'ALL SUBMIT
21 DOCUMENTS? I MEAN, YOUR ATTORNEY DID THAT.

22 A. YES, SIR.

23 Q. SUBMITTED DOCUMENTS WHERE YOU SAID I INJURED THIS
24 BODY, THIS BODY PART AND THIS BODY PART. ARE YOU
25 AWARE OF THAT?

1 A. YES, SIR. THAT'S MY ATTORNEY. THEY HAVE THE RIGHT
2 TO KNOW WHAT'S GOING ON, BECAUSE THAT'S WHAT I'M
3 TRYING TO GET HELP -- HELP WITH.

4 Q. AND I ASSUME YOUR TESTIMONY IS -- WELL, DID YOU
5 REVIEW THOSE DOCUMENTS?

6 A. AS FAR AS GO OVER THEM?

7 Q. TO SEE WHAT HE WAS SAYING WAS ALLEGED AS FAR AS BODY
8 PARTS INJURED? DID YOU REVIEW THEM BEFORE THEY WERE
9 FILED?

10 A. NO, MY LAWYER -- MY ATTORNEYS, THEY ASKED ME
11 QUESTIONS, AND I ---

12 Q. I DON'T WANT TO KNOW WHAT YOUR LAWYER TOLD YOU. I
13 CAN'T GO THERE WITH YOU. SO, DON'T TELL ME ANYTHING
14 YOU'VE DISCUSSED WITH YOUR LAWYER.

15 A. THEY ASK ME ---

16 Q. I'M SIMPLY ASKING IF YOU REVIEWED THE DOCUMENTS.

17 A. I TELL MY ATTORNEYS WHAT'S GOING ON WITH MY BODY.

18 Q. OKAY. I DON'T WANT TO KNOW ANY OF THAT. I'M JUST
19 ASKING YOU, ARE YOU -- LET ME ASK IT THIS WAY THEN:
20 ARE YOU AWARE THAT BEFORE TODAY YOU'VE NEVER IN ONE
21 YEAR AND ONE MONTH FILED A DOCUMENT CLAIMING THAT
22 YOU INJURED YOUR NECK IN THIS ACCIDENT, NOT ONE
23 TIME? ARE YOU AWARE OF THAT?

24 A. NO.

25 Q. YES OR NO, ARE YOU AWARE?

1 A. NO, SIR, BUT I AM AWARE THAT EVERY TIME I WENT TO
2 THE DOCTOR AND THEY GIVE YOU THE CHART TO FILL OUT.
3 I TOLD THE DOCTORS EVERYTHING THAT WAS GOING -- THEY
4 SAID PUT -- THERE'S A CHART YOU HAVE TO FILL OUT.
5 EVERY -- EVERY CHART THAT I EVER FILLED OUT, I DONE
6 TALKED -- I SPOKE WITH DR. O'LEARY ABOUT HOW MUCH MY
7 PAIN WAS IN. DR. O'LEARY EXAMINED ME. HE TOLD ME
8 THAT HE WAS GOING -- DR. O'LEARY TOLD ME THAT HE WAS
9 GOING TO SEE WHAT THE INSURANCE SAY ABOUT GETTING AN
10 M.R.I. FOR MY -- FOR MY UPPER BODY, BECAUSE I
11 THOUGHT I WAS GOING TO HAVE AN M.R.I. FROM WHEN I
12 HAD THE FIRST M.R.I., I THOUGHT IT WAS GOING TO BE
13 FOR EVERYTHING THAT WAS GOING ON. THEN I GET DOWN
14 THERE, AND THEY TELL ME "WELL, IT'S JUST GOING TO BE
15 AN M.R.I. JUST FOR THE LOWER BACK." I'M LIKE "WHAT
16 HAPPENED FOR THE M.R.I. FOR MY NECK?" NOW, THEY
17 WANT TO PLAY -- IT'S BEEN A WHOLE BUNCH OF GAMES
18 PLAYING ON MY LIFE, AND I'M THANKFUL THAT I'VE GOT
19 GOD AND I'VE GOT A FAMILY, AND I JUST WANT TO GET
20 BETTER. I JUST WANT TO -- I'M READY. I WANT TO GET
21 MY HEALTH AND STRENGTH BACK SO I CAN GO BACK TO
22 WORK. I'VE GOT KIDS THAT ARE SUFFERING. I'M
23 SUFFERING.

24 Q. YOU JUST HAD ANOTHER INJECTION, DIDN'T YOU?

25 A. YES, SIR.

1 Q. AND IT HELPED?

2 A. YES, SIR.

3 Q. ARE YOU STILL HAVING ANY PAIN?

4 A. I'VE GOT SOME -- I'VE GOT SOME PAIN IN MY BACK AND
5 MY NECK, BUT THE PAIN GOING DOWN THROUGH MY LEGS,
6 THIS HAS BEEN -- I THANK GOD THAT -- I FELT SO MUCH
7 PAIN EVER SINCE JULY THE 17TH. I THANK GOD THAT I
8 WAS ABLE TO PUT MY SHOE ON FOR THE FIRST TIME AFTER
9 THE FIRST SHOT. I'VE GOT LITTLE KIDS I CAN'T EVEN
10 HARDLY PLAY -- I CAN'T EVEN HARDLY DO NOTHING WITH.
11 DO YOU KNOW HOW SERIOUS THAT IS? IF YOU WAS IN MY
12 CONDITION -- IF YOU WAS IN MY ---

13 Q. MR. DORSEY, I'M JUST ASKING YOU THE QUESTION, DO YOU
14 STILL HAVE BACK PAIN?

15 A. YES, SIR.

16 Q. OKAY.

17 BY MR. HAIGLER:

18 THANK YOU. I DON'T HAVE ANY OTHER QUESTIONS,
19 COMMISSIONER.

20 BY COMMISSIONER TAYLOR:

21 ALL RIGHT. THANK YOU.

22 BY MR. SAFRAN:

23 YOUR HONOR, MR. COLEMAN OBVIOUSLY IS JUST GOING
24 TO DO THAT. JUST SO WE CAN KIND OF PUT THIS TO AN
25 END, IF YOU WILL LOOK AT THEIR APAs, PAGES 28

1 BEGINNING TO 34, 35, THERE IS REFERENCES FROM EARLY
2 ON IN JULY WHERE THEY ARE TALKING ABOUT PAIN IN HIS
3 UPPER BACK, IN THE UPPER PART OF HIS TRAPEZIUS, AND
4 YOU AND I BOTH KNOW WHERE THAT IS. IT'S RIGHT IN
5 THE VERY VICINITY OF WHAT HE IS TALKING ABOUT NOW.
6 THAT WAS DOCUMENTED FROM DAY ONE. SO, LET'S JUST
7 DISPEL ANY NOTION THAT THIS IS JUST COMING OUT OF
8 THE AIR, BECAUSE THE PLACE THEY SENT HIM FROM THE
9 OUTSET WAS DOCUMENTING COMPLAINTS OF PAIN FROM IN
10 THAT AREA FROM THE GET GO.

11 BY MR. HAIGLER:

12 I DON'T READ THAT AT ALL. I MEAN, ARE YOU
13 ASKING US -- ARE YOU ASKING THE COMMISSIONER TO DRAW
14 A CONCLUSION FROM THIS RECORD THAT HE COMPLAINED OF
15 NECK PAIN?

16 BY MR. SAFRAN:

17 WELL, WHAT I'M ASKING TO SIMPLY DO IS IT SAYS -

18 --

19 BY MR. HAIGLER:

20 DID YOU DEPOSE THIS DOCTOR, ANDY?

21 BY MR. SAFRAN:

22 IT SAYS ---

23 BY MR. HAIGLER:

24 OR DO YOU WANT TO DO THAT, TOO, NEXT WEEK?

25 BY MR. SAFRAN:

1 "T.T.P. OVER RIGHT UPPER TRAP," OKAY. ALSO
2 BASICALLY SAYS ON THE PRIOR PAGE, "DULL ACHE IN
3 UPPER RIGHT BACK." YOUR HONOR, I JUST THINK AGAIN,
4 IT'S LIKE I MENTIONED EARLIER ---

5 BY COMMISSIONER TAYLOR:

6 WELL, I'LL LET YOU NOTE IT FOR THE RECORD, BUT
7 ---

8 BY MR. HAIGLER:

9 WHY WASN'T IT ON THEIR BRIEF, COMMISSIONER?

10 BY COMMISSIONER TAYLOR:

11 --- WE CAN'T INTERPRET IT.

12 BY MR. HAIGLER:

13 WHY WASN'T IT ON THE BRIEF?

14 BY COMMISSIONER TAYLOR:

15 IT'S NOTED FOR THE RECORD. THANK YOU.

16 BY MR. HAIGLER:

17 YOU CAN'T HAVE IT BOTH WAYS.

18 BY COMMISSIONER TAYLOR:

19 MR. COLEMAN.

20 CROSS EXAMINATION BY MR. COLEMAN:

21 Q. RICO, I WANT TO START WITH A FEW QUESTIONS. HOW OLD
22 ARE YOU?

23 A. I'M 40 YEARS OLD.

24 Q. OKAY. AND HOW FAR DID YOU GO IN SCHOOL?

25 A. I WENT TO 11TH -- I WENT TO THE 11TH GRADE, AND THEN

1 I WENT -- I DID A LITTLE SCHOOL WHILE I WAS
2 INCARCERATED.

3 Q. OKAY. AND WHAT WERE YOU INCARCERATED FOR?

4 A. I WAS INCARCERATED FOR DRUGS.

5 Q. OKAY. HOW MANY YEARS DID YOU SERVE?

6 A. I SERVED THREE YEARS.

7 Q. DID YOU GET YOUR G.E.D. WHILE YOU WERE IN JAIL?

8 A. YES, SIR, BUT I NEVER RECEIVED IT THROUGH THE MAIL,
9 BUT I DID GO TO SCHOOL WHILE I WAS IN THERE.

10 Q. OKAY. AND THEN WHEN YOU -- LET ME BACK UP A MINUTE.
11 THE PRIOR INJURY THAT YOU HAD THAT WE'RE TALKING
12 ABOUT IN 2003, ---

13 A. YES, SIR.

14 Q. --- THAT WAS A MOTORCYCLE WRECK; IS THAT CORRECT?

15 A. YES, SIR, IT WAS.

16 Q. AND YOU WIPED OUT AVOIDING THE CAR THAT CAME IN YOUR
17 LANE?

18 A. YES, SIR.

19 Q. OKAY. AND TELL THE COURT WHAT INJURIES YOU HAD. IF
20 YOU WOULD, STAND UP AND SHOW THE COURT EXACTLY WHAT
21 INJURIES YOU SUSTAINED. AND HOW LONG WERE YOU IN
22 THE HOSPITAL?

23 A. I WAS IN THE HOSPITAL FOR PROBABLY ABOUT THREE
24 WEEKS, ABOUT THREE -- TWO OR THREE WEEKS.

25 Q. DID THEY INDUCE A COMA ON YOU?

1 A. YES, SIR, THEY DID.

2 Q. FOR HOW LONG?

3 A. THEY INDUCED A COMA ON ME FOR A COUPLE OF DAYS.

4 Q. OKAY. AND SHOW THE COURT YOUR -- WHAT SORT OF
5 OPERATIONS DID YOU HAVE ON YOUR BODY?

6 A. I'VE HAD LIKE -- I'VE HAD LIKE PROBABLY FOUR
7 SURGERIES ON THIS ARM (INDICATES).

8 Q. OKAY.

9 A. I'VE HAD KNEE REPLACEMENT.

10 Q. A KNEE REPLACEMENT OR KNEECAP REPLACEMENT?

11 A. A KNEECAP REPLACEMENT.

12 Q. OKAY.

13 A. A KNEECAP REPLACEMENT. I'VE GOT RODS IN THIS LEG
14 (INDICATES).

15 **BY COMMISSIONER TAYLOR:**

16 AND THAT'S THE RIGHT LEG?

17 **BY THE CLAIMANT:**

18 YES. YES, MA'AM.

19 **BY THE CLAIMANT:**

20 AND THEN I'VE GOT A ROD ON THIS SIDE
21 (INDICATES).

22 **BY COMMISSIONER TAYLOR:**

23 ON THE LEFT LEG.

24 **CROSS EXAMINATION RESUMED BY MR. COLEMAN:**

25 Q. OKAY.

1 A. AND I'VE GOT RODS IN MY FOOT.

2 Q. AND ONCE YOU WERE RELEASED FROM THE HOSPITAL, IT WAS

3 AFTER THAT YOU WERE INCARCERATED?

4 A. YES, SIR.

5 Q. OKAY. AND YOU SERVED APPROXIMATELY THREE YEARS?

6 A. THREE YEARS.

7 Q. WHEN YOU GOT OUT, WHERE DID YOU GO TO WORK?

8 A. I WENT STRAIGHT TO A.S.I.

9 Q. WELL, YOU FIRST ---

10 A. I WENT -- I HAD -- I HAD ---

11 Q. YOU HAD TO GET OFF ELECTRONIC MONITORING FIRST?

12 A. I HAD TO GET OFF ELECTRONIC MONITORING. THEN I

13 STARTED WORKING AT A.S.I. ON APRIL THE 7TH OF --

14 APRIL THE 7TH OF I WANT TO SAY '08, '09.

15 Q. OKAY.

16 A. IT WAS APRIL THE 7TH.

17 Q. APRIL 7TH OF '08.

18 A. OKAY.

19 Q. AND THEN YOU'VE BEEN THERE EVER SINCE UNTIL THIS

20 ACCIDENT?

21 A. EVER SINCE.

22 Q. HOW MANY HOURS WOULD YOU WORK IN A WEEK IN A GIVEN

23 WEEK?

24 A. I WOULD AVERAGE ABOUT -- I WOULD AVERAGE ABOUT 60,

25 SOMETIMES 65 HOURS, BECAUSE I WAS WORK -- AND

1 WHATEVER I WOULD WORK, AND THEY WAS ALWAYS WANTING
2 ME TO WORK. I PERFORM -- I PERFORM MY JOB TO THE
3 BEST OF MY ABILITY.

4 Q. YOU'RE A HUSTLER?

5 A. YES, SIR. YES, SIR.

6 Q. AND YOU WORKED ALL THIS TIME. DID YOU MISS MANY
7 DAYS OF WORK?

8 A. NEVER MISSED -- NEVER MISSED NO DAYS. SOMETIMES I
9 EVEN WORKED THROUGH MY VACATION JUST BECAUSE HOW
10 MUCH I LOVE TO WORK AND LOVE TO DO FOR MY -- BEING
11 ABLE TO DO FOR MY KIDS AND NOT HAVE TO TAKE CHANCES
12 WITH SELLING DRUGS OR NOTHING LIKE THAT WITH MY
13 LIFE. I WENT AND GOT SPIRITUALLY FIT. I WENT AND
14 GOT PHYSICALLY FIT. I WORKED OUT WHILE I WAS IN
15 JAIL MY WHOLE THREE YEARS.

16 Q. YOU WERE A PRETTY GOOD ATHLETE IN HIGH SCHOOL, ---

17 A. YES.

18 Q. --- WEREN'T YOU?

19 A. YES, SIR.

20 BY MR. HAIGLER:

21 OBJECT TO THE FORM.

22 BY COMMISSIONER TAYLOR:

23 SUSTAINED.

24 CROSS EXAMINATION RESUMED BY MR. COLEMAN:

25 Q. I MEAN -- AND YOU JUST GOT TURNED AROUND GOING THE

1 WRONG WAY IN HIGH SCHOOL?

2 A. YES.

3 Q. OKAY. TELL THE COURT YOUR JOB, WHAT IT ENTAILS.

4 WHAT DOES IT DO? WHAT DO YOU HAVE TO DO DURING THE
5 PROCESS?

6 A. OKAY. WELL, I GET THERE IN THE MORNING.

7 Q. YOU RIDE WITH SAMMY FROM WINNSBORO; IS THAT CORRECT?

8 A. YES, SIR. YES, SIR, I RIDE FROM WINNSBORO TO
9 COLUMBIA -- TO LEXINGTON COUNTY. I WOULD GET THERE,
10 AND I WOULD -- I WOULD ALWAYS BE LIKE EARLY AT WORK.
11 I ALWAYS GET TO WORK EARLY SO I CAN HAVE ME A LITTLE
12 COFFEE AND STUFF LIKE THAT, AND WE WOULD -- ME AND
13 THE DRIVER, WE WOULD LOAD UP INTO THE TRASH TRUCK,
14 AND WE WOULD GO TO -- WE WOULD GO TO WHATEVER ROUTE
15 WE HAD. WE HAD ROUTES AND SITES TO ---

16 Q. THAT WOULD BE ASSIGNED TO YOU?

17 A. YES, SIR, THAT WOULD BE ASSIGNED TO YOU MONDAY,
18 TUESDAY, WEDNESDAY, THURSDAY, FRIDAY AND SATURDAY.

19 Q. EXPLAIN TO THE COURT YOUR TRUCK, HOW BIG IS THAT
20 TRUCK?

21 A. THAT TRUCK IS 53 OR 55 INCHES LONG.

22 Q. INCHES?

23 A. I MEAN, 54 FEET -- FEET. I MEANT TO SAY FEET, 53, 55
24 FEET LONG.

25 Q. WHAT DOES IT WEIGH?

1 A. I'M GUESSING THE TRUCK WEIGH APPROXIMATELY PROBABLY
2 ABOUT 35,000 POUNDS. YOU'RE TALKING ABOUT A BIG
3 PIECE OF STEEL THERE.

4 Q. AND HOW MANY TONS OF GARBAGE DOES IT HOLD?

5 A. IT HOLDS ANYWHERE FROM 15 TONS OF GARBAGE TO ABOUT
6 17 TONS OF GARBAGE.

7 Q. OKAY. TELL THE COURT, ONCE YOU GET TO THE SITE
8 ABOUT YOUR MOVEMENTS, WHAT YOU DO AND EXPLAIN THE
9 PHYSICAL NATURE OF YOUR JOB.

10 A. ONCE -- ONCE I GET TO MY SITE -- ONCE I GET TO MY
11 SITE, I WOULD HAVE TO JUMP OUT, GET OUT OF THE
12 TRUCK. WE HAVE TO JUMP ON THE BACK. WE HAVE TO
13 JUMP ON THE BACK, WHICH THE STEPS ARE PROBABLY
14 ABOUT, I WANT TO SAY ABOUT THREE FEET. SOME TRUCKS
15 MAY BE THREE-FEET-AND-A-HALF WITH STEPS ON THE BACK
16 WHERE YOU JUMP UP AND DOWN ALL DAY LONG CLIMBING ON,
17 HOLDING ON ALL DAY FROM THE TIME THE ROUTE START TO
18 THE TIME THE ROUTE FINISH. YOU MIGHT -- WE HAD --
19 WE HAVE ROLL CARTS, AND NO TELLING -- WHEN YOU GRAB
20 A ROLL CART, YOU DON'T KNOW WHAT'S IN IT. IT MIGHT
21 BE 20 BLOCKS IN THERE. IT MIGHT BE FULL OF
22 CONCRETE, DIRT, CAT LITTER, YOU NAME IT, WHATEVER
23 SOMEBODY FEEL LIKE ---

24 Q. THE WEIGHT OF THESE CAN BE WHAT?

25 A. OH, THE WEIGHT OF THESE CANS CAN BE ANYWHERE FROM --

1 SOME CAN BE 50. SOME CAN BE 150. SOME MIGHT BE 200
2 PROBABLY.

3 Q. AND THEY ROLL; YOU ROLL THEM?

4 A. YES, SIR, I DONE HAD SOME THAT WHEN YOU TRY TO ROLL
5 THEM, THE WHEEL BUSTS OFF OF THEM. THEN SOMETIMES
6 WE HAVE TO DUMP THEM BY HAND AND GET THE WHEEL --
7 CALL THE BOSS MAN, GET THE WHEEL FIXED. SOMETIMES
8 WE HAVE TO PICK UP FURNITURE, PICK UP FURNITURE. I
9 HAVE TO TAKE A PITCH FORK AND WHATEVER ON THE SIDE
10 OF THE ROAD, WHATEVER IS OUT THERE, WHATEVER YOU PUT
11 OUT THERE BESIDE YOUR HOUSE, I HAVE TO GO GET IT.

12 Q. OKAY. AND HOW MANY HOUSES WILL YOU DO IN A DAY?

13 A. ANYWHERE FROM 800 TO 1200.

14 Q. IN A DAY, YOU WOULD DO THAT?

15 A. YES, SIR.

16 Q. AND WAS -- AND YOU NEVER MISSED A DAY BASICALLY?

17 A. I MEAN, I LOVE -- I LOVE TO WORK. I LOVE TAKING
18 CARE OF MY KIDS. SO, THAT'S ALL I KNOWED WAS WORK.

19 Q. AND YOUR PRIOR MOTORCYCLE ACCIDENT IN '03, DID IT
20 HAVE ANY EFFECT ON YOUR ABILITY TO DO YOUR JOB?

21 A. NOT NARY A DAY.

22 Q. BUT YOU DID OCCASIONALLY GO INTO THE HOSPITALS TO
23 HAVE BACK ---

24 A. YEAH, MAYBE A LITTLE STRAIN, YOU KNOW, 'CAUSE
25 SOMETIMES YOU PICK UP A CAN. WE HAD TO CALL ON AN

1 OLD LADY. SHE HAD 200 CATS IN HER HOUSE ON BROAD
2 RIVER. SO, WHEN WE GET TO HER CAN, YOU KNOW, I
3 REMEMBER PICKING UP HER CAN BEFORE, AND WHEN YOU
4 GRAB THE CAN TO GO TO ROLL WITH IT, YOU DON'T KNOW
5 WHAT YOU GOT IN THE CAN UNTIL THE WEIGHT HIT YOU,
6 AND I HAVE HAD LITTLE MINOR BACK -- I MEAN, LIKE
7 LITTLE MINOR STUFF WHERE I WOULD PULL A MUSCLE, ---

8 Q. BUT DID ---

9 A. --- AND MIGHT GO TO THE DOCTOR OR SOMETHING LIKE
10 THAT.

11 Q. 2013, YOU WENT TO -- I THINK THE INSURANCE LAWYER
12 BROUGHT THIS UP THAT YOU WENT TO THE HOSPITAL OUT AT
13 WINNSBORO HOSPITAL; IS THAT CORRECT?

14 A. YES, SIR.

15 Q. IN 2013?

16 A. YES, SIR.

17 Q. WHAT HAPPENED THERE WHEN YOU SLIPPED ON SOME DIESEL
18 FUEL?

19 A. YES, SIR. WHEN I -- WHEN WE -- WHEN I GOT TO WORK
20 THAT MORNING, WE ALL -- WE ALL LOAD UP AND WE GO TO
21 -- WE'VE GOT A FUEL STOP RIGHT BY THE JOB WHERE
22 EVERYBODY GETS FUEL AT. SO, THIS PARTICULAR
23 MORNING, THIS PARTICULAR DAY, I WAS AT THE FUEL STOP
24 NOT KNOWING THAT THE GUY HAD ALREADY WENT AND FUELED
25 UP, AND WE GOT, THIS TRUCK, 673 HAS GOT ALUMINUM

1 STEPS ON IT. IT'S GOT ALUMINUM STEPS ON IT. SO,
2 WHEN I WENT -- AND THE GAS TANK IS RIGHT BY THE
3 STEPS.. SO, WHEN I WENT TO STEP OUT OF THE TRUCK,
4 WHEN I STEPPED OUT OF THE TRUCK AND PUT MY FOOT ON
5 THE STEP, I KEPT ON GOING TO THE -- I KEPT ON GOING
6 TO THE CONCRETE TO THE GROUND. SO, I WENT TO THE
7 EMERGENCY ROOM TO MAKE SURE THAT I HADN'T SERIOUSLY
8 INJURED MYSELF.

9 Q. YOU CONTINUED TO WORK THAT DAY?

10 A. YES, SIR.

11 Q. DID YOU FILE A WORKERS' COMP CLAIM?

12 A. NO, SIR.

13 Q. OKAY. IT DIDN'T KEEP YOU FROM WORKING, DID IT?

14 A. NO, SIR.

15 Q. OKAY. TELL ME ABOUT WHAT HAPPENED ON THE DAY THIS
16 ACCIDENT HAPPENED.

17 A. I REMEMBER IT WAS ABOUT THE END OF THE DAY, AND WE
18 CALLED THIS BIG THURSDAY. BIG THURSDAY, WE HAVE AT
19 LEAST 1200 TO 1500 HOUSES. THAT'S THE BIGGEST DAY
20 THAT I GOT. BIG THURSDAY. AND WE WAS WORKING, ME
21 AND THE LABOR FINDER.

22 Q. AND SAMMY BELL WAS THERE TOO?

23 A. SAMMY BELL.

24 Q. AND THE GIRL DRIVING?

25 A. AND THE GIRL DRIVING.

1 Q. IS THAT THE FIRST TIME THAT YOU HAD WORKED WITH THE
2 GIRL DRIVING?

3 A. THAT WAS THE FIRST TIME SHE EVER HAD BEEN IN MY
4 TRUCK TO DRIVE MY TRUCK, BECAUSE I HAD ANOTHER
5 DRIVER. MY DRIVER, HE TOOK OFF THAT DAY.

6 Q. OKAY. WELL, WE DON'T NEED TO GO INTO ALL OF THAT.

7 A. OKAY.

8 Q. SO, THE FIRST TIME YOU HAD WORKED WITH HER?

9 A. YES, SIR.

10 Q. AND WHERE IS THE LOCATION WHERE THIS HAPPENED?

11 A. IN ASHFORD.

12 Q. OKAY. EXPLAIN TO THE COURT WHAT HAPPENED.

13 A. OKAY. WE WAS IN ASHFORD. WE WAS IN A -- WE WAS IN
14 A -- I NEED TO STAND. WE WAS IN -- WE WAS IN -- I
15 REMEMBER WE WAS PULLING INTO A CUL-DE-SAC. WE WAS
16 PULLING INTO A CUL-DE-SAC, AND WE WAS PULLING INTO
17 THE CUL-DE-SAC. I JUMPED OFF THE TRUCK, 'CAUSE
18 THESE TRUCKS, WE HAVE TO RUN AND CATCH THEM. YOU
19 KNOW, THE TRUCK DON'T STAND STILL. THEY -- THEY
20 STOP FOR A SECOND AND LET YOU DUMP, AND THEN YOU
21 HAVE TO RUN AND CATCH THE TRUCK. SO, AS WE HAD
22 THREE PEOPLE ON THE BACK THAT DAY WHERE GENERALLY IT
23 DON'T USUALLY BE BUT TWO. WE WAS JUST -- WE WAS AT
24 -- WE WAS IN A RUSH 'CAUSE THEY HAD A LOT OF STUFF
25 THAT HAD BROKE DOWN. SO, WE WAS TRYING -- IT'S

1 THURSDAY. IT'S GETTING LATE IN THE EVENING.
2 EVERYBODY TRYING TO GET OFF, BECAUSE WE CAN'T GET
3 OFF 'TIL EVERYTHING IS OVER WITH. SO, I JUMPED OFF
4 THE TRUCK. I REMEMBER JUMPING OFF THE TRUCK. SAMMY
5 BELL WENT THAT WAY (INDICATES). THE LABOR FINDER
6 WENT THAT WAY. I ALWAYS TOOK THE MIDDLE 'CAUSE I
7 WAS -- I WAS FAST. I WAS FAST AT WHAT I DO, AND SO
8 AS I WAS GOING TO GRAB -- I WENT AND GRABBED MY CAN.
9 I WENT AND GRABBED MY CAN.

10 Q. THE ROLL CART?

11 A. THE ROLL CART. YES, SIR, I WAS DOING ROLL CARTS AT
12 THAT MOMENT WHEN IT HAPPENED. I WENT AND GOT THE
13 ROLL CART. I PROCEEDED -- I PROCEEDED OFF THE
14 SIDEWALK. I PROCEEDED OFF THE SIDEWALK, BECAUSE
15 PEOPLE LEAVE THE CANS ON THE SIDEWALK. YOU CAN'T
16 LEAVE IT IN THE WHAT YOU CALL IT. I PROCEEDED BACK
17 TOWARDS THE TRUCK, AND WHEN I PROCEEDED BACK TOWARDS
18 THE TRUCK -- WHEN I PROCEEDED BACK TOWARDS THE
19 TRUCK, THE ONLY THING -- THE ONLY THING I COULD HEAR
20 WAS LIKE -- IT JUST -- LIKE WHEN IT HIT -- WHEN THAT
21 TRUCK HIT ME AND CAUGHT MY BACK, IT CAUGHT MY BACK.
22 IT CAUGHT ME BACKWARDS. I WAS STANDING IN THE CUL-
23 DE-SAC, AND WHEN I -- WHEN I RETRIEVED BACK, AND THE
24 TRUCK HAD JUST ---

25 Q. YOU DIDN'T SEE IT COMING?

1 A. I DIDN'T SEE IT COMING.

2 Q. OKAY.

3 A. I -- NO WHERE I SEEN IT COMING, AND I JUST -- WHEN I
4 FELT MY HAND, I DIDN'T EVEN KNOW WHAT WAS STILL
5 GOING ON. I STILL DIDN'T KNOW WHAT WAS GOING ON
6 UNTIL AFTER I HAD CRINGED DOWN, CRINGED DOWN ON MY
7 KNEE AND SEEN, BUT I REMEMBER THAT WHEN I GOT HIT,
8 THIS ARM (INDICATES) CAUGHT THE FLIPPER. WE HAVE
9 FLIPPERS AT THE BACK OF THE TRUCK, AND THE BACK OF
10 THE WHAT YOU CALL IT CAUGHT ME. I REMEMBER LIKE IT
11 CAUGHT ME IN THE BACK. SO, I REMEMBER LIKE THIS
12 (INDICATES). I REMEMBER LIKE THIS. I WAS GOING UP
13 IN THE AIR. I WAS UP IN THE AIR. IT LIFTED -- IT
14 LIFTED ME. I'M GLAD IT DIDN'T KNOCK ME OVER, 'CAUSE
15 SHE COULD HAVE EASILY KILLED ME. AS I -- AS I -- AS
16 I -- THE TRUCK WAS STILL IN MOTION. SO, AS I -- AS
17 THE TRUCK -- AS SHE HIT BRAKES, I COME OFF THE
18 TRUCK. I COME OFF THE TRUCK. AS SHE HIT THE
19 BRAKES, I COME OFF THE TRUCK. IT WAS A BIG FORCE
20 THAT I CAME OFF THE TRUCK. I CRINGED DOWN TO THE
21 GROUND, 'CAUSE IT HAD TOOK THE WIND OUT OF ME AND
22 EVERYTHING. I STILL DIDN'T KNOW WHAT HAD HAPPENED.
23 I WAS IN SHOCK. I DIDN'T KNOW WHAT HAPPENED UNTIL I
24 SEEN THE TRASH CAN LAYING UP UNDER THE TRUCK, AND
25 WHILE HE WAS -- I WAS STILL TRYING TO CATCH MY

1 BREATH WHILE SAMMY BELL WAS TALKING TO ME. HE WAS
2 LIKE "MAN, YOU ALL RIGHT? YOU ALL RIGHT?" THEN THE
3 TRUCK GOT READY TO TAKE OFF AGAIN. SAMMY SAID,
4 "HEY, HEY, DON'T MOVE THAT TRUCK. DON'T MOVE THAT
5 TRUCK. YOU DONE HIT THIS MAN BACK HERE. YOU DONE
6 HIT THIS MAN BACK HERE." SO, SHE WAS TRYING -- SHE
7 WAS -- SHE HAD HER PHONE IN HER EAR, AND I TOLD
8 SAMMY, I SAID, "MAN, JUST LET ME GET ON -- JUST LET
9 ME GET ON THE BACK OF THE TRUCK. JUST LET ME GET ON
10 THE BACK OF THE TRUCK." SO, HE HELPED ME GET ON THE
11 BACK OF THE TRUCK. I PULLED UP. I TOLD -- I TOLD
12 HIM RIGHT THEN AND THERE, I SAID, "SAMMY," I SAID,
13 "MAN" -- SAMMY SAID, "MAN, YOU BETTER CALL
14 SOMEBODY." I SAID, "I AIN'T GOT NO CELL PHONE,
15 SAMMY." I SAY -- HE SAY "GET ON THE TRUCK AND CALL
16 SOMEBODY ON THE RADIO." I SAY, "YOU KNOW THAT 61,
17 THE RADIO DON'T WORK ON -- THE RADIO HADN'T BEEN
18 WORKING ON 61 FOR A COUPLE OF DAYS." SO, I SAID
19 "I'M GOING TO JUST TRY TO..." I SAID, "I'M GOING TO
20 JUST TRY TO MAKE IT -- MAKE IT TO THE JOB." HE SAY
21 ---

22 Q. WELL, LET'S JUST SORT OF GET TO THE POINT IF YOU
23 WOULD, RICO. SO, YOU THEN LATER GET INTO THE CAB
24 WITH THE DRIVER?

25 A. WITH MS. ODOM, YES, SIR.

1 Q. AND YOU LATER WENT BACK TO THE HOME BASE AND ASKED
2 MR. RICK FOR ---
3 A. YEAH, I WENT TO GO ASK MR. RICK FOR HIM TO TAKE ME
4 TO DOCTORS CARE 'CAUSE I WAS IN THAT MUCH PAIN.
5 Q. BUT HE WASN'T THERE TO GIVE YOU THE AUTHORITY?
6 A. YES, SIR, BECAUSE I WAS TRYING -- I WAS TRYING TO
7 SUCK IT UP. I'M THE TYPE -- I'M THE TYPE OF PERSON,
8 I'VE NEVER LIKED TO MISS WORK.
9 Q. OKAY. OKAY. ALL RIGHT. I'M GOING TO LEAD A LITTLE
10 BIT JUST TO GET TO WHERE I THINK IS -- SO, YOU LATER
11 WENT HOME THAT NIGHT?
12 A. YES, SIR.
13 Q. CAME BACK TO WORK WITH SAMMY BELL THE NEXT DAY?
14 A. THAT NEXT DAY.
15 Q. AND YOU HUNG OUT AROUND THE OFFICE DURING THE DAY,
16 AND LATER MR. RICK ---
17 A. YES, SIR.
18 Q. --- AUTHORIZED YOU TO GO TO DOCTORS CARE?
19 A. YES, SIR.
20 Q. OKAY. A COUPLE OF POINTS I WANT TO MAKE. NOW, WHEN
21 THE IMPACT OCCURRED, HOW FAR -- WHAT HAPPENED? WHAT
22 DID YOUR BODY DO AS FAR AS THE IMPACT? WE NEED TO
23 STRAIGHTEN THAT OUT. HOW FAR DID THE TRUCK -- WHAT
24 IMPACT DID IT HAVE ON YOU?
25 A. OKAY. I NEVER SEEN THE -- I NEVER SEEN THE TRUCK

1 COMING.

2 Q. JUST ANSWER THE QUESTION. COME ON. HOW FAR DID --
3 THE TRUCK IMPACT, WHAT DID IT DO TO YOUR BODY?

4 A. IT PUT ME -- IT PUT ME IN SOME PAIN THAT I NEVER
5 EVER FELT BEFORE.

6 Q. I KNOW, BUT HOW FAR DID IT GO; HOW FAR DID YOU GO IN
7 THE AIR, OR WHAT?

8 A. THE TRUCK, IT PUSHED ME. IT PUSHED -- IT PUSHED ME.
9 THE TRUCK PUSHED ME, AND IT THROW -- IT PUSHED ME
10 AND THEN IT THREW -- THREW ME OFF WITH FORCE BY
11 WHEN SHE HIT THE BRAKES. WHEN SHE HIT THE BRAKES,
12 THAT'S WHEN I FELT MY BODY RELEASING FROM THE TRUCK
13 'CAUSE THE TRUCK WAS STILL IN MOTION.

14 Q. I WANT YOU TO GO ON AND READ SOME OF YOUR
15 DEPOSITION. I THINK THE INSURANCE MADE A POINT OF
16 THIS. YOU TOLD IN YOUR DEPOSITION THAT THE TRUCK
17 PUSHED YOU FROM ABOUT THIS WALL TO THAT WALL, AND
18 THAT WAS IN MY CONFERENCE ROOM IN MY OFFICE?

19 A. YES, SIR.

20 Q. AND I THINK THE INSURANCE LAWYER SAID "THAT WAS
21 ABOUT TEN TO TWELVE FEET." HE SAID THAT, AND YOU
22 AGREED WITH HIM?

23 A. YES, SIR.

24 Q. AND THEN THERE WERE SOME OTHER QUESTIONS IN THERE
25 ABOUT WHETHER OR NOT YOU FLEW IN THE AIR TEN FEET,

1 WHETHER OR NOT YOU WERE PUSHED.

2 A. RIGHT.

3 Q. AND I WANT TO READ THIS TO YOU, AND THIS IS A
4 QUESTION.

5 A. YES, SIR.

6 Q. I'M GOING TO READ THE QUESTION, AND IT'S ON PAGE 43,
7 LINE 13. THE QUESTION THAT WAS ASKED OF YOU, IT
8 SAID, "AND DID YOU -- WERE YOU IN THE AIR FOR THAT
9 LONG, OR DID YOU JUST -- DID IT JUST -- I MEAN, TELL
10 ME HOW YOU?" YOU ANSWERED WHAT?

11 A. "IT MOSTLY PUSHED ME."

12 Q. GO AHEAD AND READ THE REST OF IT.

13 A. "IT MOSTLY PUSHED ME AND LIKE THREW ME UP IN THE
14 AIR LIKE, YEAH, IT PUSHED ME AND THREW ME UP IN
15 THE AIR -- IN THE AIR, BECAUSE I SEE I GOT HIT WITH
16 THE BACK OF THE TRUCK."

17 Q. OKAY. AND THIS -- AND THEN LATER ON IN THE
18 DEPOSITION, HE WAS CONTINUING TO ASK YOU IF YOU FLEW
19 IN THE AIR, AND THEN AT SOME POINT, YOU SAID YES,
20 YOU FLEW IN THE AIR TEN FEET, YOU FLEW IN THE AIR?

21 A. YES, I HAD A MISUNDERSTANDING WHAT -- I MEAN, HE
22 KEPT ASKING ME THE SAME THING OVER AND OVER, BUT I
23 KNOW WHAT I MEANT.

24 Q. KIND OF LIKE HE'S DOING TODAY?

25 A. I DID NOT GO TEN FEET HIGH IN NO AIR LIKE THAT.

1 WHEN THAT TRUCK -- WHEN THAT IMPACT CAUGHT ME, WE'RE
2 TALKING ABOUT 50 -- OVER 50 THOUSAND POUNDS OF
3 FORCE. WHEN THAT CAUGHT ME, IF IT DIDN'T LIFT ME UP
4 IN THE AIR, IT WOULD HAVE MAULED ME. THAT TRUCK
5 WOULD HAVE MAULED ME. I THANK GOD THAT I'M HERE
6 TODAY TO ---

7 Q. OKAY.

8 A. --- TO BE AT THIS.

9 Q. LET'S TALK A LITTLE BIT ABOUT YOUR TREATMENT. YOU
10 WENT TO DOCTORS CARE?

11 A. YES, SIR.

12 Q. OKAY. AND WHAT HAPPENED THERE?

13 A. DOCTORS CARE, THE FIRST DAY I WENT TO DOCTORS CARE,
14 I TOLD -- I TOLD THEM. HE SEEN ALL WHERE I WAS
15 SWOLLEN. MY ARM WAS SWOLLEN. MY BACK WAS -- WAS
16 BADLY SWOLLEN, AND I TOLD HIM THAT MY NECK WAS
17 BOTHERING ME AT THE SAME TIME. HE TOLD ME -- THE
18 DOCTOR, I JUST REMEMBER, HE WAS A HEAVY -- HEAVY --
19 I DON'T KNOW HIS NAME, BUT HE WAS A HEAVY DOCTOR.
20 HE SAID, "I'M GOING TO DO" -- HE SAY, "WE DON'T HAVE
21 THE PROPER EQUIPMENT TO -- TO -- FOR YOUR NECK --
22 FOR YOUR NECK AND STUFF AROUND HERE, BUT I'M GOING
23 TO REFER YOU -- I'M GOING TO REFER YOU TO ORTHO,
24 BECAUSE THERE'S NOTHING I CAN DO FOR YOU."

25 Q. AND WHO DID HE REFER YOU TO? DO YOU REMEMBER?

1 A. HE JUST -- HE JUST WROTE -- HE TOLD ME HE WROTE IT
2 TO WORKMAN COMP.

3 Q. OKAY.

4 BY MR. HAIGLER:

5 I'M GOING TO OBJECT TO THAT QUESTION,
6 COMMISSIONER.

7 BY COMMISSIONER TAYLOR:

8 SUSTAINED.

9 BY MR. COLEMAN:

10 OKAY.

11 CROSS EXAMINATION RESUMED BY MR. COLEMAN:

12 Q. WELL, LET'S GO ON. SO, YOU WENT TO DOCTORS CARE FOR
13 HOW MANY -- HOW MANY TIMES DID YOU GO TO DOCTORS
14 CARE?

15 A. I WENT TO DOCTORS CARE 'TIL HE TOLD ME I CAN'T. HE
16 SAID ---

17 BY MR. HAIGLER:

18 COMMISSIONER, I NEED TO OBJECT TO THAT,
19 WHATEVER HE TOLD THE CLAIMANT.

20 BY COMMISSIONER TAYLOR:

21 YEAH, AND ---

22 CROSS EXAMINATION RESUMED BY MR. COLEMAN:

23 Q. DON'T -- JUST HOW MANY TIMES DID YOU GO TO DOCTORS
24 CARE?

25 A. PROBABLY -- PROBABLY FIVE -- FOUR OR FIVE.

1 Q. OKAY. AS A RESULT OF THAT OR EITHER LATER ON, YOU
2 WERE LATER REFERRED TO MIDLANDS; IS THAT CORRECT?

3 A. YES, SIR.

4 Q. WHO DID YOU SEE AT MIDLANDS?

5 A. I SEEN DR. O'LEARY.

6 Q. OKAY. AND THEN DR. O'LEARY, HE X-RAYED YOU AND DID
7 SOME THINGS, AND HE REFERRED YOU TO DR. REDMOND?

8 A. YES, SIR.

9 Q. WHAT DID DR. REDMOND DO?

10 A. DR. REDMOND CONDUCTED A NERVE STUDY ON ME.

11 Q. OKAY.

12 A. AND TOLD ME THAT I HAD ---

13 BY MR. HAIGLER:

14 OBJECT. I'VE GOT TO OBJECT TO THE FORM.

15 BY COMMISSIONER TAYLOR:

16 SUSTAINED.

17 CROSS EXAMINATION RESUMED BY MR. COLEMAN:

18 Q. AS A RESULT OF YOUR CONVERSATION WITH DR. REDMOND,
19 WHO DID HE REFER YOU TO?

20 A. HE REFERRED ME I THINK TO DR. LAMOTTA FOR ---

21 Q. NO, WHO WAS THE DOCTOR THAT DID THE INJECTION? DR.
22 WETZEL.

23 A. DR. WETZEL, I MEAN -- I'M SORRY. I'M SORRY.

24 Q. OKAY.

25 A. I JUST HAD DR. LAMOTTA IN MY HEAD, BUT DR. WETZEL.

1 Q. AND DID -- DID THAT INJECTION HELP?

2 A. NO, SIR. I WENT BACK. I WENT BACK TO MIDLANDS I
3 THINK IT MIGHT HAVE BEEN TWO DAYS OR THREE DAYS OR
4 SOMEWHERE. IT WAS CLOSE AFTER BECAUSE WHEN THEY
5 GAVE ME THE SHOT, IT PUT ME IN MORE PAIN THAN I WAS
6 IN, AND I WENT DOWN THERE AND TOLD THEM THAT.

7 Q. WELL, TOO, ---

8 A. 'CAUSE THEY SAY IF YOU ARE IN PAIN TO COME BACK AND
9 SEE THE DOCTOR.

10 Q. AND, TOO, YOU WERE DOING PHYSICAL THERAPY AT THE
11 SAME TIME?

12 A. YES, SIR. YES, SIR. AND THE DOCTOR -- DR. WETZEL
13 TOLD ME THAT WITH THE SHOT, YOU NEED TO GO HOME ---

14 **BY MR. HAIGLER:**

15 OBJECT TO THE FORM, COMMISSIONER.

16 **BY COMMISSIONER TAYLOR:**

17 SUSTAINED. SUSTAINED. YEAH, YOU CAN'T TELL --

18 I HAVE ALL OF YOUR MEDICAL RECORDS.

19 **BY THE CLAIMANT:**

20 OKAY.

21 **BY COMMISSIONER TAYLOR:**

22 PROBABLY DOUBLE, BUT YOU CAN'T TELL US WHAT HE
23 SAID.

24 **BY THE CLAIMANT:**

25 OKAY, I'M SORRY.

1 BY COMMISSIONER TAYLOR:

2 JUST LISTEN TO YOUR LAWYER'S QUESTION AND ---

3 BY THE CLAIMANT:

4 OKAY, OKAY.

5 BY COMMISSIONER TAYLOR:

6 --- THEN ANSWER EXACTLY WHAT HE IS ASKING.

7 BY THE CLAIMANT:

8 OKAY, OKAY. I'M SORRY. I APOLOGIZE.

9 CROSS EXAMINATION RESUMED BY MR. COLEMAN:

10 Q. AND AS A RESULT OF YOUR ---

11 BY MR. HAIGLER:

12 OBJECT TO THE FORM. IT'S A LEADING QUESTION.

13 CROSS EXAMINATION RESUMED BY MR. COLEMAN:

14 Q. AS A RESULT OF YOUR DISCUSSIONS WITH THE DOCTORS,
15 WHAT DO YOU THINK CAUSED THE PAIN OF YOUR BACK TO BE
16 WORSE AFTER THE SHOT?

17 A. SAY THAT AGAIN.

18 Q. AS A RESULT OF YOUR CONVERSATIONS WITH THE VARIOUS
19 DOCTORS, YOU SAID YOUR PAIN IN YOUR BACK WAS WORSE
20 AFTER THE SHOT?

21 A. YES, SIR.

22 Q. WHY DO YOU THINK THAT IS?

23 A. 'CAUSE IT WAS MORE -- I THINK THAT 'CAUSE IT WAS
24 MORE THAN WHAT MY BACK THEY WAS TREATING ME FOR,
25 THAT I HAD MORE PAIN THAN JUST MY BACK, AND THEY

1 WASN'T -- THEY DIDN'T FULLY LOOK OVER ME LIKE I FELT
2 LIKE THEY SHOULD.

3 Q. AND YOU WERE STILL GOING TO PHYSICAL THERAPY ---

4 BY MR. HAIGLER:

5 OBJECT TO THE FORM, COMMISSIONER.

6 CROSS EXAMINATION RESUMED BY MR. COLEMAN:

7 A. AND I WAS STILL GOING TO PHYSICAL THERAPY.

8 BY COMMISSIONER TAYLOR:

9 SUSTAINED.

10 CROSS EXAMINATION RESUMED BY MR. COLEMAN:

11 Q. OKAY. WHAT OTHER DOCTORS DID YOU GO TO?

12 A. I WENT TO -- I WENT TO NUMEROUS DOCTORS TRYING TO
13 GET OUT OF THIS PAIN.

14 Q. YOU WENT TO DR. LAMOTTA?

15 A. I JUST REMEMBER SEEING DR. LAMOTTA. ME AND DR.
16 LAMOTTA NEVER ---

17 Q. HOW DID YOU GET TO HIM IF YOU KNOW? IF YOU DON'T,
18 DON'T WORRY ABOUT IT..

19 A. IT HAD TO BE THROUGH MIDLANDS. IT HAD TO BE THROUGH
20 MIDLANDS.

21 Q. AND HOW ABOUT YOU ALSO WENT TO SEE DR. PEELE?

22 A. YES, SIR.

23 Q. AND THAT WAS THE RESULT OF THE E.R.?

24 A. E.R. FROM THE HOSPITAL.

25 Q. WHAT HOSPITAL E.R. DID YOU GO TO?

1 A. RICHLAND MEMORIAL.

2 Q. THEY REFERRED YOU TO ---

3 A. YES, SIR.

4 Q. --- DR. PEELE?

5 A. YES, SIR.

6 Q. AND COULD HE DO ANYTHING?

7 A. PEELE, HE JUST LOOKED AT MY C.D., AND HE TOLD ME

8 "NO, SIR, IT AIN'T."

9 Q. OKAY.

10 A. "I CAN'T DO ANYTHING FOR YOU."

11 Q. OKAY. THEN AT SOME POINT IN TIME YOU WENT TO

12 SOUTHEASTERN SPINE CLINIC IN CHARLESTON; IS THAT

13 CORRECT?

14 A. YES, SIR.

15 Q. AND WHO DID YOU SEE; WHO WAS THE FIRST PERSON YOU

16 SAW?

17 A. THEY ASKED ME HAD I HAD ANY M.R.I.s. THE FIRST

18 PERSON I SEEN WAS A DR. DENNIS.

19 Q. AND DID YOU TAKE STUFF DOWN THERE TO HIM?

20 A. I TOOK THE M.R.I. THAT I HAD FROM -- FROM THE FIRST.

21 Q. DID YOU TAKE THE NERVE STUDY ALSO?

22 A. NO, SIR, I DIDN'T HAVE THE NERVE STUDY.

23 Q. OKAY. SO, THEN AS A RESULT OF YOUR CONVERSATION

24 WITH DR. DENNIS, WHAT HAPPENED NEXT?

25 A. DR. DENNIS. HE SAT DOWN, HE LISTENED TO ME LIKE --

1 AND THEN HE REFERRED ME, BECAUSE TO KNOW WHAT'S
2 GOING ON WITH ME, HE HAD TO SIT DOWN AND LISTEN TO
3 ME TO FIND OUT WHAT WAS REALLY GOING ON. HE
4 REFERRED ME TO AN ORTHO BY THE NAME OF DR. LEONARD
5 FORREST WHO DID THE -- DID THE SAME THING. DR.
6 FORREST SEEN WHAT WAS GOING ON. HE GAVE ME A -- HE
7 GAVE ME -- HE GAVE ME AN INJECTION. I HAD TO HAVE
8 THE FIRST INJECTION.

9 Q. HOW LONG AGO WAS THAT, IF YOU REMEMBER? IT'S IN THE
10 MEDICAL RECORDS, BUT APPROXIMATELY?

11 A. A COUPLE OF MONTHS AGO.

12 Q. TWO TO THREE MONTHS AGO?

13 A. TWO TO THREE MONTHS OR SOMETHING LIKE THAT.

14 Q. AND WHAT SORT OF RELIEF DID YOU GET, IF ANY?

15 A. I TELL YOU THAT HAS BEEN THE BEST RELIEF THAT I HAVE
16 FELT EVER SINCE JANUARY -- I MEAN, SINCE JULY THE
17 17TH OF THE DAY OF THE ACCIDENT. I WAS SO HAPPY AND
18 RELIEVED THAT I COULD FINALLY GET DOWN AND PUT A
19 SHOE ON MY FEET, AND THEN I TOLD DR. O'LEARY ABOUT
20 HOW MUCH SUCCESS THAT THE SHOT HAD BROUGHT ME. HE
21 TOLD ME THAT ---

22 Q. DON'T SAY WHAT HE SAID.

23 A. OKAY. OKAY.

24 Q. SO, YOU'VE CONTINUED TO GO DOWN TO DR. ---

25 A. YES, SIR.

1 Q. --- FORREST; IS THAT CORRECT?

2 A. YES, SIR.

3 Q. AND HE HAD SCHEDULED FOR A PERIOD OF TIME ANOTHER.
4 SHOT?

5 A. YES, SIR.

6 Q. YOU'RE CURRENTLY USING YOUR -- YOUR WORK'S
7 INSURANCE; IS THAT CORRECT?

8 A. YES, BUT I HAVE TO PAY OUT -- I HAVE TO PAY ---

9 Q. THE CO-PAY?

10 A. YES, SIR. I HAVE CHURCH MEMBERS HELPING ME, THE
11 PASTOR. I HAVE MY FAMILY HELPING ME PAY THESE
12 BILLS, 'CAUSE THESE BILLS ARE HIGH. IF I DIDN'T
13 NEED HELP, WHY WOULD I BE -- THAT'S WHY I GO ---

14 Q. YOU'VE ALSO BORROWED A BUNCH OF MONEY, TOO, HAVEN'T
15 YOU?

16 A. YES, SIR. YES, SIR. YES, SIR.

17 **BY MR. HAIGLER:**

18 OBJECT TO THE FORM.

19 **BY COMMISSIONER TAYLOR:**

20 SUSTAINED.

21 **CROSS EXAMINATION RESUMED BY MR. COLEMAN:**

22 Q. AND SO FINALLY ---

23 A. I DID GET SOME RELIEF.

24 Q. --- YOU GOT THE SECOND SHOT?

25 A. YES, SIR.

1 Q. AND WHEN WAS THAT?

2 A. I GOT THE SECOND SHOT THURSDAY.

3 Q. LAST THURSDAY?

4 A. JUNE THE 28TH, YES. I WAS SUPPOSED TO HAVE IT
5 BEFORE THEN, BUT IT'S JUST THEY -- I HAVE TO SAVE
6 UP. I HAVE TO WAIT ON MY INSURANCE - I HAVE TO WAIT
7 ON MY INSURANCE TO VOUCH BECAUSE THEY DONE SPENT OUT
8 SO MUCH MONEY, AND THEN I HAVE TO BORROW, AND THEN
9 WHEN I -- WHENEVER I'VE AVAILABLE TO GO SEE THE
10 DOCTOR, THAT'S WHEN I CAN GO. THAT'S WHEN I CAN GO
11 WHEN I CAN AFFORD TO GO.

12 Q. OKAY.

13 A. BUT THEY -- THEY WANT TO SEE ME MORE -- THEY WANT TO
14 SEE ME MORE THAN I AM COMING, BUT MY INSURANCE, IT'S
15 TAKING SO LONG TO GET STUFF ---

16 Q. PROCESSED.

17 A. --- PROCESSED, YOUR HONOR, 'CAUSE I HAVE TO -- THEY
18 HAVE TO -- THEY PUT IT IN THE COMPUTER, AND IT MIGHT
19 NOT BE 20, 30 DAYS LATER BEFORE THEY GIVE ME THE
20 OKAY WHERE YOU CAN GO GET THE SHOT WITH THE CO-PAY
21 'CAUSE THEY DONE SPENT -- DONE SPENT OUT SO MUCH ON
22 ME WITH GOING BACK AND FORTH TO THESE DOCTORS TO
23 WHERE MY PREMIUMS, THEY STARTING TO RUN OUT.

24 Q. OKAY. AND, RICO, NOW, LET ME GO BACK TO THE ACTUAL
25 ACCIDENT. WHAT BODY PARTS DID YOU INJURE AS A

1 RESULT OF THE ACCIDENT?

2 A. MY ARM (INDICATES), IT WAS SWOLLEN FOR OVER SIX
3 MONTHS.

4 BY COMMISSIONER TAYLOR:

5 AND THAT IS YOUR RIGHT ARM?

6 BY THE CLAIMANT:

7 YES, MA'AM.

8 CROSS EXAMINATION RESUMED BY MR. COLEMAN:

9 A. MY BACK WAS SWOLLEN FOR I DON'T KNOW HOW -- NUMEROUS
10 OF MONTHS.

11 Q. LOW BACK, UPPER BACK OR BOTH?

12 A. BOTH.

13 Q. OKAY.

14 A. JUST MY BACK. MY NECK, I'VE BEEN TELLING THEM ABOUT
15 SINCE DAY ONE. I HAVE PUT ON ALL MY DOCTOR REPORTS
16 ABOUT WHAT'S GOING ON. I WAS ALWAYS WONDERING WHY
17 THE WHEN THE DOCTORS COME IN THE ROOM, Y'ALL NEVER -
18 - THEY WOULD NEVER ORDER ME OR TALK TO ME ABOUT --
19 THEY ALWAYS TELL ME, "WELL, YOU'RE GOING TO PHYSICAL
20 THERAPY. YOU DOING THIS PHYSICAL THERAPY."
21 PHYSICAL THERAPY, THE LADY SEEN HOW MESSED UP MY
22 NECK WAS AT PHYSICAL THERAPY, AND YOU CAN CHECK MY
23 NOTES. SHE WAS DOING EVERYTHING SHE POSSIBLY COULD
24 IN PHYSICAL THERAPY TO HELP ME WITH THE PAIN THAT
25 WAS IN MY NECK.

1 Q. ARE YOU A DRUG ABUSER?

2 A. NO, SIR.

3 Q. ARE YOU AN ALCOHOL ABUSER?

4 A. NO, SIR.

5 BY MR. COLEMAN:

6 I BEG THE COURT'S INDULGENCE, YOUR HONOR.

7 BY COMMISSIONER TAYLOR:

8 SURE.

9 CROSS EXAMINATION RESUMED BY MR. COLEMAN:

10 Q. RICO, LET ME ASK YOU THIS: THE SECOND SHOT, WHAT
11 SORT OF RELIEF IF ANY DID YOU GET FROM THE SECOND
12 SHOT?

13 A. I GOT -- I'M GETTING MORE AND MORE RELIEF EVERY TIME
14 I GO DOWN THERE.

15 Q. OKAY. DID IT AFFECT YOUR NECK, YOUR SECOND SHOT?

16 A. I CAN'T HEAR YOU.

17 Q. DID IT AFFECT YOUR NECK?

18 A. WELL, IT PUT -- IT PUT -- IT BLOCKED OUT ALL OF THIS
19 PAIN (INDICATES) THAT'S DOWN ---

20 Q. GOING DOWN INTO YOUR LEG?

21 A. IT BLOCKED OUT ALL OF THIS PAIN (INDICATES), BUT
22 IT'S LIKE I CALLED THE DOCTOR THE OTHER DAY AND TOLD
23 HIM THAT IT'S PUTTING MORE PRESSURE ON MY NECK. AS
24 YOU -- YOU CAN LOOK AT MY NECK. MY NECK BEEN
25 SWOLLEN FOR OVER A YEAR, AND I HAD DR. -- I HAD DR.

1 FORREST, HE HAD ME TO DO AN M.R.I. OF MY NECK, WHICH
2 HE FOUND FINE, THAT I BEEN TELLING MIDLANDS ABOUT
3 SINCE DAY ONE.

4 BY MR. HAIGLER:

5 COMMISSIONER, I DON'T KNOW WHAT HE JUST SAID,
6 BUT IT SOUNDS LIKE HE SAID WHAT THE DOCTOR TOLD HIM.

7 BY MR. COLEMAN:

8 HE DIDN'T.

9 BY COMMISSIONER TAYLOR:

10 HE MADE A CONCLUSION. IT'S NOTED FOR THE
11 RECORD.. THANK YOU..

12 BY MR. COLEMAN:

13 THAT'S ALL, YOUR HONOR.

14 BY COMMISSIONER TAYLOR:

15 OKAY. ALL RIGHT. THANK YOU, SIR. MR.

16 HAIGLER, ANY RE-DIRECT?

17 BY MR. HAIGLER:

18 I'VE GOT JUST A COUPLE OF FOLLOW UPS.

19 BY COMMISSIONER TAYLOR:

20 SURE.

21 BY MR. HAIGLER:

22 AND IT'S PRETTY POINTED -- OR TO THE POINT, I
23 GUESS.

24 RE-DIRECT EXAMINATION BY MR. HAIGLER:

25 Q. MR. DORSEY, YOUR TESTIMONY IS THAT YOU'VE BEEN

1 TELLING ALL OF THESE DOCTORS ABOUT YOUR NECK PAIN;
2 IS THAT RIGHT?

3 A. YES, SIR.

4 Q. ALL OF THIS TIME, YOU'VE BEEN TELLING THEM?

5 A. I'VE BEEN NOTING IT ON THE NOTEPADS AND EVERYTHING.

6 Q. OKAY.

7 A. THEY ALWAYS TELL ME THAT -- DR. O'LEARY TELL ME,
8 "MR. DORSEY, I CAN PUT IT THERE BUT WHETHER YOUR
9 INSURANCE COMPANY APPROVES OF ME DOING YOUR NECK,
10 THEN IT'S GOT TO BE -- IT'S GOING TO BE UP TO THEM."
11 THE NEXT TIME I SEE DR. O'LEARY, NEVER NOTHING DONE
12 ABOUT MY NECK. I STILL PUTTING ON THE BOOKS, ON THE
13 CHARTS THAT THEY GIVE YOU, 'CAUSE EVERYTHING IS
14 ELECTRONIC MONITOR NOW, AND I'M PRETTY SURE YOU KNOW
15 THAT, RIGHT? YOU BEEN TO THE DOCTOR LATELY?

16 Q. I'M JUST ASKING ---

17 A. OKAY.

18 Q. --- IF YOU'VE BEEN TELLING ALL OF THESE DOCTORS
19 THAT? IS THAT WHAT YOU'RE SAYING?

20 A. YES, I TELL -- I TELL ANYBODY I'M HAVING NECK PAIN.

21 Q. OKAY. AND ---

22 A. THEY ASK ME WHERE IS THE MOST -- WHEN I TOLD YOU...

23 Q. NOW, YOUR ATTORNEY -- OR ONE OF YOUR ATTORNEYS
24 INDICATED TO THE COMMISSIONER THAT THE DAY YOU WENT
25 TO DOCTORS CARE FOR THE FIRST TIME IN JULY OF '15,

1 THAT YOU TOLD THEM YOU HAD RIGHT UPPER BACK PAIN,
2 AND THE ASSUMPTION WAS ASKED TO BE MADE THAT THAT
3 EQUALED NECK PAIN.

4 A. AND ---

5 Q. HOLD ON. HOLD ON. NOW, WHEN YOU WERE AT DOCTORS
6 CARE, THEY -- YOU TOLD THEM ABOUT OTHER PROBLEMS YOU
7 WERE HAVING, TOO. IN FACT, THEY DID AN M.R.I. THEY
8 DID X-RAYS WHEN YOU WENT OF YOUR LOWER BACK, OF YOUR
9 THORACIC SPINE, OF YOUR RIGHT ELBOW. THEY EXAMINED
10 THOSE BODY PARTS. THEY DIDN'T DO AN X-RAY OF YOUR
11 NECK, DID THEY? DO YOU REMEMBER THAT?

12 A. 'CAUSE -- THAT'S WHAT I JUST TOLD -- JUST TOLD MY
13 ATTORNEY WHEN I WENT TO DOCTORS CARE AND TOLD THEM
14 ABOUT MY NECK, HE TOLD ME THAT THEY DIDN'T HAVE THE
15 PROPER -- PROPER STUFF IN THE OFFICE TO DO -- TO DO.
16 AND HE GAVE ME FLEXERIL. HE TOLD ME IT'S PROBABLY A
17 MUSCLE SPASM GOING UP MY BACK FROM THE INJURY.

18 Q. OKAY. WHEN YOU WENT BACK TO DOCTORS CARE A WEEK
19 LATER, YOU TOLD THEM THAT YOU WERE HAVING, THE ONLY
20 THING YOU TOLD THEM YOU WERE HAVING WAS BACK PAIN
21 AND LEFT SIDED RIB PAIN. YOU DIDN'T SAY ANYTHING
22 ABOUT YOUR NECK, DID YOU?

23 A. YOUR HONOR -- I MEAN, MR. HAIGLER ---

24 Q. I'M JUST READING THE REPORT. IF THE REPORT SAYS ---

25 A. NO.

1 Q. --- YOU DIDN'T MENTION THAT.

2 A. NO. THE REPORT MIGHT SAY THAT, BUT EVER SINCE I'VE
3 BEEN GOING TO THE DOCTOR, I'VE BEEN TELLING THEM
4 ABOUT MY NECK.

5 Q. OKAY. FAIR ENOUGH. NOW, I'M GOING TO TELL YOU, MR.
6 DORSEY, THAT THE REST OF THESE DOCTORS CARE RECORDS,
7 NONE OF THEM MENTION YOUR NECK AS A COMPLAINT. ARE
8 YOU AWARE OF THAT?

9 A. I'M AWARE THAT EVERYBODY FROM A.S.I. GO TO THE SAME
10 DOCTORS CARE IN LEXINGTON.

11 Q. OKAY.

12 A. THAT'S WHO WE'VE BEEN A PART OF, AND YOU KNOW HOW --
13 YOU KNOW HOW -- YOU KNOW HOW PEOPLE KIND OF LIKE --
14 YOU KNOW...

15 Q. I UNDERSTAND.

16 A. AND THAT'S WHY -- THAT'S WHY THE WORLD IS SO THE WAY
17 IT IS TODAY.

18 Q. BUT IF I'M UNDERSTANDING, YOUR POINT IS THAT BECAUSE
19 ---

20 A. SIR, I'VE BEEN HONEST WITH YOU.

21 Q. I KNOW YOU HAVE. MY POINT IS THAT BECAUSE THE
22 INSURANCE COMPANY AND THE EMPLOYER WOULDN'T LET THE
23 DOCTORS DEAL WITH YOUR NECK, THAT'S WHY IT WASN'T
24 BEING PUT IN THE REPORT; IS THAT WHAT YOU THINK?

25 A. OTHER THAN THAT, WHAT'S THE PROBLEM? WHY -- WHY

1 HAVEN'T I BEEN TREATED FOR MY NECK? WHY HAVEN'T MY
2 NECK BEEN LOOKED AT BY NONE OF YOUR DOCTORS, AND I'M
3 TELLING EVERY DOCTOR THAT I EVER SEEN FROM DOCTORS
4 CARE TO EVERY DOCTOR THAT I SEEN AT MIDLANDS THAT
5 SOMETHING IS WRONG WITH MY NECK.

6 Q. FAIR ENOUGH. YOU WENT TO FAIRFIELD MEDICAL HEALTH
7 CENTER. IT HAD NOTHING ---

8 A. I DON'T ---

9 Q. HOLD ON. YOU DID ALL OF THAT ON OUR OWN; DID YOU
10 NOT?

11 A. I ---

12 Q. JUST ANSWER THE QUESTION, YES OR NO, DID YOU GO
13 THERE ON YOUR OWN?

14 A. YES, SIR.

15 Q. SO, THEY COULD SEE YOU FOR WHATEVER COMPLAINT YOU
16 HAD, COULDN'T THEY?

17 A. NO, THEY -- THAT'S -- NO, SIR, 'CAUSE WE'VE GOT --
18 THAT'S A SMALL HOSPITAL. THEY DIDN'T HAVE CAT SCANS
19 AND STUFF LIKE THAT. THEY DON'T HAVE STUFF --
20 THAT'S A VERY SMALL HOSPITAL.

21 **BY MR. HAIGLER:**

22 ON PAGE 19 OF THE CLAIMANT'S APA, COMMISSIONER.

23 ON AUGUST 23RD, HE GOES TO FAIRFIELD.

24 **RE-DIRECT EXAMINATION RESUMED BY MR. HAIGLER:**

25 Q. ARE YOU AWARE YOU DIDN'T TELL HIM ABOUT NECK PAIN

1 DURING THAT VISIT? THAT WAS A MONTH AFTER THE
2 VISIT. ARE YOU AWARE THAT YOU'VE MADE ALL OF THESE
3 COMPLAINTS, BUT YOU DIDN'T MENTION YOUR NECK. ARE
4 YOU AWARE OF THAT? ACCORDING TO THE REPORT, ARE YOU
5 AWARE OF THAT?

6 A. NO, SIR, I'M NOT AWARE OF THAT.

7 Q. YOU WENT BACK ON 9/2, THE SAME THING, YOU TOLD THEM
8 ABOUT YOUR HEMORRHOIDS, YOUR LUMBAR PAIN, YOUR BACK
9 PAIN. YOU DIDN'T MENTION ANYTHING ABOUT YOUR NECK;
10 ARE YOU AWARE OF THAT?

11 BY MR. COLEMAN:

12 YOUR HONOR, I MEAN, THE RECORDS REFLECT WHAT
13 THE RECORDS REFLECT. WE ARE ---

14 BY MR. HAIGLER:

15 WELL, I'M ASKING. HE'S ALLEGING HE'S TOLD ALL
16 OF THESE DOCTORS.

17 BY COMMISSIONER TAYLOR:

18 I KNOW. I'M GOING TO ALLOW IT. OVERRULED.

19 RE-DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

20 Q. I'M JUST ASKING, AND THESE AREN'T AUTHORIZED
21 DOCTORS, ARE THEY? THESE ARE DOCTORS THAT YOU WENT
22 TO SEE. IS THAT CORRECT?

23 A. THESE ARE EMERGENCY ROOMS.

24 Q. OKAY. WELL, ---

25 A. I MEAN, TO KNOW THAT -- TO HAVE THAT FEELING OF FEEL

1 LIKE SOMEBODY IS TAKING AN AXE OR A KNIFE AND JUST
2 SPLITTING YOU DOWN THE LEG, SPLITTING DOWN YOUR
3 LEGS, AND WHEN THEY ASK YOU WHAT IS YOUR MOST
4 INTENSE PAIN, MY MOST INTENSE PAIN AT THAT TIME WAS
5 THIS BACK AND GOING DOWN THIS LEG. I MEAN, IF YOU
6 WANT TO KNOW MORE, I DONE HAD -- WITH THE NERVES,
7 THE NERVES -- YOUR NERVES -- YOUR NERVOUS SYSTEM. I
8 DONE HAD -- IT'S A LOT THAT I HADN'T COMPLAINED
9 ABOUT. I EVEN HAD. I'VE BEEN SWOLL -- I WAS SO
10 SWOLLEN THAT I GOT RECORDS AT HOME WHERE I HAD TO GO
11 TAKE A COLONOSCOPY BECAUSE I DIDN'T KNOW WHAT WAS
12 GOING ON WITH MY NERVES, I WAS SO SWOLLEN. THEY
13 SHOWED THAT -- I THOUGHT I HAD -- THEY THOUGHT I HAD
14 CANCER OR SOMETHING. NO PROBLEMS, NO ---

15 Q. LET ME ASK YOU ---

16 A. --- IT WAS JUST PRESSURE FROM ---

17 Q. --- ABOUT ONE MORE REPORT, MR. DORSEY. LET ME ASK
18 YOU ABOUT ONE MORE MEDICAL REPORT.

19 A. WHY YOU NEVER WANT TO HEAR WHAT I GOT TO SAY?

20 Q. I DO, BUT I NEED YOU TO ANSWER MY QUESTIONS.

21 A. OKAY.

22 Q. ONE MORE REPORT.

23 BY MR. HAIGLER:

24 COMMISSIONER, THIS IS PAGES 31 AND 32 OF THE
25 CLAIMANT'S APA.

RE-DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

1 Q. THIS IS AN ORTHOPAEDIC CONSULTATION, NOT AN E.R.
2
3 REPORT, BUT AN ORTHOPAEDIC CONSULTATION THAT YOU HAD
4 AT FAIRFIELD MEMORIAL HOSPITAL ON OCTOBER THE 15TH
5 OF 2015. WHEN YOU'VE BEEN TELLING US THE WHOLE TIME
6 TODAY THAT YOU'VE BEEN TELLING THESE DOCTORS THAT
7 YOU'VE HAD NECK PAIN FROM DAY ONE. NOW, THE DOCTOR
8 IN HIS PHYSICAL EXAM, 'NO TENDERNESS TO PALPATION TO
9 THE CERVICAL SPINE." THAT'S WHAT YOU TOLD -- THAT
10 IS WHAT THE PHYSICAL EXAM REVEALED. NOWHERE IN THIS
11 REPORT, DO YOU AGREE, DOES IT INDICATE THAT YOU
12 COMPLAINED OF ANY NECK PAIN, AND IN FACT WHEN HE
13 EXAMINED YOU, THERE WAS NO PAIN OF YOUR NECK. ARE
14 YOU AWARE OF THAT?

15 A. HE ASKED ME -- HE ASKED ME WHEN I WAS SEEN AT THE
16 HOSPITAL, ---

17 Q. CAN YOU ANSWER MY QUESTION?

18 A. HE ASKED ME WHAT WAS MY INTENSE PAIN, AND I TOLD HIM
19 THE PAIN GOING DOWN THE LEG WAS MY MOST INTENSE
20 PAIN. THAT WAS SOMETHING VERY SERIOUS. THAT THING
21 -- THAT'S WHAT -- MY INSIDES AND EVERYTHING.

22 Q. SO, LET ME MAKE SURE I'M CLEAR. SO ---

23 A. YOU DON'T GOT ME BECAUSE YOU'RE NOT -- YOU'RE NOT IN
24 THIS PAIN THAT I'M IN, MR. HAIGLER.

25 Q. I UNDERSTAND.

1 A. YOU'RE NOT IN THIS.

2 Q. I UNDERSTAND. SO, LET ME MAKE SURE THE COMMISSIONER
3 UNDERSTANDS. WHEN -- WHEN IT'S NOT IN A REPORT THAT
4 -- FROM A DOCTOR THAT MY CLIENT SENT YOU TO, IT'S
5 BECAUSE THEY DIDN'T WANT TO REPORT IT BECAUSE THEY
6 DIDN'T HAVE AUTHORIZATION, BUT WHEN IT'S NOT IN A
7 REPORT THAT YOU WENT TO ON YOUR OWN, THEY DIDN'T PUT
8 IT IN THERE BECAUSE THAT WASN'T THE MOST PAIN YOU
9 WERE IN, EVEN THOUGH YOUR TESTIMONY IS YOU'VE BEEN
10 TELLING EVERY DOCTOR THAT YOU'VE HAD NECK PAIN, BUT
11 YET WE CAN'T FIND IT IN THE RECORDS ANYWHERE, MR.
12 DORSEY. IS THAT TRUE?

13 A. I'VE BEEN TELLING YOUR DOCTORS 'CAUSE I -- I'VE BEEN
14 -- DO YOU KNOW HOW PAINFUL THE SITUATION GOT WHEN
15 YOU GOT TO GO TO THE -- WHEN YOU GOT TO GO TO THE
16 EMERGENCY ROOM, AND YOU'VE GOT TO GIVE UP YOUR LAST
17 PIECE OF MONEY, DON'T KNOW HOW YOU'RE GOING TO EAT
18 JUST TO FIND OUT ---

19 Q. MR. DORSEY, I KNOW -- I'M JUST TRYING TO GET YOU TO
20 ANSWER MY QUESTION. IT APPEARS TO ---

21 A. AND I'VE BEEN WAITING ON Y'ALL'S DOCTORS EVER SINCE
22 JULY. WHEN DID -- JULY, WHEN DID THE FIRST TIME I
23 SEE YOUR DOCTOR?

24 BY COMMISSIONER TAYLOR:

25 AND WHILE IT IS RELEVANT TESTIMONY, IT IS NON-

1 RESPONSIVE TO THE ACTUAL QUESTION THAT MR. HAIGLER
2 IS ASKING.

3 RE-DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

4 Q. MY QUESTION TO YOU IS -- AND I WILL REPHRASE IT, AND
5 WE'LL TRY TO DO THIS, AND THIS IS THE LAST QUESTION
6 I HAVE FOR YOU, MR. DORSEY, IF YOU ANSWER IT.

7 A. I'M GOING TO ANSWER IT.

8 Q. OKAY. FROM WHAT I'M UNDERSTANDING, WHEN WE SEND YOU
9 TO A DOCTOR AND THEY DON'T PUT IN THERE THAT YOU
10 COMPLAINED OF NECK PAIN, YOUR TESTIMONY IS IT'S
11 BECAUSE THEY'RE NOT AUTHORIZED TO DO THAT; IS THAT
12 CORRECT, YES OR NO?

13 A. SAY THAT AGAIN, MR. HAIGLER.

14 Q. WHEN WE SEND YOU TO A DOCTOR, DOCTORS CARE, DR.
15 O'LEARY, DR. LAMOTTA, NONE OF THOSE REPORTS MENTION
16 NECK PAIN UNLESS YOU GO WITH THE UPPER BACK ON THE
17 FIRST ONE ---

18 A. I ---

19 Q. HOLD ON A SECOND. YOUR TESTIMONY IS THE REASON IT'S
20 NOT IN THERE IS BECAUSE WE DIDN'T ALLOW THEM TO
21 EXAMINE THAT BODY PART; IS THAT CORRECT?

22 A. I'M NOT SAYING THAT.

23 Q. THAT'S WHAT YOU SAID EARLIER; IS THAT NOT WHAT
24 YOU'RE SAYING NOW?

25 A. I'M SAYING THAT EVERY DOCTOR -- EVERY TIME I WENT TO

1 THE DOCTOR, THEY GIVE ME A PAD IN THE FRONT. I
2 COMPLAINED TO DR. O'LEARY ABOUT THE NECK PAIN. DR.
3 O'LEARY CAME IN THERE AND GRABBED MY FOOT IN FRONT
4 OF MY WIFE AND HE SAID -- HE SAY -- I SAID -- HE
5 SAID HOW YOU HAVE -- I SAID, DR. O'LEARY, I SAY "ALL
6 THIS PAIN IN MY NECK." THEN HE GRABBED MY FOOT. I
7 TOLD HIM HOW NUMB MY FOOT WAS. HE SAID ---

8 BY MR. HAIGLER:

9 YOUR HONOR, THIS IS ALL -- HE CAN'T TESTIFY --
10 I DIDN'T ASK HIM ---

11 BY COMMISSIONER TAYLOR:

12 IT'S NON-RESPONSIVE. YEAH, I ---

13 BY THE CLAIMANT:

14 WELL, HE ---

15 BY COMMISSIONER TAYLOR:

16 YOU HAVE TO ANSWER THE SPECIFIC QUESTION THAT
17 HE ASKS YOU.

18 BY THE CLAIMANT:

19 I ANSWERED THE SPECIFIC QUESTION. I SAID -- I
20 SAID NO. I SAID ---

21 RE-DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

22 Q. OKAY, LET ME ASK THE SECOND PART OF THAT QUESTION,
23 AND THEN WE'RE FINISHED.

24 A. YOU SAID THAT WAS GOING TO BE THE LAST QUESTION.

25 Q. WELL, IT'S A TWO PARTER.

1 A. OKAY.

2 Q. FAIR ENOUGH. BUT WHEN YOU GO SEE A DOCTOR ON YOUR
3 OWN, THE REASON THEY DON'T PUT IT IN THE REPORT
4 ACCORDING TO YOU IS BECAUSE IT WASN'T THE MOST
5 IMPORTANT BODY PART YOU WERE TREATING FOR. IS THAT
6 YOUR EXPLANATION OF WHY IT'S IN NEITHER OF MY
7 REPORTS THAT MY CLIENT SENT YOU TO OR THE REPORT YOU
8 WENT TO GET ON YOUR OWN?

9 BY MR. COLEMAN:

10 YOUR HONOR, HE HAS NO IDEA WHY SOMETHING ISN'T
11 IN THE MEDICAL REPORTS.

12 BY MR. HAIGLER:

13 I MEAN, HE'S TESTIFIED THAT HE DOES.

14 BY COMMISSIONER TAYLOR:

15 YEAH, AND THE QUESTION IS REGARDING HIS
16 TESTIMONY, AND SO I WILL OVERRULE.

17 RE-DIRECT EXAMINATION RESUMED BY MR. HAIGLER:

18 Q. DO YOU UNDERSTAND WHAT I'M TRYING TO ASK YOU?

19 A. NO, SIR. ASK IT AGAIN.

20 BY MR. HAIGLER:

21 THANK YOU, COMMISSIONER.

22 BY MR. COLEMAN:

23 I JUST WANT TO FOLLOW UP ON ONE QUESTION.

24 BY COMMISSIONER TAYLOR:

25 SURE.

1 RE-CROSS EXAMINATION BY MR. COLEMAN:

2 Q. DO YOU REMEMBER THE DOCTOR THAT YOU WENT TO, IF I'M
3 NOT MISTAKEN IT WAS DR. O'LEARY, HE SAID THAT YOUR
4 NECK NEEDED TO BE LOOKED AT. DO YOU REMEMBER THAT?

5 A. YES, SIR.

6 Q. BUT IT HADN'T BEEN AUTHORIZED?

7 A. HADN'T BEEN AUTHORIZED.

8 BY MR. COLEMAN:

9 OKAY. THAT'S ALL I HAVE. THANK YOU.

10 BY COMMISSIONER TAYLOR:

11 OKAY, ALL RIGHT. THANK YOU. FOR THE RECORD,
12 ARE THERE ANY OTHER WITNESSES ON BEHALF OF THE
13 CLAIMANT? ANY OTHER WITNESSES ON BEHALF OF THE
14 CLAIMANT?

15 BY MR. COLEMAN:

16 NO, YOUR HONOR.

17 BY COMMISSIONER TAYLOR:

18 ANY OTHER WITNESSES ON BEHALF OF THE
19 DEFENDANTS?

20 BY MR. HAIGLER:

21 NO, YOUR HONOR.

22 BY COMMISSIONER TAYLOR:

23 OKAY. AND FOR THE RECORD, I HAVE RECEIVED
24 CLAIMANT'S APA SUBMISSIONS NUMBERS ONE THROUGH
25 EIGHT, WHICH ARE PAGES 1 THROUGH 196. IN ADDITION, I

1 DID ALLOW THE MEDICAL QUESTIONNAIRE, WHICH WILL BE
2 MARKED AS APA PAGE 197, AND IT WAS ENTERED OVER THE
3 OBJECTION OF THE DEFENDANTS DUE TO THE TIMELINESS OF
4 THE NATURE. I HAD HELD THE ISSUE OF THE HANDWRITTEN
5 NOTES IN ABEYANCE AT THE BEGINNING OF THIS HEARING.
6 I WILL JUST ALLOW THE RECORD IN COMPLETELY INCLUDING
7 THE HANDWRITTEN NOTES AT THIS TIME.

8 FOR THE DEFENDANTS, I HAVE RECEIVED THEIR APA
9 SUBMISSIONS NUMBERS ONE THROUGH SIX -- OR I'M SORRY,
10 ONE THROUGH TEN. NO, SORRY AGAIN, NUMBERS ONE
11 THROUGH EIGHT, WHICH ARE PAGES 1 THROUGH 88. I HAVE
12 ALSO RECEIVED EXHIBITS 'A' THROUGH 'D,' WHICH ARE
13 NOT NUMBERED, BUT IT IS MY UNDERSTANDING THAT THERE
14 WILL BE PORTIONS OF THE CLAIMANT'S PERSONNEL FILE,
15 THE DEPOSITION OF SAMMY BELL, THE DEPOSITION OF
16 CATHY ODOM, AND THEN THE CLAIMANT'S DEPOSITION WAS
17 NOTED "IF NECESSARY"; HOWEVER, IT WAS REFERRED TO
18 DURING TODAY'S DEPOSITION, SO IT WILL BE SCANNED AND
19 ADMITTED AS WHOLE.

20 MR. HAIGLER, WITH REGARD TO YOUR OUTSTANDING
21 DISCOVERY ISSUES, DO YOU WANT TO SPEAK TO THAT AT
22 THIS TIME?

23 BY MR. HAIGLER:

24 WELL, I MEAN, TO BE HONEST WITH YOU, I NEED TO
25 KNOW YOUR RULING ON IT BEFORE I CAN TELL YOU,

1 BECAUSE IF YOU RULE -- LET ME EXPLAIN WHAT I MEAN BY
2 THAT. IF I TELL YOU I DON'T WANT TO TAKE THEM, AND
3 YOU ALLOW THEM. WHO GETS THE FIRST CRACK AT THE
4 DOCTOR. WHOSE DEPOSITIONS ARE THEY? I'M NOT GOING
5 TO FORFEIT MY RIGHT TO TALK TO THAT DOCTOR FIRST BY
6 TELLING YOU I DON'T WANT TO TAKE THAT DEPOSITION.
7 DOES THAT MAKE SENSE?

8 BY COMMISSIONER TAYLOR:

9 IT DOES. WE'LL GO OFF THE RECORD FOR A SECOND.

10 (OFF THE RECORD)

11 BY COMMISSIONER TAYLOR:

12 BACK ON THE RECORD. WITH REGARD TO ANY
13 OUTSTANDING DISCOVERY, PRIOR TO TODAY'S HEARING,
14 THERE HAD BEEN CORRESPONDENCE REQUESTING THAT THE
15 COMMISSION HOLD THE RECORD OPEN TO DEPOSE I BELIEVE
16 DR. DENNIS AND DR. FORREST. THE INITIAL REQUEST WAS
17 MADE BY THE DEFENDANTS, AND THEN SUBSEQUENTLY THERE
18 WAS A REQUEST, I BELIEVE I HAVE THAT IN WRITING AS
19 WELL, MADE BY THE CLAIMANT. I WILL TAKE BOTH OF
20 THOSE REQUESTS UNDER ADVISEMENT AND ISSUE A WRITTEN
21 DECISION WITH THE UNDERSTANDING THAT THERE IS ONE
22 CURRENTLY SET FOR MONDAY. SO, Y'ALL WILL HAVE A
23 DECISION ON THAT AND MAYBE EVEN EVERYTHING. I'VE
24 GOT ONE MORE, AND THEN I THINK THE REST OF THE
25 AFTERNOON, I'M JUST GOING TO GET THIS ONE DONE.

1 ALL RIGHT. THAT CONCLUDES THIS MATTER. THANK
2 YOU.

3 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
4 CONCLUDED AT THE HOUR OF 12:27 P.M.)

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1512220

RICO A. DORSEY,	)	
	)	FULL COMMISSION HEARING
CLAIMANT,	)	PANEL B
vs.	)	
	)	COMMISSIONER CAMPBELL
ALLWASTE SERVICES,	)	COMMISSIONER JAMES
	)	COMMISSIONER McCASKILL-CHAIR
	)	
AND	)	
	)	
BRIDGEFIELD,	)	
	)	
CARRIER,	)	
DEFENDANTS.	)	

 **COPY**

THE WORKERS' COMPENSATION HEARING, TAKEN BEFORE
CORA ELLIS BRUTON, A NOTARY PUBLIC IN AND FOR THE
STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF
2:43 P.M., TUESDAY, FEBRUARY 21, 2017, SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION, 1333 MAIN STREET,
COLUMBIA, SOUTH CAROLINA 29202.

CORA ELLIS BRUTON
COURT REPORTER
131 BROWNING COURT
LEXINGTON, SOUTH CAROLINA 29073
803-397-0189

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REPORTED BY

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 803-397-0189

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EXHIBITS

(No Exhibits Proffered)

1 THE COURT REPORTER: Today is February 21st,
2 2017. This is South Carolina Workers' Compensation
3 Case Number 1512220. This is the case of Rico A.
4 Dorsey, Claimant, versus Allwaste Services, Employer
5 and the Carrier is Bridgefield Insurance.

6 The Appellant is the Claimant represented by
7 Attorney Andrew N. Safran. The Respondent is
8 represented by Attorney Nicholas L. Haigler.

9 Each side is allowed ten minutes for oral
10 argument and the Appellant three minutes in reply.
11 You are requested to argue the grounds of exception
12 and stay within the record.

13 MR. SAFRAN: For purposes of the record I was
14 associated by Mr. Coleman shortly before the hearing,
15 so he is also counsel of record; just for purposes of
16 the record.

17 THE COURT: All right. Let the record so
18 reflect. Mr. Creighton Coleman is also counsel for
19 the Claimant. All right. Mr. Safran.

20 BY MR. SAFRAN: If Your Honor please. I think
21 candidly this can be sort of pared down to a couple of
22 issues. As you can tell there was not any wholesale
23 appeal of all the aspect of the Order even though some
24 of them were certainly in favor of Mr. Dorsey.
25 Essentially, just by way of very limited background,

1 Mr. Dorsey had an admitted injury back in July of 2015
2 nd he was basically struck by a garbage truck. He
3 received some treatment initially at an Urgent Care
4 that was authorized. He was subsequently sent to Dr.
5 O'Leary who saw him several times. He was then sent
6 over to see Dr. LaMotta for a one time visit. In the
7 interim had nerve conduction studies that actually
8 came back objectively positive for showing some
9 radicular problems. After that Mr. Creighton Coleman
10 sent him down to Southeastern Spine where he saw Dr.
11 Dennis and Dr. Forest. Ultimately this case was moved
12 forward by the Defendants per 21. As the moving
13 parties they were seeking to stop payment of
14 compensation and get a determination of disability.
15 This case was put off several times due to the
16 Legislative commitments that Mr. Coleman had at the
17 time and ultimately was set for hearing some time last
18 summer. As was pointed out in the Brief that Mr.
19 Haigler put up, it was originally set for a date in
20 July that candidly I came and it was right after
21 something that happened relatively traumatic to me and
22 I was not in a position to go forward and graciously
23 Commissioner Taylor continued it for roughly two and a
24 half weeks. In anticipation of the hearing, as we all
25 see in every case, there were Prehearing Briefs, APA

1 submission forms filed. In this situation the
2 Defendants had included in that Brief a reference to
3 two depositions which were characterized as Exhibits 9
4 and 10. They were the depositions of Dr. Dennis and
5 Dr. Forest. They were, as far as the moving party,
6 more or less obliged to identify what they intended to
7 submit into evident, and as we frequently see, they
8 had indicated that they felt the deposition testimony
9 of these gentlemen were -- was important. Ultimately
10 there were some submissions that were put in by Mr.
11 Coleman, some of which were objected to by the
12 Defendants. We got to the hearing and essentially
13 that situation was still in the air. We had agreed
14 that the depositions were necessary and from a
15 practical matter in my experience if the other side
16 wants to take a doctor's deposition we say that yes,
17 we agree to it, and if that's something that needs to
18 go forward I think that frankly there is very little
19 doubt that those depositions will be had. Now I know
20 Commissioner Taylor when we got here was kind of coy
21 about whether or not she was going to allow them to go
22 forward, but again, this is in a context of both sides
23 saying yes, we want the deposition to go forward. Now
24 I'm not going to sit here and tell you that Mr.
25 Haigler, as any good lawyer, was kind of trying to see

1 if she would tip him off that, what are you going to
2 do; maybe I won't need to take it, but for all intents
3 and purposes there was never any withdrawal of desire
4 by them to take the depositions. There was no
5 rescission of the need for the depositions, and in
6 fact, if you read the Order, ultimately, without any
7 explanation as to why, she indicated, "That I am
8 denying both parties' request to take the
9 depositions." Now, I think the Briefs go into the
10 technical guts of 67-612, but as a basic matter what
11 it does is this. It says as a moving party you
12 identify what you're going to use. And I know it uses
13 the word "reports" and candidly, in my Brief I cited
14 to a case that more or less cites to the APA and says,
15 "APA says anything comes in in terms of documentary
16 evidence." It also says that regulations certainly
17 have the force and effect of law, but that as to
18 changing, altering a particular Statute or adding to
19 it, then they're not effective in doing that. There
20 is a basic purpose of a particular provision, I
21 believe it's subsection D of that Regulation which
22 says you lay out your cards in terms of what you're
23 going to use as evidence and the other side has an
24 opportunity to know what they need to do or not need
25 to do. And I understand, again, there has been a cry

1 here from the Respondents to say, you know, well,
2 technically it says reports, but candidly, I don't
3 believe that in light of the provisions of the APA
4 that it limits it. It says particularly when you have
5 things that you're going to use to go forward the
6 other side has a right to rely on them. And again,
7 keep in mind, this was not a matter where parties were
8 coming in and jousting about whether or not there was
9 a need to have the depositions. We said, yes, we
10 think they need to go forward, we agree. I tried to
11 think, in -- in 30 plus years when have I ever had a
12 situation where both sides said the deposition needed
13 to go forward and agreed, when it was denied.
14 Couldn't come up with one. And so basically what I
15 think happens here is that the purpose is to make sure
16 that everybody's on the same page. That if we all
17 anticipate there is going to be some element of
18 evidence coming in that it's going to, in fact,
19 happen. And again, despite what may be said there was
20 never any withdrawal. It was more or less
21 Commissioner took it, came back and said I'm not
22 letting either one of you do it. Again, I think that
23 once the die is cast, once these things are identified
24 basically I don't think there's any pulling back or
25 any saying no. Because again, this is a consensus and

1 that thing basically is there. That thing meaning the
2 Reg to prevent exactly what happened here. Now, I
3 think that under the circumstances it does rise to a
4 matter of law and so the whole notion that there's a
5 discretion involved here seems to vanish, because I've
6 cited a case that more or less says that when you are
7 dealing with a legal error this idea of using the
8 discretion as an explanation for it is not going to
9 pass muster. So I think that under the circumstances
10 the depositions should have gone forward. They need
11 to go forward, and frankly as a result of this there's
12 prejudice to us, but I can promise you that if she had
13 ruled in a different way I would have Mr. Haigler up
14 here saying I wanted to take the depositions and they
15 agreed to them, now I'm the one that's getting
16 prejudiced by it. So, you know, you really can't kind
17 of go in and ask for it and say, well, if it happens
18 to go my way that somehow now after the fact I'm going
19 to say I don't need them. The second issue that I
20 would point to you is this; there was an allegation of
21 a neck problem and ultimately the Commissioner denied
22 it. I'm not saying frankly that the whole spectrum of
23 things in the record might not be cobbled in a way to
24 say, okay, maybe it shouldn't be part of the case, but
25 here's the problem. She gave three very specific

1 reasons as to why it was denied. The first was, is
2 that when he went to Urgent Care that even though
3 there was a complaint of right upper trapezius problem
4 that all he had ever said was lumbar thoracic to the
5 exclusion of cervical. With all due respect this is
6 your trapezius. It's at the base of your neck and
7 into your top of your shoulder. There's no mention of
8 the word thoracic in that entire record, that's why I
9 handed it up. And while I believe my friend on the
10 other side tried to say there was not a consistency of
11 symptoms I've highlighted for you that the basic
12 symptoms in each of those visits as depicted by the
13 doctor didn't change. Now the last one did not
14 mention right trapezius, but by the same token there
15 was a statement that said the worst problem now is the
16 low back. That's what they focused on and that's why
17 they made a referral. But I believe if you look at
18 those reports, the terms of what they said was the
19 ongoing spectrum that was the same for those three
20 visits. The second thing she said was, the first time
21 he ever mentioned a neck problem was in a deposition
22 in March of 2016. Well, I've handed up Dr. O'Leary's
23 report from November, four months prior, where he says
24 exactly what he says in the deposition. It's been
25 running from my neck all the way down to my leg. That

1 was in there November 5th, 2015. Now, are we all
2 infallible? Absolutely not. Did she likely overlook
3 it? Sure. Is part of it probably my fault? Yes,
4 because maybe I hadn't been in this case for the
5 length of time that I should have to have everything
6 committed to memory. But the point is is that there
7 is a record that absolutely contradicts that rational
8 as to why the neck was not made part of the record --
9 or part of the claim. The last thing that she
10 mentioned was basically -- excuse me. The last thing
11 that she had mentioned was is that Dr. Forest, who
12 linked it all together, we couldn't rely on his
13 opinion because it was based upon what the Claimant
14 said, and her perception was is that the Claimant's
15 depiction of what was going on with him was
16 inaccurate. Well I submit to you when you look at
17 those records that I've handed, to Urgent Care,
18 they're saying upper right trapezius as being one of
19 the sources. They don't use the word thoracic at all,
20 but yet the notes that we got back and ultimately the
21 Order say it was down here and here. It's not that
22 way in the reports. Again, there was the idea, the --
23 the thought and the assumption that never mentioned
24 until March. Well I've handed you something that says
25 the authorized treating physician mentioned it in

1 November. So I think it's incumbent upon us to say,
2 okay, well, if she denied it for these three reasons
3 but these three reasons are not factually accurate,
4 then there's a problem. So what I would submit to you
5 is this, I don't think -- can I finish the thought?

6 THE COURT: Finish that thought.

7 MR. SAFRAN: I don't think it's -- it's really at
8 this stage while the Board is -- or the Panel is
9 empowered to do it, I don't really think to go and
10 kind of see if we can find something elsewhere to
11 support it is necessarily the answer. The answer is
12 we need to have a determination based on the evidence,
13 and frankly those depositions will take us a long way
14 in getting there. Thank you.

15 THE COURT: All right. Mr. Haigler.

16 BY MR. HAIGLER: May it please the Commission.
17 Thank you for your time this afternoon. Let me
18 address first the evidentiary issue with regard to the
19 depositions. The history in this case is disturbing
20 to say the least and you probably -- if you've had a
21 chance to read my Brief you probably picked up on
22 that. Let me just simplify it for you. The reason
23 those two depositions were scheduled, as they often
24 are, and I did my due diligence by actually trying to
25 -- knowing that evidence was coming, didn't know what

1 it was, but I knew it was coming because they hadn't
2 proven their case. I said I'm going to schedule these
3 depositions, which I did after the hearing. Now, our
4 Briefs were due to be filed on July the 12th. I
5 didn't get -- I got -- well, I got the Brief on the
6 14th -- the 15th of July and it said on there that it
7 had been filed on the 12th. Well, no, it actually had
8 been filed on the 14th. There was a misrepresentation
9 on the Certificate of Service as to the filing date.
10 So the evidence not only was it late, but it was --
11 there was a misrepresentation to the Commission as to
12 its timeliness. There's been no, and there will not
13 be anyone who will stand up here and say that that's
14 not true. So more importantly the evidence, the whole
15 issue about whether the neck is compensable centers
16 around the questionnaire which wasn't even included in
17 the APAs I received late. That questionnaire wasn't
18 sent to the doctor until after the date his APAs were
19 due to -- to this hearing on the 13th of July. I
20 didn't get it until the 20th, two days before a
21 hearing. Now I had these doctors' depositions
22 scheduled because I knew that was coming. Now I
23 hadn't read the evidence, didn't know what it said,
24 but I had -- I did -- I could have just gone into the
25 hearing and said Commissioner -- made a decision at

1 that point, but I did some due diligence and tried to
2 save a little time, mostly because I was on a running
3 award of TTD, which by the way I filed my 21 at that
4 point in February of 2016, got a hearing in August due
5 to numerous issues which I think were ridiculous, but
6 nonetheless used his Legislative conflicts. And so I
7 -- in an effort not to delay my client getting a stop
8 pay hearing or a stop pay award didn't wait to
9 schedule Southeastern Spine depositions, which you
10 know take months to do; I went ahead and scheduled it
11 because I knew they were coming. Didn't have the
12 evidence. So two days before the hearing I get the
13 evidence and I go in and I tell Commissioner Taylor,
14 "Commissioner Taylor, I don't know if I want to take
15 these depositions or not." She said, "Well, Nick I'll
16 let you decide at the end of the hearing." And I
17 said, "Okay. Thank you." The reason why I didn't
18 know was I haven't examined the Claimant on it. I
19 hadn't even reviewed them for two days. I didn't know
20 what -- what the Claimant was going to say. I didn't
21 know whether she was even going to let the depo -- the
22 records -- into the record because they were late and
23 there were some authentication issues on there. And
24 at the conclusion of my -- my examination of the
25 Claimant I realized that Andy didn't -- and Creighton.

1 didn't have the evidence they needed to win that case
2 and I knew that the only way they could win was for
3 that deposition to occur. And I said, Commissioner --
4 she goes, "Well, Nick, what do you want to do?" I
5 said, "Well it depends, Commissioner. Are you going
6 to let Andy take the deposition?" And she says,
7 "Well, I don't know." And I said, "Well, I don't want
8 to take it unless you're going to let him take it
9 because it's not fair for him to get the first bite of
10 the apple with his own expert when he should have done
11 that before." You submit the questionnaires in lieu
12 of live testimony. You don't then get to go cross
13 examine -- go examine your expert after the case. Has
14 that ever happened? I have never heard of a
15 Commissioner allowing a move -- a non-moving party to
16 submit evidence and then want to go depose that
17 witness because the evidence they submitted in lieu of
18 live testimony. The questionnaires that they went and
19 got from doctors that I can't go talk to wasn't good
20 enough and they knew it.

21 COMMISSIONER JAMES: Isn't the deposition what's
22 in lieu of the live testimony?

23 MR. HAIGLER: Excuse me?

24 COMMISSIONER JAMES: The questionnaire can you --
25 while it's -- not testimony -- but the deposition and

1 the testimony and one reason we kind of practice
2 around that is so that the experts themselves don't
3 have to show up at a hearing?

4 MR. HAIGLER: That's exactly right.

5 COMMISSIONER JAMES: So it's not a -- essentially
6 not a report it's a -- it's basically testimony which
7 he could happen -- I mean coming to hearings sometimes
8 we all have to work around a doctor's schedule. So
9 this was scheduled, as I understand it, weeks in
10 advance of the hearing because of the doctors'
11 schedule?

12 MR. HAIGLER: Correct. Had nothing to do with
13 anything else other than I was trying --

14 COMMISSIONER JAMES: Right.

15 MR. HAIGLER: -- to protect this from --

16 COMMISSIONER JAMES: Unless -- unless somebody
17 could have sent a subpoena for him to appear there.
18 So it's really not -- it's really not under 612, it's
19 really under 611 as far as noticing live testimony.
20 The Prehearing Brief itself?

21 MR. HAIGLER: Exactly. And the issue is this is
22 not a report, and I -- they -- there's been this
23 allegation that the APA says -- that's not what the
24 APA says. The APA that they've cited says that you
25 can submit a questionnaire, which they did in lieu of

1 live testimony. That's all it says. It doesn't say
2 that a deposition equals a report under 67-612.

3 COMMISSIONER JAMES: But then are we not looking
4 at an analysis -- if it's under 611 are we not looking
5 at an analysis under the (inaudible) case as to the --
6 as to being able to add witnesses?

7 MR. HAIGLER: Sure. But it's also the
8 Commissioner's discretion as to whether to allow those
9 witnesses to testify. And the key here, Commissioner,
10 this is the key is that the evidence that we wanted to
11 discuss in a deposition was late; was late. So in --
12 so here -- so in other words if you rule, because if
13 you guys rule that Andy is allowed to go take these
14 depositions then basically what you've said is, not
15 only do you not have to submit your deposition -- your
16 evidence timely -- how would you not have to do that?
17 But then the other side doesn't even get the benefit
18 of deciding whether they want to cross examine that
19 person or not. You get to -- so if you submit it late
20 and it's still not good enough you then get to go
21 depose the person and try to get it even better. That
22 makes zero sense. That is -- the only person that
23 would be prejudiced in this case, and they've claimed
24 due process and they've had their due process
25 violated. The only party who would have their due

1 process violated is mine.

2 COMMISSIONER JAMES: My question would be is the
3 reason -- and this is typically because this being in
4 the whole process and we all understand that, is the
5 doctors don't always accommodate us with being
6 available before the hearing or at the hearing;
7 sometimes they're not available until after the
8 hearing. So the -- I mean that's just something that
9 we -- we typically deal with, so my -- I'm just
10 looking at -- one of the things I'm looking at is the
11 date that these were noticed.

12 MR. HAIGLER: Correct.

13 COMMISSIONER JAMES: And everybody knew and that
14 was the doctor's availability?

15 MR. HAIGLER: Correct But again, the issue that I
16 have is I should be able to decide whether I get --
17 whether I have to cross examine -- in other words when
18 -- when the Claimant or either party submits an expert
19 report the other side, I think we all agree, is
20 entitled to go cross examine them.

21 COMMISSIONER JAMES: Right.

22 MR. HAIGLER: They don't have to. They don't
23 have to. I don't have to do that. I could just say,
24 Commissioner this doesn't meet any of the standards
25 they need to meet, I'm not going to go cross examine

1 that doctor. You know why I wouldn't go do that?
2 Because then that will give them an opportunity to go
3 beef up their case and that's exactly what happened
4 here. I saw the report and I said this isn't good
5 enough. This isn't good enough for the reasons I'm
6 going to get to in a second. This isn't good enough
7 I'm not -- I'm not going to address -- I'm not going
8 to go -- why would I go depose him? And the only
9 reason Andy's here arguing that he needs the
10 opportunity to depose him is, as we found out later
11 when you looked at the record, he couldn't win with
12 that questionnaire and didn't. And so he needed an
13 opportunity to go do that even though I filed my 21
14 six months prior and he never asked for it; never
15 asked for it, never. He didn't go do a deposition,
16 none of that stuff. And the -- and the whole issue
17 was that the evidence that they tried to get in, not
18 only was it untimely, but I got it two days before the
19 hearing and then I'm supposed to stand up here and
20 say, well, Commissioner, I don't want to go depose
21 this doctor. I don't need to do it anymore. If I'd
22 had the evidence before I could have made that
23 decision. It -- it -- this is the whole point that we
24 run to and now I'm -- I'm in a position where I have
25 to decide do I need to go depose this doctor? I

1 decided I didn't. It was a risk I took, maybe I would
2 have lost, but I decided as -- as counsel for my
3 client that I didn't need to go depose that doctor.
4 To allow Andy to then go do that, to allow the
5 Claimant to then go do that is a complete violation of
6 my due process. There -- that was my right to go
7 cross examine his -- his expert. You don't get to
8 submit live testimony -- a questionnaire in lieu of
9 live testimony and then when you realize it ain't good
10 enough, Commissioner hold on a second, I've got to go
11 -- we've got to stop this hearing so I can go take
12 this -- this doctor's deposition and make sure my --
13 my case is right. You should have done that before.
14 You should have done that before. Shouldn't have
15 submitted it late first of all. And the reason this
16 is whole -- this whole thing is an issue is because of
17 the neck which is the second part of their appeal; the
18 second part of their appeal. The issue that I think
19 Commissioner Taylor had with this questionnaire is
20 that he wrote on there that had nothing to do with the
21 neck; had to do with the right arm. He wrote on there
22 that the right arm was causally related to this
23 accident. Interestingly enough just a month before in
24 his reports he said I'm not an expert for the right
25 arm. I can't give you an expert opinion as to

1 causation on the right arm. He's put that in his
2 narrative report and then fills out a questionnaire,
3 an expert opinion saying the right arm is causally
4 related. Well how do you do that? How do you give an
5 opinion on something -- how do you declare yourself to
6 be an expert on something you've written in a report
7 that you're not an expert on? I suspect she probably
8 read that and said well, I'm not giving this any
9 weight. And then when you look at the evidence, which
10 Andy was kind enough to provide to you, you'll notice
11 that in none of these Urgent Care reports does he
12 reference the neck; not one. Now it says upper trap.
13 Well, that could be shoulder, that could be clavicle,
14 that could be the scapula; that could be any body
15 part. How do you know that's the neck? It doesn't
16 say neck on here; doesn't say neck on here. And then
17 if you'll look at Dr. O'Leary's report it says pain
18 all the way down -- from neck all the way down to the
19 left leg. Well, they never -- he didn't examine the
20 left leg either. Can I finish this just real quick,
21 Commissioner?

22 THE COURT: Actually I'm going to give you an
23 extra minute because you were answering Commissioner
24 James' questions. And Mr. Safran, I'll give you an
25 extra minute as well. All right? Go ahead.

1 MR. HAIGLER: These are the only two documents he
2 gives you that one -- one doesn't reference neck at
3 all. The other one references neck in a cursory
4 manner. What's interesting though is during the
5 period in between these two reports the Claimant filed
6 a Form 50 with the Commission. Guess what wasn't on
7 there? The neck. So if he was -- as he testified in
8 his deposition and at the hearing telling everybody
9 from day one that I had a neck injury, why wasn't it
10 on the Form 50? How come I've never been notified
11 this until -- about this being causally related until
12 two days before the hearing? I can't explain that.
13 The issue is that -- and if you also read, and I put
14 it in my Brief, what's interestingly omitted from
15 their Brief is the -- is the notes that there are I
16 think ten to 12 other reports from multiple different
17 providers that he saw during the course of this claim,
18 none of them reference neck pain. They all say the
19 neck is fine. So I'm a little confused as to the
20 Claimant's testimony that I've been telling everyone
21 from day one. It's in a -- a cursory manner mentioned
22 in one report and then he didn't file -- he filed a
23 Form 50 with the Commission alleging the back, the
24 right arm and didn't mention the neck. Thank you,
25 Commissioner.

1 THE COURT: All right. Thank you very much. Mr.
2 Safran, you'll have four minutes this time.

3 BY MR. SAFRAN: Thank you very much. Let me just
4 respond to a few things. I don't have any question
5 about due diligence, but the point is this; if you're
6 the moving party, as I understand the way this system
7 works; you more or less kind of set the tone for where
8 this case is going in terms of evidence and issues.
9 The evidence -- and this wasn't a matter of saying I
10 get to the hearing, can I take his deposition? This
11 is a matter of setting them and listing them as
12 exhibits and making every indication that I am going
13 forward with it. Now, the bottom line is this; I
14 believe that the whole notion of -- of these documents
15 that we send are to let the other side know exactly
16 where this is going in terms of issues and discovery.
17 If there's outstanding discovery you list it.

18 COMMISSIONER JAMES: Isn't this really in lieu of
19 testimony though?

20 MR. SAFRAN: Well, but I think the problem --

21 COMMISSIONER JAMES: It's not -- it's not really
22 a document, it's testimony. It's de bene esse
23 testimony. So isn't it under 611 and then the
24 question is whether you can amend the -- well, as I
25 understand it you're already all on notice of that

1 fact that these depositions are supposed to go forward
2 and that this -- as I indicated to Mr. Haigler, you're
3 at the doctors' scheduling as to whether it's before
4 the hearing or whether -- or whether there is some
5 point at the hearing or whether they're after.

6 MR. SAFRAN: I can't -- I won't sit here and
7 argue the point that you can't look to both of those
8 Regs and properly discern that there is something
9 about each one of them that can be applied here,
10 because frankly with the Admin -- the APA, you know,
11 the depositions, the questionnaires, they are all kind
12 of overlapping now in some respects. I mean we're
13 using them in many ways almost interchangeably other
14 than the fact that, you know, one is basically with --
15 under oath. But if -- we're using them in effectively
16 the same purpose.

17 COMMISSIONER JAMES: But my point is that
18 everybody -- it's my understanding that everybody is
19 on notice that there's live testimony at this point
20 being solicited and y'all are both in agreement --

21 MR. SAFRAN: Exactly.

22 COMMISSIONER JAMES: -- (inaudible).

23 MR. SAFRAN: Right. And I think either way you
24 -- you're basically -- everybody was onboard that this
25 is what we're doing and I think each party then has

1 the opportunity to do whatever the need may be for
2 their particular case to go forward with those
3 depositions, and then effectively when at the end of
4 the day we're more or less told, well, I'll think
5 about it. And again, I can't think of a circumstance
6 where I have come or been involved in a case where
7 there's a consensus saying we want to take a
8 deposition of a medical person and for whatever reason
9 it doesn't happen. I think, again, the reason these
10 Regs are there and set up the way that they have been
11 is to prevent effectively situations where this
12 occurred; where one person relies on something going
13 forward in order to be part of the evidentiary record
14 and because somebody else thinks, well, maybe now I
15 don't need it, you know, because truth be known, once
16 they had it noticed, once they were the moving party
17 we had no requirement or no need to go and notice them
18 separately because as far as the documents that have
19 been submitted show these are going to take place.
20 And when you show up here it's not like people walk in
21 here with blindfolds on. You effectively have
22 everybody saying we're going to take the deposition
23 and then ultimately the Commissioner saying no. Now,
24 don't in any way detract from doing what is necessary
25 in order to be protective of the record; I believe

1. it's the appropriate thing to do, but to say this
2. would always happen, the simple thing this -- we
3. wouldn't even be here if those things weren't listed
4. as exhibits on a document that tells everybody this is
5. where we're going on the case. And so again, this
6. record has a lot of potholes, and I think frankly in
7. order to deal with navigating them, to get ultimately
8. to where we need to be in terms of the evidence and
9. ultimately the truth, those depositions were
10. essential. They were agreed to and they should be
11. allowed. Thank you.

12. THE COURT: All right. Thank you very much.
13. That concludes this hearing.

14. (The hearing concluded at 3:09 p.m.)
15.
16.
17.

State of South Carolina
Before the
South Carolina Workers' Compensation Commission
WCC File No.: 1512220

Rico Dorsey,)
Employee,)
Claimant,)
vs.) Deposition of
Allwaste Services, Inc.,) RICO A. DORSEY
Employer,) March 28, 2016
and)
Summit Holdings, Inc./)
Bridgefield Casualty)
Insurance,)
Carrier,)
Defendants.)

Deposition on oral examination of RICO
A. DORSEY, reported by Andrea R. Taylor, Court
Reporter and Notary Public in and for the State of
South Carolina; said deposition taken pursuant to
notice of deposition and in accordance with the
South Carolina Rules of Civil Procedure, at
Coleman & Tolen, 120 West Washington Street,
Winnsboro, South Carolina, commencing on Monday,
March 28, 2016, at the hour of 9:59 a.m.

APPEARANCES

Representing the Employee/Claimant:

NICOLAS L. HAIGLER, ESQUIRE
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Columbia, South Carolina 29201

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(Deposition of RICO A. DORSEY)

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EXHIBIT INDEX

REPORTER'S NOTE: No exhibits were marked for
identification.

STIPULATIONS

This deposition is taken in
accordance with the South Carolina Rules of Civil
Procedure.

It is agreed and stipulated by the
deponent and respective counsel that the reading
and signing of the deposition transcript by the
deponent is expressly waived.

WHEREUPON:

RICO A. DORSEY, being duly sworn and
cautioned to speak the truth, the whole truth, and
nothing but the truth, testified as follows:

EXAMINATION

BY MR. HAIGLER:

Q. Mr. Dorsey, please state your full name
for the record.

A. Rico AndrÃ© Dorsey.

Q. Mr. Dorsey, my name is Nick Haigler. I
represent Allwaste Services and Bridgefield
Casualty Insurance Company in your workers'
compensation claim.

Have you ever been in a deposition like
this before?

A. No, sir.

Q. Okay. I don't know if your attorney has

1 gone over any of this with you or not, but I need
2 to do it by rule just to make sure you kind of
3 understand the procedure here. The first thing
4 I'll tell you is no reason to be nervous. This is
5 just -- really I'm just going to ask you some
6 questions and you can just give me answers. It's
7 really that simple. There's no judge. You are
8 under oath, as you've already figured out --

9 A. Uh-huh.

10 Q. -- but I don't have a tie on, we're not
11 in court, so it's not a formal setting, but this
12 is -- this is under oath.

13 A. Uh-huh.

14 Q. This is for real, so. But no reason to
15 be nervous. Most of the questions I'm going to
16 ask you are going to be questions you're going to
17 know the answer to before I even finish my
18 question, they're going to be that easy.

19 Couple instructions. If I ask you a yes
20 or no question, try to say yes or no before you
21 explain your answer.

22 A. Yeah.

23 Q. Sometimes in conversation you may
24 talking with a friend say huh-uh or uh-huh or nod
25 your head. She's going to take down everything

1 that I ask you and you say. So if you say uh-huh,
2 we may not know whether that was a yes or no in
3 three months when we read this. Does that make
4 sense?

5 A. Uh-huh.

6 Q. There you go. And if you forget like
7 that, I'll say, "Did you mean yes or no?"

8 A. Yes, sir.

9 Q. Okay.

10 A. Yes, sir.

11 Q. I promise you everybody does it.

12 A. Okay.

13 Q. So I'll just say, "Mr. Dorsey, did you
14 mean yes or no," I'm not being mean. It's just to
15 protect -- make sure your answer is what you --
16 what you meant it to be. If I ask you any
17 questions that are unclear or poorly worded or you
18 need me to repeat or rephrase, please ask me to do
19 that.

20 A. Okay.

21 Q. My questions are not trick questions.
22 If you don't understand it, I need to know that so
23 I can ask you a question that you do understand.
24 Is that fair?

25 A. Yes, sir.

1 Q. All right. If you need to take a break
2 for any reason, let me know. We shouldn't be here
3 more than 45 minutes, but if you are and you want
4 to take a break or if you want to stand up and
5 answer my questions, I don't really care.
6 Whatever makes you more comfortable is what we'll
7 do.

8 A. Uh-huh.

9 Q. And the last thing I'll say is do you
10 understand you're under oath today?

11 A. Yes, sir.

12 Q. Okay. Anything I've asked you so far or
13 mentioned so far, any questions that you have
14 related to those instructions?

15 A. (Shakes head.)

16 Q. Is that a no?

17 A. No, sir.

18 Q. Okay. What is your date of birth, sir?

19 A. 09/03/1975.

20 Q. How old does that make you?

21 A. Forty.

22 Q. How tall are you?

23 A. Six foot.

24 Q. How much do you weigh?

25 A. Two -- two -- about 215.

1 Q. Have you had any recent weight gain or
2 weight loss of any kind?

3 A. Yes, sir.

4 Q. What kind of --

5 A. Weight gain.

6 Q. How much weight have you gained?

7 A. Probably like -- about 30 -- 30 pounds.

8 Q. And how long a period of time is that?

9 A. Since -- probably since within the last
10 -- I'd say the last six months.

11 Q. What do you attribute that weight gain
12 to, or what do you think is causing it?

13 A. Well, I've been on like steroids and
14 stuff, so from the medicine that they give me.

15 Q. For your injury?

16 A. Uh-huh.

17 Q. Is that a yes? Is that a yes? You said
18 uh-huh.

19 A. Yeah, yeah. Okay. Yes.

20 Q. Sorry.

21 A. Yes. Yes.

22 Q. Okay. So you used to be in the 185
23 range?

24 A. Yeah. Uh-huh.

25 Q. Okay. Do you have a car, a vehicle?

- 1 A. My wife, she has one.
- 2 Q. Do you have your own car?
- 3 A. No, sir.
- 4 Q. Do you have a South Carolina driver's
- 5 license?
- 6 A. I've got a permit, South Carolina
- 7 permit.
- 8 Q. Okay. Did you previously have a
- 9 driver's license?
- 10 A. Yeah.
- 11 Q. Has that license been suspended?
- 12 A. No. When I got out of jail, I had to
- 13 start back over. Yeah.
- 14 Q. Okay. What were you in jail for?
- 15 A. Like drug charges.
- 16 Q. All right. While we're there, let me
- 17 ask you this question. Can you tell me what's on
- 18 your criminal record?
- 19 A. Just drug charges. They might be on
- 20 there; they might not.
- 21 Q. Okay.
- 22 A. They been over like ten, 12 years or so.
- 23 Q. Okay.
- 24 A. Uh-huh.
- 25 Q. When was the last time you were charged

1 with anything, do you know, regarding drugs or
2 anything else?

3 A. It's been a long time. It's been a long
4 time.

5 Q. More than five years?

6 A. Yeah, more than five.

7 Q. Okay. Have you ever been charged with
8 anything outside of drug charges?

9 A. Oh, I had a CDV one time, that's about
10 it.

11 Q. Criminal domestic violence?

12 A. Yes, sir.

13 Q. Okay. Were you convicted of that
14 charge?

15 A. I think I plead guilty to it in jail.
16 While I was in jail, they -- they -- they brought
17 me back to Fairfield County and -- and I just --
18 they just ran it concurrent.

19 Q. With your prior sentence?

20 A. Yeah. Yes, sir.

21 Q. How long were you in prison?

22 A. For like three years.

23 Q. And where were you -- where were you
24 incarcerated?

25 A. Lee County Correctional.

1 Q. Is that the only time you've been
2 incarcerated?

3 A. Yes, sir.

4 Q. I mean, for an extended period of time?

5 A. Uh-huh.

6 Q. Is that a yes?

7 A. Yes, sir.

8 Q. Okay. Did you have any injuries while
9 you were in prison?

10 A. No.

11 Q. Due to working or any altercations or
12 anything like that, did you have any injuries of
13 any kind?

14 A. No. I used to work while I was in
15 prison.

16 Q. Did you have any injuries while you were
17 working?

18 A. Huh-uh.

19 Q. Is that a no?

20 A. No. You're talking about in prison?

21 Q. Yeah.

22 A. No. No.

23 Q. Okay.

24 A. I ain't never got hurt in no prison.

25 Q. All right. Fair enough. And since then

1 you've had -- have you had a South Carolina
2 permit? Or when did you get your permit?

3 A. I got my permit about three years ago,
4 two or three years ago.

5 Q. Have you tried to get a driver's
6 license?

7 A. Yeah, I failed the test like -- the
8 driving test. Yeah, I failed the driving test.

9 Q. When was that?

10 A. I don't remember.

11 Q. Have you tried to take it again, or do
12 you plan to take it again?

13 A. Yeah, I plan to take it again.

14 Q. Okay. And did you mention your wife has
15 a car?

16 A. Uh-huh.

17 Q. Is that a yes?

18 A. Yes.

19 Q. What kind of car does she have?

20 A. She drives a -- that Honda right there.

21 Q. Is it outside?

22 A. Uh-huh.

23 Q. Is that a yes?

24 A. Yes.

25 Q. Sorry, I just want to make sure. You're

1 saying uh-huh. I want to make sure if it was a
2 yes, it was a yes. That's all I'm trying to do.

3 A. Uh-huh.

4 Q. Don't worry, everybody does it. What
5 color is that Honda? I haven't seen it, so I
6 don't know.

7 A. It's like a gold looking.

8 Q. Do you drive that car sometimes?

9 A. Yes, sir, sometimes.

10 Q. Did you drive it this morning?

11 A. Yes, sir.

12 Q. Does she have any other automobiles?

13 A. No, sir.

14 Q. Do you have any -- anything like a
15 motorcycle, moped --

16 A. Huh-uh.

17 Q. -- anything like that?

18 A. No, sir.

19 Q. Okay. How far did you go in school?

20 A. I think I got like ten -- about 11th
21 grade.

22 Q. Did you complete the 11th grade or did
23 you --

24 A. I went back and got my GED while I was
25 incarcerated.

1 Q. Gotcha.

2 A. Uh-huh.

3 Q. Any other education?

4 A. No, sir.

5 Q. No technical school or certificates of
6 any kind?

7 A. No, sir.

8 Q. How long have you been married?

9 A. I think since about 2003, 2004,
10 somewhere up in there.

11 Q. Is this your first marriage?

12 A. Uh-huh.

13 Q. Is that a yes?

14 A. Yes, sir.

15 Q. Do you have any children?

16 A. Yes, sir.

17 Q. How many children do you have?

18 A. I got -- I got ten kids.

19 Q. Are you paying child support on any of
20 those children?

21 A. Yeah. I pay for two.

22 Q. Do you have any outstanding child
23 support at this time?

24 A. Well, a little bit. Little bit. I just
25 tried to catch it up. I just went and took like

1 about -- I took about 1,300 up there, and I think
2 I'm still like \$500 behind.

3 Q. When did you take that 1,300 up there?

4 A. Probably about a month ago.

5 Q. Where did you come up with that cash?

6 A. Through the -- I filed my income tax
7 check. Uh-huh.

8 Q. So you only owe about 500 now?

9 A. Well, might be a little bit more than
10 that now.

11 Q. How much do you think it is?

12 A. Probably about -- might be about between
13 six, \$700.

14 Q. Okay.

15 A. Uh-huh.

16 Q. Are any of -- how many of your children
17 are minors; do you know? And, by that, I mean
18 under the age of 18?

19 A. Deandre, Rianna, Janiya -- total --
20 about -- I think it's like six. Six of them under
21 18.

22 Q. Okay. What's your current address?

23 A. 5 Ben Dorsey.

24 Q. Can you say that again? I'm sorry.

25 A. 5 Ben Dorsey.

1 Q. Like your last name?

2 A. Uh-huh.

3 Q. Is that a yes?

4 A. Yes.

5 Q. Is that a family street or something?

6 A. No. We -- my -- it's a -- well, my
7 great -- it's named after my grandfather. My
8 grandfather bought us like 64 acres, and that's
9 what live on. So they named the road after my
10 grandfather.

11 Q. I gotcha. But that's what your address
12 is?

13 A. Yeah.

14 Q. Is that Winnsboro?

15 A. Yeah.

16 Q. Is that a house or mobile home?

17 A. It's an apartment that I stay in.

18 Q. Gotcha.

19 A. Duplex.

20 Q. Gotcha. Who lives with you at this
21 time?

22 A. Just the kids and the wife.

23 Q. How many kids?

24 A. I've got three kids.

25 Q. Three kids there?

1 A. There, uh-huh.

2 Q. Okay. How long have you lived there?

3 A. Probably about the last five -- five,
4 six years.

5 Q. Do you have any military experience?

6 A. No, sir.

7 Q. Do you know when you were hired by
8 Allwaste; do you remember the day of your hire?

9 A. It was like April the 7th like 2000- --
10 I think it was April the 7th like 2008.

11 Q. Okay.

12 A. Right after I was released I was --
13 after I got my leg monitor off, I went down there
14 and they hired me. Then I got laid off for a
15 short period of time, and then I went back to
16 work.

17 Q. When was this? When did you go back?

18 A. I went back like -- I probably was out
19 of work for about three weeks, two or three weeks.

20 Q. Oh, okay.

21 A. Uh-huh..

22 Q. So nothing major?

23 A. No, no.

24 Q. Okay.

25 A. Huh-uh.

1 Q. So have you -- have you worked anywhere
2 else since 2008?

3 A. No, sir.

4 Q. That's been your only job since 2008?

5 A. Yes, sir.

6 Q. And did you -- were you incarcerated
7 prior to 2008?

8 A. I got out 2000- -- the end of 2007.

9 Q. Okay. And is that the first job you
10 got?

11 A. Yes, sir.

12 Q. Okay. Did you work anywhere between the
13 end of 2007 and April of 2008 when you started at
14 Allwaste?

15 A. No, sir. No --

16 Q. No job during that --

17 A. No, sir.

18 Q. -- three-month period? Okay.

19 A. I was on house arrest.

20 Q. I gotcha. So I assume you were
21 incarcerated from like 2005, 2006, and 2007; does
22 that --

23 A. Yes.

24 Q. -- sound about right?

25 A. Yeah, uh-huh.

1 Q. Where did you work prior to going to
2 prison? What were your jobs? Who were your
3 employers?

4 A. I worked for a company called MCI
5 Contractors. They were from out of Lancaster,
6 South Carolina.

7 Q. What did you do for them?

8 A. I like -- like we built like dormitory
9 -- college dormitories, big churches and stuff
10 like that.

11 Q. Construction work?

12 A. Yes, sir.

13 Q. Where else have you worked?

14 A. I worked at -- they had a little company
15 up here one time called JPM. I worked up there.

16 Q. What was that? What kind of work was
17 that?

18 A. Like warehouse work. And then -- uh-
19 huh. Yeah.

20 Q. Anywhere else?

21 A. I did -- I always mostly like did
22 construction work, like I built -- helped build
23 the Panther stadium and stuff like that. You
24 know, construction always like -- it's took up
25 most of my life.

1 Q. Okay. What were you doing with
2 Allwaste; what was your job?

3 A. I was general labor. Ride on the back.

4 Q. Of the truck?

5 A. Yes, sir.

6 Q. And that's what you would do?

7 A. I would ride on the back of the truck
8 and, you know, I -- you know, you have to get
9 down, you know, get off and on to like get the --
10 pull like garbage cans, whatever they had.
11 Garbage cans, we did yard -- yard waste.

12 Q. Yard debris and things like that?

13 A. Yeah, yeah. Yes, sir.

14 Q. So whatever that was there --

15 A. Yeah.

16 Q. -- you had to -- you were responsible
17 for getting it in the truck --

18 A. Yes, sir.

19 Q. -- basically, is that fair?

20 A. Yes, sir. Yes, sir.

21 Q. Did you ever drive the truck?

22 A. No.

23 Q. You were just the --

24 A. Yes, sir. I ain't got no CDLs. You
25 have to have a CDL to drive.

1 Q. Good deal. And you did that from 2008
2 until this accident in 2015; is that right?

3 A. Yes, sir.

4 Q. Did you work with the same guys every
5 day every shift, or was it different?

6 A. Like most of the time we like we had --
7 we had our -- we had like assigned truck --
8 assigned truck we do, we work on and like -- but,
9 you know, like sometimes you might have a Labor
10 Finder here, you know. Depending on whoever come
11 to work, who -- whoever didn't come to work and
12 stuff like that. You know, you work with
13 different peoples.

14 Q. Okay. Did you have the same route
15 normally?

16 A. Yeah. Uh-huh. Yes, sir.

17 Q. Okay. Who was your supervisor?

18 A. Mr. -- his name Mr. Willie Bell and Mr.
19 Mike Williams.

20 Q. What were their job titles? Who was
21 Willie Bell?

22 A. Supervisor.

23 Q. Okay. Did he ride on the truck with
24 y'all or did he --

25 A. No, he had like his own little personal

1 pickup truck, you know, yeah.

2 Q. So he supervised all the folks --

3 A. Yeah, yeah.

4 Q. -- that were doing it?

5 A. Yeah. Yes, sir.

6 Q. Who was Mike Williams?

7 A. He's the assistant supervisor.

8 Q. So he was under Willie Bell?

9 A. Uh-huh.

10 Q. Is that a yes?

11 A. Yes, sir.

12 Q. Okay. Who was above Willie Bell, do you
13 know, or do you remember?

14 A. It wasn't nobody but Mr. Bell. He ran
15 everything out there.

16 Q. I gotcha.

17 A. Uh-huh. Yeah. I mean he -- we had like
18 peoples over in the office over him, you know,
19 stuff like that, but --

20 Q. Did you ever deal with any of those
21 folks?

22 A. I worked out there eight years, so I
23 dealt with everybody.

24 Q. I gotcha. Did you have someone in HR
25 that you dealt with as far as --

1 A. What's that? HR like --

2 Q. Human resources, like if you had a
3 paycheck issue or you had, you know, a medical
4 note you had to take to someone. I mean, did you
5 have someone you dealt with in the main office?

6 A. Like Mr. Rick Andrews.

7 Q. Okay. And what's his -- what does he
8 do?

9 A. He's like the -- he's like the head. He
10 was like the --

11 Q. Like the president of the company?

12 A. Yeah. Yes, sir. Yes, sir. Well, he
13 was -- he was like -- he's the president now. I
14 think the boss man that owned the company, he
15 turned it over to --

16 Q. To Rick?

17 A. Uh-huh.

18 Q. Is that a yes?

19 A. Yes, sir.

20 Q. Okay. Did you make an hourly rate? Did
21 you get paid by the hour?

22 A. Yeah.

23 Q. How much did you make an hour?

24 A. Oh, my last -- I think I was making
25 about \$10.34 an hour.

1 Q. How many hours a week did you normally
2 work?

3 A. I worked 50 -- most of the time like 50,
4 58, you know, because I was always that guy they
5 can call on to go do extra, you know.

6 Q. Did you normally work overtime every
7 week?

8 A. Yeah. Uh-huh. Yeah.

9 Q. Did you have any kind of health
10 insurance or anything through the company?

11 A. Yeah. Uh-huh.

12 Q. Do you still have that?

13 A. Like last time I checked, they like --
14 they stopped like some of my -- they stopped like
15 some of my insurance back in like November of --
16 in November. They didn't never send me no letter
17 or nothing telling me that I need to pay the bill,
18 so, you know.

19 Q. I understand.

20 A. Uh-huh.

21 Q. Do you know if you actually have health
22 insurance right now? Have you called anybody to
23 find out what's going on or what options you have?

24 A. Well, they change insurance companies so
25 much to the way like -- they change insurance

1 company like every year or every six months
2 whenever the quotas have to meet. But I -- they
3 sent me -- I got a little paper in the mailbox
4 like last week and they -- I don't think I've been
5 covered like this year. I don't think I've been
6 covered.

7 Q. Gotcha.

8 A. Because I been going to the doctors and
9 I've been paying for it out of my pockets.

10 Q. You have been?

11 A. Yeah.

12 Q. What kind of medical treatment have you
13 paid for out of your own pocket?

14 A. Like I paid for medicine; I paid for --
15 I paid for doctor visits, you know, paid for
16 doctor visits, and paid for --

17 Q. Did you keep the receipts for that
18 stuff?

19 A. -- treatments. Yeah. Well, yeah, I've
20 got it somewhere. I'm pretty sure I've got --
21 keep up with my stuff, but you know, that ain't no
22 problem going -- going and getting no receipt or
23 nothing like that.

24 Q. You could do that?

25 A. I'm pretty sure I could.

1 Q. Okay.

2 A. I'm pretty sure they got records of it.

3 Q. Do you know how much you've paid out of
4 pocket for this? And you're talking about stuff
5 related to this accident?

6 A. Yes, sir, because --

7 Q. Do you know how much you're talking
8 about you've paid out of pocket, you think?

9 A. No, I don't have no like flat idea,
10 because I've been paying for like numerous --
11 numerous visits.

12 Q. Have you paid for like physical therapy
13 and things like that?

14 A. No, I ain't paid for no physical
15 therapy. They -- they had -- they paid for my
16 physical therapy.

17 Q. Well, who -- have you paid to like go to
18 the hospital and get medication or --

19 A. Yeah.

20 Q. Which hospital have you gone to?

21 A. I done went to numerous hospitals trying
22 to get, you know, till I find out what's wrong
23 with me.

24 Q. Okay. Which hospitals have you gone to?

25 A. Fairfield, Richland, Providence.

1 Q. When's the last time you went to
2 Providence?

3 A. I'm not sure, but it's about two months
4 -- about two months ago.

5 Q. What about Richland; how long's it been
6 since you've been to Richland?

7 A. Probably about a month or something.

8 Q. Excuse me?

9 A. About a month or something.

10 Q. What about Fairfield, how long's it been
11 since you've been there?

12 A. Probably about -- about -- probably
13 about -- at least about two months.

14 Q. Are you currently taking medications?

15 A. Yeah.

16 Q. What are you taking right now?

17 A. I'm taking -- been taking antibiotic.

18 I've been taking -- I take a, it's a pain pill. I
19 take a pain pill, and I take muscle relaxers.

20 Q. And where do you -- where did you get
21 the pain pills? Who gave them to you?

22 A. It was prescribed.

23 Q. By who?

24 A. Like by the hospital.

25 Q. Do you know which one?

1 A. I think Richland. Richland. It might
2 be Providence.

3 Q. Okay. Same with the muscle relaxers,
4 did you get those from there or somewhere else?

5 A. Yeah, yeah, yeah, yeah.

6 Q. Okay. Have you ever had a prior
7 workers' compensation claim?

8 A. No, sir.

9 Q. Never?

10 A. Never.

11 Q. You ever been injured on the job and
12 didn't file a workers' comp claim for whatever
13 reason?

14 A. No. I mean, one day I was riding on the
15 back of the truck and the step came off. But I
16 never did what you call, you know, try to -- they
17 sent me to the doctor and stuff like that.

18 Q. Okay. Anything else?

19 A. No. I ain't never filed no -- no claims
20 or nothing.

21 Q. You ever been in a car accident?

22 A. When I was real, real young, probably
23 about 20 -- about 30 years ago.

24 Q. When you were like ten years old?

25 A. I was probably about 12, thereabouts.

1 Q. Okay. Have you been -- have you been in
2 any kind of car accident since then?

3 A. Huh-uh.

4 Q. Is that a no?

5 A. No. Wait a minute. My -- my -- I had a
6 friend, he -- he ran into the back of me probably
7 when I was like 15 or 16. I was driving my mother
8 car.

9 Q. Anything else?

10 A. He had had a -- no.

11 Q. Did you have any injuries in that
12 accident?

13 A. No, sir.

14 Q. Have you ever had a car accident where
15 you had injuries? Let me ask it that way.

16 A. No, sir.

17 Q. Okay. Have you ever given a deposition
18 like this before?

19 A. No, sir.

20 Q. Have you ever had any prior back
21 problems before this accident?

22 A. No.

23 Q. Have you ever treated with anyone for
24 back problems before this accident?

25 A. No.

1 Q. Did those questions make sense?

2 A. You said have I ever been -- the last
3 question you said?

4 Q. Yeah. Let me make sure I'm clear. Have
5 you ever had -- my question to you is have you
6 ever been treated by a doctor for back problems or
7 the chiropractor or anyone else for back problems
8 before this accident?

9 A. No, sir, not to my knowledge. Huh-uh.

10 Q. What about leg problems or knee problems
11 or anything like that? Have you ever had prior
12 knee problems that you've treated with a doctor
13 for?

14 A. I had -- I had a -- like the knee, this
15 side of my knee (indicating).

16 Q. You're talking about the -- you're
17 pointing to your right knee?

18 A. Yes, sir.

19 Q. You're talking about the outside of your
20 right knee? Where -- I can't see where you're
21 pointing.

22 A. Yeah. Yeah.

23 Q. Okay.

24 A. I had a surgery on my knee. Well, I had
25 a tube in it. It was built up fluid in it. Yeah.

1 Q. When did you have surgery on your knee?

2 A. Probably back in, I'll say about 2002.

3 Q. Who did that surgery, do you know?

4 A. Dr. Mark Locke.

5 Q. Excuse me?

6 A. Dr. Mark Locke.

7 Q. Locke?

8 A. Yeah.

9 Q. Do you know where he's located?

10 A. Uh-huh.

11 Q. Where?

12 A. He's at Moores Orthopaedics.

13 Q. In Columbia?

14 A. Yes, sir.

15 Q. Have you ever had any other kind of
16 surgery there with any doctors at Moore?

17 A. Just -- just the right here, my arm
18 (indicating).

19 Q. The scar that you just showed me?

20 A. Uh-huh.

21 Q. Is that a yes?

22 A. Yes.

23 Q. So you've had right arm surgery?

24 A. Yeah. Uh-huh.

25 Q. When did you have that done?

1 A. About 2000- -- 2002. Somewhere up in
2 there.

3 Q. Who did that surgery?

4 A. Mark Locke.

5 Q. At Moore?

6 A. Uh-huh.

7 Q. Is that a yes?

8 A. Yes.

9 Q. How did you injure your right arm?

10 A. I had a accident.

11 Q. What kind of accident?

12 A. A bike accident.

13 Q. Motorcycle accident?

14 A. Uh-huh. Uh-huh.

15 Q. Is that a yes?

16 A. Yes.

17 Q. And what were your injuries in that
18 motorcycle accident?

19 A. Just my arm and I scarred up my knee
20 real good, so that was it.

21 Q. What kind of surgery did you have in
22 your right arm; do you know? I mean, what did
23 they do? Did you break your --

24 A. They put hardware in -- yeah, I -- yeah,
25 I tried to brace myself and my arm shot -- my bone

1 shot up out.

2 Q. Out of your shoulder?

3 A. Uh-huh.

4 Q. Is that a yes?

5 A. Yes.

6 Q. Okay. I'm not putting words in your
7 mouth. I'm --

8 A. Yeah.

9 Q. I want you to tell me what happened.

10 A. Yeah.

11 Q. Okay. And you've got a scar --

12 MR. COLEMAN: Anybody need coffee or
13 anything?

14 MR. HAIGLER: I'm good.

15 MR. COLEMAN: Go ahead. Rico, you need
16 anything?

17 THE WITNESS: I might get a little water
18 or coffee or something.

19 BY MR. HAIGLER:

20 Q. The scar on your --

21 A. Uh-huh.

22 Q. -- arm is how -- I mean, can you show me
23 that again?

24 A. (Witness complies.)

25 Q. Looks like it's about six inches maybe?

1 A. Yeah.

2 Q. At least?

3 A. Uh-huh.

4 Q. Is that right?

5 A. Yeah.

6 Q. And that's from your motorcycle accident

7 --

8 A. Yeah.

9 Q. 2002?

10 A. Uh-huh.

11 Q. Is that a yes?

12 A. Yes, sir.

13 Q. Okay. Now, between 2002 and when you
14 had this accident in July of 2015, this workers'
15 comp accident, did you have any symptoms with that
16 arm or did you have any problems with it or --

17 A. No.

18 Q. None whatsoever?

19 A. No.

20 Q. Do you have a family doctor?

21 A. Yeah. I go to Dr. Wofford.

22 (Mr. Coleman returned to room.)

23 Q. Can you spell that for me?

24 A. Wofford, like Wofford College, W-A-F-F-
25 O-R-D.

1 Q. Gotcha.

2 A. Uh-huh. I think it's --

3 Q. And where -- what's the name of that
4 practice?

5 A. Eau Claire Family Practice.

6 Q. I gotcha. Okay. How long have you been
7 going there?

8 A. For about a year and some -- about a
9 year and something.

10 Q. Where did you go for just general
11 treatment before?

12 A. I used to go to Dr. Patrick.

13 Q. Where is Dr. Patrick?

14 A. He's right here located right next to
15 the hospital.

16 Q. Here in Winnsboro?

17 A. Uh-huh.

18 Q. Is that a yes?

19 A. Yes, sir.

20 Q. How long did you go to Dr. Patrick?

21 A. I went to him for -- for about a year.

22 Q. Okay. And where did you go before Dr.
23 Patrick?

24 A. I always went to like the emergency room
25 or anything if I got like sick or something. I

1 ain't even went --

2 Q. The one here in Winnsboro?

3 A. Yeah. Uh-huh.

4 Q. Anywhere else?

5 A. No. No.

6 Q. So you didn't have a family doctor until
7 about two, two and a half years ago?

8 A. Well, I had a family doctor; he was from
9 Providence Northeast, but he moved. He moved, so
10 yeah, when he moved I had to like -- when he moved
11 I had to like switch doctors, so I was running
12 around from doctor to doctor.

13 Q. Who was that doctor at Providence
14 Northeast?

15 A. I can't think of his name right now it's
16 been such a -- such a while ago.

17 Q. Okay. Have you ever had any other
18 surgery other than that arm?

19 A. (Shakes head.)

20 Q. None?

21 A. (Shakes head.)

22 Q. Can you say no just whenever you get a
23 chance. I know you're drinking; take your time.

24 A. No, sir.

25 Q. Okay. Are you right or left handed?

1 A. I'm right. Uh-huh.

2 Q. Have you treated at Moore for anything
3 else other than your right arm and your knee?

4 A. Say that again.

5 Q. Have you treated at Moore Orthopaedic
6 for any other injuries other than your right arm
7 and your right knee?

8 A. Huh-uh.

9 Q. Is that a no?

10 A. No, sir.

11 Q. Okay. How long has it been since you've
12 been to Moore Orthopaedic?

13 A. It's been like -- I went -- I went about
14 -- I went sometime or another like -- like since
15 this accident.

16 Q. Who did you see?

17 A. I can't think of his name.

18 Q. You went to Moore?

19 A. Well, yeah, I went to -- she was a lady.
20 It was a lady. It was a lady doctor, I think.

21 Q. What did she do for you?

22 A. She -- they did a nerve study on my arm.
23 Yeah, on my arm.

24 Q. Okay. And when did you have that done?

25 A. I'm not sure of the date, but it was

1 like since the accident that took place.

2 Q. Okay.

3 A. They diagnosed me with carpal tunnels
4 and -- carpal tunnels and something else. They
5 said I was get -- I was getting carpal tunnels or
6 something in my elbow. They said that was the --
7 uh-huh.

8 Q. Did you see a doctor other than this
9 doctor who did the nerve study?

10 A. No. She was a lady.

11 Q. How did you get to that appointment? I
12 mean did your --

13 A. My wife took me.

14 Q. I mean, no, but did your attorney send
15 you there or did workers' comp approve that or did
16 you go on your own or --

17 A. I went on my own, yeah. Because workmen
18 comp was taking like forever trying to get me to a
19 doctor, you know.

20 Q. Who have you seen? What doctor have you
21 seen for your arm?

22 A. Well, I can't think of her name, but I'm
23 pretty sure I've got the paperwork at home
24 somewhere, but --

25 Q. Have you told your -- well, can't ask

1 you that.

2 A. Yeah. Yeah.

3 Q. Do you -- I mean, how many times have
4 you been to treat with someone for your arm?

5 MR. HAIGLER: Can we go off the record
6 for a second.

7 (Off the record)

8 BY MR. HAIGLER:

9 Q. We were just trying to find out --
10 figure out who this physician was. Are you sure
11 it was at Moore Orthopaedic?

12 A. Yeah. I think he got -- you got that --
13 should have it on file.

14 Q. Do you know where that physician's
15 located? Like is it Lexington?

16 A. No, it's --

17 Q. Is it Columbia?

18 A. -- it's right beside -- right beside the
19 hospital, Medical Park.

20 Q. I gotcha.

21 A. Uh-huh.

22 Q. I gotcha.

23 A. Right beside the hospital, Medical Park.

24 Q. Do you have any more appointments
25 scheduled with that doctor?

1 A. No. Well, no, it's just that when I
2 talked to the guy -- the guy like Mr. Marcus
3 Butts, he told me --

4 Q. Mr. who?

5 A. Mr. Butts, he told me that I couldn't be
6 going to like doctors and stuff like that.

7 Q. Who is that? Who is the person you
8 talked to?

9 THE WITNESS: Well, what's Mr. Butts
10 name?

11 Q. He can't answer.

12 MR. COLEMAN: Yeah. I can't. I can't
13 answer.

14 THE WITNESS: Okay.

15 A. Well, his name was Marcus Butts. He's
16 from the -- Bridgefield.

17 Q. Oh, he's from the insurance company?

18 A. Yeah, he's from the insurance company.

19 Q. Gotcha.

20 A. He was one of my first adjusters.

21 Q. Marcus Botts?

22 A. Yeah.

23 Q. B-O-T-T-S?

24 A. Yeah.

25 Q. Gotcha.

1 A. Uh-huh.

2 Q. That helps.

3 A. That's it.

4 Q. That helps. Thank you. All right.

5 (Off the Record)

6 BY MR. HAIGLER:

7 Q. Well, let's go back then. Tell me about
8 your accident. Tell me what happened. I had the
9 -- just to be clear, I have the date as July 17th;
10 is that right?

11 A. Yeah. That's the day. That's the date.

12 Q. Can you tell me what happened?

13 A. I know we was out there working at Irmo.
14 I think the name of the community was --

15 Q. What road was it on; do you remember?

16 A. I don't know exactly what road; I done
17 traveled so many roads. But I was working. We
18 hired this -- we hired this lady. She been hired
19 for us about -- she must have been working with us
20 for like less than a -- less -- about less than a
21 week, I want to say, if that long. And with my
22 normal driver, he was out that day. He got sent
23 home, so she had to drive for us.

24 And I was working. While I was working,
25 I had two other guys on the truck that was working

1 with me. And the lady, she just -- I went to go
2 grab a can, I had my back turned. I went to go
3 grab a can like I normally do, and all the sudden,
4 by the time one of the coworkers got ready to
5 holler, it was too late, yep.

6 And she knocked me -- she knocked me
7 from maybe like -- she knocked me from about from
8 that wall through that wall, through a little bit
9 through that wall (indicating).

10 Q. Did you fly through the air?

11 A. Yeah. You get hit with a big piece of
12 steel like that.

13 Q. How far did you go?

14 A. I went from about that wall to that --
15 to that -- to that wall to wall.

16 Q. What ten, 12 feet? Longer? Shorter?

17 A. Just -- just --

18 Q. I'm asking you. I'm not trying to put
19 words in your mouth.

20 A. I want to say about from -- much as I
21 got throwed from here from that wall right there
22 to that, however -- however many feets that is,
23 yeah.

24 Q. I mean, I'm --

25 A. Uh-huh.

1 Q. Did you get hit and fly through the air
2 and --

3 A. Well, yeah. She backed into me like I
4 was -- I had my back turned. I had my back
5 turned, I was walking to go get a can. So she --
6 she hit me, and when she caught me in the back, it
7 just knocked me from --

8 Q. I'm going to guess that's 12 feet --
9 ten, 12, feet?

10 A. About ten -- I'd say about ten feet.

11 Q. Okay.

12 A. Yeah.

13 Q. And did you -- were you in the air for
14 that long, or did you just -- did it just -- I
15 mean tell me how you --

16 A. It mostly pushed me. It mostly pushed
17 me and like throwed me up in the air like -- yeah,
18 it pushed me and throwed me up in the air like.
19 Because see, I -- I got hit with the back of the
20 truck.

21 Q. I gotcha.

22 A. Uh-huh.

23 Q. And that was about ten feet you went?

24 A. Yeah.

25 Q. All right. Did you fall on the ground?

1 A. Yes, sir.

2 Q. Did anybody --

3 A. I was glad -- I glad -- I was glad I was
4 walking because it -- the way I was walking, I was
5 walking, I'm glad that I was walking because it's
6 like that how I was able to get the push; that's
7 how I was able to get the push because, other than
8 that, she probably would have just ran over me.

9 Q. So she didn't run over you?

10 A. No, no, she didn't run over me. She --
11 not -- you know, if I got ran over I would have --
12 she hit me with the -- okay. Let me tell you.
13 This is how it was. I was working. She's --
14 she's -- she's working. She ain't never drove a
15 truck that big. She always had drove a 32-yarder
16 she said, and she was driving like a 55-yarder
17 that day.

18 Q. Who was this, by the way?

19 A. Ms. Kathy.

20 Q. Katherine?

21 A. Ms. Kathy. Uh-huh.

22 Q. Kathy?

23 A. Uh-huh.

24 Q. Okay. And tell me what --

25 A. Yeah. Yeah, by me -- by me walking --

1 by me walking, I was walking to go get the can and
2 she just -- she backed up like --

3 Q. So were you walking away from the truck,
4 or were you walking to the truck or --

5 A. No, I was walking away from the truck.
6 Because she was parked over here -- see, and we
7 was in a cul-de-sac, and she was parked -- she was
8 parked right there. And then we like bring the
9 cans to the truck once we're in a cul-de-sac.

10 So I was walking back to get another can
11 and take another can back, and, all the sudden,
12 just backed up and there go the lick. She caught
13 me straight center of my back.

14 Q. Okay. Now, you're -- I want to -- this
15 is important.

16 A. Uh-huh.

17 Q. So where did you -- where did the truck
18 make contact to your body?

19 A. In my back.

20 Q. In your back?

21 A. Back and my arm. It's back, arm.

22 Q. Okay. Where in your back?

23 A. From right here (indicating) --

24 Q. You're pointing to your left middle of
25 your back; is that right?

1 A. From up here from this height -- from
2 this height right here all the way down across the
3 top of my butt.

4 Q. Okay. So chest --

5 A. We've got -- we've got a plate, you
6 know, like where the truck has got like a plate
7 where we dump the cans and stuff at.

8 Q. You pointed to chest high to right above
9 your rear end; is that right?

10 A. About right -- I know the lick came from
11 about right up in here, because I was -- I'm still
12 swole from up there. From right here to about
13 right here (indicating).

14 Q. Okay. Did you just point to the middle
15 of your thigh?

16 A. Not the middle of the thigh.

17 Q. Top of the thigh?

18 A. Yeah.

19 Q. Okay. So from kind of the bottom of
20 your chest to the --

21 A. We got --

22 Q. -- top of your thigh?

23 A. Uh-huh.

24 Q. Is that right?

25 A. Yeah. The bed of the truck is about

1 that wide (indicating). You know, with that --

2 Q. Did it make contact with you anywhere
3 else?

4 A. No.

5 Q. Other than here to here, did it make
6 contact with anywhere else on your body?

7 A. My arm (indicating).

8 Q. Your right arm?

9 A. Yes, sir.

10 Q. Where did it hit your right arm?

11 A. It caught me up in -- up in here pretty
12 good. All this was swole (indicating).

13 Q. You're pointing to the back of your --

14 A. Yeah.

15 Q. -- kind of at --

16 A. Yeah.

17 Q. -- your elbow area?

18 A. Yeah. Uh-huh.

19 Q. And who else was around when this
20 happened?

21 A. Sammy Bell. I've got a -- it was a
22 Labor Finder with us that day. I can't think --
23 can't think of his name. You know, they hire
24 people off the streets, you know.

25 Q. Okay. Sammy Bell, is he related to

1 Willie Bell?

2 A. Uh-huh.

3 Q. Is that a yes?

4 A. Yes, sir.

5 Q. Who else was there; did you know?

6 A. (No response.)

7 Q. But you knew Kathy and Sammy. Anybody
8 else?

9 A. No.

10 Q. And you're --

11 A. I mean, that Labor Finder, you know.

12 Q. Okay.

13 A. I had worked with him before, but I just
14 don't know his name like that. He wasn't from
15 around here. You know, they -- I think he's
16 originally from D.C. or something.

17 Q. And your testimony is the contact made
18 you go about ten feet --

19 A. Yes, sir.

20 Q. -- flying about ten feet; is that right?

21 A. Yes, sir.

22 Q. And then onto the ground?

23 A. Yes, sir.

24 Q. Okay. What happened next?

25 A. Sammy and them ran up to me and they,

1 you know, they wanted to make sure I was all
2 right. But it was about the end of the day; they
3 wanted to make sure I was all right.

4 Q. Did Sammy see the impact?

5 A. Uh-huh.

6 Q. Is that a yes?

7 A. Yes, sir.

8 Q. Any doubt in your mind about that? I
9 mean, you know he saw it?

10 A. I know he saw it.

11 Q. Okay. All right. What about Kathy, do
12 you know if she was able to see it through the
13 mirror or anything like that?

14 A. No, because I was -- I had to be in the
15 -- she didn't -- she didn't see it because if she
16 would have seen me back there, I'm pretty sure you
17 wouldn't -- if I wasn't -- if I wasn't -- if I was
18 just standing still or something with my back
19 turned, it probably would have mauled me, ran over
20 me. But so happened I was in motion of working.
21 I was walking away from the truck when she came up
22 and --

23 Q. Okay.

24 A. -- gave me the lick.

25 Q. She did not run over you, that's -- is

1 that true?

2 A. No. She -- she -- I was struck by the
3 truck.

4 Q. I gotcha.

5 A. You know, I don't know what you claim to
6 be ran over me, you know.

7 Q. Okay. Gotcha. I'm with you.

8 A. I was struck by the truck.

9 Q. I understand.

10 A. I mean, I think ran over mean like you
11 run over like a --

12 Q. Cat or something?

13 A. Yeah, yeah.

14 Q. Yeah, that didn't happen to you?

15 A. Yeah. No, no, no, no.

16 Q. Okay. Just making sure.

17 A. No, it didn't.

18 Q. Did you go -- it looks like you went to
19 Doctors Care in Lexington?

20 A. Uh-huh.

21 Q. Does that sound right?

22 A. Yes, sir.

23 Q. How many times did you go there?

24 A. I went like -- I think I went about five
25 times till he told me that it wasn't nothing --

1 nothing else he can do for me, that he told -- he
2 had told -- he had sent to Mr. Botts or whoever
3 that he told that -- that when I need to see a
4 orthopedist.

5 Q. Okay.

6 A. I think I went about five, six times
7 then. After talking with Mr. Botts, he told me to
8 go back to -- after I was going to like other
9 doctors and stuff trying to get the help because
10 he was taking so long with trying to help me get
11 me help.

12 Q. Okay.

13 A. He was like "You can't go to other
14 doctors," like "Go back to Doctor Care." I went
15 back to Doctor Care, they told me it ain't nothing
16 we can do for you.

17 Q. Okay. And it looks like you eventually
18 went to -- looks like you did some physical
19 therapy; is that right?

20 A. Yes, sir.

21 Q. Did that help you at all?

22 A. Well, it helped me. It was helping me
23 at the time, but they took me out of it. They
24 took me out of physical therapy because they
25 didn't want -- I mean workmen comp, they didn't

1 pay the bill at first, so that knocked me out of
2 work -- out of physical therapy. And then the
3 next time I went to physical therapy, they stopped
4 -- the took me out because they said I wasn't
5 making no progress after I had an epidural that
6 day. I had an epidural the day before.

7 Q. Okay. Then you went to Midlands
8 Orthopaedics?

9 A. Uh-huh.

10 Q. Is that right?

11 A. Yes, sir.

12 Q. Started treating with Dr. O'Leary?

13 A. Yes, sir.

14 Q. And then Dr. LaMotta?

15 A. Yes, sir.

16 Q. Did you have an injection?

17 A. They gave me one injection.

18 Q. Did that help you?

19 A. It did. It -- it -- it -- I didn't -- I
20 didn't really get a chance to like -- because the
21 doctor, when he told me, when he gave me an
22 injection he told me, he's like, "Son, you can't
23 move around for like -- you can't move around for
24 like three days. You've got to give the medicine
25 time enough to work." But I had to go to physical

1 therapy the day after I got the injection and they
2 say -- he told me if I did any movement or
3 anything that the injection, the medicine where he
4 places it, it'll -- it'll like explode, like it'll
5 go different places like because I ain't give it
6 time to heal.

7 Q. Who told you this?

8 A. The guy who -- the guy who gave me the
9 shot. He was like --

10 Q. I can't hear you.

11 A. The guy who gave me the shot.

12 Q. Oh, doc -- is it Dr. Wetzel?

13 A. Dr. Wetzel, yeah. He wanted me to like
14 lay down for like three days, or he's like stay
15 off your foot for like three days after you get
16 the shot so the medicine will take time to what
17 you call -- but I had to go to physical therapy
18 the next day.

19 Q. Okay.

20 A. You know.

21 Q. Now, it looks like you saw Dr. LaMotta
22 on February the 4th; does that sound about right?
23 He was the doctor who was going to look at you for
24 surgery on your back; do you remember that?

25 A. Okay. Yeah, I remember that.

1 Q. And then he -- have you seen any doctor
2 since then?

3 A. Yeah.

4 Q. For your back? Have you seen a doctor
5 for your back since February the 4th?

6 A. Well, not -- not for -- not from them
7 because not through --

8 Q. Not through workers' comp?

9 A. Not through workmen's comp.

10 Q. On your own, have you seen a doctor?

11 A. Yes, sir.

12 Q. Who did you see?

13 A. I seen -- I went to -- Palmetto Health
14 referred me to Palmetto Spine and Surgery.

15 Q. And who did you see?

16 A. A Dr. Feeley.

17 Q. Felmlly?

18 A. Yeah, Felmlly.

19 MR. COLEMAN: Let me -- hold on.

20 A. I think that's his name.

21 MR. COLEMAN: Do you want me to -- It's
22 Peelle, wasn't it?

23 THE WITNESS: Well, I'm not --

24 MR. HAIGLER: Oh, okay.

25 MR. COLEMAN: I think it was -- I mean

1 he -- go off the record.

2 (Off the Record)

3 BY MR. HAIGLER:

4 Q. So not Dr. Felmlly? We're back on the
5 record. Do you know? You don't know?

6 A. Huh-uh

7 Q. Okay. That's fair enough. But you saw
8 a doctor at Palmetto Spine?

9 A. Yes, sir.

10 Q. That's what you know. And when did you
11 see that doctor?

12 A. Probably about -- I want to say about a
13 month and -- about a month and a half ago. Month
14 and a half.

15 Q. A month and a half ago?

16 A. Uh-huh.

17 Q. Is that a yes?

18 A. Yes, sir.

19 Q. Have you seen any doctors since then?
20 Except for your back -- excuse me. Have you seen
21 any doctors for your back, or have you followed up
22 with that practice since then?

23 A. Well, they was waiting on me to -- they
24 waiting on me to -- they was waiting on me to like
25 -- they was waiting on to hear something from

1 workmen's comp. They was trying to get the -- see
2 can workmen comps, they want me to get workmen's
3 comp to --

4 Q. Approve?

5 A. Yeah. And he said I need something like
6 an LEG or something. An LCG or something.

7 Q. Okay.

8 A. He said he wanted to see what I can -- a
9 full body, a full -- like a full body exam or
10 something like that.

11 Q. I gotcha. Okay. And you haven't had
12 that done, I presume?

13 A. No, sir. Waiting on them.

14 Q. So you've been to that practice one
15 time?

16 A. Twice.

17 Q. When was the last time? Month and a
18 half ago or more recent?

19 A. I'll say about -- less than about a --
20 probably like a month. Because I had two
21 appointments with them.

22 Q. Okay. That's fine. I'm not -- I mean,
23 I'm just asking you.

24 A. Uh-huh.

25 Q. And then you've seen the other doctor at

1 Moore Orthopaedic that did the EMG or nerve study

2 --

3 A. Uh-huh.

4 Q. -- on your arm; is that right?

5 A. Uh-huh.

6 Q. Is that a yes?

7 A. Yes.

8 Q. Are you treating with any other doctors
9 at this point in time, your chiropractor or
10 anybody else?

11 A. Say that again.

12 Q. Are you treating with any other doctors
13 other than this doctor who diagnosed you with
14 carpal tunnel or whatever that issue was with your
15 arm?

16 A. Huh-uh.

17 Q. And the people at Palmetto Spine. Are
18 you treating anywhere else on a regular basis?

19 A. No.

20 Q. Or have you seen any other doctors for
21 your injuries?

22 A. I've seen so many doctors. I've seen a
23 lot of doctors.

24 Q. Have you seen anybody else other than
25 the people we've talked about?

1 A. I mean, I go to my regular doctor, I go
2 to Dr. Wofford, I go to -- I've been to doctors in
3 the hospital. I've been to a bunch of doctors.

4 Q. Are you doing any treatment right now?
5 Are you doing physical therapy or anything else
6 right now?

7 A. No, they ain't got me -- I ain't got no
8 -- they took me out of physical therapy. Workmen
9 comp took me out of physical therapy.

10 Q. When was the last time you had treatment
11 of any kind? When was the last time you saw a
12 doctor for these injuries?

13 A. Last time I been to the doctors like --
14 been about three -- about three, four weeks ago.

15 Q. Who did you see?

16 A. I got the paperwork at home. I seen
17 like -- no, I went -- the last place I went to was
18 out there -- they by that -- you know anything
19 about the new hospital they just built out there
20 at Irmo?

21 Q. I do.

22 A. Okay. That's where I've been, the spine
23 place that they sent me to is out there.

24 Q. At Parkridge?

25 A. Parkridge. Uh-huh.

1 Q. Okay. How many times have you been out
2 there?

3 A. Like -- I want to say about two times so
4 far. They waiting on -- waiting on the word from
5 workmen comp to schedule for the -- for me to
6 schedule for the LEG or something -- something
7 they call it.

8 Q. So a test they want to run?

9 A. Yeah, yeah, yeah.

10 Q. Okay.

11 A. Yeah.

12 Q. That's fine. You don't need to know all
13 those words.

14 A. Uh-huh.

15 Q. Do you have any work restrictions at
16 this time?

17 A. Yeah.

18 Q. What are those?

19 A. He told me don't lift nothing over 15
20 pounds, don't do no bending and no -- no like
21 standing.

22 Q. Who told you this?

23 A. The last doctor I seen.

24 Q. Who is that, do you know? Was it the
25 doctor from Palmetto Spine?

1 A. Uh-huh.

2 Q. Is that a yes?

3 A. Yes, sir.

4 Q. Okay. Did you give those restrictions
5 to your attorney? He can't answer for you. I'm
6 just asking --

7 A. Okay.

8 Q. -- do you know if you gave that to your
9 attorney?

10 A. No. I'm not sure.

11 Q. Did you give it to your employer?

12 A. I think -- I'm not sure. Last time I
13 knowed, I ain't had no employer. They told me
14 that they had, what you call, they been released
15 me from -- from work duty.

16 Q. When was that?

17 A. This was like about the first -- about
18 the first week after being out of work.

19 Q. Okay. Who told you that?

20 A. I had -- I had signed up for
21 unemployment because workmen comp wasn't -- I
22 hadn't gotten the workmen comp or nothing started
23 going, and I went and signed up for unemployment,
24 and they put on there that -- they put on my
25 unemployment, you know, when you go to the

1 computer, they put on there that -- say I -- say I
2 -- they said I -- they said I just -- said I just
3 quit or something; say I just quit.

4 Q. Okay.

5 A. Yeah, they put on there say I just quit
6 or something.

7 Q. Did you get unemployment?

8 A. No, sir.

9 Q. Were you denied?

10 A. I never did go through it because I
11 didn't go -- I didn't file for it because --
12 because my attorney, he had got my --

13 Q. I don't want to know anything --

14 A. Okay.

15 Q. -- your attorney said to you --

16 A. Okay.

17 Q. -- or any conversations you had with
18 him. So if you're getting ready to tell me that,
19 then don't.

20 A. No, no. I was going to say he got my
21 workmen comp started.

22 Q. I gotcha. All right.

23 A. Okay.

24 Q. Fair enough. Were you aware that Dr.
25 LaMotta released you on February 4th with no

1 restrictions?

2 A. No, sir.

3 Q. He didn't tell you that?

4 A. Huh-uh.

5 Q. Is that a no?

6 A. No, sir.

7 Q. Okay. Tell me what symptoms you're
8 having right now. Tell me what -- just describe
9 for me what's going on.

10 A. I've got nerves -- my nerves, just
11 shooting pain, throbbing pain.

12 Q. Where?

13 A. In my -- from my back down -- down in my
14 leg.

15 Q. Which leg?

16 A. This left leg right here.

17 Q. Anything else?

18 A. Burning in my feet.

19 Q. Both feet?

20 A. No, just one.

21 Q. Which one?

22 A. The left one.

23 Q. Anything else?

24 A. Numbness, back pain.

25 Q. Any other problems -- do you have any

1 other problems other than that pain shooting down
2 your leg and your back pain that you relate to
3 this accident right now?

4 A. You said do I have any other problems?
5 My arm, it bother me. My arm, it bother me every
6 now and then. But they told me try to do -- try
7 to work it much as possible, but other than that,
8 it's -- I told them from day one that this pain,
9 it runs from my neck. It's run -- it's running
10 from my neck all the way down my leg.

11 Q. You mentioned your arm; your right arm?

12 A. Uh-huh.

13 Q. Is that a yes?

14 A. Yes, sir.

15 Q. And you said every now and then, you
16 have problems with it?

17 A. Yeah, you know, it'll tighten up on me.
18 Like when I --

19 Q. Where does it tighten up?

20 A. Like when I -- well, what you call it,
21 it tightens up around up in here (indicating).

22 Q. Can you tell me -- about your forearm,
23 your biceps, your elbow, your --

24 A. Yeah, elbow.

25 Q. How often do you have problems with

1 that, like once a week?

2 A. Just say about two day -- three days out
3 the week.

4 Q. Okay. And you're seeing that doctor at
5 Moore Orthopaedic for that problem; is that right?

6 A. Yes.

7 Q. Okay. Have you applied to go work
8 anywhere else?

9 A. No, sir.

10 Q. Have you worked since your accident?

11 A. No, sir.

12 Q. Are you still getting a workers' comp
13 check?

14 A. I got a letter last week saying that I
15 was going -- they was going to finally eventually
16 stop sending the checks because I was released on
17 the 4th. They said I was released to go back to
18 work with no restriction.

19 Q. Okay. But you're still getting a check?

20 A. No, I haven't received none like this
21 week. No. But the last one I got was like -- I
22 got a gas check about --

23 Q. A mileage check?

24 A. Yeah. About two weeks ago. Three weeks
25 ago.

1 Q. Have you applied to go work anywhere
2 else?

3 A. I can't go to no work like this.

4 Q. So is that a no?

5 A. No. No.

6 Q. Have you had any other injuries or
7 aggravations of your problem or any kind of falls
8 or anything like that since you got hurt?

9 A. No. No, nothing that's pertaining to no
10 other injuries.

11 Q. I mean pertaining to this. Have you
12 done anything to hurt your back more, or do you
13 feel like you've done anything to reinjure --

14 A. Well, by my -- by me -- by me like -- by
15 me not -- like ever since they took me out of
16 physical therapy, seems like my health has like
17 degrading like --

18 Q. What do you mean by that?

19 A. Like -- like my body, it's like it's
20 getting more painful. The pain is -- when I
21 usually go to therapy, the pain would go away, you
22 know. But now I ain't got no therapy now, so the
23 pain is like constantly always there.

24 Q. What's your pain level; do you know?

25 A. It always stays like -- I don't know if

1 you see a vein on the side of my head right now,
2 like it's killing me to sit in this chair like
3 this. But my pain level's like about a eight and
4 a half right now?

5 Q. Out of ten?

6 A. Yeah.

7 Q. What's the most -- I mean, is that
8 average or is that -- I mean, what is it on a
9 normal day? Like an average day, what's your
10 pain?

11 A. Average day, like a nine, ten.

12 Q. So today's actually better than an
13 average day?

14 A. Well, because I'm sitting up here and
15 I've got this brace on. I've got this brace on.

16 Q. My question to you, on an average day,
17 your pain is a nine to ten out of ten?

18 A. Yeah.

19 Q. Which is -- and I'm talking about ten
20 being worst, one being the best.

21 A. Uh-huh.

22 Q. That's what your pain is on a normal
23 day?

24 A. Well, that -- my pain level --

25 Q. Yeah.

1 A. -- on a normal day?

2 Q. Correct.

3 A. Like a ten. Between nine and ten.

4 Q. Okay. Now, and is that including --
5 that's even with your medication?

6 A. The medication, it don't -- the
7 medication, it don't -- it -- it don't -- don't
8 really like have like no big like help with the
9 sciatica or whatever, whatever. It don't have no
10 big help with it.

11 Q. So does your pain medication help you?
12 Does it take your pain from a nine to ten out of
13 ten and reduce it?

14 A. Yeah, it reduce it to about a seven or
15 something like that where I can get some sleep or
16 something like that.

17 Q. Okay. And is the pain medication, is
18 that for the back pain, the sciatica issue that
19 you're having?

20 A. Yes, sir. Yes, sir.

21 Q. What did the doctor at Moore Orthopaedic
22 when you had your arm examined --

23 A. Uh-huh.

24 Q. -- what did that doctor tell you about
25 what -- did he or she recommend any treatment for

1 you or anything like that?

2 A. Yeah. They wanted me to what you call
3 it -- they wanted me to get to -- they wanted me
4 to -- I told them that I had a workmen comp case
5 that was going on, and they was like -- they
6 wanted to -- they wanted to send workmen comp some
7 paperwork and so they can -- like so I would have
8 to be like responsible for all the bills because I
9 was paying for it out of pocket and then --

10 Q. Okay. Did they recommend any treatment
11 for you, though?

12 A. Yeah.

13 Q. What?

14 A. They told me that I need to -- they
15 wanted to do -- after they did the nerve study and
16 stuff like that, they recommended that I like take
17 physical therapy and stuff like that, you know,
18 because they say rigor mortis or carpal tunnel was
19 setting in my -- I mean, they seen the way that --
20 they said that it was going to the bad.

21 Q. Okay.

22 A. Yeah. From the bruise and stuff like
23 that. Because my arm was swole for like about --
24 my arm was like swole for like three months after
25 the -- after the hit from -- from the steel.

1 MR. HAIGLER: I think those are all the
2 questions I have for you. Thank you.

3 MR. COLEMAN: I don't have any.

4 (The deposition was concluded at
5 approximately 11:01 a.m.)
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State of South Carolina
Before the
South Carolina Workers' Compensation
Commission
WCC File No.: 1512220

Rico Dorsey,)
Employee,)
Claimant,)
vs.)
Allwaste Services,)
Inc.,) Deposition of
Employer,) SAMMIE BELL
and) July 1, 2016
Summit Holdings, Inc./)
Bridgefield Casualty)
Insurance,)
Carrier,)
Defendants.)

Deposition on oral examination of
SAMMIE BELL, reported by Shelley Burgoyne,
Court Reporter and Notary Public in and for
the State of South Carolina; said deposition
taken pursuant to notice of deposition and in
accordance with the South Carolina Rules of
Civil Procedure, at Sowell Gray Law Firm, 1310
Gadsden Street, South Carolina, commencing on
Friday, July 1, 2016, at the hour of 10:29
a.m.

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ALSO PRESENT:

Rico Dorsey
Rick Andrews

CONTENTS

(Deposition of SAMMIE BELL)

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* * * * *

EXHIBIT INDEX

REPORTER'S NOTE: No exhibits were marked for
identification.

1 This deposition is taken in accordance
2 with the South Carolina Rules of Civil
3 Procedure.

4 It is agreed and stipulated by the
5 deponent and respective counsel that the
6 reading and signing of the deposition
7 transcript by the deponent is expressly
8 waived.

9 WHEREUPON:

10 SAMMIE BELL, being duly sworn and
11 cautioned to speak the truth, the whole truth
12 and nothing but the truth, testified as
13 follows:

14 EXAMINATION

15 BY MR. HAIGLER:

16 Q. Mr. Bell, please state your name for
17 the record.

18 A. Sammie Lee Bell, Jr.

19 Q. Sammie Lee Bell, Jr.?

20 A. Yes, sir.

21 Q. Okay. And that's L-E-E?

22 A. Yes, sir.

23 Q. All right. Mr. Bell, my name is
24 Nick Haigler. I represent your employer,
25 Allwaste, in the -- and the insurance company

1 in Mr. Dorsey's workers' compensation claim.

2 Have you ever been in a deposition
3 like this before?

4 A. On the phone.

5 Q. Okay. Ever done this in person,
6 though, like this?

7 A. No.

8 Q. Okay. Let me -- I will introduce
9 everyone that is here, but first -- and then
10 I'm going to give you some kind of -- some
11 instructions to make this process a little bit
12 easier for you.

13 First of all, you don't need to be
14 nervous. I know that's probably too late for
15 me to tell you that, but there is -- you don't
16 need to be nervous. You haven't done anything
17 wrong. You are just here to answer some
18 questions.

19 But as you can tell, Mr. Andrews is
20 here, my associate, Eve Goodstein, is here,
21 and then this lady is our court reporter, and
22 her job is to take down the questions I ask
23 you and anything you say in response and any
24 questions that Mr. Coleman may ask you, that
25 he needs to ask you after I'm finished, and

1 she will type it up in a book form, and it
2 will be something we can read much like this,
3 and that is her role.

4 Let me just give you a few
5 instructions, if I can, just to kind of make
6 this a little bit -- little bit easier. Most
7 of my questions you will know or most of my
8 question are yes- or no-type questions, so you
9 will be able to say yes or no and then explain
10 your answer if you need to, but if you can,
11 try to avoid saying things like uh-huh or
12 huh-un or nodding your head.

13 Now, I -- I can tell you from
14 experience that you are going to do that at
15 some point, you will say uh-huh, and don't
16 worry. I might just say did you mean yes or
17 no, and you can then say yes or no. I'm not
18 trying to be mean. I just want your testimony
19 to be what you meant it to be.

20 If I ask you any questions that are
21 unclear or you need me to repeat or rephrase,
22 you don't understand it, it's a bad question,
23 whatever, just let me know. You are not going
24 to offend me, and I'm not here to trick you or
25 mislead you. I just need to make sure you

1 understand my question so you can answer it.

2 Is that fair?

3 A. Yes, sir.

4 Q. Okay. If you need to take a break for
5 any reason, this shouldn't take very long, but
6 if you need to stretch or take a break or just
7 get some air, that is fine. Just let me know
8 and we can -- we can take a short break. Is
9 that fine?

10 A. Yes, sir.

11 Q. Okay. And try to talk as loudly as
12 you can even if you -- if you think you are
13 yelling at me, I'm all right with that. I
14 need to make sure she hears everything that
15 you say.

16 A. Yes, sir.

17 Q. Okay. Thank you, sir.

18 Sir, what do you do for a living?

19 A. I work at Allwaste -- Allwaste
20 Service.

21 Q. How long have you been employed there?

22 A. About 11 years.

23 Q. Okay. And what do you do at Allwaste?

24 A. I'm a loader.

25 Q. Okay. Are you -- and it's my

1 understanding that a loader, you are on the
2 back of the garbage truck and you retrieve the
3 garbage on the sides of the road and make sure
4 it gets in the truck and -- and things of that
5 nature. Is that correct?

6 A. Yes.

7 Q. Okay. Do you ride on the back of the
8 truck?

9 A. Yes, sir.

10 Q. Okay. And it's also my understanding
11 that there is a driver and then there is a
12 couple people, maybe two or three, on the back
13 of the truck. Does that sound right?

14 A. Yes, sir.

15 Q. All right. And that's -- is that the
16 job you have been doing for the last 11 years?

17 A. Yes, sir.

18 Q. Okay. Now, Mr. Andrews is here,
19 Mr. Rick Andrews is here. What is -- what is
20 his role with Allwaste?

21 A. Rick?

22 Q. What does he do?

23 A. Talking about...

24 Q. Yes.

25 A. He operates and manage.

1 Q. Okay. Now, have you had -- Mr. Dorsey
2 is here as well; is that correct?

3 A. Yes, sir.

4 Q. Okay. Have you had any conversations
5 with Mr. Dorsey prior to this deposition?

6 A. No, sir.

7 Q. Okay. About what's going to go on
8 today?

9 A. No, sir.

10 Q. Okay. Are you guys friends outside of
11 work?

12 A. Yes, sir.

13 Q. Okay. Do you all go to church
14 together?

15 A. Yes, sir. We go to the same church,
16 yes, sir.

17 Q. Okay. And him being in the room and
18 you having to testify today, does that -- does
19 that make you a little uncomfortable?

20 A. Yes, sir.

21 Q. Okay. And you can be honest. Does
22 it?

23 A. Yes, sir.

24 Q. Okay. Now, do you -- do you remember
25 you and I talking on the telephone a couple of

1 months ago?

2 A. Yes, sir.

3 Q. Okay. Do you remember the things we
4 talked about?

5 A. Yes, sir.

6 Q. Do you remember the conversation?

7 A. Yes, sir.

8 Q. Okay. Now, are you aware that Mr. --
9 are you aware that Mr. Dorsey -- well, let me
10 ask you this question. Is -- is Mr. Dorsey's
11 presence here today in this -- in this room
12 with you while you testify, does that in any
13 way affect your ability to tell the truth?

14 A. No, sir.

15 Q. Okay. Now, are you aware that he has
16 filed a workers' compensation claim?

17 A. I have no -- no, sir.

18 Q. Okay. Are you aware he was injured on
19 the job?

20 A. Yes, sir.

21 Q. Okay. Or claims he was injured on the
22 job, are you aware of that?

23 A. Yes, sir.

24 Q. Okay. Do you know when that occurred?
25 Maybe if you don't know the exact date, do you

1 know --

2 A. No. No, sir. That was a long time
3 ago.

4 Q. If I told you it was in July of last
5 year, 2015, about a year ago, would that sound
6 about right?

7 A. Yes, sir.

8 Q. Was it a long time ago?

9 A. Yeah.

10 Q. Several months ago?

11 A. Yes, sir.

12 Q. Okay. Now, do you work with
13 Mr. Dorsey?

14 A. (No verbal response.)

15 Q. Or did you work with Mr. Dorsey?

16 A. That day.

17 Q. Okay. The day that we're talking
18 about.

19 A. Yeah, that --

20 Q. The day in question you --

21 A. Yes.

22 Q. You were working --

23 A. Yes, sir.

24 Q. Did you always work with him?

25 A. No, sir.

1 Q. Did you all rotate who you worked
2 with?

3 A. Yes, sir.

4 Q. Okay. Now, are you aware that
5 Mr. Dorsey is claiming that a truck, a trash
6 truck, that I think Ms. Odom was driving made
7 contact with his body in July of last year?
8 Are you -- are you aware of that?

9 A. Yes, sir.

10 Q. Was Ms. Odom the one driving the
11 truck?

12 A. Yes, sir.

13 Q. All right. Have you had any
14 conversations with Ms. Odom about this?

15 A. No, sir.

16 Q. Now, the actual contact with his body,
17 did you witness that?

18 A. Yes, sir.

19 Q. I mean, you -- did you actually see it
20 happen?

21 A. Yes, sir.

22 Q. All right. How fast do you think or
23 what speed or fast or slow, whatever term you
24 want to use, how -- what was the speed of the
25 truck like when it made contact with his body?

1 A. I could not determine that.

2 Q. I mean, was it going really fast or
3 was it going slow? Was it -- I mean, was it
4 -- I mean, do you have any idea? Do you
5 remember?

6 A. No, sir, I don't remember.

7 Q. Okay. Okay. Did you and -- when the
8 truck made contact with Mr. Dorsey, did he
9 fly -- quote, fly 10 feet through the air?

10 A. No, sir.

11 Q. Okay. Did -- when the -- when the
12 truck made contact with Mr. Dorsey, did he
13 fall to the ground?

14 A. No, sir.

15 Q. Okay. Did he fly 10 feet through the
16 air and then land on the ground?

17 A. No, sir.

18 Q. Okay. In your opinion, did he appear
19 to be seriously injured when that occurred?

20 A. I couldn't determine nobody body.

21 Q. Excuse me?

22 A. I cannot determine nobody body.

23 Q. Okay. You can't determine whether he
24 was injured or not?

25 A. No, I can't determine that.

1 Q. Okay. Fair enough. Fair enough. Did
2 you -- did Mr. Dorsey continue working the
3 rest of that day?

4 A. Yes, sir.

5 Q. Did you guys go tell Cathy that that
6 had occurred, that she had hit you -- hit him
7 with the truck?

8 A. No, sir.

9 Q. Now, we -- as you know, we just took
10 Ms. Odom's deposition a few minutes ago, and
11 she said that you said that the truck brushed
12 him, was the word she used.

13 A. I don't know what she did that for.

14 Q. Okay. How would you -- how would you
15 characterize the contact between the truck and
16 Mr. Dorsey?

17 A. (Indicating.)

18 Q. Just -- we can't hear that.

19 A. Just (indicating.) Just popped him in
20 the back.

21 Q. Okay. But --

22 MR. COLEMAN: I -- I would like the
23 record to reflect that he clapped, that -- a
24 hard clap, and it popped him in the back.

25 MR. HAIGLER: Okay. Well, I would

1 like the record to reflect that I disagree
2 with that characterization.

3 BY MR. HAIGLER:

4 Q. Are you aware that Mr. Dorsey went
5 through this same process at a deposition a
6 few months ago?

7 A. (No verbal response.)

8 Q. Are you aware of that?

9 A. No, sir.

10 Q. Okay. Are you aware that he testified
11 that you saw him fly through the air and land
12 on the ground?

13 A. No, sir.

14 Q. Okay. Your testimony is that's not
15 what happened; is that right?

16 A. No, sir.

17 Q. That's your testimony, is that -- that
18 that is not what happened?

19 A. Oh, that's not what happened.

20 MR. HAIGLER: Okay. Thank you, sir.

21 Those are all the questions I have for you.

22 EXAMINATION

23 BY MR. COLEMAN:

24 Q. Thank you, Mr. Bell, for being here
25 today. I won't be too long. You did see the

1 impact, didn't you?

2 A. Yes, sir.

3 Q. And at some point in time did you not
4 yell to the driver to stop, that she had hit
5 him?

6 A. No, sir.

7 Q. You never said that to the driver of
8 the truck?

9 A. No, sir. No, sir.

10 Q. Okay. You and Mr. Dorsey ride to work
11 together; is that correct?

12 A. Yes, sir.

13 Q. And the day that this happened you all
14 rode together. Do you remember that?

15 A. Yes, sir. I mean, I can't remember
16 that far -- far back.

17 Q. Right. But I think -- you were
18 driving, I think. Is that correct? Or was
19 Mr. Dorsey driving or did you all take turns
20 driving to work?

21 A. I drive to work.

22 Q. Okay. Do you not remember the day
23 that this -- the impact occurred, that
24 Mr. Dorsey got into the truck cab and sat in
25 there with the driver?

1 A. I don't -- I -- I can't recall.

2 Q. You can't recall?

3 A. No, I can't.

4 Q. I mean, you are not saying he didn't
5 do it. You are saying you just can't recall.

6 A. I -- I can't recall.

7 Q. Okay. So you -- okay. So if
8 Mr. Dorsey says that once the impact occurred
9 he got into the cab of the truck with
10 Ms. Odom, you are not disputing that, are you?

11 A. I can't recall.

12 Q. Okay. And you rode to work -- you
13 rode home from work that day -- well,
14 Mr. Dorsey rode with you, is that correct,
15 home?

16 A. Yes, sir.

17 Q. And that day do you remember him
18 complaining about the pain in his back and his
19 legs?

20 A. The next morning.

21 Q. The next morning.

22 Now, the day that this occurred I
23 think the -- Mr. Rick and them weren't there
24 at the location, so nobody could authorize him
25 going to the doctor. Do you remember that?

1 A. No, sir.

2 Q. Okay. The next -- the next morning
3 you all went to -- rode again together; is
4 that correct, the day after the impact?

5 A. No, sir.

6 Q. The next day -- this happened
7 July 17th. The next day you all rode to work
8 again together. Do you remember that?

9 A. Yeah. In my car?

10 Q. Right.

11 A. Yes, sir.

12 Q. In your car. And Mr. Dorsey was
13 complaining about the pain in his back and his
14 legs and his neck and his arm at that time
15 too, wasn't he? Do you remember that?

16 A. I -- I don't -- I don't know what I --
17 I can't explain the man's pain.

18 Q. Oh, I know that. I don't want you to
19 explain his pain. I just want you to confirm
20 to us that he was complaining about his pain.

21 A. Yes, sir.

22 Q. That he told you that he was hurting.

23 A. The next morning, yes, sir.

24 Q. Right. And he said from getting hit
25 by the truck.

1 A. Yes, sir.

2 Q. Okay. And it was that next day after
3 work you took him to Doctors Care.

4 A. Yes, sir.

5 Q. Okay. And you took him to
6 Doctors Care and you waited for him to go to
7 Doctors Care. I think, if I recall, Mr. Rick
8 said go to Doctors Care.

9 A. Yes, sir.

10 Q. And you took him there.

11 A. Yes, sir.

12 Q. Do you remember making the statement
13 to Mr. Dorsey that she, Ms. Odom, knocked the
14 hell out of him with the truck? Do you
15 remember making that statement?

16 A. No, sir.

17 Q. Okay. And you knew that Mr. Dorsey
18 could not work the next day after this
19 happened. What -- he wasn't able to work.

20 MR. HAIGLER: Object to the form.

21 THE WITNESS: I can't recall.

22 BY MR. COLEMAN:

23 Q. Okay. Let me ask you this. Do you
24 remember what time in the daytime that the
25 truck struck Mr. Dorsey?

1 A. Had to been about 11:35, about
2 11:35 a.m.

3 Q. Okay. And before that happened,
4 before the truck struck Mr. Dorsey, how was
5 Mr. Dorsey working? Was he working good
6 before the impact of the truck?

7 A. Yes, sir.

8 Q. And Mr. Dorsey is a very good worker,
9 isn't he?

10 A. Yes, sir.

11 Q. He's one of the best workers I think
12 there at ASI. He's quick.

13 MR. HAIGLER: Object to the form.

14 BY MR. COLEMAN:

15 Q. You are aware of that.

16 A. Yes, sir.

17 Q. He is big. He is strong. He is a
18 great athlete.

19 MR. HAIGLER: Object to the form.

20 BY MR. COLEMAN:

21 Q. Are you aware of that?

22 A. Yes, sir.

23 Q. And before all this happened, before
24 he was struck, he was a good worker, one of
25 the best workers at ASI. Is that true?

1 A. Myself.

2 Q. We -- we -- and you are one of the
3 best ones too, Sammie. You are too, but you
4 would categorize Mr. Dorsey as one of the
5 better workers there at ASI, wouldn't you?

6 A. Yes, sir.

7 Q. And he always gets overtime. They
8 always assign him to work when they got the
9 big jobs and that stuff. You are aware of
10 that, aren't you?

11 A. Yes, sir.

12 Q. Okay. And -- but once the truck
13 impact him, he hasn't been able to work. Are
14 you aware of that?

15 MR. HAIGLER: Object to the form.

16 MR. COLEMAN: Go ahead and answer.

17 THE WITNESS: Yes, sir.

18 BY MR. COLEMAN:

19 Q. Okay. Does -- has he had any
20 conversation with you about how painful his
21 back is and how it goes into his leg?

22 A. Once upon a time.

23 Q. Okay. And do you remember at one
24 point in time -- I think it was the day after.
25 I think you had taken Mr. Dorsey to the urgent

1 care or Doctors Care, or whatever, the next
2 day. You remember that.

3 A. Yes, sir.

4 Q. And then you took Mr. Dorsey home and
5 his pants were on the front porch. Do you
6 remember that?

7 A. (No verbal response.)

8 Q. And you told his parents that that
9 truck knocked the hell out of Rico and he's
10 been hurting. Do you remember that?

11 A. I can't recall.

12 Q. Okay. You don't deny that, do you?

13 A. I can't recall.

14 Q. Okay. Do you know what the truck --
15 at that cul-de-sac we're talking about, it was
16 full with trash. I mean, during you all's
17 route where this occurred -- that truck holds
18 about 15 tons of trash, and when this
19 happened, that truck was full. Are you aware
20 of that?

21 MR. HAIGLER: Object to the form.

22 THE WITNESS: I can't -- no. No, sir.

23 BY MR. COLEMAN:

24 Q. It wasn't full?

25 A. I -- no, sir. It was probably

1 three-quarter.

2 Q. Okay. Three-fourths full.

3 So if it holds 15 tons, it had 10 tons
4 in it. Is that what you are saying?

5 A. Yes, sir.

6 Q. Okay. Has there been a lot of
7 scuttlebutt around ASI with the coworkers
8 there about what's going on with this
9 workmen's comp case? A lot of the coworkers
10 are talking about it?

11 A. No, sir.

12 Q. But there has been some, hasn't there?
13 People --

14 A. No, sir.

15 Q. People --

16 A. No, sir.

17 Q. People have talked to you about your
18 testimony, is that correct, about what
19 happened, your coworkers?

20 MR. HAIGLER: Object to the form.

21 THE WITNESS: No, sir.

22 BY MR. COLEMAN:

23 Q. So the -- so none of the coworkers
24 have talked to you about this incident and
25 about what's happened.

1 MR. HAIGLER: He's already answered
2 that question.

3 THE WITNESS: No, sir.

4 BY MR. COLEMAN:

5 Q. Okay. You know Ms. Odom testified
6 earlier, and she testified that the coworkers
7 had been talking about this case. Are you
8 aware of that?

9 MR. HAIGLER: Object to the form.

10 THE WITNESS: No, sir.

11 BY MR. COLEMAN:

12 Q. Okay. Do you remember when we had the
13 hearing scheduled back in May, May 9th of
14 2016? You remember we saw you all up at the
15 workmen's compensation hearing, and it was
16 continued? Do you remember that?

17 A. Yes, sir.

18 Q. And do you remember after that you all
19 went back to work and Mr. Rick had a meeting
20 with all the employees? Do you remember that?

21 A. Yes, sir.

22 Q. What did Mr. Rick tell you all?

23 A. What did he tell us?

24 Q. Yes.

25 A. If anyone want to know about the case,

1 or whatever, Rico Dorsey case, come see him.

2 Q. Okay. He wanted people to quit
3 talking about it and quit giving you and
4 Ms. Odom a hard time about it; is that right?

5 A. Yes, sir.

6 Q. Okay. Mr. Rick knew the next day that
7 Rico got hit by the truck, didn't he?

8 A. I have -- I have no idea of that.

9 Q. Well, he authorized Rico -- for you to
10 take Rico to Doctors Care.

11 MR. HAIGLER: I'm going to object to
12 the form.

13 BY MR. COLEMAN:

14 Q. Correct?

15 MR. HAIGLER: Object to the form.

16 THE WITNESS: Rephrase the question
17 because I -- I don't understand.

18 BY MR. COLEMAN:

19 Q. Okay. You took Rico to the
20 Doctors Care the next day.

21 A. Yes, sir.

22 Q. Okay. And Mr. Rick authorized that;
23 is that correct?

24 A. I don't know that.

25 Q. Okay. Did -- who told you to take

1 him, take Rico, to the --

2 A. He do.

3 Q. Okay. You are still working with ASI;
4 is that right?

5 A. Yes, sir.

6 Q. You have been there 11 years.

7 A. Yes, sir.

8 Q. You want to keep your job, don't you?

9 A. Yes, sir.

10 Q. Okay. And you are aware that
11 Mr. Dorsey was on light duty at -- you know,
12 the day -- the day after the incident; is that
13 right? He was riding around in the trucks.

14 A. Yeah.

15 MR. HAIGLER: Object to the form.

16 BY MR. COLEMAN:

17 Q. Is that correct?

18 A. Yes, sir.

19 Q. Okay. And why was he on light duty?

20 MR. HAIGLER: Object to the form.

21 THE WITNESS: I -- I don't know. I
22 mean, I can't determine nobody body. You know
23 what I'm saying. I guess he was in pain.

24 BY MR. COLEMAN:

25 Q. Okay. I mean, he told you that.

1 A. Yes.

2 Q. Okay. So he told you he was in pain
3 during you all's back and forth from you all's
4 home to ASI. The many times you all rode back
5 and forth after the incident, he told you all
6 that you all were in pain -- that he was in
7 pain, correct?

8 A. Yes, sir.

9 Q. As a matter of fact, you had to go
10 knock on the door to wake him up sometimes at
11 his house to get him up because he was on pain
12 medications, isn't that correct? You had to
13 get him up.

14 A. Yes, sir.

15 Q. Okay. And before this impact about
16 11:35 that morning, he was working fine,
17 wasn't he?

18 A. Yes, sir.

19 MR. HAIGLER: Object to the form.

20 BY MR. COLEMAN:

21 Q. And doing his job.

22 A. Yes, sir.

23 Q. The day that this happened was
24 July 17th. Had you worked with him the day
25 before?

1 A. No, sir.

2 Q. How close in proximity -- how close in
3 time had you worked with Mr. Dorsey? If you
4 remember. I mean, a week, two weeks?

5 A. No. I was -- he had Labor Finders on
6 the truck with him, and they -- somebody had
7 to go somewhere. I think Mr. Mark had to go
8 somewhere, so Cathy end up driving the truck,
9 so I had to go on the truck to help him.

10 Q. Okay. Do you remember the
11 Labor Finders guy's name?

12 A. I don't know. He -- he don't exist.
13 I don't know where he at now.

14 Q. Okay. This incident happened on
15 July 17th. Okay. When is the time that you
16 have worked with Mr. Dorsey before July 17th?

17 A. I can't --

18 Q. The week before or two weeks before or
19 three weeks or approximate it?

20 A. I can't recall.

21 Q. Give me an idea. Was it within a
22 month of this incident that you had worked
23 with Mr. Dorsey?

24 A. I can't recall.

25 Q. Well, you had to have worked with him

1 at some point in time before this incident.

2 A. I meant a long time ago. We -- we
3 don't be on -- we vice versa, on different
4 trucks.

5 Q. I know that.

6 A. Wherever they need.

7 Q. Do you ever -- do you ever work with
8 Mr. Dorsey? Had you ever worked with him
9 before this day?

10 A. Yes, sir.

11 Q. How -- how close in time to this did
12 you work with Mr. Dorsey?

13 A. I don't -- I can't recall.

14 Q. Well, just give me a ballpark?

15 A. Maybe nine months.

16 Q. Okay. And how was he working then?

17 A. Fine.

18 Q. Okay. Doing a good job.

19 A. Yes, sir.

20 MR. COLEMAN: Okay. That's all I
21 have.

22 MR. HAIGLER: Just a couple --

23 MR. COLEMAN: Thank you, Mr. Bell. I
24 appreciate it.

25 REEXAMINATION

1 BY MR. HAIGLER:

2 Q. Mr. Bell, I've got just a couple
3 questions, and then you can go. I promise I
4 won't -- I won't take long.

5 You were asked whether Mr. Andrews
6 told you to take him to Doctors Care, and you
7 said that is not what happened, and then you
8 said -- you said -- Mr. Coleman asked you,
9 Then who told you to take him?

10 And you said, He did. When you said
11 "he" did, did you mean Mr. Dorsey told you to
12 take him?

13 A. Yes, sir.

14 Q. Okay. I just want to make sure I was
15 clear on that. Now, you were also asked a
16 question about -- that he was -- or you were
17 also told that he hasn't been able to work
18 since this, and you agreed, yes, he hasn't
19 been able to work. Is that what you said?

20 A. Yes, sir.

21 Q. Okay. Do you actually know whether
22 he's capable of working or do you just know
23 that he hasn't been at work?

24 A. I -- I can't -- I can't recall. I
25 can't -- I don't know the man body.

1 Q. Okay. Have you seen anything from a
2 doctor or anything that he has shown you
3 saying Mr. --

4 A. I'm --

5 Q. -- Dorsey can't work?

6 A. It's -- it's -- it's not my business.

7 Q. I got you. So when you say he
8 can't -- he hasn't been able to work, he just
9 hasn't -- what you are saying is, he just
10 hasn't been there; is that right?

11 A. He -- I -- I --

12 Q. Do you know whether he can work?

13 A. I don't know.

14 Q. Okay. Fair enough. Now, the
15 questions I asked you earlier about what
16 happened after the truck made contact with
17 Mr. Dorsey, you understand that the
18 question -- the answers you gave were
19 different than the answers Mr. Dorsey gave.
20 Do you understand that?

21 A. Yes, sir.

22 Q. It must be -- is it -- is it difficult
23 for you to give that kind of testimony
24 considering he is a person you go to church
25 with and you are a friend with?

1 A. Yes, sir.

2 MR. HAIGLER: Okay. Thank you, sir.

3 Creighton, do you have any other
4 questions?

5 MR. COLEMAN: I don't have any.

6 (The deposition concluded at
7 approximately 10:58 a.m.)
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