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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2011-CP-20-436

Case Tracking No. 2012-212898

James Clark, Jr.,

v.

Respondent,

Pyramid Masonry Contractors, Inc., and
Hartford Fire Insurance Company,

Appellants.

RECORD ON APPEAL

VOLUME II OF II

RECEIVED
JUN 11 2013

SC Court of Appeals

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VOLUME 2

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STATE OF SOUTH CAROLINA)

COUNTY OF FAIRFIELD)

James Clark, Jr., Employee,)

Claimant-Appellant,)

-vs-)

Pyramid Masonry Contractors, Inc.,)
Employer, and Hartford Fire Insurance)
Company, Carrier,)

Defendants-Respondents.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2007-CP-20-150

ORDER AFFIRMING THE
WORKERS' COMPENSATION
COMMISSION

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CLERK OF COURT
JO BECHAM

STATEMENT OF THE CASE

This is an appeal from the Decision and Order of the South Carolina Workers' Compensation Commission, filed May 18, 2007. The Claimant was injured in a motor vehicle accident that occurred in the very early morning hours of November 17, 2004 on Interstate Highway I-77. At the time, Claimant, and a co-worker, Joey J. Horton, were riding in the personal vehicle of Mark Hinson, a foreman with Pyramid Masonry Contractors, Inc. (hereinafter "Pyramid"). Hinson died as a result of the injuries he sustained in the motor vehicle accident. On May 24, 2006, Claimant filed a Form 50 alleging that the motor vehicle accident arose in the course and scope of his employment. On June 19, 2006, Defendants filed a Form 51, denying that Claimant's motor vehicle accident arose out of and in the course of employment.

The Hearing Commissioner in his Decision and Order, filed January 25, 2007, held that Claimant's motor vehicle accident did not arise out of and in the course of employment. The Hearing Commissioner found, inter alia, that the employer did not provide Claimant transportation to and from work. On February 5, 2007, Claimant filed a Form 30, Request for Commission Review. The appeal was heard by an Appellate Panel and on May 18, 2007, the Panel issued its Order affirming the Hearing Commissioner's Order. This appeal followed.

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STANDARD OF REVIEW

Whether a causal connection exists between employment and an alleged injury is a question of fact for the South Carolina Workers' Compensation Commission. Sharpe v. Case Produce, Inc., 336 S.C. 154, 159, 519 S.E.2d 102, 105 (1999). In workers' compensation cases, the Commission is the ultimate finder of fact. Hunter v. Patrick Const. Co., 289 S.C. 46, 47, 344 S.E.2d 613, 614 (1986); Ross v. American Red Cross, 298 S.C. 490, 492, 381 S.E.2d 728, 730 (1989). The Appellate Court's review of these findings of fact is limited to determining whether the findings are clearly unsupported by substantial evidence in the record. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E.2d 384 (1987). "Substantial evidence" necessary to support a decision of the Commission is:

'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. . . . It must be enough to justify, if the trial were [sic] to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. . . . This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.'

Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981); *see also*, O'Banner v. Westinghouse Electric Corp., 319 S.C. 24, 30, 459 S.E.2d 324, 327 (Ct. App. 1995) (The determination of witness credibility and the weight to be accorded evidence is reserved to the Commission.)

This Court's review of the Commission's findings of fact is limited to determining whether the findings are clearly unsupported by substantial evidence in the record, rather than reweighing the evidence presented to the Commission. *See generally*, Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306-7 (1981); Howell v. Pacific Columbia Mills, 291 S.C. 469, 471, 354 S.E.2d 384, 385 (1987); Brown v. Jordan Oil Co., 291 S.C. 272, 275, 353 S.E.2d 280, 282 (1987); O'Banner, 319 S.C. at 30, 459 S.E.2d at 327. Thus, if reasonable minds could reach the conclusion

reached by the Commission, the Commission's findings must be affirmed. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 414 S.E.2d 162, 163 (1992).

Of special note is that where the evidence is conflicting, "the Commission's findings of fact are conclusive." Sharp, 336 S.C. at 160, 519 S.E.2d at 105; *See also*, Hoxit v. Michelin Tire Corp., 304 S.C. 461, 405 S.E.2d 407 (1991) ("Where there is a conflict in the evidence, either of different witnesses or of the same witnesses, the findings of fact of the Commission as triers of fact are conclusive.")

DECISION

The primary issues before this Court are as follows:

1. Whether there was substantial evidence in the record to support the Commission's finding of fact that Pyramid did not provide Claimant transportation to and from work?
2. Whether there was substantial evidence in the record to support the Commission's finding that Pyramid was not paying Mark Hinson \$150.00 each month to transport Claimant to and from the job site?
3. Whether there was substantial evidence in the record to support the Commission's finding that Mark Hinson did not have actual or apparent authority to provide transportation to the Claimant?
4. Whether the Commission erred in holding that Defendants were not collaterally estopped from denying compensation because of the Commission's decision in Horton v. Pyramid Masonry Contractors, Inc.?

I. "Going To and Coming From" Rule.

In Sola v. Sunny Slope Farms, 244 S.C. 6, 135 S.E.2d 321 (1964), the South Carolina Supreme Court held:

As a general rule, an employee going to or coming from the place where his work is to be performed is not engaged in performing any service growing out of or incidental to his employment, and, therefore, an injury sustained by accident at such time does not arise out of and in the course of his employment.

Id. at 14, 135 S.E.2d at 326. The Supreme Court has carved out five exceptions to the "going to and coming from" rule. In Sola v. Sunny Slope Farms, the Court set forth four exceptions:

- 1) Where, in going to and returning from work, the means of transportation is provided by the employer, or the time that is consumed is paid for or included in the wages;
- 2) Where the employee, on his way to or from his work, is still charged with some duty or task in connection with his employment;
- 3) The way used is inherently dangerous and is either (a) the exclusive way of ingress and egress to and from his work; or (b) constructed and maintained by the employer; or
- 4) That such injury incurred by a workman in the course of his travel to his place of work and not on the premises of his employer but in close proximity thereto is not compensable unless the place of the injury was brought within the scope of employment by an express or implied requirement in the contract of employment of its use by the servant in going to and coming from his work.

Id. The fifth exception was set forth in Bickley v. S.C. Electric and Gas Co., 259 S.C. 463, 192 S.E.2d 866 (1972), where the Court adopted the "special errand doctrine" as an exception, when the employee is performing a special task, service, mission or errand for his employer, even before or after customary working hours, or on a day which he does not ordinarily work. Id. at 469, 192 S.E.2d at 869.

The Claimant contended that he fell within the first exception, i.e., that the means of transportation was provided by the employer. He asserted that Pyramid paid its foreman, Mark Hinson, the sum of \$150.00 per month to use his personal vehicle to transport him and a co-worker, Joey Horton, to and from work. Pyramid denied that it paid Mark Hinson to transport the employees to and from work. The Commission found that Pyramid was paying Hinson the \$150.00 for use of his personal vehicle at the job site to pick up incidentals, and not to transport employees to and from work.

II. Provision of Transportation

The evidence was undisputed that at the time of the accident Claimant was a passenger in the personal automobile of Mark Hinson, Claimant's foreman, and not in a vehicle owned by

Pyramid. (Tr. 18-19). In fact, Pyramid did not provide its foremen with company trucks to drive. (Tr. 61, 75). Moreover, David G. Mauney, Regional Vice-President for Pyramid, testified that Pyramid did not furnish its employees rides to work. (Tr. 60, 64). He further testified that it was the employee's responsibility to find their own way to work. Employees could either drive their own vehicles or could catch rides with friends or co-workers. (Tr. 69). Job descriptions for the "labor-tender" and "mason" jobs were introduced into evidence. Both job descriptions included provisions that the employee "must have means of transportation to and from project." (Tr. 61; Defendant's Exhibits 3 and 4).

Donald G. Williams, a foreman for Pyramid for 18 years, testified that Pyramid did not provide transportation for employees to the job site. (Tr. 77). He also confirmed that Pyramid did not provide its foremen with company trucks to drive. (Tr. 75). Clearly, the testimony of Mauney and Williams and the job descriptions are substantial evidence to support the Commission's finding that Pyramid did not provide Claimant transportation to and from work.

III. Payment of Gas Money

The Claimant contends that while Pyramid did not provide a company vehicle to transport him to and from work, it paid Foreman Mark Hinson \$150.00 per month for gas money to transport him back and forth to work. The Commission found that Pyramid's payment to Mark Hinson was for the use of his personal vehicle at the job site to pick up incidentals and not to transport the Claimant to and from the job site. David Mauney testified that foremen are paid a \$150.00 monthly truck allowance because during the course of a workday, foremen may have to use their personal vehicle at the job site to pick up incidentals such as ice, gasoline, small tools, etc. (Tr. 59-60). Therefore, the \$150.00 was intended to reimburse foremen for the use of their truck at the job site. (Tr. 59). Pyramid's written policy, dated January 1, 1989, was submitted into evidence. The policy provides:

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TRUCK ALLOWANCE

This expense is paid monthly. It is for the intended use of reimbursement for the use of personal vehicles on the job site. This pertains only for picking up or delivering incidentals and is not to be interpreted as mileage.

(Defendant's Exhibit No. 2). Mauney's testimony was corroborated by the testimony of Donald Williams, a Pyramid foreman for 18 years. (Tr. 74). Mr. Williams testified that he was paid \$150.00 per month as a truck allowance for using his truck at the job site to get ice or anything pertaining to the job. (Tr. 75). Mr. Williams had been getting the truck allowance for 18 years, but had never transported any employees to and from work. (Tr. 75-6).

Moreover, the amount of the monthly truck allowance would refute that it was intended to pay mileage for taking employees to and from work. Mr. Mauney testified that the distance from Mark Hinson's home in Lancaster to the Columbia job site was about 140 miles round trip. (Tr. 62). If Mr. Hinson was being paid mileage at the IRS mileage rate of 37.5 cents per mile, the \$150.00 truck allowance would only cover 2.87 days out of the month. (Tr. 62). In terms of mileage, if Mr. Hinson drove back and forth to Lancaster from Columbia for 22 work days in an average month, the \$150.00 allowance would only pay approximately 4.9 cents per mile. This is also substantial evidence to support the Commission's finding that Pyramid was not paying Mark Hinson the \$150.00 to transport Claimant to and from the job site.

Furthermore, even assuming that Pyramid had paid Hinson \$150.00 per month to transport Claimant to and from work, it would still not constitute the provision of transportation. In Byrd v. Stackhouse Sheet Metal Works, 317 S.C. 35, 451 S.E.2d 405 (Ct. App. 1994), the employee died in a motor vehicle accident while driving his truck home from work. It was undisputed that the employer had agreed to pay the employee \$90.00 per month for "gas money" as an inducement to take the job. The Commission denied the employee's application for workers' compensation benefits and the circuit court affirmed. The South Carolina Court of

Appeals held that whether gas money constituted the provision of transportation was a question of fact and the courts used several factors to determine whether payment for travel was within the exception to the "going to and coming from" rule:

First, the rule requires the provision of transportation to be 'deliberate and substantial' for the employee to meet the exception. Arthur Larson, 1 The Law of Workmen's Compensation Section 16.31 (1993). The travel money paid should defray all or substantially all of the cost of travel. Id. Section 16.33. The underlying principle is that 'employment should be deemed to include travel when the travel itself is a substantial part of the services performed.' Id. Sections 16.31, p. 4-208.86. The basis for the rule is that the employer gains a benefit from the transportation.

Id., 451 S.E.2d at 407. The Court of Appeals in Byrd held that simply hiring an employee, who lives away from the employer's premises and has the expectation of extensive travel to and from work, is not a basis for awarding compensation. The Court found that the employer received no benefit from the decedent's travels. Moreover, Byrd did not prove that the money provided was substantial nor did he provide any evidence of the cost to travel to and from work. The Court stated that although the gas money was held out as an inducement to employment, it did not substantially compensate Byrd for his travel time or travel expenses. The Court noted that the per mile reimbursement to Byrd was less than 5 cents per mile.

The facts in Byrd are analogous to the present case. Again, assuming that Hinson was paid \$150.00 for gas money, the provision of transportation was neither deliberate or substantial. As in Byrd, such payment was not connected to travel time, distance traveled, or the transportation expenses actually incurred. The Claimant had no duties requiring him to be on the road, and Pyramid received no benefit from his travels.

IV. Actual or Apparent Authority

Because the Commission found that Pyramid neither provided Claimant with the transportation to and from work nor paid its foreman to transport the Claimant to and from work, it is not necessary for this decision to determine if Mark Hinson had actual or apparent authority

to negotiate transportation terms as a condition of Claimant's employment with Pyramid. Nevertheless, there is substantial evidence in the record that Hinson had no authority, actual or apparent, to bind Pyramid to provide transportation to an employee. David Mauney, Regional Vice-President of Pyramid, testified that Pyramid does not provide transportation to its employees to and from work and that Hinson had no authority to bind Pyramid to provide transportation. (Tr. 64). Moreover, Pyramid had job descriptions which provided that the employee "must have means of transportation to and from projects." (Defendant's Exhibits 3 and 4). The "labor-tender" job description was included in Claimant's employment package, and Claimant signed a statement acknowledging that he had read that job description. (Defendant's Exhibit No. 1). Mauney testified that while it would be reasonable for Hinson to have offered a ride to the Claimant as a personal courtesy, it would not have been reasonable for him to have offered transportation as a part of employment. (Tr. 67). Donald Williams, a Pyramid foreman for 18 years, also testified that Pyramid did not provide transportation for employees to and from work. (Tr. 75, 77).

The Claimant offered no evidence to establish that Mark Hinson had actual authority to offer company transportation to the Claimant. The party asserting agency as a basis of liability must prove the existence of the agency, and the agency must be clearly established by the facts. Orphan Aid Society v. Jenkins, 294 S.C. 106, 109, 362 S.E.2d 885, 887 (S.C. App. 1987). The doctrine of apparent authority provides that the principle is bound by the acts of his agent when the principle has placed the agent in such a position that a person of ordinary prudence, reasonably familiar with business usages and custom, is led to believe the agent has certain authority and in turn deals with the agent based on that assumption. Muller v. Myrtle Beach Golf and Yacht Club, 303 S.C. 137, 142, 399 S.E.2d 430, 433 (Ct. App. 1990), rev'd on other grounds, 313 S.C. 412, 438 S.E.2d 248 (1993). To establish apparent authority, it is not enough simply to prove that the purported principle by either affirmative conduct or conscious and

voluntary inaction has represented another to be his agent or servant. Watkins v. Mobile Oil Corp., 291 S.C. 62, 67, 352 S.E.2d 284, 287 (Ct. App. 1986). Instead, it must be shown that he reasonably relied on the indicia of authority originated by the principle, and such reliance must have affected a change in the position of the third party. Beasley v. Kerr-McGee Chem. Corp., Inc., 273 S.C. 523, 528, 257 S.E.2d 726, 728 (1979). In the present case, Claimant offered no evidence to suggest that Pyramid engaged in any conduct that would lead him to believe that Mark Hinson had authority, either actual or apparent, to provide transportation on behalf of Pyramid. David G. Mauney, Pyramid's vice-president, testified that Pyramid did not furnish its employees rides to work. Donald G. Williams, a Pyramid foreman for 18 years, also testified that Pyramid did not provide transportation for employees to the job site. Moreover, Pyramid did not provide its foremen with company trucks to drive. The job descriptions, including the job description in Claimant's employment package, indicated that the employee "must have means of transportation to and from project." Since Pyramid had manifested its "no transportation" policy in its job descriptions and actual practice, there is substantial evidence in the record to support the finding that Pyramid had not given Hinson actual or apparent authority to negotiate transportation with the Claimant.

V. Doctrine of Collateral Estoppel

The Claimant argued that the Commission's decision in Joey Horton v. Pyramid Masonry Contractors, Inc., WCC File No. 0425180, collaterally estopped Defendants from arguing any of the issues determined in the Horton case. Under the doctrine of collateral estoppel, a judgment in a first action may preclude re-litigation in a second action based on a different claim, of issues actually and necessarily litigated in determining the first suit. See, Stewart, Res Judicata and Collateral Estoppel in South Carolina, 28 S.C.L. Rev. 451, 452 (1977); Beall v. Doe, 281 S.C. 363, 315 S.E.2d 186 (Ct. App. 1984). The Court of Appeals in Beall enumerated ten possible circumstances in which a litigant may not be precluded from re-litigating an issue. Beall v. Doe,

281 S.C. at 371, 315 S.E.2d at 191. However, for either res judicata or collateral estoppel to apply, the judgment in the first action must be final, valid, and on the merits. See, Owenby v. Owens Corning Fiberglass, 313 S.C. 181; 437 S.E.2d 130 (Ct. App. 1993). The Horton decision is not a final Order, because all appeals have not been exhausted. On February 28, 2007, Defendants filed its Notice of Appeal with the South Carolina Court of Appeals, where the case is currently pending. Therefore the Commission correctly held that Defendants are not prohibited by the doctrine of collateral estoppel from litigating the issues in this case.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Order of the South Carolina Workers' Compensation Commission, filed May 18, 2007, is **AFFIRMED**.

AND IT IS SO ORDERED.



BROOKS P. GOLDSMITH
JUDGE, SIXTH JUDICIAL CIRCUIT

February 22, 2008

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 0427461

JAMES CLARK, JR.,

EMPLOYEE,
CLAIMANT/APPELLANT,

- V -

PYRAMID MASONRY CONTRACTORS, INC.,

EMPLOYER,

AND

HARTFORD FIRE INSURANCE COMPANY,

CARRIER,
DEFENDANTS/RESPONDENTS.

Appellate Panel Review held in Columbia,
South Carolina on April 23, 2007 per notices
timely and properly served on all parties of
interest.

Appellate Panel Decision and Order filed
May 18, 2007.

APPEARANCES:

Claimant/Appellant represented by Barry B.
George, Esquire, of Columbia, South Carolina.

Defendants/Respondent represented by
Richard B. Kale, Jr., Esquire, of Greenville,
South Carolina.

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STATEMENT OF CASE

The parties were heard by Commissioner G. Bryan Lyndon on October 11, 2006 in Rock Hill, South Carolina. On January 25, 2007, he issued the following Order:

IT IS, THEREFORE, ORDERED that the claim of James Clark, Jr., be, and hereby is, denied.

Within the statutory period, counsel for the Claimant filed an Application for Review in the case setting forth his reasons, copies of which were furnished to all interested parties, prior to oral argument presented before the Appellate Panel on April 23, 2007. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Full Commission and has since been under study and consideration.

By appeal, Claimant respectfully submits the following:

1. The hearing commissioner erred in finding that Employer did not provide transportation to and from work.
2. The hearing commissioner erred in concluding Defendants are not estopped under the doctrine of collateral estoppel from denying the compensability of this claim because of the Commission's decision in Horton v. Pyramid Masonry Contractors, Inc., WCC File # 0425180 and the order of Judge Kenneth G. Goode, Presiding Judge Sixth Judicial Circuit.

In an appellate review, the Panel shall, pursuant to S.C. Code Ann. §42-17-50 (1985), review the Award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. After careful review in the instant case, the Panel, by majority vote, has

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determined all of the Hearing Commissioner's Findings of Fact and Rulings of Law are correct as stated. Accordingly, they shall become, and hereby are, the law of the case, and; therefore, the Order is sustained in its entirety. The Hearing Commissioner's decision is incorporated by reference as if set forth verbatim herein.

ORDER

IT IS, THEREFORE, ORDERED the Order of the Single Commissioner filed in the above-captioned matter on January 25, 2007 is hereby affirmed by the Panel, and the same shall constitute the Decision and Order of the Appellate Panel.

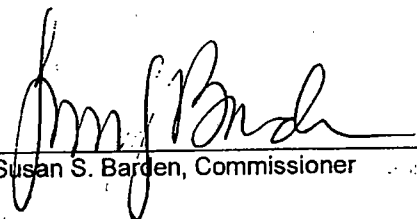
AND IT IS SO ORDERED.

S. C. WORKERS' COMPENSATION COMMISSION

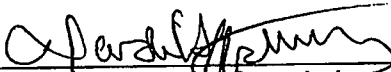

Andrea Pope Roche, Commissioner

MAJORITY AFFIRMATION

CONCUR:


Susan S. Barden, Commissioner

DISSENT:


David W. Huffstetler, Commissioner
I would find Mr. Hinson acted as an agent of the company in providing transportation to the Claimant.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy herof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

This 18th day of May, 2007
By Barbara OB Chesebrough
Administrative Assistant to the Commissioner

BBB
RBK

(L:\0427461.apr.app.doc)

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 0427461

James Clark, Jr., Employee,)
)
 Claimant,)
)
 -vs-)
)
 Pyramid Masonry Contractors, Inc.,)
 Employer, and Hartford Fire Insurance)
 Company, Carrier,)
)
 Defendants.)
 _____)

HEARING:

Held in Rock Hill, South Carolina on
October 11, 2006.

APPEARANCES:

Claimant represented by Barry B. George,
Esquire.

Defendants represented by Richard B. Kale,
Jr., Esquire of Willson Jones Carter &
Baxley, P.A.

PURPOSE OF HEARING:

To determine issues as set forth on Forms 50
and 51.

DECISION AND ORDER:

G. BRYAN LYNDON, COMMISSIONER

FILED:

January 25, 2007

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STIPULATIONS

Counsel for the parties stipulated at the time of the hearing to the following:

1. That the South Carolina Workers' Compensation Commission has jurisdiction of the parties and issues involved.
2. That venue in York County was agreed upon by the parties.
3. That Claimant's average weekly wage was \$274.50, making the compensation rate of \$183.01 applicable in this case.
4. That notice of the hearing was timely and properly served upon all parties of interest.

APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence at the time of the hearing.

BY THE CLAIMANT:

APA #1 - Reports of Dr. James Morrison, dated December 16, 2004, consisting of 6 pages.

APA #2 - Report of Dr. James Morrison, dated November 30, 2004, consisting of 3 pages.

APA #3 - Reports of Dr. Raymond Bynoe, dated November 24, 2004 to December 9, 2004, consisting of 7 pages.

APA #4 - Reports of Dr. Raymond Bynoe, dated November 24, 2004, consisting of 2 pages.

APA #5 - Report of Dr. Russell McMurry, dated November 17, 2004, consisting of 2 pages.

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APA #6 - Report of Tee Long Hwang, dated December 13, 2004 to August 16, 2005, consisting of 8 pages.

APA #7 - Report of Dr. Chad Gaurorearm, dated November 17, 2004, consisting of 2 pages.

APA #8 - Report of Dr. G. Eddie Richmond, dated November 17, 2004, consisting of 3 pages.

APA #9 - Report of Dr. Robert L. Waldron, dated November 17, 2004, consisting of 3 pages.

APA #10 - Report of Dr. David E. Koon, dated November 30, 2004, consisting of 3 pages.

APA #11 - Report of Dr. Dennis Dejesus, dated November 17, 2004, consisting of 2 pages.

APA #12 - Reports of Dr. Joshua Frankel, dated January 3, 2005 to September 10, 2005, consisting of 15 pages.

APA #13 - Reports of Dr. Deovyaas Sharma, dated February 28, 2005 to July 18, 2006, consisting of 12 pages.

APA #14 - Reports of Dr. James Storay, dated May 15, 2004 to November 14, 2005, consisting of 2 pages.

APA #15 - Reports of Dr. Reid W. Tribble, dated December 30, 2004 to February 2, 2005, consisting of 3 pages.

APA #16 - Report of Dr. Dennis M. Gettelfinger, dated March 16, 2006, consisting of 3 pages.

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BY THE DEFENDANTS:

APA #17 - Reports of University Specialty Clinic - Department of Ophthalmology, dated November 17, 2004 to April 12, 2005, consisting of 13 pages.

APA #18 - Reports of Carolina Cardiac Surgery, dated July 20, 2005 to August 30, 2006, consisting of 5 pages.

APA #19 - Reports of Palmetto Health Richland, dated February 2, 2005, consisting of 2 pages.

APA #20 - Reports of Dr. I. Foster Afulukwe, dated January 31, 2006 to May 18, 2006, consisting of 7 pages.

STATEMENT OF THE CASE

On May 24, 2006, Claimant filed a Form 50 alleging that on November 17, 2004, he was injured in a motor vehicle accident in the course and scope of his employment. On June 19, 2006, Defendants filed a Form 51, denying that Claimant's motor vehicle accident arose out of and in the course of his employment and asserting certain affirmative defenses.

A hearing was held before Commissioner G. Bryan Lyndon on October 11, 2006. It was undisputed that the Claimant was injured in a motor vehicle accident that occurred in the very early morning hours of November 17, 2004, on Interstate Highway I-77. At the time, Claimant and a coworker, Joey J. Horton, were riding in the personal vehicle of Mark Hinson, a foreman at Pyramid Masonry Contractors, Inc. (hereinafter "Pyramid"). Mr. Hinson died as a result of the injuries he received in the motor vehicle accident. Claimant contended that the employer through Mr. Hinson was providing him transportation to and from the work site. Therefore, he argued that the case fell within an exception to the "going to and coming from" rule. The Claimant requested a finding of compensability for the injuries suffered in the motor vehicle accident, payment of all medicals, payment of temporary total benefits from the date of the

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accident through the date of the hearing and continuing. Claimant contended that he had not reached maximum medical improvement. He further contended that Defendants were collaterally estopped by the Commission's decision in Joey J. Horton v. Pyramid Masonry Contractors, Inc., WCC File No. 0425180, from denying the compensability of the claim.

The Defendants denied that Claimant's injuries arose out of and in the course of his employment, since he was traveling to work at the time of the accident. The employer denied that it provided transportation to Claimant while going to and from work and denied paying travel time or mileage to either the Claimant or to the foreman, Mark Hinson. Defendants denied that they were collaterally estopped because of the Horton decision, since the Horton case was on appeal and, therefore, there was no final Order.

The Commission's file, except for unstipulated medical reports and self-serving declarations, was made a part of the record in this case.

EVIDENCE OF THE CASE

On January 12, 2004, Pyramid hired Mark Hinson as a masonry foreman. (Tr. 58). Several weeks later, Hinson went to Joey Horton's home and offered him a job as a brick mason. (Tr. 37-38). Prior to this, Mr. Horton had worked for 10-15 years as a brick mason for Mark Hinson's father, who owned a masonry company. (Tr. 47).

In October 2004, Mark Hinson, accompanied by Joey Horton, went to the home of the Claimant, James Clark. At the time, Claimant was living at 1401 Phil Thurman Drive in Lancaster, South Carolina. (Tr. 50). According to Kimberly Ingram, Claimant's purported common law wife, Mark Hinson came to their house twice. (Tr. 50). The first time, Hinson told Claimant and Ms. Ingram's cousin about two job positions coming open at Pyramid and asked if they would be interested in the jobs. (Tr. 50). Then, Hinson returned another day and advised Claimant that the job position was available, and if the Claimant wanted to work he should go

ahead and fill out the paperwork. (Tr. 50-1). According to Claimant and Ms. Ingram, Claimant filled out the paperwork at that time. (Tr. 19, 51).

Claimant completed a 2004 Internal Revenue W-4 Form, a North Carolina Department of Revenue Form NC-4, an Immigration and Naturalization Service Form I-9, a job placement information form, a job description for labor-tender, and a statement acknowledging that the perspective employee had read his job description. (Defendants' Exhibit #1). The Claimant testified that he had signed each of these forms. (Tr. 19-20). Although when questioned by his counsel, Claimant denied reading the documents before signing, the Forms required Claimant to provide information in addition to his signature. On the W-4 Form, Claimant was required to print his name, address, Social Security number, marital status, and the number of allowances he was claiming. (Defendants' Exhibit #1). On the Form NC-4, the Claimant was also required to print his name, address, Social Security number, marital status, and the number of allowances he was claiming. (Defendants' Exhibit #1). On the INS Form I-9, the Claimant was required to print his name, address, date of birth, and Social Security number. (Defendants' Exhibit #1). On the job placement information form, the Claimant was required to give his telephone number, date of birth, three previous employers and the dates worked, a past medical history, and the name and address of persons to contact in case of emergency. (Defendants' Exhibit #1). Finally, Claimant was required to sign and date a form acknowledging that he had read his job description. (Defendants' Exhibit #1).

Mark Hinson offered Claimant the job as a laborer. (Tr. 13). The Claimant did not own a car or have a driver's license at the time. (Tr. 12). Therefore, Mark Hinson offered to take him to and from work everyday. (Tr. 12-13). Claimant further testified that was how he got to work, and if Mark Hinson had not taken him, he would have no way to get there. (Tr. 14). Specifically, the Claimant testified:

I told him, "I ain't got no license. The only way is you come and get me. If you'll take me to work, that's the only way - - I don't have any other transportation to go to work - - get to work."

(Tr. 14). According to the Claimant, Mark Hinson responded:

A. He said, "I have transportation. I'll provide transportation for you to go to work." I said, "Well I'll take the job."

(Tr. 31). The Claimant testified that when he first went to work, Mark Hinson drove him to and from the job site in Charlotte. (Tr. 15). Mark Hinson also supervised him on the job. (Tr. 11). The Claimant had only worked three to four weeks for Pyramid at the time of his motor vehicle accident (Tr. 11), and the accident took place when they were on their way to a job site in Columbia, South Carolina. (Tr. 12). The Claimant testified that he never had contact with anyone at Pyramid other than Mark Hinson about his employment. (Tr. 11).

On cross-examination, Claimant confirmed that he was hired on November 1, 2004, and the accident took place on November 17, 2004. (Tr. 17). At the time of the accident, Claimant was riding in Mark Hinson's Honda automobile (Tr. 18) on the way to Columbia. The Claimant identified his signature on the W-4 Form, the NC-4 Form, the I-9 Form, and the Pyramid Prospective Employee Memo. (Tr. 20). Although Claimant had signed the Prospective Employee form indicating that he had read his job description, the Claimant testified that he actually did not read it. (Tr. 22). However, on cross-examination, Claimant admitted that when he had filled out the forms with the information requested, he had to read these forms. (Tr. 31-2). Initially, Claimant tried to contend that he completed and signed the W-4, NC-4, and I-9 on a different date than the Pyramid job description memo. However, he subsequently admitted that all forms were dated the same date, November 1, 2004. The Claimant acknowledged that if a company gives a job description to a prospective employee indicating that the employee must have a means of transportation, that would be an indication that the company was not going to

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provide the employee transportation. (Tr. 23-24). Claimant testified that Pyramid did not pay him anything for traveling back and forth to work, and that he did not go on the clock until he reached the job site. (Tr. 24). He admitted that his workday started when he arrived at the project. (Tr. 24).

The Claimant further testified that Mark Hinson provided him transportation to the worksite using Hinson's personal truck or car. (Tr. 25). He also acknowledged that he and Mr. Hinson, who also lived in Lancaster, would have to travel the same route to the job site each day. (Tr. 25). The Claimant testified that he told Mark Hinson "I couldn't take the job unless you come pick me up and take me to work everyday." (Tr. 26). Therefore, Hinson drove the Claimant to work each day using his personal vehicle. (Tr. 27).

The Claimant testified that his driver's license was suspended in 2000, because he was in a wreck and did not have insurance on his car. (Tr. 27). Prior to working for Pyramid, the Claimant worked at the Wal-Mart Distribution Center in Pageland, South Carolina. (Tr. 27). Claimant testified that the Distribution Center was approximately 22 miles from his home in Lancaster and that he had to get a ride to work each day with a friend. (Tr. 27-8). The Claimant also testified that when he worked for Tyson Foods in Monroe, North Carolina, he had also caught rides to work with friends. (Tr. 28-9). He admitted that neither of these companies provided him with transportation to and from work. (Tr. 29).

The Claimant called Joey Horton as a witness. Mr. Horton has known the Claimant for 8-10 years. (Tr. 37). Mr. Horton was also a passenger in Mark Hinson's car on November 17, 2004, when the motor vehicle accident occurred. (Tr. 37). Mr. Horton testified that he was hired by Mark Hinson as a brick mason in January 2004. (Tr. 37-38). At the time, he did not have a car or driver's license. (Tr. 39). Mr. Horton testified that Pyramid was going to provide him with transportation and that Mark Hinson was paid \$150.00 to carry him to work. (Tr. 39-40).

Horton further testified that in October 2004, he became aware that Hinson needed another laborer. Horton knew Clark from previous jobs and told Mark Hinson about the Claimant. (Tr. 42). Horton and Mark Hinson drove to the Claimant's house to offer the Claimant a job. (Tr. 42). In addition to the Claimant, the Claimant's "girlfriend or wife" was also present. (Tr. 41-2). According to Mr. Horton, the Claimant told Mark Hinson that he did not have any way to work and Mark Hinson replied "Don't worry about it. The company provides it." (Tr. 42). Horton testified that after the Claimant was hired, he, the Claimant, and Mark Hinson would ride to work everyday together. (Tr. 44).

On cross-examination, Horton testified that when they would ride to work with Mr. Hinson, they would ride in Hinson's personal truck or his wife's Honda. (Tr. 45). He testified that the week of the accident, Mark Hinson was driving his wife's car because his personal truck had been "tore up." (Tr. 46). Horton admitted that Pyramid did not provide a company truck for their transportation but he claimed that Hinson was paid \$150.00 to carry them. (Tr. 46). Horton admitted that he never discussed the \$150.00 payment with anyone other than Mr. Hinson. (Tr. 46). He testified that his only knowledge about the \$150.00 payment came from Mark Hinson, although he had seen the check. (Tr. 46).

Horton further testified that the mileage from Lancaster to Columbia was approximately 140 miles round trip. (Tr. 46-7). Horton had known Mark Hinson for many years, because Horton had worked for Hinson's father. He admitted that Mark Hinson had provided him transportation to work plenty of times in other employments. (Tr. 47). Mr. Horton admitted that if Mark Hinson did not work, Pyramid did not send a truck out to transport him to the job site. (Tr. 47-8). He also admitted that no one at Pyramid (other than Hinson) ever told him that the company was providing transportation. (Tr. 48).

The Claimant also called Kimberly Ingram as a witness. Ms. Ingram testified that she and the Claimant were married under common law. (Tr. 49). Ms. Ingram testified that she was present when Joey Horton and Mark Hinson came to their house. She further testified that Hinson told Claimant and Ms. Ingram's cousin about two job positions coming open and asked if they would be interested in the job positions. (Tr. 50). The Claimant told him he would be interested whenever it came open. Mr. Hinson then returned another day with the paperwork and told the Claimant that the job was available, and if he wanted to take the job he needed to fill out the paperwork. (Tr. 51). The Claimant then filled out the paperwork. According to Ingram, Claimant then asked Mark Hinson how he was supposed to get to and from work, and Mark Hinson told him:

... not to worry about that; he was going to come and get him and the company was gonna furnish it.

(Tr. 51). Thereafter, Mark Hinson would come to Claimant's house every morning around 5:00 a.m. and take him to work. (Tr. 52). Ms. Ingram testified that the Claimant did not have a driver's license and did not have any other means of getting to work. (Tr. 52).

On cross-examination, Ms. Ingram testified that she did not believe the Claimant read any of the forms that he signed. (Tr. 53-54). However, she was unable to explain how the Claimant would be able to answer questions about his medical history without reading the question. (Tr. 54). Ms. Ingram also testified that when Hinson came to pick up the Claimant he was either in a truck or a car. Neither of these vehicles had signs indicating they belonged to Pyramid. Ms. Ingram further admitted that the Claimant had received rides to work even before he began working with Pyramid, because he did not have a driver's license. (Tr. 56).

On behalf of the Defendants, David G. Mauney, Regional Vice-President for Pyramid, testified that Mark Hinson was hired as a foreman by Pyramid on January 12, 2004. Hinson's

job was to supervise brick masons and laborers on the job sites. (Tr. 59). Mr. Mauney testified that Hinson was not a part of the management of Pyramid. (Tr. 59). Hinson was paid an hourly wage of \$23.00 per hour. (Tr. 59). In addition, he was paid \$150.00 per month as a truck allowance for the use of his vehicle during the course of the workday. (Tr. 59). Mr. Mauney testified that the truck allowance was in effect at the time he began working at Pyramid in 1981. He also identified Defendants' Exhibit #2 which was a written policy explaining the truck allowance:

This expense is paid monthly. It is for the intended use of reimbursement for the use of personal vehicles on the job site. This pertains only for picking up or delivering incidentals and not to be interpreted as mileage.

(Tr. 60; Defendants' Exhibit #2). Mr. Mauney testified that Pyramid does not provide transportation to its employees (Tr. 60), and does not provide trucks to its foremen. (Tr. 61). He testified that all of the company's job descriptions contain the provision "Must have means of transportation to and from project." (Tr. 61).

Mr. Mauney testified that the mileage from Lancaster to Columbia and back was approximately 140 miles. At the mileage reimbursement rate of 37½ cents per mile, the monthly truck allowance would only pay for 2.87 days of travel. (Tr. 62). Additionally, if the \$150.00 was divided over the 22 work days in a month, then Mark Hinson would only be receiving approximately 13% of the amount that he would be entitled to at 37½ cents per mile. (Tr. 63). Mr. Mauney further testified that Mark Hinson started receiving the \$150.00 truck allowance when he was hired, which was before Clark was hired. (Tr. 64).

Mr. Mauney testified that Mark Hinson did have authority to hire the Claimant. (Tr. 63). However, there were company guidelines as to the amount that Hinson could offer to pay the Claimant. (Tr. 63). For a laborer at the Columbia job site, Hinson could offer between \$8.50

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and \$10.00 per hour depending upon experience. (Tr. 64). Mr. Mauney testified that Hinson did not have authority to offer him \$50.00 per hour. (Tr. 64). Likewise, Mr. Hinson did not have authority to offer transportation (Tr. 64), because Pyramid did not provide transportation for its employees. (Tr. 64).

On cross-examination, Mauney testified that Hinson did not have a copy of the truck allowance policy. (Tr. 65). However, when Mark Hinson was hired, there had been an extensive discussion about the truck allowance that Hinson would receive. (Tr. 68). Mr. Mauney testified that Pyramid had been very specific as to what the truck allowance was for, and Mark Hinson understood that the \$150.00 was paid for the use of his vehicle during the course of the workday to pick up ice, water, gasoline, or small tools. (Tr. 68-69). Mr. Mauney admitted that Mark Hinson had authority to tell the Claimant what his job would be and how much he would make. (Tr. 66-67). However, as to whether it was reasonable for the Claimant to believe that Mark Hinson had authority to say that Pyramid was providing transportation, Mr. Mauney testified that it was reasonable that Mark Hinson would offer a ride to the Claimant as a personal courtesy, but not as a part of his employment. (Tr. 67). Mr. Mauney testified that although he heard the testimony from witnesses Horton and Ingram, Mr. Hinson was not paid to take the Claimant or Mr. Horton to work. (Tr. 68). He further testified that it was not uncommon for employees to catch rides to work with friends and co-workers. (Tr. 69). Mauney testified that he did not have any conversation with the Claimant or with Joey Horton about how they were hired. (Tr. 72). He testified that it was a common practice in the construction industry to pay a per diem for people who have to go out and get incidental parts, etc. (Tr. 73). He also testified that if Hinson was not able to pick up the Claimant or Horton for 2-3 weeks, they would not have gone to work. (Tr. 73). Mr. Mauney testified that Pyramid would not send out a truck to pick up the Claimant or Horton, if Hinson was not available to bring them to work.

The Defendants also called Donald G. Williams to testify. Mr. Williams has been a foreman for Pyramid for 19 years. (Tr. 74). Mr. Williams testified that Pyramid did not provide its foremen with company trucks, and he had always driven his personal truck to work. (Tr. 75). Mr. Williams testified that he has been receiving a truck allowance for approximately 18 years, and has never transported any of Pyramid's workers to the job site. (Tr. 75-6). Williams further testified that the \$150.00 allowance was paid to the foremen to pick up miscellaneous things for the job such as ice, gas, wall tires, anything that the job required. (Tr. 75-77). The \$150.00 was paid for his using his own truck to pick up these incidentals. (Tr. 77-78). Williams testified that Pyramid did not provide transportation to and from work to its employees. (Tr. 77).

Numerous medical reports were submitted by the parties and have been thoroughly reviewed by the undersigned. Following the accident, Claimant was transported to Palmetto Health Richland Hospital. It was noted on the discharge summary that Claimant had suffered an aortic injury, a left femur fracture, a C2 fracture, a right eye injury, hypertension, and seizure. During the hospital stay, Claimant had surgery for a closed reduction and intermedullary nail fixation of the left femur fracture. The Claimant also sustained a closed head injury and experienced respiratory failure. Therefore, he underwent a tracheostomy at the hospital. It was also noted that the Claimant suffered some seizure activity secondary to his closed head injury. The Claimant also underwent surgery for a repair of a right orbital floor fracture with implantation of plate. Following his discharge from the hospital, Claimant's hypertension remained stable and his seizure disorder was stable on medication.

A record such as was necessary was made of the proceedings in this matter, and after careful consideration and a study of all the evidence, the following findings of fact are accordingly made.

FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. That all parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Pyramid Masonry Contractors, Inc., as the employer, and Hartford Fire Insurance Company, as the carrier.
2. That Claimant's average weekly wage was \$274.50, making the compensation rate of \$183.01 applicable in this case.
3. That Claimant suffered multiple injuries as a result of the motor vehicle accident that occurred on November 17, 2004, while the Claimant was traveling to Pyramid's job site in Columbia, South Carolina.
4. That Claimant did not own a car and his supervisor offered him a ride to and from work in the supervisor's personal truck or car, said finding being based upon all the evidence in the record.
5. That Claimant was riding with his supervisor in his supervisor's wife's car when the accident occurred on November 17, 2004.
6. That Claimant was not paid until he began work at the job site.
7. That the drive took about 1½ hours, and Claimant and his supervisor would stop for breakfast.
8. That the only knowledge Claimant had about transportation was from his supervisor who was killed in the accident.
9. That Claimant had held previous jobs in which he rode with friends to and from work because he had no transportation.

10. That a witness for Claimant, Joey Horton, testified that he had known Hinson, Claimant's supervisor, when Horton worked for Hinson's father and that Hinson had provided transportation for other employees while in that employment. He further testified that if the supervisor could not make it to work, neither could his riders.

11. That Claimant's girlfriend testified. Her testimony was given no weight. She was evasive on cross-examination and would not answer certain questions regarding forms that were filled out when Claimant was hired. She also could not give a physical description of Hinson, who was Claimant's supervisor.

12. That David G. Mauney, a witness for the Defendants, was a 25 year employee who was in a senior position with Pyramid. Mauney testified that the \$150.00 paid monthly to Hinson was not for transporting Claimant to and from work but instead was for any use of Hinson's personal car or truck at the job site during work hours to pick up incidentals, such as ice, water, parts, or other items which may be needed throughout the work day. This truck allowance of \$150.00 monthly would fall far short of compensating a supervisor for transporting employees in Lancaster, South Carolina to and from work in Columbia.

13. That a written policy statement regarding the truck allowance was promulgated in 1989 and clearly explains the policy. (See Defendants' Exhibit #2).

14. That the Commission's Order in Joey Horton v. Pyramid Masonry Contractors, WCC File No. 0425180, was under appeal at the time of this hearing.

15. That the only testimony indicating that the Defendant provided transportation was based on an alleged conversation with Mark Hinson, who is now dead. While this testimony was allowed, I gave it little weight.

16. That Claimant failed to prove by the greater weight of the evidence that his employer was providing transportation to and from work.

17. That the greater weight of the evidence established that Pyramid was paying Mark Hinson the amount of \$150.00 monthly for use of his personal vehicle at the work site to pick up incidentals.

18. That the greater weight of the evidence established that Pyramid was not paying Mark Hinson \$150.00 to transport Claimant to and from the job site.

19. That Claimant failed to establish through credible, reliable or probative evidence that Pyramid was paying Mark Hinson to transport him to and from work.

CONCLUSIONS OF LAW

Accordingly, as provided in Section 42-17-40, S.C. Code Ann. (1976), it is the determination of this Commissioner that:

1. Under Section 42-1-130, S.C. Code Ann. (1976), James Clark, Jr. was a covered employee at the time in question and under Section 42-1-140, S.C. Code Ann. (1976), Pyramid Masonry Contractors, Inc. was a covered employer.

2. Under Section 42-1-160, S.C. Code Ann. (1976), Pyramid did not pay travel money to transport the Claimant to and from work.

3. Under Section 42-1-160, S.C. Code Ann. (1976), Pyramid did not provide the means of transportation for the Claimant to travel to and from work.

4. Under Section 42-1-160, S.C. Code Ann. (1976), Claimant failed to prove that his injuries resulted from an accident which both "arose out of" and "in the course of" employment. Sola v. Sunny Slope Farms, 244 S.C. 6, 135 S.E.2d 321 (1964); Byrd v. Stackhouse Sheetmetal Works, 317 S.C. 35, 451 S.E.2d 405 (S.C. App. 1994).

5. That Defendants are not estopped under the doctrine of collateral estoppel from denying the compensability of this claim because of the Commission's decision in Horton v. Pyramid Masonry Contractors, Inc., WCC File No. 0425180, since the Decision and Order in

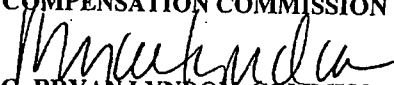
Horton is under appeal and is not a final, valid judgment on the merits. See, Owenby v. Owens Corning Fiberglas, 313 S.C. 181, 437 S.E.2d 130 (S.C. App. 1993).

ORDER

IT IS, THEREFORE, ORDERED that the claim of James Clark, Jr. be, and hereby is, denied.

AND IT IS SO ORDERED.

**SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION**


G, BRYAN LYNDON, COMMISSIONER

January 25, 2007
Columbia, South Carolina

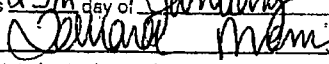
cc: Barry B. George, Esquire
Attorney at Law
1419 Bull Street
Columbia, South Carolina 29201

Richard B. Kale, Jr., Esquire
WILLSON, JONES, CARTER & BAXLEY, LLC
200 E. Camperdown Way, Suite D
Greenville, South Carolina 29601

CERTIFICATE OF SERVICE

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

This 25th day of January, 2007

By 
Administrative Assistant to the Commissioner

031

W964: 20 9002/20/90 Compensation Commission
P.O. Box 1715 * 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

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

James Clark, Jr. 251-45-4421
Claimant's name SSN
P.O. Box 3011, Lancaster, SC 29720
Address
803)
Home Phone # Work Phone #

Pyramid Masonry Contractors, Inc.
Employer's Name
2330 Mellon Court, Decatur, GA 30035
Address
SRS Specialty Risk Services
Insurance Carrier

Barry B. George, Esquire, 1419 Bull Street, 1419 Bull St., Columbia, SC 29201 (803) 254-7222
Preparer's Name Address Phone #

Complete each information blank. To request a hearing, check box 13b, indicate the kinds of benefits claimed by checking the box(es) at lines 6, 7, 8, & 9, and file this form in duplicate.

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

1. a. The claimant sustained an accident injury to see Exhibit "A" on 11/17/04
in Fairfield County, State of South Carolina
b. Describe briefly how the accident occurred claimant injured in automobile accident
2. Both the claimant and employer were subject to the South Carolina Workers' Compensation Act at time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accident injury was given to the employer on 11/17/2004 in the following manner: reported to employer.
- ☒ 6. Due to injury, the claimant is in need of (check one):
☐ (a) medical examination and treatment for
☒ (b) additional medical examination and treatment for injuries listed in 1a:
- ☒ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of date of accident to present
- ☒ 8. Due to the injury, the claimant has permanent disability of the following nature and extent: (check one)
☒ (1) General Disability: ☒ Total ☐ Partial
☐ (2) Specific Disability: ☐ Total ☐ Partial
Body part(s) affected are: head, back, aorta
- ☒ 9. Due to the injury, the claimant has a serious bodily disfigurement consisting of facial, head, neck & leg scars.
10. a. At the time of injury, the claimant was paid weekly wages of \$ 360.00; and demands accounting of days worked and wages earned as provided by law.
10. b. Give names and addresses of all employers for whom the claimant has worked since the date of accident.
none
11. a. Further grounds of claim:
11. b. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident. See page 2 of Form 50
- c. To the best of your knowledge, did you have any prior permanent disability? no; if yes, describe:
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- ☐ 13. a. I am filing a claim. I am not requesting a hearing at this time.
- ☒ 13. b. I am requesting a hearing.

Signature of Claimant Representative

Date

Refer to R.67-205, R.67-206, R.67-207, & R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. 50 Employee's Notice of Claim and/or Request for Hearing.

11b) Dr. Joshua Frankel
Four Medical Park, Suite 100
Columbia, SC 29203

Palmetto Health Eye Center
One Medical Park
1801 Sunset Drive
Columbia, SC 29203

Dr. Sandoli
3209 Colonial Drive
Columbia, SC 29203

Dr. Te Long Hwang
University Specialty Clinic
15 Medical Park, Suite 103
Columbia, SC 29203

Carolina Cardiac Surgery
Dr. Pettit & Dr. Tribble
One Medical Park, Suite 340
Columbia, SC 29203

Lancaster Internal Medicine
Dr. Sharma
834 W. Meeting Street
Lancaster, SC 29720

University Orthopaedics
Two Medical Park, Suite 404
Columbia, SC 29203

Dr. Foster Afulukwe
822 W. Meeting Street
Lancaster, SC 29720

James Clark, Jr. -v- Pyramid Masonry Contractors, Inc.

EXHIBIT "A"

Aortic injury

Head injury

Seizures

Left Femur Fracture

Hyphema Lid injury to right eye

Left Pulmonary contusion

Nasal bone fracture

Right orbit fracture

Right Maxillary sinus fracture

C₂ fracture

South Carolina Workers' Compensation Commission

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

WCC File # 0427461

Carrier File # YMG-35644

Carrier Code # 322

Employer FEIN 581269808

James Clark, Jr.	251-45-4421	Pyramid Masonry Contractors, Inc.
Claimant's Name	SSN	Employer's Name
P.O. Box 3011, Lancaster, SC 29720		2330 Mellon Court, Decatur, GA 30035
Address	City State Zip	Address City State Zip
Home Phone	Work Phone	Hartford Casualty Insurance Company
	Richard B. Kale, Jr.	Insurance Carrier
	Preparer's Name	(864) 527-3272
		Phone #

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part.
The employer-insurance carrier in answer to the claim, respectfully shows:

1. It is (denied) that the employee sustained an injury on or about the date set forth in the application. The reasons for denial are: No injury by accident arising out of and in the course of employment; see #11
2. It is (admitted) that both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: But see #1 and #11
3. It is (admitted) that the relationship of employer and employee existed at the time in question. The reasons for denial are: But see #1 and #11
4. It is (denied) that at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: See #1 and #11
5. It is (denied) that notice of injury was given the employer. The reasons for denial are: See #1 and #11
6. It is (denied) that the employee needs or is entitled to additional medical care as a result of injury. The reasons for denial are: See #1 and #11; No medical evidence.
7. It is (denied) that the employee is entitled to temporary total disability for the period(s) of: _____
8. It is (denied) that the employee is permanently disabled. The reasons for denial are: See #1 and #11; No medical evidence.
9. It is (denied) that the employee has a serious disfigurement.
10. It is contended that an average weekly wage of \$ Form 20 to be submitted applies, according to attached accounting of employee's earnings as provided by law.
11. Further contentions or grounds of defense are: All special and affirmative defenses including Section 42-15-20 (notice); Section 42-9-60; and Cooper v. McDevitt & Street, if applicable. Defendants reserve the right to amend.

I certify that I have served this document pursuant to R.67-212 by delivering a copy to Barry B. George, Esquire,
Name

1419 Bull Street, Columbia, SC 29201

Address

on the 19th day of June, 2006 by ☒ first class mail; ☐ personal service; ☐ certified mail.

Richard B. Kale, Jr. Attorney for Defendants June 19, 2006
Preparer's Signature Title Date
Richard B. Kale, Jr.
Willson Jones Carter & Baxley, LLC
200 East Camperdown Way, Suite D
Greenville, SC 29601

Refer to R.67-205 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

South Carolina Workers' Compensation Commission
1612 Marion St.
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675



WCC File #: 0427461
Carrier File #: YMGC 35644
Carrier Code #: 00285
Employer FEIN #: _____

Claimant's Name: James Clark, Jr. SSN: 251 - 45 - 4421 Employer's Name: Pyramid Masonry Contractors, Inc.
Address: P. O. Box 3011 Address: 2330 Mellon Court
City: Lancaster State: SC Zip: 29720 City: Decatur State: G Zip: 30035
Home Phone: () - Work Phone: () - Insurance Carrier: Hartford Fire Insurance Co.
Preparer's Name: Barry B. George Law Firm: Barry B. George, Esquire Preparer's Phone #: (803) 254 - 7222

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ claimant ☐ employer (check one) Date of injury: 11/17/2004 (m/d/yyyy)

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

See attached

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Richard B. Kale, Esquire

Name

200 East Camperdown Way, Suite D, Greenville, SC 29601

Address

on the 5th day of February, 2007 by ☒ first class mail ☐ personal service ☐ certified mail.

Preparer's Signature: [Signature] Attorney for Claimant: _____ Title: _____ Date: February 5, 2007

Check this box if you are not represented by an attorney. ☐

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and four copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

WCC Form # 30
Rev. 3/97

30

REQUEST FOR COMMISSION REVIEW

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R 490

JAMES CLARK, JR.
PYRAMID MASONRY CONTRACTORS
W.C.C. FILE #0427461

QUESTIONS PRESENTED

1. Did the Hearing Commissioner err in concluding that the Claimant failed to prove that his injuries resulted from an accident which both arose out of and in the course of his employment in light of the evidence in the record.
2. Did the Hearing Commissioner err in failing to find that the Claimant suffered injuries arising out of and in the course of his employment under the exception to the "going and coming" rule pursuant to Medlin v. Upstate Plaster Service 329 S.C. 92, 495 SE2d 447 (1998) and Eadie v. H.A. Sack Company, 322 S.C. 164, 470 S.E.2d 397 (S.C. App. 1996).
3. Did the Hearing Commissioner err in concluding that Pyramid did not pay travel money to transport the Claimant to and from work.
4. Did the Hearing Commissioner err in failing to find that Pyramid, through its employee acting with actual and/or apparent authority, provided the means of transportation for the Claimant to travel to and from work in light of the evidence in the record.
5. Did the Hearing Commissioner err in concluding that the Defendants are not estopped under the doctrine of collateral estoppel from denying the compensability of this claim because of the Commission's decision in Horton v. Pyramid Masonry Contractors, Inc., WCC File #0425180.

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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 ROCK HILL,
4 SOUTH CAROLINA.

5 * * * * *

6 BY COMMISSIONER LYNDON:

7 TODAY'S DATE IS OCTOBER THE 11TH, 2006. THIS
8 IS SOUTH CAROLINA WORKERS' COMPENSATION CASE FILE
9 NUMBER 0427461. THE CLAIMANT IS JAMES CLARK,
10 REPRESENTED BY ATTORNEY BARRY GEORGE; VERSUS
11 EMPLOYER PYRAMID MASONRY CONTRACTORS. SPECIALTY
12 RISK IS THE CARRIER, AND DICK KALE IS THE ATTORNEY
13 FOR HARTFORD, OR SPECIALTY RISK, AND THE DEFENDANT.
14 THE PURPOSE OF THE HEARING IS TO DETERMINE ISSUES
15 RAISED ON FORMS 50 AND 51. THE CLAIMANT'S AVERAGE
16 WEEKLY WAGE IS 274.50, HIS COMPENSATION RATE 183.01,
17 AND THE DATE OF ACCIDENT IS 11/17/04. ARE THERE ANY
18 OBJECTIONS TO APAs, JURISDICTION, VENUE OR ANY OTHER
19 ITEMS?

20 BY MR. GEORGE:

21 NO, YOUR HONOR.

22 BY MR. KALE:

23 NONE FROM THE DEFENSE, YOUR HONOR.

24 BY THE COMMISSIONER:

25 WITHOUT OBJECTION THE COMMISSION FILE BECOMES A

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1 PART OF THE RECORD WITH THE EXCEPTION OF SELF-
2 SERVING DECLARATIONS AND UNSTIPULATED MEDICAL
3 REPORTS. PRIOR TO GOING ON THE RECORD, WE HAD A
4 PREHEARING CONFERENCE, AND THIS IS A FAIRLY COMPLEX
5 CASE. IT INVOLVES A MOTOR VEHICLE ACCIDENT, AND ONE
6 OF THE -- A MAIN THEME, NOT THE MAIN THEME, IS
7 WHETHER OR NOT THERE WAS AN EXCEPTION TO THE GOING
8 AND COMING RULE, AND WHAT I'VE ASKED IS THAT EACH
9 PARTY -- GENERALLY, I DO THIS, BUT I'VE ASKED EACH
10 PARTY TO PUT THEIR RESPECTIVE POSITIONS ON THE
11 RECORD MORE OR LESS AS A FAIRLY BRIEF OPENING
12 STATEMENT, AND I WILL START WITH THE MOVING PARTY,
13 FOR MR. CLARK, MR. GEORGE.

14 BY MR. GEORGE:

15 YOUR HONOR, OUR POSITION ON THIS IS MR. CLARK
16 WAS INJURED IN AN ACCIDENT ON NOVEMBER 17TH, '04.
17 THIS IS A COMPENSABLE INJURY UNDER THE WORKERS'
18 COMPENSATION ACT, THAT IS AN EXCEPTION TO THE GOING
19 TO AND FROM WORK RULE. THE CASE THAT IS CLOSEST TO
20 THIS CASE THAT I COULD FIND IS MEDLIN VERSUS UPSTATE
21 PLASTER SERVICE, 329 SOUTH CAROLINA 92, AND ALSO I
22 HANDED UP TO THE COMMISSION THE CASE OF EADIE VERSUS
23 H.A. SACK COMPANY, WHICH HAS TO DO WITH A PARENT
24 AUTHORITY. OUR POSITION IS THAT MR. CLARK WAS HIRED
25 BY PYRAMID CONSTRUCTION COMPANY THROUGH MR. HINSON.

1 MR. HINSON CAME TO MR. CLARK'S HOUSE, HIRED HIM.
2 MR. CLARK DID NOT OWN A CAR, DID NOT HAVE A DRIVER'S
3 LICENSE, HAD NO WAY TO GET TO WORK, AND HE WAS TOLD
4 BY MR. HINSON, WHO WAS HIS SUPERVISOR, THAT PYRAMID
5 CONSTRUCTION COMPANY WOULD PROVIDE HIM WITH
6 TRANSPORTATION TO WORK, AND THAT'S THE ONLY WAY HE
7 COULD GET THERE, AND HE WORKED FOR THEM UNTIL THIS
8 ACCIDENT, AND EVERY DAY HE WENT TO WORK FOR THE
9 EMPLOYER, HE WAS TAKEN BY MR. HINSON, THE
10 SUPERVISOR.

11 BY THE COMMISSIONER:

12 ALL RIGHT, SIR. AND JUST TO PUT THE FINISHING
13 TOUCHES, WHAT, CERTAINLY, YOU ARE ASKING FOR IS
14 COMPENSABILITY, WHICH YOU STATED, PAYMENT OF ALL
15 MEDICALS, AS I UNDERSTAND IT, AND TEMPORARY TOTAL
16 DISABILITY BENEFITS FROM 11/17/04 AND CONTINUING,
17 SIMPLY BECAUSE THE CLAIMANT HAS NOT YET REACHED
18 M.M.I., AND IF I UNDERSTOOD CORRECTLY, AND I READ
19 THIS ON YOUR PREHEARING BRIEF, THE BODY PARTS THE
20 CLAIMANT IS ALLEGING OR STATES WERE AFFECTED IN THIS
21 M.V.A. IS HIS HEAD, AORTA, LEFT LOWER EXTREMITY,
22 RIGHT EYE, LEFT LUNG, NOSE, RIGHT JAW AND NECK?

23 BY MR. GEORGE:

24 THAT'S CORRECT, COMMISSIONER.

25 BY THE COMMISSIONER:

1 ALL RIGHT, SIR. AND NOW I'LL HEAR FROM MR.

2 KALE.

3 BY MR. KALE:

4 YOUR HONOR, WE DENY THAT MR. CLARK'S INJURIES
5 FROM THE MOTOR VEHICLE ACCIDENT AROSE BY ACCIDENT
6 ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT.
7 MR. CLARK WAS ON HIS WAY TO WORK FROM LANCASTER TO
8 COLUMBIA WHEN THE ACCIDENT OCCURRED. THEREFORE, THE
9 GOING AND COMING RULE DOES APPLY. IT IS OUR
10 POSITION THAT IT DOES NOT FALL WITHIN AN EXCEPTION
11 TO THE GOING AND COMING RULE. AT THE TIME OF THE
12 ACCIDENT, MR. CLARK, MR. HINSON AND MR. HORTON WERE
13 RIDING IN THE CAR BELONGING TO MARK HINSON'S WIFE.
14 HE WAS USING HER CAR THAT DAY. THE COMPANY DID NOT
15 PROVIDE ANY TRANSPORTATION BY MEANS OF TRUCK.

16 IT IS OUR BELIEF THAT MR. CLARK WILL CONTEND
17 THAT MR. HINSON WAS PAID \$150 PER MONTH TO PROVIDE
18 THEM WITH TRANSPORTATION. WE DENY THAT. MR. HINSON
19 WAS PAID A TRUCK ALLOWANCE, AND WE HAVE A WRITTEN
20 POLICY REGARDING THE TRUCK ALLOWANCE, AND THAT WAS
21 TO PAY MR. HINSON FOR THE USE OF HIS VEHICLE WHEN HE
22 WAS AT THE JOB SITE FOR INCIDENTALS, GOING TO GET
23 WATER, GOING TO GET CONCRETE, ANY SUPPLIES THAT THEY
24 NEEDED TO USE.

25 IT IS ALSO OUR POSITION THAT THE COMPANY,

1 PYRAMID MASONRY, DID NOT PAY FOR TRAVEL TIME, AND
2 THEY DID NOT PAY FOR MILEAGE, AND I HAVE HANDED UP
3 THE CASE OF EADIE VERSUS H.A. SACK, WHICH HAS
4 ALREADY BEEN REFERENCED, AND VERY CLEARLY THEY
5 INDICATE IN THAT CASE THAT FOR THE PAYMENT OF
6 MILEAGE TO CONSTITUTE THE PROVISION OF
7 TRANSPORTATION, THAT IT MUST PAY ALL OR
8 SUBSTANTIALLY ALL OF THE COST OF TRAVEL, AND AS YOU
9 WILL SEE FROM OUR TESTIMONY, THE \$150, EVEN ASSUMING
10 THAT, THAT WAS PAYMENT OF MILEAGE, WOULD ONLY PAY
11 ABOUT THREE DAYS, LESS THAN THREE DAYS OF TRAVEL
12 BETWEEN LANCASTER AND COLUMBIA AND, THEREFORE, WOULD
13 NOT DEFRAY SUBSTANTIALLY ALL THE COST OF TRAVEL.
14 SO, OUR POSITION IS THAT THIS COMES WITHIN THE GOING
15 AND COMING RULE AND IT'S NOT COMPENSABLE.

16 BY THE COMMISSIONER:

17 ALL RIGHT, SIR. THANK YOU. WHY DON'T WE DO
18 THIS: SINCE I THINK THE FACTS OF THE ACCIDENT
19 ITSELF ARE NOT IN DISPUTE, WE KNOW THAT HAPPENED, IF
20 YOU COULD LEAD THE CLAIMANT. IF YOU KNOW HIS AGE,
21 TELL HIM HIS AGE AND ASK HIM "YES" OR "NO," HOW FAR
22 HE WENT IN SCHOOL, HIS WORK HISTORY, AND THEN WHEN
23 IT GETS TO 11/17/04 AND THE DATE OF ACCIDENT, THEN,
24 SIR, IF YOU WOULD STOP LEADING THE CLAIMANT AND THEN
25 ASK HIM WHAT HAPPENED THAT DAY AND ABOUT THE WRECK

1 TO FAST-FORWARD THIS SIMPLY BECAUSE WE ---

2 BY MR. GEORGE:

3 OKAY, SURE.

4 BY MR. KALE:

5 CAN I JUST ASK ONE QUESTION?

6 BY THE COMMISSIONER:

7 YES, SIR.

8 BY MR. KALE:

9 I DON'T BELIEVE YOU MENTIONED ABOUT THE AVERAGE
10 WEEKLY WAGE AND COMP RATE, DID YOU?

11 BY THE COMMISSIONER:

12 I THOUGHT I DID, BUT I'LL SAY IT AGAIN. 274.50
13 IS THE AVERAGE WEEKLY WAGE, AND THE COMP RATE IS
14 183.01.

15 BY MR. KALE:

16 OKAY. THANKS.

17 BY THE COMMISSIONER:

18 MR. CLARK, WOULD YOU STATE YOUR FULL NAME FOR
19 THE RECORD?

20 BY THE WITNESS:

21 JAMES CLARK, JR.

22 * * * * *

23 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
24 WHOLE TRUTH AND NOTHING BUT THE TRUTH CONCERNING THE
25 MATTER HEREIN:

JAMES CLARK, JR.,

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

BY THE COMMISSIONER:

ANSWER ANY QUESTIONS YOUR LAWYER MAY HAVE,

PLEASE, SIR.

DIRECT EXAMINATION BY MR. GEORGE:

Q. JAMES, WOULD YOU PLEASE GIVE US YOUR AGE?

A. THIRTY-FIVE.

Q. AND HOW FAR DID YOU GO IN SCHOOL?

A. ELEVENTH.

Q. ARE YOU MARRIED?

A. YES.

Q. HOW MANY CHILDREN DO YOU HAVE?

A. THREE.

Q. AND WERE YOU INVOLVED IN AN ACCIDENT ON NOVEMBER 17,
'04?

A. YES.

Q. AND I BELIEVE MARK HINSON WAS DRIVING THE VEHICLE;
IS THAT CORRECT?

A. YES.

Q. AND YOU ALL WERE TRAVELING FROM LANCASTER TO
COLUMBIA, IS THAT RIGHT?

A. RIGHT.

Q. AND MARK HINSON WAS YOUR SUPERVISOR?

A. RIGHT.

1 Q. I THINK HE RAN INTO THE BACK OF ANOTHER CAR AND
2 THERE WAS A FAIRLY SERIOUS ACCIDENT; IS THAT
3 CORRECT?
4 A. RIGHT.
5 Q. YOU WERE AIR EVAC'D FROM THE SCENE TO THE HOSPITAL?
6 A. RIGHT.
7 Q. NOW, HOW LONG HAD YOU BEEN WORKING WITH PYRAMID
8 CONSTRUCTION?
9 A. I THINK THREE WEEKS, THREE TO FOUR WEEKS.
10 Q. AND WHO HIRED YOU AT PYRAMID CONSTRUCTION?
11 A. MARK HINSON.
12 Q. MARK HINSON? AND HE WAS YOUR SUPERVISOR THERE?
13 A. RIGHT.
14 Q. DID YOU EVER HAVE ANY CONTACT WITH ANYBODY ELSE
15 ABOUT BEING HIRED FROM PYRAMID CONSTRUCTION COMPANY
16 BESIDES MARK HINSON?
17 A. NO.
18 Q. HE WAS THE ONLY ONE YOU EVER TALKED TO?
19 A. RIGHT.
20 Q. DID HE ALSO BRING YOU YOUR CHECK?
21 A. RIGHT.
22 Q. NOW, AT THE TIME, WHERE DID YOU LIVE?
23 A. 1401 PHIL THURMAN DRIVE.
24 Q. WHERE IS THAT?
25 A. LANCASTER, SOUTH CAROLINA.

- 1 Q. AND WHERE WAS THE JOB SITE?
- 2 A. IN COLUMBIA.
- 3 Q. HOW LONG HAD YOU ALL BEEN WORKING ON THAT JOB SITE?
- 4 A. ABOUT THREE WEEKS.
- 5 Q. ALL RIGHT. AND HOW WOULD YOU GET TO WORK EVERY DAY?
- 6 A. MARK.
- 7 Q. DID YOU OWN A CAR AT THIS TIME?
- 8 A. NO.
- 9 Q. DID YOU HAVE A DRIVER'S LICENSE AT THIS TIME?
- 10 A. NO.
- 11 Q. COULD YOU GET TO WORK IF MARK HINSON DID NOT TAKE
- 12 YOU TO WORK?
- 13 A. NO.
- 14 Q. AND WHO HIRED YOU AT PYRAMID CONSTRUCTION COMPANY?
- 15 A. MARK HINSON.
- 16 Q. AND WHERE DID HE COME TO HIRE YOU?
- 17 A. AT MY HOUSE.
- 18 Q. AND WHO BROUGHT HIM OVER THERE?
- 19 A. JOEY.
- 20 Q. JOEY HORTON?
- 21 A. RIGHT.
- 22 Q. SO JOEY HORTON BROUGHT MARK HINSON TO YOUR HOUSE?
- 23 A. RIGHT.
- 24 Q. WAS YOUR WIFE AT HOME AT THAT TIME ALSO?
- 25 A. YES.

1 Q. AND THAT'S KIMBERLY INGRAM?

2 A. RIGHT.

3 Q. ALL RIGHT. SO WHEN MARK HINSON CAME TO YOUR PLACE
4 TO HIRE YOU, WHAT WAS THE JOB THAT WAS OPEN?

5 A. OPERATING LABORER -- OPERATING MACHINE AND LABORER.

6 Q. YOU WERE A LABORER?

7 A. AND AN OPERATOR.

8 Q. AND A MACHINE OPERATOR? AND DID HE OFFER YOU THE
9 JOB?

10 A. YES, HE OFFERED ME THE JOB.

11 Q. AND WHAT ABOUT HOW WERE YOU GOING TO GET TO WORK?

12 BY MR. KALE:

13 OBJECT TO THE HEARSAY, YOUR HONOR.

14 BY THE COMMISSIONER:

15 ALL RIGHT. ARE YOU GOING TO HAVE A RUNNING
16 OBJECTION ON THAT?

17 BY MR. KALE:

18 YES, SIR.

19 BY THE COMMISSIONER:

20 I'M GOING TO NOTE YOUR OBJECTION, BUT I'LL
21 ALLOW HIM TO TESTIFY.

22 DIRECT EXAMINATION RESUMED BY MR. GEORGE:

23 Q. HOW WERE YOU GOING TO GET TO WORK?

24 A. HE WAS GONNA TAKE ME. HE WAS GONNA DRIVE ME TO
25 WORK.

1 Q. DID HE TELL YOU THAT PYRAMID CONSTRUCTION ---

2 BY MR. KALE:

3 OBJECT TO THE LEADING, YOUR HONOR.

4 DIRECT EXAMINATION RESUMED BY MR. GEORGE:

5 Q. HOW WERE YOU SUPPOSED TO GET TO WORK?

6 A. THROUGH MARK.

7 Q. THROUGH MARK?

8 A. RIGHT.

9 Q. AND IS THAT HOW YOU GOT TO WORK?

10 A. THAT'S HOW I GOT TO WORK.

11 Q. AND IF HE HADN'T TAKEN YOU, YOU HAD NO WAY TO GET
12 THERE?

13 A. I DIDN'T HAVE NO WAY.

14 Q. AND WHEN HE CAME AND YOU ALL TALKED ABOUT THE JOB,
15 WHAT DID YOU TELL HIM? WHAT DID YOU TELL HIM?

16 A. I TOLD HIM, "I AIN'T GOT NO LICENSE. THE ONLY WAY
17 IS YOU COME AND GET ME. IF YOU'LL TAKE ME TO WORK,
18 THAT'S THE ONLY WAY -- I DON'T HAVE ANY
19 TRANSPORTATION TO GO TO WORK -- GET TO WORK."

20 Q. YOU COULDN'T GET THERE UNLESS THE COMPANY PROVIDED -

21 --

22 BY MR. KALE:

23 OBJECT, YOUR HONOR, TO THE LEADING.

24 BY THE COMMISSIONER:

25 ALL RIGHT. PLEASE DON'T SUGGEST THE ANSWER.

1- BY MR. GEORGE:

2 I'M SORRY.

3 DIRECT EXAMINATION RESUMED BY MR. GEORGE:

4 Q. SO HOW WERE YOU TO GET TO WORK?

5 A. THROUGH MARK.

6 Q. NOW, IS THAT HOW YOU DID GET TO WORK?

7 A. THAT'S HOW I GOT TO WORK.

8 Q. YOU GOT TO WORK EVERY DAY LIKE THAT?

9 A. RIGHT.

10 Q. AND DID YOU ALSO WORK FOR THE COMPANY IN CHARLOTTE?

11 A. YES.

12 Q. WHEN YOU FIRST WENT THERE?

13 A. RIGHT.

14 Q. AND HOW DID YOU GET TO THE JOB SITE IN CHARLOTTE?

15 A. MARK.

16 Q. AND AT THAT TIME -- I THINK I ASKED YOU THIS
17 QUESTION -- DID YOU OWN A CAR?

18 A. NO.

19 Q. DID YOU HAVE A DRIVER'S LICENSE?

20 A. NO.

21 BY MR. GEORGE:

22 YOUR HONOR, ON THE INJURIES AND EVERYTHING, I
23 THINK SINCE IT'S PART OF THE RECORD, I DON'T THINK
24 WE NEED TO GO INTO ---

25 BY THE COMMISSIONER:

1 RIGHT. I THINK THE PRIMARY FOCUS OF THIS
2 HEARING IS GOING TO BE COMPENSABILITY. I DID READ
3 INTO THE RECORD WHAT HE HAD PLED AS FAR AS BODY
4 PARTS, AND I THINK THAT WILL SHAKE ITSELF OUT
5 FURTHER DOWN THE ROAD, THE FIRST THING BEING TO SEE
6 WHETHER OR NOT I FIND IT A COMPENSABLE ACCIDENT OR
7 WHETHER IT IS OR IS NOT AN EXCEPTION TO THE GOING
8 AND COMING RULE. SUFFICE IT TO SAY HE HAS MULTIPLE
9 BODY PARTS.

10 BY MR. GEORGE:

11 OKAY. THAT'S GOOD. LET ME JUST ASK HIM ONE
12 OTHER...

13 DIRECT EXAMINATION RESUMED BY MR. GEORGE:

14 Q. WHO WAS YOUR SUPERVISOR AT PYRAMID? WHO DID YOU
15 WORK FOR THERE?

16 A. MARK.

17 Q. MARK HINSON?

18 A. YES. THAT'S THE ONLY ONE I KNEW, WAS MARK.

19 BY MR. GEORGE:

20 THAT'S ALL I HAVE, COMMISSIONER.

21 BY THE COMMISSIONER:

22 ALL RIGHT, SIR. ANSWER ANY QUESTIONS THAT MR.
23 KALE MAY HAVE, PLEASE, SIR.

24 CROSS EXAMINATION BY MR. KALE:

25 Q. MR. CLARK, I BELIEVE YOU WERE HIRED AT PYRAMID ON

- 1 NOVEMBER 1 OF 2004; IS THAT CORRECT?
- 2 A. YES.
- 3 Q. AND YOU WORKED THERE THEN 16 DAYS, AND ON THE 17TH
- 4 DAY YOU WERE ON YOUR WAY TO WORK, YOU HAD THE
- 5 ACCIDENT?
- 6 A. RIGHT.
- 7 Q. SO, BASICALLY, YOU HAD WORKED THERE PROBABLY ABOUT
- 8 TWO WEEKS; IS THAT CORRECT?
- 9 A. TWO, THREE WEEKS.
- 10 Q. NOW, DID YOU KNOW MARK HINSON PRIOR TO BEING HIRED?
- 11 A. NO.
- 12 Q. AND WHEN HE CAME TO YOUR HOUSE, WHO WAS THERE WHEN
- 13 HE CAME TO YOUR HOUSE?
- 14 A. JOEY.
- 15 Q. AND THAT'S YOUR WIFE?
- 16 A. NO.
- 17 Q. JOEY? ARE YOU SAYING JOEY?
- 18 A. JOEY.
- 19 Q. OKAY. THAT'S JOEY HORTON?
- 20 A. RIGHT.
- 21 Q. AND HE WAS A CO-WORKER AT PYRAMID?
- 22 A. YES.
- 23 Q. AND HE WAS IN THE MOTOR VEHICLE ACCIDENT?
- 24 A. RIGHT.
- 25 Q. AND HE HAS A CLAIM ALSO?

1 A. YES.

2 Q. AND YOU TESTIFIED AT HIS HEARING, DID YOU NOT?

3 A. RIGHT.

4 Q. NOW, ANYONE ELSE BESIDES JOEY AND YOU?

5 A. UH-UH. (NEGATIVE RESPONSE)

6 Q. NOW ---

7 BY MR. GEORGE:

8 I THINK HE TESTIFIED PREVIOUSLY ---

9 BY MR. KALE:

10 THIS IS CROSS EXAMINATION, MR. GEORGE.

11 BY MR. GEORGE:

12 OKAY. I WAS JUST -- OKAY.

13 CROSS EXAMINATION RESUMED BY MR. KALE:

14 Q. NOW, LET ME HAND YOU SOME DOCUMENTS. BEFORE I DO
15 THAT, WHEN YOU WOULD GO TO WORK, YOU RODE IN MR.
16 HINSON'S OWN CAR, CORRECT?

17 A. RIGHT.

18 Q. EITHER HIS TRUCK OR HIS WIFE'S CAR?

19 A. WE WERE IN A CAR THE LAST TIME.

20 Q. WHEN YOU HAD THE ACCIDENT ---

21 A. RIGHT.

22 Q. --- YOU WERE IN A HONDA, WHICH WAS HIS WIFE'S CAR?
23 WERE YOU AWARE OF THAT?

24 A. I DIDN'T KNOW WHOSE CAR IT WAS.

25 Q. BUT YOU KNEW IT WAS MR. HINSON'S CAR?

1 A. RIGHT.

2 Q. IT DIDN'T HAVE "PYRAMID CONSTRUCTION" ON THE SIDE OF
3 IT, DID IT?

4 A. (WITNESS NODS NEGATIVE RESPONSE)

5 Q. IS THAT A "NO"?

6 A. NO.

7 Q. WE CAN'T PICK UP YOUR SHAKING, SO IF YOU'D GIVE ME A
8 "YES" OR "NO."

9 BY THE COMMISSIONER:

10 PLEASE GIVE VERBAL ANSWERS, IF YOU WOULD,
11 PLEASE, SIR.

12 CROSS EXAMINATION RESUMED BY MR. KALE:

13 Q. NOW, WHEN YOU WERE HIRED, YOU SIGNED SOME DOCUMENTS
14 THAT INCLUDE A W-4 FORM AND AN NC-4 FORM AND AN I-9
15 FORM. DO YOU REMEMBER SIGNING THOSE FORMS?

16 A. YES.

17 Q. LET ME SHOW YOU THESE FORMS AND ASK YOU TO IDENTIFY
18 ON EACH OF THESE YOUR SIGNATURE. IS THAT YOUR
19 SIGNATURE?

20 A. YES.

21 Q. IS THAT YOUR SIGNATURE ON THE W-4?

22 A. YES.

23 Q. IS THAT YOUR SIGNATURE ON THE NC-4?

24 A. YES.

25 Q. IS THAT YOUR SIGNATURE ON THE I-9 FORM?

1 A. YES.

2 Q. AND THIS LAST ONE, IS THAT YOUR SIGNATURE?

3 A. YES.

4 Q. AND THOSE ARE ALL DATED NOVEMBER 1, 2004?

5 A. RIGHT.

6 BY MR. KALE:

7 YOUR HONOR, WE'D LIKE TO INTRODUCE THESE INTO
8 EVIDENCE.

9 BY THE COMMISSIONER:

10 DO YOU WANT TO MARK THEM SEPARATELY?

11 BY MR. KALE:

12 YOUR HONOR, I THINK WE CAN JUST DO THEM AS ONE
13 PACKAGE.

14 BY THE COMMISSIONER:

15 ALL RIGHT. SIR, HAVE YOU SEEN THEM? MR.
16 GEORGE, HAVE YOU SEEN THEM?

17 BY MR. GEORGE:

18 I THINK I'VE SEEN THEM BEFORE, BUT LET ME SEE
19 THEM AGAIN.

20 BY THE COMMISSIONER:

21 AND AFTER YOU LOOK AT THEM, WE NEED TO GO OFF
22 THE RECORD, AND I'LL ASK TIMMI TO MARK THEM.

23 BY MR. GEORGE:

24 I HAVE NO OBJECTION.

25 BY THE COMMISSIONER:

1 ALL RIGHT, SIR. LET'S GO OFF THE RECORD.

2 (OFF THE RECORD)

3 (COURT REPORTER MARKS DOCUMENTS DEFENDANTS' EXHIBIT

4 NUMBER ONE)

5 BY THE COMMISSIONER:

6 GO AHEAD.

7 BY MR. KALE:

8 YOUR HONOR, WE'D LIKE TO INTRODUCE THESE INTO
9 EVIDENCE.

10 BY THE COMMISSIONER:

11 ALL RIGHT, SIR. WITHOUT OBJECTION. THANK YOU,
12 SIR.

13 BY MR. KALE:

14 DO YOU MIND IF I USE ANOTHER COPY SO HE CAN
15 KEEP THAT ONE IN FRONT OF HIM?

16 BY MR. GEORGE:

17 NO.

18 CROSS EXAMINATION RESUMED BY MR. KALE:

19 Q. LET ME SHOW YOU ON THIS FIRST DOCUMENT THAT YOU
20 SIGNED, WHICH IS A MEMO ---

21 BY THE COMMISSIONER:

22 WHICH ONE? I'M SORRY.

23 BY MR. KALE:

24 THE FIRST DOCUMENT, YOUR HONOR, THE ONE THAT
25 HAS THE PYRAMID LOGO.

1 BY THE COMMISSIONER:

2 ALL RIGHT, SIR.

3 CROSS EXAMINATION RESUMED BY MR. KALE:

4 Q. IT INDICATES IN THERE THAT WHEN YOU SIGNED THAT
5 DOCUMENT YOU HAD BEEN ASKED TO READ AND UNDERSTAND
6 THE JOB DESCRIPTION, DOES IT NOT?

7 A. I CAN'T REMEMBER 'CAUSE HE JUST GAVE THEM TO ME AND
8 TOLD ME TO SIGN THEM.

9 Q. WELL ---

10 BY MR. GEORGE:

11 LET HIM ANSWER THE QUESTION, NOW. LET HIM
12 FINISH ANSWERING THE QUESTION, SIR. GO AHEAD.

13 CROSS EXAMINATION RESUMED BY MR. KALE:

14 Q. ANYTHING ELSE?

15 A. NO, THAT'S ALL.

16 Q. YOU'RE FINISHED THEN. IT SAYS, "WE ASK THAT YOU
17 SIGN BELOW ACKNOWLEDGING THAT YOU READ AND
18 UNDERSTAND THE JOB DESCRIPTIONS," CORRECT?

19 A. NO, 'CAUSE HE JUST TOLD ME TO SIGN THAT 'CAUSE ---

20 Q. ISN'T THAT WHAT IT SAYS?

21 A. YEAH, THAT'S WHAT IT SAYS.

22 Q. AND THAT'S WHAT YOU SIGNED?

23 A. I DIDN'T REALLY READ IT, THOUGH.

24 Q. WELL, LET ME ASK YOU ABOUT THE JOB DESCRIPTION. ON
25 THE JOB DESCRIPTION, THAT'S FOR A LABOR-TENDER,

1 NUMBER TEN, WHAT DOES THAT SAY?

2 A. "MUST HAVE MEANS OF TRANSPORTATION TO AND FROM

3 PROJECT."

4 Q. OKAY. SO THE COMPANY SAYS THAT YOU MUST HAVE YOUR

5 OWN MEANS OF TRANSPORTATION, RIGHT? ISN'T THAT WHAT

6 IT SAYS?

7 A. THAT'S WHAT IT SAYS.

8 Q. SO THAT'S A PRETTY GOOD INDICATION THAT THE COMPANY

9 WASN'T GOING TO PROVIDE YOU WITH TRANSPORTATION,

10 WASN'T IT?

11 A. I DIDN'T REMEMBER SIGNING THAT, BUT I JUST -- I JUST

12 SIGNED THE PAPER 'CAUSE HE TOLD ME TO START WORKING

13 I WAS GONNA SIGN THIS PAPER. SIGN THIS PAPER BEFORE

14 YOU START WORK.

15 Q. THAT'S A PRETTY GOOD INDICATION TO YOU FROM THE

16 COMPANY THAT THEY AREN'T GOING TO PROVIDE YOU

17 TRANSPORTATION, ISN'T IT?

18 A. I DON'T REMEMBER SEEING THAT PART THERE.

19 Q. I'M NOT SAYING WHETHER YOU'VE SEEN IT. I'M SAYING

20 WHEN A COMPANY GIVES YOU A JOB DESCRIPTION AND YOU

21 SIGN THAT YOU HAVE READ IT AND THE JOB DESCRIPTION

22 SAYS YOU MUST HAVE THE MEANS OF TRANSPORTATION TO

23 AND FROM THE PROJECT, THAT'S A PRETTY INDICATION THE

24 COMPANY ISN'T GOING TO PROVIDE YOU TRANSPORTATION,

25 ISN'T IT?

- 1 A. I GUESS.
- 2 Q. NOW, YOU HAVE NEVER BEEN PAID ANYTHING FOR TRAVEL
- 3 BACK AND FORTH TO WORK, HAVE YOU?
- 4 A. PAID TO TRAVEL?
- 5 Q. PYRAMID DOESN'T PAY YOU ANYTHING FOR TRAVELING BACK
- 6 AND FORTH TO WORK, DO THEY?
- 7 A. NO.
- 8 Q. AND BASICALLY, YOU DON'T GO ON THE CLOCK UNTIL YOU
- 9 GET TO THE JOB SITE, CORRECT?
- 10 A. YES, SIR.
- 11 Q. PARDON?
- 12 A. YES, SIR.
- 13 Q. SO THAT WHEN YOUR DAY STARTS IS WHEN YOU'RE AT THE
- 14 PROJECT, WHEREVER THAT MAY BE?
- 15 A. YES.
- 16 Q. AND IN THIS PARTICULAR INSTANCE, I THINK YOU ALL
- 17 WERE WORKING -- AT THE TIME THAT YOU HAD THE MOTOR
- 18 VEHICLE ACCIDENT, YOU WERE WORKING IN COLUMBIA AT A
- 19 PROJECT AT WHAT USED TO BE RICHLAND MEMORIAL
- 20 HOSPITAL. I THINK IT'S CALLED PROVIDENCE OR
- 21 PROVIDENT RICHLAND OR SOMETHING NOW. WEREN'T YOU
- 22 ALL AT THE HOSPITAL? WASN'T THAT WHERE THE JOB SITE
- 23 WAS?
- 24 A. YES, SIR.
- 25 Q. AND YOU DROVE EVERY DAY FROM LANCASTER TO COLUMBIA

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1 AND THEN BACK FROM COLUMBIA TO LANCASTER EVERY DAY,
2 CORRECT?
3 A. WITH MARK, YEAH.
4 Q. YOU WERE RIDING IN HIS CAR?
5 A. RIGHT.
6 Q. AND HE PROVIDED YOU THE TRANSPORTATION IN HIS CAR?
7 A. RIGHT.
8 Q. HE HAD TO GO TO WORK EVERY DAY THAT SAME ROUTE, DID
9 HE NOT?
10 A. YES.
11 Q. AND WHAT TIME WOULD YOU ALL LEAVE HOME TO GET TO
12 COLUMBIA?
13 A. BETWEEN FIVE AND SIX.
14 Q. AND WHAT TIME DID YOU HAVE TO BE IN COLUMBIA?
15 A. ABOUT EIGHT WHEN WE'D GET THERE.
16 Q. SO IT TOOK YOU OVER TWO HOURS TO DRIVE DOWN THERE?
17 A. HOUR, HOUR AND A HALF, SOMETHING LIKE THAT.
18 Q. DID YOU ALL STOP FOR BREAKFAST OR SOMETHING?
19 A. YES.
20 Q. NOW, THE DISTANCE FROM LANCASTER TO COLUMBIA IS
21 ABOUT 70 MILES, IS IT NOT?
22 A. YES, SIR.
23 Q. NOW, YOU DON'T KNOW OF YOUR OWN KNOWLEDGE WHETHER
24 THE COMPANY HAD AUTHORIZED MR. HINSON TO OFFER
25 ANYTHING TO YOU AS FAR AS TRANSPORTATION, DO YOU?

1 A. CAN YOU SAY IT AGAIN?

2 Q. I SAID, YOU DON'T HAVE ANY PERSONAL KNOWLEDGE
3 YOURSELF THAT THE COMPANY OFFERED TO PROVIDE YOU
4 TRANSPORTATION, DO YOU?

5 A. THAT'S WHAT MARK TOLD ME.

6 Q. OTHER THAN THIS ALLEGED CONVERSATION ---

7 BY MR. KALE:

8 AND MY OBJECTION STILL RUNS TO THAT.

9 BY THE COMMISSIONER:

10 I UNDERSTAND.

11 CROSS EXAMINATION RESUMED BY MR. KALE:

12 Q. --- YOU DIDN'T TALK WITH ANYONE ELSE ---

13 A. BUT MARK.

14 Q. --- BUT MARK?

15 A. RIGHT.

16 Q. AND YOU DON'T KNOW WHETHER HE HAD AUTHORITY TO OFFER
17 YOU ANYTHING, DO YOU?

18 A. HE GAVE ME A JOB.

19 Q. I'M SAYING YOU DON'T KNOW HE HAD AUTHORITY TO OFFER
20 YOU TRANSPORTATION OR ANY OTHER INDUCEMENT OTHER
21 THAN JUST OFFER YOU THE JOB?

22 A. I TOLD HIM I COULDN'T TAKE THE JOB UNLESS YOU COME
23 PICK ME UP AND TAKE ME TO WORK EVERY DAY.

24 Q. AND SO HE DID?

25 A. YES.

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- 1 Q. IN HIS PERSONAL VEHICLE?
- 2 A. RIGHT.
- 3 Q. AND HE WAS GOING THE SAME WAY THAT YOU WERE GOING?
- 4 A. RIGHT.
- 5 Q. AND ARE YOU A FRIEND WITH JOEY HORTON?
- 6 A. NOT REALLY, BUT WE JUST MET ON A JOB SITE ONE TIME.
- 7 Q. SO HE KNEW YOU FROM PRIOR WORK?
- 8 A. RIGHT.
- 9 Q. NOW, YOU INDICATE YOU DON'T HAVE A DRIVER'S LICENSE.
- 10 WHY DON'T YOU HAVE A DRIVER'S LICENSE?
- 11 A. I HAD A DRIVER'S LICENSE IN 2000, BUT I GOT IN A
- 12 WRECK, AND I DIDN'T HAVE INSURANCE ON MY CAR, SO
- 13 THEY TOOK MY LICENSE.
- 14 Q. SO YOUR LICENSE HAS BEEN SUSPENDED?
- 15 A. SUSPENDED SINCE 2000.
- 16 Q. NOW, PRIOR TO NOVEMBER 1, 2004, WHERE HAD YOU LAST
- 17 WORKED?
- 18 A. AT WAL-MART DISTRIBUTION.
- 19 Q. OKAY. AND WHERE WAS THAT LOCATED?
- 20 A. PAGELAND, SOUTH CAROLINA.
- 21 Q. PAGELAND?
- 22 A. RIGHT.
- 23 Q. HOW FAR AWAY IS THAT FROM LANCASTER?
- 24 A. ABOUT 22 MILES, SOMETHING LIKE THAT.
- 25 Q. HOW DID YOU GET TO WORK EVERY DAY?

1 A. A FRIEND.
2 Q. YOU GOT A RIDE WITH A FRIEND?
3 A. RIGHT.
4 Q. HE TOOK YOU EVERY DAY?
5 A. YES.
6 Q. AND HE WORKED THERE?
7 A. YES.
8 Q. NOW, DID YOU ALSO WORK AT TYSON FOODS?
9 A. RIGHT.
10 Q. WHEN WAS THAT?
11 A. '94, '95, SOMETHING LIKE THAT.
12 Q. WAS IT '98 TO 2001?
13 A. I CAN'T REMEMBER.
14 Q. WELL, LET ME ASK YOU, ONE OF THESE DOCUMENTS THAT
15 YOU FILLED OUT YOU INDICATE YOU WORKED AT TYSON
16 FOODS, AND IT'S HARD TO TELL WHAT YOU DID THERE, BUT
17 YOU SAY YOU WORKED TO APRIL OF 2001. YOU SEE THAT?
18 A. YES, SIR.
19 Q. IS THAT WHEN YOU WORKED AT TYSON FOODS?
20 A. I MIGHT HAVE MADE A MISTAKE. I DON'T REMEMBER.
21 Q. HOW DID YOU GET BACK AND FORTH TO WORK AT TYSON
22 FOODS?
23 A. A FRIEND.
24 Q. SO YOU ALWAYS HAVE CAUGHT RIDES TO WORK WITH
25 FRIENDS?

- 1 A. RIGHT.
- 2 Q. AND THE COMPANIES THAT YOU WORKED FOR THEN DIDN'T
- 3 PROVIDE YOU ANY TRANSPORTATION, DID THEY?
- 4 A. NO.
- 5 Q. WHERE WAS TYSON FOODS LOCATED?
- 6 A. MONROE.
- 7 Q. HOW FAR AWAY IS THAT FROM LANCASTER? MONROE IS IN
- 8 NORTH CAROLINA, CORRECT?
- 9 A. RIGHT. ABOUT 40 MILES, SOMETHING LIKE THAT.
- 10 Q. FROM LANCASTER TO MONROE IS 40 MILES?
- 11 A. ABOUT 40.
- 12 Q. ARE YOU SURE ABOUT THAT?
- 13 A. I DON'T ---
- 14 Q. DID IT TAKE AN HOUR TO GET THERE?
- 15 A. ABOUT AN HOUR.
- 16 Q. WHAT IS YOUR WIFE'S NAME?
- 17 A. KIMBERLY.
- 18 Q. AND WHAT'S HER LAST NAME?
- 19 A. INGRAM.
- 20 Q. AND WHY DOESN'T SHE HAVE THE SAME LAST NAME AS YOU?
- 21 A. WE'RE COMMON LAW MARRIED.
- 22 Q. COMMON LAW MARRIAGE?
- 23 A. RIGHT.
- 24 Q. DOES SHE LIVE WITH YOU?
- 25 A. YES.

1 Q. HOW LONG HAS SHE LIVED WITH YOU?

2 A. SINCE '98, I BELIEVE.

3 BY MR. KALE:

4 THAT'S ALL THE QUESTIONS I HAVE.

5 BY MR. GEORGE:

6 I HAVE A FEW QUESTIONS.

7 BY THE COMMISSIONER:

8 ALL RIGHT, SIR.

9 REDIRECT EXAMINATION BY MR. GEORGE:

10 Q. THESE DOCUMENTS THAT MR. KALE PRESENTED TO THE
11 COMMISSIONER THAT YOU SIGNED, DID YOU READ ANY OF
12 THOSE DOCUMENTS BEFORE YOU SIGNED THEM?

13 A. NO, 'CAUSE I JUST SIGNED THEM 'CAUSE I WAS READY TO
14 GO WORK. I WAS READY TO WORK.

15 Q. WHY DID YOU SIGN THEM?

16 A. BECAUSE JOEY TOLD ME -- MARK TOLD ME TO SIGN THEM SO
17 I COULD START WORK THAT DAY. SO I JUST WENT ON AND
18 SIGNED THEM.

19 Q. ALL RIGHT. BUT YOU DIDN'T READ THEM?

20 A. I DIDN'T READ THEM.

21 Q. AND WHEN MARK HINSON CAME AND OFFERED YOU THE JOB,
22 DID YOU TELL HIM YOU DIDN'T HAVE A CAR?

23 A. I TOLD HIM I DIDN'T HAVE NO CAR. I SAID, "YOU'LL BE
24 MY ONLY TRANSPORTATION IF I GO."

25 Q. WHAT DID HE SAY?

1 A. HE SAID, "I HAVE TRANSPORTATION. I'LL PROVIDE
2 TRANSPORTATION FOR YOU TO GO TO WORK." I SAID,
3 "WELL, I'LL TAKE THE JOB."

4 Q. ALL RIGHT. SO YOU HAD NO OTHER WAY TO GET THERE?

5 A. I DIDN'T HAVE NO OTHER WAY.

6 BY MR. KALE:

7 OBJECT TO THE LEADING, YOUR HONOR.

8 BY MR. GEORGE:

9 I HAVE NOTHING FURTHER.

10 BY THE COMMISSIONER:

11 NOTHING FURTHER?

12 BY MR. KALE:

13 I HAD THAT OBJECTION, YOUR HONOR.

14 BY THE COMMISSIONER:

15 YES, I KNOW, AND I SUSTAIN YOUR OBJECTION, BUT
16 THERE WERE NO OTHER QUESTIONS.

17 BY MR. KALE:

18 JUST VERY QUICK.

19 RECROSS EXAMINATION BY MR. KALE:

20 Q. LET ME ASK YOU THIS, MR. CLARK: WHEN YOU FILLED OUT
21 THE FORM SAYING "PLACEMENT INFORMATION," YOU FILLED
22 OUT ALL OF THAT, DIDN'T YOU, ABOUT YOUR PRIOR
23 EMPLOYMENTS AND ---

24 A. YES, SIR.

25 Q. --- WHETHER YOU'D LOST A JOB, ALL OF THAT KIND OF

1 THING, WHETHER YOU HAD PAST ILLNESSES? YOU FILLED
2 OUT THAT DOCUMENT, DID YOU NOT?

3 A. YES.

4 Q. SO YOU READ IT, CORRECT?

5 A. I FILLED THE QUESTIONS OUT.

6 Q. OKAY. AND WHEN YOU FILLED OUT THE I-9 FORM, IT
7 REQUIRED YOU TO PUT YOUR ADDRESS, YOUR DATE OF
8 BIRTH, YOUR SOCIAL SECURITY NUMBER. SO YOU READ
9 THAT DOCUMENT, DID YOU NOT?

10 A. RIGHT.

11 Q. OKAY. AND WHEN YOU FILLED OUT THE NC FORM, IT
12 REQUIRED YOUR NAME AND ADDRESS, WHETHER YOU WERE --
13 AND YOU CHECKED SINGLE DOWN THERE, DIDN'T YOU?

14 A. YES.

15 Q. YOU DIDN'T INDICATE YOU WERE MARRIED AT THAT POINT
16 IN TIME?

17 A. IT DIDN'T SAY NOTHING ABOUT IT.

18 Q. IT HAS THREE BLOCKS. IT SAYS SINGLE, MARRIED, OR
19 QUALIFYING WIDOWER, HEAD OF HOUSEHOLD, AND YOU
20 CHECKED SINGLE, DIDN'T YOU?

21 A. RIGHT.

22 Q. AND YOU HAD TO READ THAT FORM, DIDN'T YOU?

23 A. RIGHT.

24 Q. AND WHEN YOU FILLED OUT THE W-4 FORM, IT REQUIRED
25 YOUR ADDRESS; IT REQUIRED YOUR SOCIAL SECURITY

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1 NUMBER; IT REQUIRED THE NUMBER OF DEPENDENTS. YOU
2 READ THAT FORM, DIDN'T YOU?
3 A. YES.
4 Q. IN FACT, UP HERE UNDER PERSONAL ALLOWANCE IT
5 REQUIRED YOU TO PUT A "1" UP THERE, MEANING THAT YOU
6 HAD ONE DEDUCTION, DIDN'T IT?
7 A. RIGHT.
8 Q. SO YOU READ THAT DOCUMENT. SO IT'S YOUR CONTENTION
9 YOU READ EVERY DOCUMENT BUT THAT ONE THAT TALKED
10 ABOUT THE FACT THAT YOU HAD TO PROVIDE
11 TRANSPORTATION?
12 A. RIGHT. I DIDN'T READ THAT. HE TOLD ME -- HE
13 BROUGHT IT TO MY HOUSE AND SAID SIGN IT. I SIGNED
14 IT. HE TOLD ME I'D BE ABLE TO WORK THE NEXT DAY..
15 Q. WELL, YOU HAD TO FILL OUT SOME OF THE DOCUMENTS,
16 DIDN'T YOU?
17 A. I FILLED THAT OUT AHEAD OF TIME, BEFORE THE JOB EVEN
18 STARTED.
19 Q. BUT YOU FILLED OUT ALL THESE DOCUMENTS AT THE SAME
20 TIME BECAUSE THEY WERE GIVEN TO YOU IN A PACKAGE,
21 WEREN'T THEY?
22 A. NO, SIR.
23 Q. HE PROVIDED THOSE IN ONE PACKAGE AND YOU SIGNED
24 THEM, AND THEY ARE ALL DATED ---
25 BY MR. GEORGE:

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1 YOU'RE MAKING A STATEMENT; YOU'RE NOT ASKING
2 HIM A QUESTION.

3 BY MR. KALE:

4 CAN I FINISH MY QUESTION, BARRY? I'M NOT
5 FINISHED WITH MY QUESTION.

6 BY THE COMMISSIONER:

7 LET HIM FINISH HIS QUESTION. GO AHEAD AND
8 FINISH YOUR QUESTION.

9 RECROSS EXAMINATION RESUMED BY MR. KALE:

10 Q. EVERY ONE OF THESE IS DATED NOVEMBER 1 OF 2004,
11 AREN'T THEY?

12 A. YES.

13 BY MR. KALE:

14 THAT'S ALL THE QUESTIONS I HAVE, YOUR HONOR.

15 REDIRECT EXAMINATION BY MR. GEORGE:

16 Q. FROM THE DATE YOU SIGNED THOSE PAPERS THAT MR. KALE
17 HAS, HOW DID YOU GET TO WORK EVERY DAY?

18 A. MARK.

19 BY MR. GEORGE:

20 THANK YOU VERY MUCH.

21 BY THE COMMISSIONER:

22 ANY OTHER QUESTIONS OF THIS WITNESS?

23 BY MR. KALE:

24 NONE.

25 BY THE COMMISSIONER:

1 WHILE HE'S STILL HERE, I'M NOT NECESSARILY
2 ASKING HIM, BUT IS THERE GOING TO BE ANY EVIDENCE
3 THAT HAVING TO PROVIDE YOUR OWN TRANSPORTATION WAS A
4 CONDITION OF EMPLOYMENT? IS THERE ANY EVIDENCE BY
5 ANY WITNESSES ---

6 BY MR. KALE:

7 YES, SIR.

8 BY THE COMMISSIONER:

9 SIR?

10 BY MR. KALE:

11 YES, SIR.

12 BY THE COMMISSIONER:

13 THERE'S EVIDENCE TO CONTRADICT THAT?

14 BY MR. KALE:

15 NO. EVIDENCE TO CONTRADICT IT?

16 BY THE COMMISSIONER:

17 RIGHT.

18 BY MR. KALE:

19 OH, I'M SORRY. I THOUGHT YOU SAID IS THERE
20 GOING TO BE EVIDENCE TO SHOW THEY HAD TO PROVIDE --

21 NO, I'M NOT PRESENTING ANY EVIDENCE ---

22 BY THE COMMISSIONER:

23 I WAS JUST ASKING.

24 BY MR. GEORGE:

25 WE HAVE ANOTHER EMPLOYEE THAT TESTIFIES TO THE

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1 SAME THING, THAT THEY HIRED HIM AND THEY WOULD
2 PROVIDE HIM WITH TRANSPORTATION.

3 BY THE COMMISSIONER:

4 ALL RIGHT, SIR. AND YOUR NEXT WITNESS WOULD BE
5 WHO?

6 BY MR. GEORGE:

7 JOEY HORTON.

8 (OFF THE RECORD)

9 BY THE COMMISSIONER:

10 WOULD YOU STATE YOUR FULL NAME FOR THE RECORD?

11 BY THE WITNESS:

12 JOEY DEAN HORTON.

13 BY THE COMMISSIONER:

14 JOEY DEAN HORTON?

15 BY THE WITNESS:

16 YES, SIR.

17 * * * * *

18 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
19 WHOLE TRUTH AND NOTHING BUT THE TRUTH CONCERNING THE
20 MATTER HEREIN:

21 JOEY DEAN HORTON,

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

23 DIRECT EXAMINATION BY MR. GEORGE:

24 Q. MR. HORTON, WHERE DO YOU LIVE?

25 A. I LIVE IN LANCASTER.

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1 Q. AND WERE YOU EMPLOYED BY PYRAMID CONSTRUCTION ON
2 NOVEMBER 17, 2004?
3 A. YES, SIR.
4 Q. AND DO YOU KNOW JAMES CLARK?
5 A. YES, SIR.
6 Q. HOW LONG HAVE YOU KNOWN JAMES CLARK?
7 A. ROUGHLY ABOUT EIGHT, TEN YEARS.
8 Q. SPEAK UP SO THEY CAN HEAR YOU.
9 A. EIGHT, TEN YEARS.
10 Q. ALL RIGHT. AND ON NOVEMBER 17, 2004, YOU ALL WERE
11 IN AN ACCIDENT GOING FROM LANCASTER TO COLUMBIA TO
12 GO TO WORK; IS THAT CORRECT?
13 A. YES, SIR.
14 Q. NOW, WHEN WERE YOU HIRED BY PYRAMID CONSTRUCTION
15 COMPANY?
16 A. I THINK JANUARY, BUT I DON'T KNOW THE EXACT DATE.
17 Q. JANUARY 2004?
18 A. YES, SIR.
19 Q. AND WHO HIRED YOU?
20 A. MARK HINSON.
21 Q. TELL US ABOUT THAT.
22 A. WELL, HE HIRED ME ---
23 BY MR. KALE:
24 YOUR HONOR, IT'S IRRELEVANT WHEN HE WAS HIRED.
25 HE WAS HIRED IN JANUARY 2004. SO WHEN HE WAS HIRED,

1 HOW HE WAS HIRED, THAT'S NOT RELEVANT TO THIS CLAIM.

2 BY MR. GEORGE:

3 COMMISSIONER, IT IS RELEVANT TO THE FACT IF HE
4 WAS TOLD THE SAME THING HE WAS TOLD, IT SHOWED A
5 PATTERN OF HOW THEY HIRED THEM.

6 BY THE COMMISSIONER:

7 WELL, I'LL NOTE YOUR OBJECTION, BUT I'LL ALLOW
8 YOU TO ANSWER THE QUESTION. SO THE QUESTION IS --
9 AND MR. KALE HAS A RUNNING OBJECTION TO ANYTHING
10 MARK HINSON MAY OR MAY NOT HAVE SAID.

11 BY MR. GEORGE:

12 I UNDERSTAND THAT, YOUR HONOR.

13 BY THE COMMISSIONER:

14 HE'S NOT WITH US. OKAY.

15 BY MR. GEORGE:

16 I UNDERSTAND THAT.

17 BY THE COMMISSIONER:

18 GO AHEAD.

19 DIRECT EXAMINATION RESUMED BY MR. GEORGE:

20 Q. DID MARK HINSON HIRE YOU?

21 A. YES, SIR.

22 Q. AND WHAT DID HE HIRE YOU AS?

23 A. BRICK MASON.

24 Q. AND DID HE COME TO YOUR HOUSE AND HIRE YOU?

25 A. YES, SIR.

1 Q. AND WHERE DID HE WANT YOU TO GO TO WORK?

2 A. IN COLUMBIA.

3 Q. DID YOU ---

4 A. WELL, WE WENT IN CHARLOTTE FIRST.

5 Q. DID YOU HAVE A CAR AT THIS TIME?

6 A. NO, SIR.

7 Q. DID YOU HAVE A DRIVER'S LICENSE?

8 A. NO, SIR.

9 Q. HOW WERE YOU GOING TO GET TO WORK?

10 A. HE SAID THE COMPANY WAS GOING TO PROVIDE US
11 TRANSPORTATION.

12 BY MR. KALE:

13 OBJECTION. MY STANDING OBJECTION.

14 BY THE COMMISSIONER:

15 I'LL NOTE YOUR OBJECTION.

16 DIRECT EXAMINATION RESUMED BY MR. GEORGE:

17 Q. HE SAID WHAT?

18 A. THE COMPANY WAS GOING TO PROVIDE US TRANSPORTATION.

19 Q. AND DID THE COMPANY PROVIDE YOU WITH TRANSPORTATION?

20 A. YES, SIR.

21 Q. AND WAS MARK HINSON PAID TO TAKE YOU TO WORK?

22 A. YES, SIR.

23 BY MR. KALE:

24 OBJECTION TO THE LEADING, YOUR HONOR. MOVE TO
25 STRIKE.

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1 BY THE COMMISSIONER:

2 SUSTAINED.

3 DIRECT EXAMINATION RESUMED BY MR. GEORGE:

4 Q. WHY DID MARK HINSON TAKE YOU TO WORK?

5 A. 'CAUSE HE GOT PAID TO CARRY US TO WORK.

6 Q. AND HOW MUCH DID HE GET PAID?

7 BY MR. KALE:

8 I'M GOING TO OBJECT TO THAT AS BEING HEARSAY,
9 TOO, YOUR HONOR.

10 BY THE COMMISSIONER:

11 LET'S GO OFF THE RECORD.

12 (OFF-THE-RECORD DISCUSSION)

13 BY THE COMMISSIONER:

14 WE'RE BACK ON THE RECORD. ASK THE QUESTION
15 AGAIN, IF YOU WOULD, SIR.

16 DIRECT EXAMINATION RESUMED BY MR. GEORGE:

17 Q. AND YOU SAID HOW MUCH WAS MARK HINSON PAID?

18 A. A HUNDRED AND FIFTY DOLLARS.

19 BY MR. KALE:

20 AGAIN, YOUR HONOR, WHAT BASIS DOES HE HAVE TO
21 KNOW WHAT MARK HINSON WAS PAID?

22 BY THE COMMISSIONER:

23 MAYBE YOU CAN ASK HIM THAT QUESTION.

24 DIRECT EXAMINATION RESUMED BY MR. GEORGE:

25 Q. HOW DO YOU KNOW THAT?

1 A. HE TOLD ME THAT.

2 Q. WHO TOLD YOU THAT?

3 A. MARK HINSON TOLD ME THAT.

4 BY MR. KALE:

5 SAME OBJECTION, YOUR HONOR.

6 BY THE COMMISSIONER:

7 I'LL NOTE YOUR OBJECTION.

8 WITNESS RESUMES:

9 A. I SEEN THE CHECK.

10 DIRECT EXAMINATION RESUMED BY MR. GEORGE:

11 Q. MARK HINSON TOLD YOU HE WAS PAID \$150 FOR WHAT?

12 A. TO CARRY US TO WORK.

13 Q. YOU AND JAMES CLARK?

14 A. YES, SIR.

15 Q. DID YOU HAVE ANY OTHER WAY TO GET TO WORK BESIDES
16 THAT?

17 A. NO, SIR.

18 Q. NOW, TELL US ABOUT -- WERE YOU PRESENT WHEN JAMES
19 CLARK WAS HIRED?

20 A. YES, SIR.

21 Q. AND WHERE DID THIS TAKE PLACE?

22 A. AT HIS HOUSE.

23 Q. AND WHO WAS PRESENT AT THAT TIME?

24 A. IT WAS HIM AND HIS GIRLFRIEND OR WIFE.

25 Q. HIS WIFE?

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1 A. YEAH.

2 Q. AND MARK HINSON?

3 A. YES, SIR.

4 Q. AND WHY WERE YOU THERE?

5 A. BECAUSE I WAS DRIVING MARK.

6 Q. SO YOU TOOK HIM OVER THERE?

7 A. YES. HE NEEDED A LABORER, AND I KNOWED HIM FROM
8 PREVIOUS JOBS, AND I TOLD HIM ABOUT MR. CLARK.

9 Q. SO YOU RECOMMENDED JAMES CLARK TO MARK HINSON?

10 A. YES.

11 BY MR. KALE:

12 OBJECT TO THE LEADING, YOUR HONOR.

13 BY THE COMMISSIONER:

14 SUSTAINED.

15 DIRECT EXAMINATION RESUMED BY MR. GEORGE:

16 Q. SO, WHERE DID YOU ALL GO? WHERE WAS CLARK?

17 A. AT HIS HOUSE.

18 Q. AND WHAT HAPPENED OVER THERE?

19 A. WELL, HE NEEDED A LABORER. HE SAID HE DIDN'T HAVE
20 NO WAY.

21 Q. WHO SAID THAT?

22 A. HE DID.

23 Q. JAMES CLARK?

24 A. MR. CLARK. HE SAID, "DON'T WORRY ABOUT IT. THE
25 COMPANY PROVIDES IT."

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1 Q. PROVIDES TRANSPORTATION?

2 A. THAT'S RIGHT.

3 Q. YOU HEARD MARK HINSON SAY THAT?

4 A. YES, SIR.

5 Q. YOU WERE PRESENT?

6 A. YES, SIR.

7 Q. AND THAT'S THE SAME THING HE TOLD YOU, TOO?

8 A. YES, SIR.

9 BY MR. KALE:

10 OBJECT TO THE LEADING, YOUR HONOR.

11 BY THE COMMISSIONER:

12 YOU ARE LEADING. PLEASE REFRAIN.

13 BY MR. GEORGE:

14 ALL RIGHT.

15 DIRECT EXAMINATION RESUMED BY MR. GEORGE:

16 Q. DID HE ALSO TELL YOU THAT?

17 A. YES, SIR, SURE DID.

18 Q. AND DID JAMES CLARK GO TO WORK WITH PYRAMID?

19 A. YES, SIR.

20 Q. AND WHAT WAS MARK HINSON'S POSITION WITH PYRAMID?

21 A. HE WAS A FOREMAN.

22 Q. HE WAS YOUR FOREMAN?

23 A. YES, SIR.

24 Q. WAS HE JAMES CLARK'S FOREMAN?

25 A. YES, SIR.

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- 1 Q. AND WHEN YOU ALL WOULD GO FROM LANCASTER TO
2 COLUMBIA, HOW DID YOU ALL GET THERE EVERY DAY?
3 A. BY MARK HINSON.
4 Q. AND DID YOU AND CLARK RIDE TOGETHER?
5 A. RODE TOGETHER EVERY DAY.
6 Q. WHAT ABOUT IF HE DIDN'T PICK YOU UP? COULD YOU GET
7 TO WORK?
8 A. NO, SIR.
9 Q. YOU DIDN'T OWN A CAR?
10 A. NO, SIR.
11 Q. YOU DIDN'T HAVE A DRIVER'S LICENSE?
12 A. NO DRIVER'S LICENSE.

13 BY MR. GEORGE:

14 THAT'S ALL THE QUESTIONS I HAVE."

15 BY THE COMMISSIONER:

16 ANSWER ANY QUESTIONS MR. KALE MAY HAVE, PLEASE,

17 SIR.

18 CROSS EXAMINATION BY MR. KALE:

- 19 Q. MR. HORTON, YOU WERE HIRED IN JANUARY OF 2004; ISN'T
20 THAT CORRECT?
21 A. YES, SIR.
22 Q. MR. CLARK WAS NOT HIRED UNTIL NOVEMBER OF 2004,
23 CORRECT?
24 A. YES, SIR.
25 Q. OKAY. AND WHEN YOU WENT OVER TO HIS HOUSE, YOU'RE

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1 SAYING YOU WERE THERE, MARK HINSON WAS THERE, MR.
2 CLARK WAS THERE, AND MR. CLARK'S GIRLFRIEND OR WIFE?
3 A. YES, SIR.
4 Q. DID YOU DRIVE? I THOUGHT I HEARD YOU SAY YOU DROVE
5 MR. HINSON OVER TO HIS HOUSE.
6 A. NO, YOU DIDN'T EITHER. I DON'T DRIVE.
7 Q. YOU DON'T DRIVE? SO YOU KNEW MR. CLARK FOR 18
8 YEARS?
9 A. EIGHT OR TEN YEARS.
10 Q. OH, EIGHT OR TEN YEARS?
11 A. YES, SIR.
12 Q. AND YOU ALL HAD WORKED JOBS TOGETHER?
13 A. WELL, NOT ON THE SAME JOB. HE WORKED FOR A
14 DIFFERENT COMPANY. I JUST SEEN HIM ON JOB SITES,
15 AND I GOT TO KNOW HIM.
16 Q. IS THAT HOW YOU KNEW HIM, OR DID YOU KNOW HIM ---
17 A. I GOT TO KNOW HIM ON JOB SITES.
18 Q. OKAY. DID YOU KNOW HIM OUTSIDE OF WORK, TOO?
19 A. NO.
20 Q. WHEN YOU WOULD RIDE TO WORK WITH MARK HINSON, YOU
21 WOULD RIDE IN EITHER MARK HINSON'S PERSONAL TRUCK OR
22 MARK HINSON'S WIFE'S CAR; ISN'T THAT CORRECT?
23 A. YES, SIR. THAT'S THE ONLY TIME WE EVER DROVE THE
24 CAR.
25 Q. WAS THE DAY OF THE ACCIDENT?

- 1 A. WELL, THAT WEEK OR WHATEVER 'CAUSE HIS TRUCK WAS
2 TORE UP.
- 3 Q. HIS TRUCK WAS TORE UP, SO HE DROVE HIS WIFE'S CAR?
- 4 A. YES, SIR.
- 5 Q. SO PYRAMID WASN'T PROVIDING A TRUCK TO DRIVE YOU AND
6 MR. CLARK AND MR. HINSON BACK AND FORTH TO WORK
7 EVERY DAY, WERE THEY?
- 8 A. A PERSONAL TRUCK?
- 9 Q. NO. THEY WERE NOT PROVIDING A COMPANY TRUCK?
- 10 A. NO, THEY WAS PAYING HIM TO CARRY US.
- 11 Q. AND DID YOU EVER TALK WITH ANYONE OTHER THAN MR.
12 HINSON ABOUT WHAT HE WAS BEING PAID \$150 FOR?
- 13 A. NO, SIR.
- 14 Q. SO THE ONLY WAY THAT YOU CAN SAY THAT THIS \$150 WAS
15 TO PAY MR. HINSON TO TAKE YOU AND MR. CLARK BACK AND
16 FORTH IS TO SAY WHAT MR. HINSON SAID, CORRECT?
- 17 A. YEAH, BUT I SEEN THE CHECK.
- 18 Q. AND MR. HINSON IS NOT HERE; HE'S DEAD, ISN'T HE?
19 CORRECT?
- 20 A. OH, YES.
- 21 Q. NOW, HOW LONG WOULD IT TAKE YOU TO GET FROM
22 LANCASTER TO COLUMBIA TO THE JOB SITE?
- 23 A. HOUR AND TEN MINUTES, TWENTY MINUTES.
- 24 Q. ABOUT 70 MILES ONE WAY?
- 25 A. SOMETHING LIKE THAT.

- 1 Q. ONE HUNDRED AND FORTY MILES ROUND TRIP?
- 2 A. APPROXIMATELY.
- 3 Q. AND YOU WOULD WORK FIVE DAYS A WEEK?
- 4 A. YES, SIR.
- 5 Q. AND MORE THAN 40 HOURS OR 40 HOURS?
- 6 A. SOMETIMES OVER 40 AND SOMETIMES 40 OR LESS.
- 7 Q. OKAY. AND, BASICALLY, YOU ALL WENT EVERY WEEK?
- 8 A. YES, SIR.
- 9 Q. AND YOU KNEW MARK HINSON PRIOR TO GOING TO WORK FOR
- 10 PYRAMID MASONRY, DID YOU NOT?
- 11 A. YES, SIR.
- 12 Q. IN FACT, YOU HAD WORKED FOR HIM AT SOME TIME?
- 13 A. I WORKED FOR HIS DADDY.
- 14 Q. AND SO EVEN BEFORE, WHEN YOU WERE WORKING FOR HIS
- 15 DADDY, YOU KNEW MARK HINSON, DID YOU NOT?
- 16 A. YES, SIR.
- 17 Q. BECAUSE MARK HINSON WORKED FOR HIS DAD?
- 18 A. THAT'S RIGHT.
- 19 Q. SO YOU'VE KNOWN THEM FOR A LONG TIME?
- 20 A. YES, SIR.
- 21 Q. AND HE'S PROVIDED YOU TRANSPORTATION TO WORK OR
- 22 OTHER PLACES PLENTY OF TIMES, HAS HE NOT?
- 23 A. YES, SIR.
- 24 Q. NOW, IF MARK HINSON COULD NOT GO TO WORK, PYRAMID
- 25 DIDN'T SEND A TRUCK OUT TO GET YOU, DID IT?

1 A. NO, SIR.

2 Q. THE ONLY TIMES THAT YOU EVER GOT TO WORK, YOU WERE
3 GOING IN MARK HINSON'S PERSONAL CAR OR PERSONAL
4 TRUCK?

5 A. YES, SIR.

6 Q. OTHER THAN MARK HINSON AND WHAT YOU'VE TESTIFIED, DO
7 YOU HAVE ANY -- LET ME REPHRASE. OTHER THAN WHAT
8 YOU'RE SAYING MARK HINSON SAID, DID ANYONE ELSE AT
9 PYRAMID MASONRY EVER TELL YOU THAT THE COMPANY WAS
10 PROVIDING TRANSPORTATION?

11 A. NO. I DIDN'T ASK.

12 BY MR. KALE:

13 THAT'S ALL I HAVE, YOUR HONOR.

14 BY THE COMMISSIONER:

15 OKAY. MR. GEORGE?

16 BY MR. GEORGE:

17 THAT'S ALL I HAVE.

18 BY THE COMMISSIONER:

19 ALL RIGHT, SIR. UNLESS YOU ALL THINK HE'LL BE
20 RECALLED, HE CAN BE EXCUSED.

21 BY MR. GEORGE:

22 JUST HAVE A SEAT OUTSIDE.

23 (OFF THE RECORD)

24 BY THE COMMISSIONER:

25 AND YOUR NAME IS WHAT, MA'AM?

1 BY THE WITNESS:

2 KIMBERLY INGRAM.

3 BY THE COMMISSIONER:

4 AND I'M GOING TO ASK YOU TO SPEAK UP BECAUSE
5 WE'RE RECORDING THIS, MS. INGRAM.

6 * * * * *

7 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
8 WHOLE TRUTH AND NOTHING BUT THE TRUTH CONCERNING THE
9 MATTER HEREIN:

10 KIMBERLY INGRAM,

11 BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS FOLLOWS:

12 DIRECT EXAMINATION BY MR. GEORGE:

13 Q. KIMBERLY INGRAM IS YOUR NAME?

14 A. YES.

15 Q. AND YOU KNOW JAMES CLARK?

16 A. YES.

17 Q. WHAT'S YOUR RELATIONSHIP TO HIM?

18 A. COMMON LAW MARRIED.

19 Q. YOU'RE COMMON LAW MARRIED? AND HOW MANY CHILDREN DO
20 YOU ALL HAVE?

21 A. THREE.

22 Q. HOW OLD ARE THEY?

23 A. SEVEN, FIVE AND TWO.

24 Q. AND WHERE DO YOU ALL LIVE NOW?

25 A. PHIL THURMAN, OFF OF LYNWOOD DRIVE IN LANCASTER.

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1 Q. WERE YOU PRESENT WHEN MARK HINSON CAME TO YOU ALL'S
2 HOUSE TO SEE JAMES CLARK?

3 A. YES.

4 BY MR. KALE:

5 OBJECT TO THE LEADING, YOUR HONOR.

6 DIRECT EXAMINATION RESUMED BY MR. GEORGE:

7 Q. DID MARK HINSON COME TO YOU ALL'S HOUSE?

8 BY THE COMMISSIONER:

9 AND I SUSTAIN IT. WE CAN MOVE ON.

10 WITNESS ANSWERS:

11 A. YES.

12 DIRECT EXAMINATION RESUMED BY MR. GEORGE:

13 Q. AND WHO WAS WITH HIM WHEN HE CAME TO YOUR HOUSE?

14 A. JOEY.

15 Q. JOEY HORTON?

16 A. MM-HMM. (AFFIRMATIVE RESPONSE)

17 Q. AND WHAT WAS THE PURPOSE OF THEM COMING OVER TO YOUR
18 HOUSE?

19 A. WELL, HE CAME OVER THERE TWICE. THE FIRST TIME HE
20 CAME, HE WAS TELLING JAMES AND MY COUSIN ABOUT TWO
21 JOB POSITIONS COMING OPEN, AND HE TOLD -- HE ASKED
22 HIM WOULD HE BE INTERESTED IN THE JOB POSITION.
23 JAMES TOLD HIM YEAH, WHENEVER THEY CAME OPEN. SO HE
24 CAME BACK ANOTHER DAY, AND HE CAME WITH THE
25 PAPERWORK AND TOLD JAMES THAT THE JOB POSITION WAS

1 AVAILABLE, AND HE TOLD HIM IF HE WANTED TO WORK HE
2 HAD TO GO AHEAD ON AND FILL OUT THE PAPERWORK. SO
3 JAMES FILLED OUT THE PAPERWORK, AND JAMES ASKED HIM
4 HOW WAS HE SUPPOSED TO GET TO AND FROM WORK, AND HE
5 TOLD JAMES NOT TO WORRY ABOUT THAT; HE WAS GONNA
6 COME AND GET HIM AND THE COMPANY WAS GONNA FURNISH
7 IT.

8 BY MR. KALE:

9 AGAIN, I'M GOING TO OBJECT TO THE HEARSAY.

10 BY MR. GEORGE:

11 I THOUGHT WE HAD A RUNNING OBJECTION ON THAT.

12 BY THE COMMISSIONER:

13 WE HAVE A RUNNING OBJECTION. I'LL ALLOW HIM TO
14 VOICE IT PERIODICALLY, BUT I UNDERSTAND WHY HE DID
15 IT AT THAT JUNCTURE.

16 DIRECT EXAMINATION RESUMED BY MR. GEORGE:

17 Q. WOULD YOU PLEASE REPEAT WHAT YOU SAID? I THINK YOU
18 WERE INTERRUPTED ON THE RECORD.

19 A. HE CAME BY TWO DIFFERENT TIMES. THE FIRST TIME HE
20 CAME, HE TOLD JAMES THAT THEY WAS GONNA HAVE TWO
21 POSITIONS COMING OPEN. HE TOLD HIM ABOUT IT AND MY
22 COUSIN. HE TOLD HIM AS SOON AS HE HEARD SOME MORE
23 ON IT, HE WAS GONNA COME BACK. SO THEN HE CAME BACK
24 AT A LATER DATE. HE HAD PAPERWORK FOR THE JOB
25 POSITION. HE TOLD JAMES IF HE STILL WAS INTERESTED

1 IN WORKING, HE NEEDED TO FILL OUT THE PAPERWORK.
2 THAT WAY HE COULD START THE FOLLOWING DAY. JAMES
3 SIGNED THE PAPERWORK, AND JAMES ASKED HIM HOW WAS HE
4 GONNA GET TO AND FROM WORK, AND HE TOLD JAMES NOT TO
5 WORRY ABOUT IT, THAT HE WAS GONNA COME AND PICK HIM
6 UP, AND THE COMPANY WAS GONNA PROVIDE THE
7 TRANSPORTATION.

8 Q. THE COMPANY WAS GOING TO PROVIDE TRANSPORTATION?

9 A. MM-HMM. (AFFIRMATIVE RESPONSE) AND HE CAME EVERY
10 MORNING AT 5:00.

11 Q. HE PICKED HIM UP EVERY MORNING?

12 A. MM-HMM. (AFFIRMATIVE RESPONSE)

13 Q. IS THAT HOW JAMES GOT TO WORK?

14 A. HE GOT TO WORK BY MARK, AND HE BROUGHT HIM BACK.

15 Q. AND AT THIS TIME, DID JAMES HAVE A CAR?

16 A. NO.

17 Q. DID JAMES HAVE A DRIVER'S LICENSE?

18 A. NO.

19 Q. DID HE HAVE ANY OTHER MEANS OF GETTING TO WORK?

20 A. NO.

21 BY MR. GEORGE:

22 THAT'S ALL I HAVE.

23 BY THE COMMISSIONER:

24 OKAY. ANSWER ANY QUESTIONS BY MR. KALE,
25 PLEASE.

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CROSS EXAMINATION BY MR. KALE:

- 1 Q. WHEN MR. HINSON CAME BY, YOU MENTIONED THERE WAS
2 SOME PAPERWORK?
3
4 A. MM-HMM. (AFFIRMATIVE RESPONSE)
5 Q. JAMES READ THE PAPERWORK AND SIGNED IT, FILLED IT
6 OUT?
7 A. NO. JAMES JUST SIGNED THE PAPERWORK BECAUSE HE TOLD
8 HIM ---
9 Q. HE FILLED IT OUT, DIDN'T HE?
10 A. HE SIGNED IT, BUT AS FAR AS HIM -- MARK WAS TELLING
11 HIM TO JUST SIGN THE PAPERWORK. SO HE JUST SIGNED
12 IT.
13 Q. WELL, LET ME ASK YOU, IF YOU LOOK AT THIS PAPERWORK,
14 HE HAD TO COMPLETE THAT, DIDN'T HE?
15 A. YEAH. BUT, I MEAN, ANY JOB YOU HAVE, YOU HAVE FORMS
16 LIKE THAT. SO YOU BASICALLY KNOW HOW ---
17 Q. HE FILLED OUT THAT, DIDN'T HE?
18 A. --- TO COMPLETE THEM.
19 Q. HE FILLED OUT THAT, DIDN'T HE?
20 A. YEAH. WITH ANY JOB, THOUGH, YOU HAVE THAT SAME TYPE
21 PAPERWORK IN EVERY JOB, THE ---
22 Q. HE FILLED OUT THAT, DIDN'T HE?
23 A. --- W-4s AND STUFF.
24 Q. DIDN'T HE FILL OUT THAT WITH HIS PRIOR JOBS?
25 A. I MEAN, IF YOU SEE IT, HE DID. AS FAR AS ---

- 1 Q. WELL, I MEAN, DON'T YOU THINK HE DID?
- 2 A. YEAH, HE FILLED OUT SOME PAPERWORK.
- 3 Q. OKAY. AND HE TALKED ABOUT PAST ILLNESSES?
- 4 A. I DON'T KNOW.
- 5 Q. "HAVE YOU FILED A COMPENSATION CLAIM OR RECEIVED
- 6 BENEFITS AS A RESULT OF AN INDUSTRIAL ACCIDENT?" HE
- 7 FILLED OUT THAT, DIDN'T HE?
- 8 A. IF YOU SEE IT, I GUESS.
- 9 Q. ARE YOU SAYING HE DIDN'T FILL IT OUT?
- 10 A. I DIDN'T SAY HE DIDN'T. I SAID HE DID. BUT AS FAR
- 11 AS HIM READING OVER WHAT HE FILLED OUT, I MEAN, ---
- 12 Q. SO YOU THINK ---
- 13 A. --- FRANKLY, HE FILLED IT OUT SO QUICK, THE
- 14 PAPERWORK WAS DONE WITHIN LIKE TEN, FIFTEEN MINUTES.
- 15 Q. SO YOU THINK WHEN IT SAYS WHETHER YOU'VE HAD A
- 16 RUPTURED DISC OR HERNIATED DISC, A HERNIA, HIGH
- 17 BLOOD PRESSURE, YOU DON'T THINK HE EVEN KNEW WHAT HE
- 18 WAS SAYING WHEN HE ANSWERED THAT? WHEN HE SAID YES
- 19 OR NO?
- 20 A. I MEAN, I HAVE RUSHED THROUGH PAPERWORK BEFORE
- 21 WITHOUT READING ---
- 22 Q. I'M NOT ASKING YOU WHAT YOU DID. I'M SAYING DO YOU
- 23 THINK HE HAD TO READ THAT TO BE ABLE TO ANSWER YES
- 24 OR NO?
- 25 A. I MEAN, I'M NOT A MIND READER. I CAN'T ANSWER THAT.

1 Q. OKAY. SO YOU DON'T KNOW WHETHER HE READ IT OR NOT?
2 A. I MEAN, HE WAS RUSHING THROUGH IT WHEN HE SIGNED IT
3 'CAUSE ---
4 Q. YOU DON'T KNOW WHETHER HE READ IT OR NOT ---
5 A. --- IT TOOK HIM TEN, FIFTEEN MINUTES ---
6 Q. --- BECAUSE YOU'RE NOT A MIND READER, ARE YOU?
7 A. IT TOOK HIM TEN OR FIFTEEN MINUTES TO ---
8 Q. YOU DO NOT KNOW WHETHER HE READ IT OR NOT BECAUSE
9 YOU'RE NOT A MIND READER, ARE YOU?
10 A. I DON'T THINK HE READ IT.
11 Q. OKAY. DIDN'T YOU SAY YOU COULDN'T SAY BECAUSE YOU
12 WEREN'T A MIND READER?
13 A. BECAUSE HE RUSHED THROUGH IT. SO I DON'T THINK SO.
14 Q. NOW, WHEN MR. HINSON CAME TO PICK UP MR. CLARK, HE
15 CAME IN HIS PERSONAL TRUCK, DID HE NOT?
16 A. HE CAME IN A TRUCK BEFORE AND IN A HONDA BEFORE.
17 Q. SO HE CAME IN HIS PERSONAL TRUCK OR CAR?
18 A. I DON'T KNOW IF IT WAS PERSONAL OR -- TO MY
19 KNOWLEDGE, HE SAID THE COMPANY WAS PROVIDING
20 TRANSPORTATION. SO IF IT WAS PERSONAL -- I DON'T
21 KNOW IF IT WAS PERSONAL OR NOT. HE JUST SAID THAT
22 THE COMPANY WAS ---
23 Q. YOU DIDN'T SEE "PYRAMID MASONRY" ON THE SIDE OF THE
24 CAR, DID YOU?
25 A. NO, I DID NOT.

- 1 Q. DID YOU, IN FACT, KNOW THAT THEY WERE HAVING TO RIDE
2 IN HIS WIFE'S CAR THAT WEEK BECAUSE HIS TRUCK WAS
3 TORN UP?
- 4 A. NO. ALL I HAPPEN TO KNOW WAS HE WAS RESPONSIBLE FOR
5 PICKING HIM UP AND BRINGING HIM BACK FROM WORK.
- 6 Q. NOW, IN FACT, MR. CLARK HAD HAD TO GET RIDES TO WORK
7 SINCE HE HADN'T HAD A DRIVER'S LICENSE, HADN'T HE?
- 8 A. 'CAUSE HE DIDN'T HAVE NO DRIVER'S LICENSE.
- 9 Q. MY QUESTION IS, HE'S HAD TO HAVE RIDES TO WORK EVEN
10 BEFORE PYRAMID BECAUSE HE DIDN'T HAVE A DRIVER'S
11 LICENSE?
- 12 A. YES.
- 13 Q. SO THAT WAS NOTHING NEW, FOR HIM TO HAVE TO GET
14 RIDES?
- 15 A. NO, BECAUSE IF YOU AIN'T GOT A DRIVER'S LICENSE AND
16 SOMEBODY WANTS YOU TO WORK FOR THEM, YOU'VE GOT TO
17 PICK THEM UP IF YOU WANT THEM TO WORK.
- 18 Q. WHAT DOES MR. HINSON LOOK LIKE?
- 19 A. HE'S A WHITE GUY, TALL, BROWN HAIR.
- 20 Q. HOW TALL?
- 21 A. I DON'T KNOW.
- 22 Q. WHAT AGE?
- 23 A. I DON'T KNOW.
- 24 Q. WHAT HEIGHT?
- 25 A. I DO NOT KNOW.

1 Q. WHAT WEIGHT?
2 A. I DON'T KNOW. I'VE NEVER KNOWN NOTHING PERSONAL
3 ABOUT HIM UNTIL WHEN HE CAME TO THE HOUSE.
4 BY MR. KALE:
5 THAT'S ALL I HAVE, YOUR HONOR.
6 BY MR. GEORGE:
7 I HAVE NOTHING FURTHER.
8 BY THE COMMISSIONER:
9 ALL RIGHT, SIR.
10 BY MR. GEORGE:
11 COMMISSIONER, I HAVE NOTHING FURTHER.
12 BY THE COMMISSIONER:
13 ALL RIGHT, SIR. YOUR FIRST WITNESS IS WHO?
14 BY MR. KALE:
15 I'M GOING TO CALL MR. MAUNEY.
16 BY THE COMMISSIONER:
17 IF YOU WOULD STATE YOUR FULL NAME FOR THE
18 RECORD, SIR.
19 BY THE WITNESS:
20 DAVID GEORGE MAUNEY.
21 BY THE COMMISSIONER:
22 AND SPELL YOUR LAST NAME.
23 BY THE WITNESS:
24 M-A-U-N-E-Y.
25 * * * * *

1 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
2 WHOLE TRUTH AND NOTHING BUT THE TRUTH CONCERNING THE
3 MATTER HEREIN:

4 DAVID GEORGE MAUNEY,

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

6 BY THE COMMISSIONER:

7 ANSWER ANY QUESTIONS MR. KALE MAY HAVE, PLEASE,

8 SIR.

9 DIRECT EXAMINATION BY MR. KALE:

10 Q. I THINK I'VE BEEN MISPRONOUNCING YOUR NAME FROM THE
11 GET GO.

12 A. THAT'S ALL RIGHT.

13 Q. GIVE ME YOUR FULL NAME FOR THE RECORD.

14 A. DAVID GEORGE MAUNEY.

15 Q. AND BY WHOM ARE YOU EMPLOYED?

16 A. PYRAMID MASONRY CONTRACTORS.

17 Q. AND HOW LONG HAVE YOU BEEN WITH THEM?

18 A. TWENTY-FIVE YEARS.

19 Q. AND WHAT IS YOUR POSITION?

20 A. REGIONAL VICE PRESIDENT.

21 Q. DID YOU KNOW MARK HINSON?

22 A. I DID.

23 Q. AND WHEN WAS MR. HINSON HIRED BY PYRAMID MASONRY?

24 A. JANUARY THE 12TH, 2004.

25 Q. AND WHAT WAS HIS POSITION?

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- 1 A. FOREMAN.
- 2 Q. AND WHAT, BASICALLY, DID HE SUPERINTEND OR SUPERVISE
- 3 AS FAR AS HIS JOB?
- 4 A. HE WAS A SUPERVISOR OF THE MASONS AND THE LABORERS
- 5 ON THE JOB SITES THAT HE WOULD BE ASSIGNED TO.
- 6 Q. AS FAR AS THE COMPANY ITSELF, HE WASN'T A MANAGEMENT
- 7 PERSON WITHIN THE COMPANY, WAS HE?
- 8 A. NO, SIR.
- 9 Q. NOW, HOW MUCH WAS MR. HINSON PAID AS AN HOURLY WAGE?
- 10 A. HE WAS PAID \$23 AN HOUR.
- 11 Q. AND WAS HE PAID ANYTHING IN ADDITION TO HIS HOURLY
- 12 WAGE?
- 13 A. YES, HE WAS.
- 14 Q. WHAT WAS HE PAID?
- 15 A. AS ALL OF OUR FOREMEN, HE WAS PAID A \$150 PER MONTH
- 16 TRUCK ALLOWANCE FOR THE USE OF HIS VEHICLE DURING
- 17 THE COURSE OF THE WORK DAY.
- 18 Q. OKAY. AND HOW LONG HAD THE COMPANY BEEN PAYING
- 19 FOREMEN THIS \$150?
- 20 A. I DON'T KNOW HOW LONG WE HAD CHANGED IT TO 150, BUT
- 21 THE TRUCK ALLOWANCE HAS BEEN IN EFFECT SINCE I WENT
- 22 TO WORK WITH PYRAMID BACK IN 1981.
- 23 Q. AND DOES THE COMPANY HAVE A WRITTEN POLICY REGARDING
- 24 THE TRUCK ALLOWANCE?
- 25 A. YES, SIR, WE DO.

1 Q. AND LET ME HAND YOU THIS DOCUMENT THAT'S DATED
2 JANUARY 1, 1989, AND ASK YOU IF THAT IS THE TRUCK
3 ALLOWANCE POLICY?

4 A. YES, SIR, IT IS.

5 Q. WOULD YOU PUBLISH WHAT THE POLICY PROVIDES?

6 A. IT SAYS, "THIS EXPENSE IS PAID MONTHLY. IT IS FOR
7 THE INTENDED USE OF REIMBURSEMENT FOR THE USE OF
8 PERSONAL VEHICLES ON THE JOB SITE. THIS PERTAINS
9 ONLY FOR PICKING UP OR DELIVERING INCIDENTALS AND
10 NOT TO BE INTERPRETED AS MILEAGE."

11 BY MR. KALE:

12 YOUR HONOR, WE WOULD ASK THAT, THAT BE MARKED.

13 BY THE COMMISSIONER:

14 YOU'VE SEEN A COPY OF IT, I'M SURE?

15 BY MR. GEORGE:

16 YES, SIR.

17 BY THE COMMISSIONER:

18 LET'S GO OFF THE RECORD A MINUTE.

19 (OFF THE RECORD)

20 (COURT REPORTER MARKS TRUCK ALLOWANCE POLICY DEFENDANTS'
21 EXHIBIT NUMBER TWO)

22 DIRECT EXAMINATION RESUMED BY MR. KALE:

23 Q. NOW, DOES THE COMPANY PROVIDE TRANSPORTATION TO ITS
24 EMPLOYEES?

25 A. NO, SIR, WE DO NOT.

1 Q. DOES THE COMPANY PROVIDE TRUCKS TO THE FOREMEN?

2 A. NO, WE DO NOT.

3 Q. THEY HAVE TO USE THEIR PERSONAL VEHICLES?

4 A. YES, SIR.

5 Q. AND I'M GOING TO SHOW YOU A JOB DESCRIPTION FOR A
6 MASON AND A JOB DESCRIPTION FOR A LABOR-TENDER AND
7 REFER YOU TO PARAGRAPH TEN IN BOTH OF THOSE JOB
8 DESCRIPTIONS. WHAT DO THEY PROVIDE?

9 A. BOTH SAY, "MUST HAVE MEANS OF TRANSPORTATION TO AND
10 FROM PROJECT."

11 Q. AND IS THAT IN ALL THE JOB DESCRIPTIONS OF PYRAMID
12 MASONRY?

13 A. YES, SIR, IT IS.

14 BY MR. KALE:

15 I'D LIKE TO MARK IT.

16 BY THE COMMISSIONER:

17 YOU'VE SEEN THIS DOCUMENT?

18 BY MR. GEORGE:

19 I'VE SEEN IT.

20 BY THE COMMISSIONER:

21 ALL RIGHT, SIR. LET'S GO OFF THE RECORD.

22 (OFF THE RECORD)

23 (COURT REPORTER MARKS LABOR-TENDER JOB DESCRIPTION AND
24 MASON JOB DESCRIPTION DEFENDANTS' EXHIBITS NUMBERS THREE
25 AND FOUR, RESPECTIVELY)

1 BY THE COMMISSIONER:

2 WE'RE BACK ON THE RECORD, AND THE JOB
3 DESCRIPTION OF THE LABOR-TENDER HAS BEEN MARKED AS
4 DEFENDANTS' EXHIBIT THREE, AND THE MASON DEFENDANTS'
5 EXHIBIT FOUR. ALL RIGHT. PROCEED.

6 DIRECT EXAMINATION RESUMED BY MR. KALE:

7 Q. MR. MAUNEY, HAVE YOU, AT MY REQUEST, MADE SOME
8 DETERMINATION AS TO HOW FAR MR. HINSON WOULD HAVE TO
9 COME FROM LANCASTER TO THE JOB SITE IN COLUMBIA AND
10 BACK?

11 A. YES, I HAVE.

12 Q. AND WHAT WOULD THAT BE?

13 A. IT WAS 140 MILES, 139-POINT-SOMETHING MILES ROUND
14 TRIP FROM HIS -- ACTUALLY, FROM HIS HOME IN HEATH
15 SPRINGS, WHICH IS RIGHT OUTSIDE OF LANCASTER, TO THE
16 JOB AND BACK.

17 Q. AND IF WE ASSUME THAT THE STANDARD MILEAGE AMOUNT OF
18 THIRTY-SEVEN-AND-A-HALF CENTS, WHICH I BELIEVE WAS
19 IN EFFECT IN 2004, HOW MANY DAYS WOULD THAT \$150
20 REPRESENT AS FAR AS PAYMENT GOING BACK AND FORTH
21 FROM LANCASTER TO COLUMBIA?

22 A. THAT WOULD HAVE REPRESENTED LESS THAN THREE DAYS.
23 IT WAS ACTUALLY, AS I FIGURED PREVIOUSLY, 2.87 DAYS
24 PER MONTH.

25 Q. AND HOW MANY DAYS A MONTH WOULD A WORKER NORMALLY

1 WORK FOR PYRAMID?

2 A. ON A NORMAL 40-HOUR WEEK, IT AVERAGES 22 DAYS PER
3 MONTH THROUGHOUT THE YEAR.

4 Q. AND SO THAT \$150 WOULDN'T HAVE REIMBURSED HIM MORE
5 THAN ---

6 BY MR. GEORGE:

7 OBJECTION. THAT'S A LEADING QUESTION.

8 BY THE COMMISSIONER:

9 REPHRASE IT.

10 DIRECT EXAMINATION RESUMED BY MR. KALE:

11 Q. HOW MANY DAYS, THEN, WOULD THAT REPRESENT OUT OF THE
12 WORK MONTH THAT THEY WOULD ACTUALLY BE REIMBURSED
13 FOR THEIR MILEAGE, ---

14 A. APPROXIMATELY ---

15 Q. --- ASSUMING THAT THAT'S WHAT IT WAS FOR?

16 A. APPROXIMATELY 13 PERCENT.

17 Q. OF THE 22 DAYS, THAT WOULD REPRESENT ABOUT 13
18 PERCENT; IS THAT WHAT YOU'RE SAYING?

19 A. YES, SIR.

20 Q. DID MR. HINSON HAVE AUTHORITY TO HIRE MR. CLARK?

21 A. YES, SIR, HE DID.

22 Q. COULD HE OFFER TO PAY HIM ANYTHING HE WANTED TO
23 OFFER HIM, OR WAS THERE SOME SPECIFIC GUIDELINES
24 THAT HE WOULD HAVE TO OFFER?

25 A. THERE WOULD BE GUIDELINES FOR EACH POSITION.

1 Q. OKAY. AND WHAT WOULD BE THE GUIDELINES FOR A
2 LABORER/MACHINE OPERATOR, IF THAT'S WHAT HE WAS
3 HIRED FOR?

4 A. IN COLUMBIA, IT WOULD BE \$8.50 TO \$10 PER HOUR
5 DEPENDING UPON EXPERIENCE.

6 Q. SO HE DIDN'T HAVE AUTHORITY TO OFFER HIM \$50 PER
7 HOUR, DID HE?

8 BY MR. GEORGE:

9 OBJECTION. THAT'S ANOTHER LEADING QUESTION.

10 DIRECT EXAMINATION RESUMED BY MR. KALE:

11 Q. DID HE HAVE AUTHORITY TO OFFER HIM \$50 PER HOUR?

12 A. NO, SIR, HE DID NOT.

13 Q. NOW, DID MR. HINSON HAVE AUTHORITY TO OFFER TO
14 PROVIDE MR. CLARK TRANSPORTATION?

15 A. HE DID NOT.

16 Q. AND WHY DID HE NOT?

17 A. THE COMPANY DID NOT PROVIDE TRANSPORTATION FOR ITS
18 EMPLOYEES.

19 Q. DID MR. HINSON START GETTING THE \$150 FROM THE DATE
20 THAT HE WAS HIRED?

21 A. YES, SIR, HE DID.

22 Q. SO HE WAS GETTING -- WAS HE GETTING THE \$150 THEN
23 BEFORE MR. CLARK WAS HIRED?

24 A. YES, SIR, HE DID.

25 BY MR. KALE:

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1 THAT'S ALL THE QUESTIONS I HAVE.

2 BY THE COMMISSIONER:

3 ALL RIGHT.

4 BY MR. GEORGE:

5 COMMISSIONER, COULD I SEE THAT EXHIBIT ABOUT
6 THE -- I THINK IT'S NUMBER TWO THERE, THE ONE ABOUT
7 THE TRUCK POLICY, ABOUT THE \$150.

8 CROSS EXAMINATION BY MR. GEORGE:

9 Q. DID YOU HIRE MR. HINSON?

10 A. YES, SIR, I DID.

11 Q. YOU HIRED HIM?

12 A. YES, SIR.

13 Q. YOU PERSONALLY HIRED HIM? WHERE DID YOU HIRE HIM?

14 A. AT MY OFFICE IN CHARLOTTE.

15 Q. AND YOU GAVE HIM ONE OF THESE?

16 A. NO, SIR, I DID NOT.

17 Q. SO YOU DON'T KNOW WHETHER MARK HINSON HAD ONE OF
18 THESE FORMS OR NOT, DO YOU?

19 A. HE DID NOT HAVE ONE OF THOSE FORMS.

20 Q. SO, THIS TRUCK ALLOWANCE DATED JANUARY 1ST, 1989, IN
21 WHICH YOU STATE PYRAMID POLICY CONCERNING THE TRUCK,
22 MR. HINSON DID NOT HAVE THAT, DID HE?

23 A. HE DID NOT HAVE THAT FORM.

24 Q. NOW, MR. MAUNEY, LET ME ASK YOU THIS: YOU SAY IN
25 HERE, "MUST HAVE MEANS OF TRANSPORTATION TO AND FROM

000

1 PROJECT." NOW, YOU'VE HEARD MR. CLARK TESTIFY THAT
2 HE HAD NO TRANSPORTATION, HAD NO CAR, HAD NO
3 DRIVER'S LICENSE, AND YET HE WAS SUPPOSED TO GO TO
4 WORK FOR YOUR COMPANY, PYRAMID CONSTRUCTION, IN
5 COLUMBIA. HOW WAS HE SUPPOSED TO GET THERE?
6 A. THAT'S HIS RESPONSIBILITY.
7 Q. THAT'S HIS RESPONSIBILITY..
8 A. YES, SIR.
9 Q. SO THAT WOULD BE A LONG WALK, WOULDN'T IT?
10 A. YES, SIR, IT WOULD BE.
11 Q. AND SO WHEN MR. HINSON WENT OUT TO -- YOU DON'T KNOW
12 WHAT MR. HINSON -- DID YOU EVER TALK TO MR. HINSON
13 PERSONALLY AND SAY, "LOOK, MR. HINSON, WHEN YOU GO
14 OUT AND HIRE THESE PEOPLE, YOU CAN'T OFFER THEM
15 TRANSPORTATION"? DID YOU EVER TELL HIM THAT?
16 A. WE NEVER HAD THAT CONVERSATION.
17 Q. YOU NEVER HAD THE CONVERSATION. SO WHEN MR. HINSON
18 WENT OUT TO SEE JAMES CLARK AND JOEY HORTON, HE HAD
19 AUTHORITY FROM YOUR COMPANY TO HIRE THEM?
20 A. YES, SIR.
21 Q. AND HE HAD AUTHORITY FROM YOUR COMPANY TO TELL THEM
22 WHAT THAT JOB WOULD BE?
23 A. YES, SIR.
24 Q. AND HE HAD AUTHORITY TO TELL THEM WHAT THEY WERE
25 GOING TO MAKE?

- 1 A. YES, SIR.
- 2 Q. SO HE HAD ALL THAT AUTHORITY. WOULD YOU THINK IT
- 3 WOULD BE UNREASONABLE FOR THEM TO BELIEVE THAT HE
- 4 HAD AUTHORITY TO SAY THE COMPANY COULD PROVIDE THEM
- 5 WITH TRANSPORTATION?
- 6 A. I CAN'T SPECULATE ON THAT.
- 7 Q. BUT HE HAD AUTHORITY TO DO EVERYTHING ELSE. WOULD
- 8 YOU THINK IT WOULD BE REASONABLE FOR MR. CLARK TO
- 9 BELIEVE MR. HINSON HAD AUTHORITY TO SAY THAT PYRAMID
- 10 WAS GOING TO PROVIDE HIM WITH TRANSPORTATION IF HE
- 11 HAD AUTHORITY TO OFFER HIM A JOB, TELL HIM HOW MUCH
- 12 HE WAS GOING TO MAKE, WHAT HE WAS GOING TO DO, WHERE
- 13 HE WAS GOING TO WORK, AND HE WAS GOING TO GIVE HIM
- 14 THE CHECK? DO YOU THINK THAT'S REASONABLE?
- 15 A. I THINK IT'S REASONABLE THAT MR. HINSON WOULD HAVE
- 16 OFFERED A RIDE AS A PERSONAL COURTESY, BUT NOT AS A
- 17 SCOPE OF EMPLOYMENT.
- 18 Q. WELL, THEY WERE NOT FRIENDS?
- 19 A. IS THAT A QUESTION?
- 20 Q. YES.
- 21 A. I DON'T KNOW.
- 22 Q. AND YOU'VE HEARD THE TESTIMONY FROM MR. HORTON THAT
- 23 SAID THAT MR. HINSON SAID THE COMPANY PAID HIM TO
- 24 TAKE THEM TO WORK? YOU HEARD THAT, DIDN'T YOU?
- 25 A. I'VE HEARD THAT TESTIMONY.

1 Q. AND YOU HEARD MS. INGRAM SAY THAT MR. HINSON SAID
2 THE COMPANY IS GOING TO PROVIDE JAMES WITH
3 TRANSPORTATION? YOU HEARD THAT, DIDN'T YOU?

4 A. I HEARD HER TESTIMONY, YES, SIR.

5 BY MR. GEORGE:

6 SIR, I THANK YOU SO MUCH FOR ANSWERING MY
7 QUESTIONS.

8 REDIRECT EXAMINATION BY MR. KALE:

9 Q. WAS MR. HINSON PAID TO TAKE MR. CLARK AND MR. HORTON
10 TO WORK?

11 A. NO, SIR, HE WAS NOT.

12 Q. NOW, YOU MENTIONED THAT MR. HINSON HAD NOT SEEN THAT
13 WRITTEN POLICY. WHEN YOU HIRED HIM, WAS IT
14 DISCUSSED ABOUT WHAT TRUCK ALLOWANCE HE WOULD BE
15 GIVEN?

16 A. YES, SIR, IT WAS, EXTENSIVELY.

17 Q. AND WHEN YOU SAY, "EXTENSIVELY," WHAT WAS HE TOLD
18 THE TRUCK ALLOWANCE WAS FOR?

19 A. WELL, ANY TIME WE TALK ABOUT COMPENSATION WITH ANY
20 EMPLOYEE, WE'RE GOING TO BE VERY SPECIFIC SO THERE'S
21 NO MISUNDERSTANDING LATER ON. SO AFTER WE DISCUSSED
22 THE WAGE, AS FAR AS THE OTHER BENEFITS, SUCH AS THE
23 TRUCK ALLOWANCE, WE WERE VERY SPECIFIC AS TO WHAT IT
24 WAS FOR SO HE WOULD UNDERSTAND.

25 Q. AND WHAT DID YOU TELL HIM IT WAS FOR?

- 1 A. THAT IT WAS FOR THE USE OF HIS VEHICLE DURING THE
2 COURSE OF THE WORK DAY IF HE NEEDED TO PICK UP ICE
3 OR WATER OR GASOLINE OR SOME SMALL TOOL, THAT RATHER
4 THAN HIM HAVING TO KEEP UP WITH MILEAGE, THAT WE
5 WOULD PAY THE LUMP SUM OF THE 150 FOR THE USE OF THE
6 VEHICLE DURING THE WORK DAY.
- 7 Q. SO WAS IT CLEAR TO HIM THAT THIS WAS NOT PAYMENT OF
8 MILEAGE BACK AND FORTH FROM HIS HOME TO ---
- 9 A. IT WAS VERY CLEAR.
- 10 Q. AND WHEN YOU SAY HE WASN'T SHOWN THAT POLICY, YOU
11 ALL JUST DIDN'T PULL OUT THE WRITTEN POLICY; YOU
12 TOLD HIM WHAT THE POLICY WAS?
- 13 A. WE DISCUSSED IT, YES, SIR.
- 14 Q. NOW, IS IT UNCOMMON FOR EMPLOYEES TO CATCH RIDES
15 WITH FRIENDS AND OTHER COWORKERS TO WORK?
- 16 A. NO, SIR, IT'S NOT UNCOMMON.
- 17 Q. YOU'RE NOT SAYING IN THERE WHEN YOU SAY -- ARE YOU
18 SAYING WHEN YOU SAY, YOU MUST HAVE MEANS OF
19 TRANSPORTATION, BASICALLY IF THEY CAN CATCH A RIDE
20 WITH A FRIEND, THAT'S FINE?
- 21 A. YES, SIR.
- 22 Q. NOW, ONCE AGAIN TO BE CLEAR, WAS MR. HINSON PAID
23 \$150 PER MONTH TO PROVIDE TRANSPORTATION TO CLARK
24 AND HORTON BACK AND FORTH FROM THEIR HOME TO WORK?
- 25 A. NO, SIR, HE WAS NOT.

1 BY MR. KALE:

2 THAT'S ALL I HAVE.

3 RECROSS EXAMINATION BY MR. GEORGE:

4 Q. WHO WAS MR. HINSON'S IMMEDIATE SUPERVISOR?

5 A. IMMEDIATE SUPERVISOR WOULD BE ARTHUR BOSTIC.

6 Q. AND WHO WAS MR. BOSTIC'S SUPERVISOR?

7 A. THAT WOULD BE ME.

8 Q. AND WHAT WOULD BE THE \$150 FOR HIM DRIVING AROUND IN
9 HIS HONDA?

10 A. EXCUSE ME?

11 Q. HE WAS DRIVING A HONDA. YOU ALL WOULD PAY HIM \$150
12 A MONTH SO HE COULD DRIVE HIS HONDA TO WORK? HE
13 CAN'T USE THAT IN THE JOB, CAN HE?

14 A. TO ---

15 Q. HIS WIFE'S HONDA?

16 A. IT'S MY UNDERSTANDING ---

17 BY MR. KALE:

18 LET HIM ANSWER.

19 WITNESS RESUMES:

20 A. IT WAS MY UNDERSTANDING THAT HIS TRUCK WAS -- FROM
21 THE PREVIOUS TESTIMONY, WAS IN THE SHOP AND HE WAS
22 DRIVING HIS WIFE'S HONDA THAT DAY. THE NEED TO RUN
23 ERRANDS IS NOT NECESSARILY AN EVERYDAY THING, BUT I
24 WOULD THINK THAT, YES, HE COULD GO PICK UP ICE OR
25 WATER OR SOMETHING OF THAT SORT IN HIS WIFE'S HONDA.

RECROSS EXAMINATION RESUMED BY MR. GEORGE:

- 1 Q. SO THERE'S NO QUESTION THAT HE WAS PAID \$150 A
2 MONTH?
3
4 A. THERE'S NO QUESTION.
5
6 Q. AND THAT WAS BESIDES HIS NORMAL SALARY?
7
8 A. THAT'S CORRECT.
9
10 Q. AND THE TESTIMONY FROM JOEY HORTON, WHEN MR. HINSON
11 SAID, "I'M PAID \$150 TO TAKE YOU AND JAMES CLARK TO
12 WORK FOR PYRAMID," YOU SAY THAT'S NOT CORRECT?
13
14 A. EXCUSE ME? I'M SORRY, REPEAT THAT.
15
16 Q. THE TESTIMONY WAS FROM MR. HORTON THAT HINSON TOLD
17 HIM THAT PYRAMID PAID HIM \$150 A MONTH TO TAKE JAMES
18 CLARK AND JOEY HORTON TO COLUMBIA. YOU HEARD THAT?
19
20 A. I HEARD THAT.
21
22 Q. AND YOU DON'T KNOW WHETHER THAT'S TRUE OR NOT?
23 WHETHER HE SAID THAT OR NOT?
24
25 A. AS I SAID, I WAS NOT THERE FOR THE CONVERSATION.
26
27 Q. AND YOU DON'T KNOW WHAT ARRANGEMENT MR. HINSON MIGHT
28 HAVE HAD WITH ANYONE ELSE AT PYRAMID ABOUT
29 TRANSPORTATION, DO YOU?
30
31 A. IN TERMS OF?
32
33 Q. TAKING PEOPLE TO WORK.
34
35 A. I HEARD NO CONVERSATION WITH MR. HINSON ABOUT
36 TRANSPORTATION.
37
38 Q. HOW MANY TIMES DID YOU TALK WITH MR. HINSON AFTER

1 YOU HIRED HIM?

2 A. I WOULD SAY TWO, THREE TIMES A MONTH ON THE JOB

3 SITES.

4 Q. AND DID YOU EVER HAVE ANY CONVERSATION WITH JAMES

5 CLARK ABOUT HOW HE WAS HIRED OR SO FORTH?

6 A. NO, SIR.

7 Q. DID YOU EVER HAVE ANY CONVERSATION WITH JOEY HORTON

8 ABOUT HOW HE WAS HIRED AND WHAT CONDITIONS HE WAS

9 HIRED?

10 A. NO, SIR, I DID NOT.

11 Q. SO YOU DON'T HAVE ANY PERSONAL KNOWLEDGE OF THAT?

12 A. NO, SIR.

13 Q. THAT WAS MARK HINSON THAT DID THAT?

14 A. MARK HINSON HAD THE CONVERSATION.

15 Q. HE HAD AUTHORITY TO DO THAT?

16 A. HE HAD AUTHORITY TO DO WHAT?

17 BY MR. KALE:

18 DO WHAT?

19 RE CROSS EXAMINATION RESUMED BY MR. GEORGE:

20 Q. HAD AUTHORITY TO HIRE THEM?

21 A. HE DID HAVE THE AUTHORITY TO HIRE THEM, YES, SIR.

22 BY MR. GEORGE:

23 THANK YOU SO MUCH, SIR. I APPRECIATE YOU

24 ANSWERING MY QUESTIONS.

25 BY MR. KALE:

1 NO FURTHER QUESTIONS.

2 BY THE COMMISSIONER:

3 LET ME ASK ONE QUESTION. IF YOU KNOW THE
4 ANSWER, IS IT A FAIRLY COMMON PRACTICE IN BUSINESS
5 TO HAVE AN ALLOWANCE FOR PEOPLE IN THE CONSTRUCTION
6 BUSINESS TO DURING THE WORK DAY GO OUT AND GET
7 INCIDENTAL PARTS AND BE PAID A PER DIEM?

8 BY THE WITNESS:

9 I THINK THAT IT IS, YES, SIR.

10 BY THE COMMISSIONER:

11 THAT'S ONE THING. THE OTHER THING, HAD HINSON
12 NOT BEEN ABLE TO PICK THESE GUYS UP FOR, SAY, TWO
13 WEEKS OR THREE WEEKS, WHAT WOULD HAVE HAPPENED?

14 BY THE WITNESS:

15 FROM THE TESTIMONY THAT I'VE HEARD, IT APPEARS
16 THEY WOULD NOT HAVE GONE TO WORK.

17 BY THE COMMISSIONER:

18 OKAY. I DON'T HAVE ANY OTHER QUESTIONS.

19 REDIRECT EXAMINATION BY MR. KALE:

20 Q. WOULD PYRAMID HAVE SENT OUT A TRUCK TO PICK THEM UP?

21 A. NO, SIR, WE WOULD NOT HAVE.

22 BY MR. KALE:

23 THAT'S ALL I HAVE.

24 BY THE COMMISSIONER:

25 ALL RIGHT. HAVE YOU GOT ANOTHER WITNESS, SIR?

1 BY MR. KALE:

2 JUST ONE SHORT WITNESS.

3 (OFF THE RECORD)

4 BY THE COMMISSIONER:

5 IF YOU WOULD STATE YOUR FULL NAME FOR THE
6 RECORD, SIR?

7 BY THE WITNESS:

8 DONALD GEORGE WILLIAMS.

9 * * * * *

10 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
11 WHOLE TRUTH AND NOTHING BUT THE TRUTH CONCERNING THE
12 MATTER HEREIN:

13 DONALD GEORGE WILLIAMS,

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

15 BY THE COMMISSIONER:

16 ANSWER ANY QUESTIONS MR. KALE MAY HAVE, PLEASE,
17 SIR.

18 DIRECT EXAMINATION BY MR. KALE:

19 Q. MR. WILLIAMS, BY WHOM ARE YOU EMPLOYED?

20 A. PYRAMID MASONRY.

21 Q. AND HOW LONG HAVE YOU WORKED FOR THEM?

22 A. NINETEEN YEARS.

23 Q. AND WHAT IS YOUR JOB THERE?

24 A. I'M A FOREMAN.

25 Q. AND HOW MANY YEARS HAVE YOU BEEN A FOREMAN?

- 1 A. EIGHTEEN YEARS.
- 2 Q. DID PYRAMID PROVIDE FOREMEN COMPANY TRUCKS TO DRIVE?
- 3 A. NO.
- 4 Q. YOU DROVE YOUR OWN PERSONAL TRUCK?
- 5 A. YES.
- 6 Q. DO YOU RECEIVE A TRUCK ALLOWANCE EACH MONTH FROM
- 7 PYRAMID?
- 8 A. YES.
- 9 Q. HOW MUCH IS THAT NOW?
- 10 A. ONE FIFTY.
- 11 Q. AND WHAT IS YOUR UNDERSTANDING OF WHAT THAT TRUCK
- 12 ALLOWANCE IS PAID FOR?
- 13 A. MISCELLANEOUS FOR THE JOB, GAS, ICE, ANYTHING THAT
- 14 THE JOB REQUIRES.
- 15 Q. YOU WOULD GO PICK IT UP? IS THAT ---
- 16 A. YES.
- 17 Q. --- WHAT YOU'RE SAYING?
- 18 A. YES.
- 19 Q. AT THE JOB SITE?
- 20 A. THE JOB SITE OR GOING TO THE ICE HOUSE OR SOMETHING
- 21 LIKE THAT.
- 22 Q. NOW, HOW LONG HAVE YOU BEEN RECEIVING A TRUCK
- 23 ALLOWANCE?
- 24 A. EIGHTEEN YEARS.
- 25 Q. EVER SINCE YOU'VE BEEN A FOREMAN?

1 A. YES.

2 Q. AND DID YOU EVER PROVIDE TRANSPORTATION TO THE JOB
3 SITE FOR ANY OF THE OTHER EMPLOYEES? DID YOU DRIVE
4 THEM TO WORK?

5 A. NO.

6 Q. BUT YOU GOT THIS \$150 PER MONTH?

7 A. YES.

8 BY MR. KALE:

9 THAT'S ALL I HAVE, YOUR HONOR.

10 CROSS EXAMINATION BY MR. GEORGE:

11 Q. SIR, YOU SAID THAT THE \$150 WAS FOR ANYTHING THAT
12 THE JOB REQUIRES?

13 A. YES.

14 Q. AND WHO IS ARTHUR BOSTIC?

15 A. MY SUPERVISOR.

16 Q. IS HE STILL THERE?

17 A. YES.

18 Q. AND DID YOU KNOW MARK HINSON?

19 A. NO.

20 Q. SO YOU DON'T KNOW ANYTHING ABOUT THE RELATIONSHIP OF
21 THE HIRING BETWEEN MARK HINSON AND JAMES CLARK AND
22 JOEY HORTON?

23 A. NO.

24 Q. DO YOU KNOW JAMES CLARK?

25 A. I'VE SEEN HIM ONLY ONCE.

1 Q. AND JOEY HORTON?

2 A. ONLY ONCE.

3 Q. DO YOU KNOW ANYTHING ABOUT AN AGREEMENT THAT MARK
4 HINSON HAD WITH ARTHUR BOSTIC ABOUT THESE BOYS?

5 A. NO.

6 BY MR. GEORGE:

7 THANK YOU.

8 REDIRECT EXAMINATION BY MR. KALE:

9 Q. DOES PYRAMID PROVIDE TRANSPORTATION TO AND FROM WORK
10 TO ITS EMPLOYEES?

11 A. NO.

12 Q. AND YOU'VE NEVER PROVIDED IT?

13 A. NO.

14 Q. AND THIS \$150 ALLOWANCE, YOU MENTIONED YOU GOT GET
15 ICE. WHAT WOULD YOU USE ICE FOR?

16 A. WATER COOLER FOR THE MEN TO DRINK WATER ON THE JOB.

17 Q. AND WHAT ELSE WOULD YOU HAVE TO DO SOMETIMES AT THE
18 JOB SITE?

19 A. GET OIL FOR THE MIXER, PICK UP WALL TIRES, ANYTHING
20 THAT THE JOB REQUIRES THAT I'M NOT -- THAT'S NOT ON
21 THE JOB SITE.

22 Q. WOULD YOU USE YOUR PERSONAL TRUCK TO DO THAT?

23 A. YES.

24 Q. AND IS THAT WHAT THE \$150 TO REPAY YOU FOR DOING
25 THAT AT THE JOB SITE?

1 A. IT'S NOT -- IT'S NOT THE USE OF MY TRUCK. IT'S THE
2 USE OF GOING AND GETTING THE STUFF FOR THE JOB.

3 Q. ARE YOU TALKING ABOUT THE GAS AND STUFF THAT YOU
4 WOULD USE?

5 A. YES, YES. IT WAS FOR THE MIXER AND STUFF.

6 BY MR. KALE:

7 THAT'S ALL I HAVE.

8 BY MR. GEORGE:

9 I HAVE NOTHING FURTHER.

10 BY THE COMMISSIONER:

11 ANYTHING OTHER WITNESSES?

12 BY MR. KALE:

13 NO OTHER WITNESSES.

14 BY THE COMMISSIONER:

15 IF THERE'S NOTHING ELSE, THAT CONCLUDES THE
16 HEARING.

17 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
18 CONCLUDED AT THE HOUR OF 11:35 A.M.)

1 that to Mr. Horton and he told that to Mr. Clark's wife.
2 All three of them testified at the hearing in the workers'
3 comp. that Mr. Hinson said the company will provide you
4 with transportation. In the order from Commissioner Lender
5 he just neglected Joey Horton's testimony. Joey Horton's
6 testimony was, "I was there, Mr. Hinson told Clark don't
7 worry about how you get to Columbia, the company will
8 provide it." If the company couldn't provide it he
9 couldn't get there. What was he supposed to do, walk to
10 Columbia? That's a long walk from Lancaster to Columbia.
11 So the company through Mr. Hinson told Mr. Clark they would
12 provide him with transportation. They provided him with
13 transportation everyday that he went to work, he never went
14 to work a day that Mr. Hinson did not provide it for him.
15 Mr. Hinson had never met -- Mr. Kale is going to say this
16 is a gratuitous matter -- Mr. Hinson did not know
17 Mr. Clark, there was no reason for him to give him any
18 gratuity. There was an inducement for the job was the
19 company would provide him transportation to work, he
20 couldn't get there if he couldn't. Now, case law on this
21 is pretty clear and there's two cases on point, one of the
22 them is the Medelin case and one of them is the Eddy case.
23 The Medelin case -- which I have copies, Your Honor, and I
24 will give you them when I get through -- the Medelin case
25 says that the facts are almost the same. This gentlemen,

1 Medelin, had no car and had no driver's license so he
2 couldn't get to work, so the supreme court said, How is he
3 going to get to work if he has no car and no
4 transportation? This was not a gratuitous act, this was
5 for the benefit of the company. Well, Pyramid is now
6 taking the position now, Your Honor, that Mr. Hinson did
7 not have authority to tell Mr. Clark that the company would
8 provide him with transportation. Well, that point is
9 covered in the another case and that's in the Eddy case.
10 The Eddy case says if you send a man out -- a foreman out
11 and he tells someone, "Look, I can hire you, I can tell you
12 what youre going to make and I can tell you where you're
13 going to work." Well, if you send that person out our
14 position is Mr. Hinson had actual authority, but no
15 question he had apparent authority and that point is
16 addressed in the Eddy case, it's right on point. It says
17 when you send this man out a reasonable person would think
18 if you can hire me, tell me where I'm going to work and
19 tell me how much you're going to pay me then you can tell
20 me that the company is going to provide me with
21 transportation. So these two cases are right on point to
22 our position and I pass them up to the Court, Your Honor.
23 Then as an addendum to all of this Mr. Clark has now --
24 since the statute of limitations is getting closer -- has
25 gotten close has filed a civil suit against Pyramid and

●

●

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

James Clark, Jr.,

Employee,

Claimant,

vs.

Pyramid Masonry Contractors, Inc.,

Employer,

and Hartford Casualty Insurance
Company,

Carrier,

Defendants.

)
) IN THE COURT OF COMMON PLEAS
) SIXTH JUDICIAL CIRCUIT

) CASE NO. 2007-CP-20-150

) W.C.C. FILE #0427461

)
)
) APPEAL FROM SOUTH CAROLINA
) WORKERS COMPENSATION
) COMMISSION

) NON-JURY

2007 JUN -5 A 9:12
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION, P. O. BOX
1715, COLUMBIA, SC 29202; AND RICHARD B. KALE, JR., ESQUIRE, 872 S.
PLEASANTBURG DRIVE, GREENVILLE, SC 29607, ATTORNEY FOR
DEFENDANTS.

YOU WILL PLEASE TAKE NOTICE that pursuant to the provisions of S.C. Code
Ann. §42-17-60 (1976), as amended, Claimant appeals from the Order of the Appellate Panel of
the South Carolina Workers' Compensation Commission, filed May 18, 2007, upon the
following grounds:

1. That the Appellate Panel erred in finding as a fact that the Pyramid Masonry Contractors
did not provide transportation for Claimant, James Clark, Jr. to and from work, that error
being that such finding was clearly erroneous in view of the reliable, probative and
substantial evidence on the record as a whole.
2. That the Appellate Panel erred in finding as a fact that Mark Hinson, Claimant's foreman,
did not provide transportation to and from work to Claimant James Clark, Jr. as a

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condition of Clark's employment, that error being that such finding was clearly erroneous in view of the reliable, probative and substantial evidence on the record as a whole.

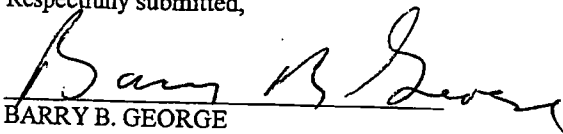
3. That the Appellate Panel erred in finding that the Claimant James Clark, Jr. failed to prove by the greater weight of the evidence that his employer was providing him transportation to and from work through its employee, Mark Hinson, acting with actual and/or apparent authority.
4. That the Appellate Panel erred in finding as a fact that Pyramid Masonry Contractors, Inc. was not paying Mark Hinson, foreman, to transport James Clark, Jr. to and from work.
5. That the Appellate Panel erred in finding that Pyramid Masonry Contractors is not estopped under the Doctrine of Collateral Estoppel from denying the compensability of this claim because of the Commission's Decision in Horton v. Pyramid Masonry Contractors, Inc., WCC File #0425180 and Order of Judge Kenneth G. Goode, Presiding Judge Sixth Judicial Circuit.

TO: THE JUDICIAL DIRECTOR OF THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

By virtue of the above Notice of Appeal, you are hereby required to certify the record of this case to the Clerk of Court for Fairfield, South Carolina.

DATED: 6/4/07

Respectfully submitted,



BARRY B. GEORGE
1419 Bull Street
Columbia, South Carolina 29201
(803) 254-7222
Attorney for the Claimant
SC Bar #2417

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 0427461

James Clark, Jr., Employee,)
)
Claimant/Appellant,)
)
-v-)
)
Pyramid Masonry Contractors, Inc., Employer,)
And Hartford Fire Insurance Company, Carrier,)
)
Defendants/Respondents.)

**BRIEF OF
CLAIMANT/APELLANT**

STATEMENT OF THE CASE

On May 24, 2006, Claimant filed a Form 50 alleging that on November 17, 2004, he was injured in a motor vehicle accident in the course and scope of his employment. On June 19, 2006, Defendants filed a Form 51, denying that Claimant's motor vehicle accident arose out of and in the course of his employment and asserting affirmative defenses. A hearing was held before Commissioner G. Bryan Lyndon on October 11, 2006. It was undisputed that the Claimant was injured in a motor vehicle accident that occurred in the early morning hours of November 17, 2004, on Interstate Highway I-77 in Fairfield County. At the time, Claimant and a coworker, Joey Horton, were riding in the vehicle of Mark Hinson, a foreman at Pyramid Masonry Contractors, Inc. (hereinafter "Pyramid") and were on the way to a job site in Columbia, South Carolina from Lancaster, South Carolina. Mr. Hinson died as a result of the injuries he received in the motor vehicle accident.

Claimant testified that the employer, through Mr. Hinson, was providing him with transportation to and from the worksite. Therefore, he argued that the case fell within an exception to the "going and coming" rule. The Claimant requested a finding of compensability

for the injuries suffered in the motor vehicle accident, payment of all medicals, payment of temporary total benefits from the date of the accident through the date of the hearing and continuing. Claimant contended that he had not reached maximum medical improvement. He further contended that Defendants were collaterally estopped by the Commission's decision in Joey J. Horton v. Pyramid Masonry Contractors, Inc., WCC File No. 0425180, from denying the compensability of the claim.

The Defendants denied that Claimant's injuries arose out of and in the course of his employment since he was traveling to work at the time of the accident. The employer denied that it provided transportation to Claimant while going to and from work and denied paying travel time or mileage to either the Claimant or to the foreman, Mark Hinson. Defendants denied that they were collaterally estopped because of the Horton decision, since the Horton case was on appeal and, therefore, there was no final Order.

The Commission's file, except for unstipulated medical reports and self-serving declarations, was made a part of the record in this case.

STANDARD OF REVIEW

On appeal from the Single Commissioner, the Workers' Compensation Commission may make its own findings of fact and reach its own conclusions of law, either consistent or inconsistent with those of the Hearing Commissioner. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (S.C. App. 1984). While the Full Commission may give weight to the Hearing Commissioner's opinion concerning the credibility of witnesses, it may disagree with the Single Commissioner's findings based on the credibility of witnesses. Green v. Raybesto-Manhattan, Inc., 250 S.C. 58, 156 S.E.2d 318 (S.C. 1967). Thus, on appeal from the Single Commissioner, this Commission reviews the evidence *de novo* and makes its own findings of fact and conclusions of law based upon a preponderance of the evidence.

STATEMENT OF THE FACTS

In October 2004, Mark Hinson, masonry foreman for employer, went to Claimant's home in Lancaster, South Carolina and offered the Claimant a job with the employer. Mark Hinson was accompanied to Claimant's house by Joey Horton, a brick mason for employer. Kimberly Ingram, Claimant's wife, was also present when Mark Hinson offered Claimant a job. (Tr. pp. 11, 12, 17).

Claimant testified that:

- a) He did not have a car and did not have a driver's license. (Tr. pp. 12, 14).
- b) He did not know Mark Hinson prior to being hired. (Tr. p. 17).
- c) He told Mark Hinson he did not have transportation and Mark Hinson told Claimant the company would provide transportation for him. (Tr. pp. 13, 41, 42, 43, 46, 26).

Joey Horton, employee of Pyramid Masonry Contractors, Inc., testified that:

- a) In January 2004, Mark Hinson came to his home in Lancaster, South Carolina and offered him a job as a brick mason. (Tr. p. 37).
- b) He did not own a car and did not have a driver's license. (Tr. pp. 38, 39).
- c) Mark Hinson told him that the employer would provide transportation for him through Mark Hinson to work. (Tr. pp. 39, 40, 41).
- d) He was present at Claimant's house when Mark Hinson offered Claimant a job as a laborer. (Tr. pp. 42, 43).
- e) Claimant told Hinson he did not have a way to work and Hinson said "Don't worry about it. The company provides it." (Tr. pp. 42, 43).

Kimberly Ingram, wife of Claimant, was present when Mark Hinson hired Claimant.

Ingram testified that:

- a) Hinson told Claimant not to worry about transportation as the employer would provide transportation. (Tr. pp. 51, 52).

David George Mauney testified for employer and stated that

- a) He had worked for employer for 25 years and was Regional Vice-President. (Tr. p. 59).
- b) He hired Mark Hinson in January 2004 as a foreman. (Tr. p. 59).
- c) Mark Hinson was paid \$150.00 for month for use of his vehicle during the course of workday. (Tr. p. 59).
- d) The employer did not provide transportation to its employees. (Tr. p. 60).
- e) Mark Hinson was not given the form about truck policy. (Tr. p. 65).
- f) He never told Mark Hinson he could not offer transportation. (Tr. p. 66).
- g) Mark Hinson had authority to hire Claimant, set his salary, and job duties. (Tr. p. 67).

Donald George Williams, testified for the employer:

- a) He was a foreman for employer. (Tr. p. 74).
- b) He never provided transportation for employees. (Tr. p. 76).
- c) He received \$150.00 per month for gas and ice or anything else the job required. (Tr. p. 75).
- d) He did not know anything about the relationship of the hiring between Mark Hinson and James Clark, Jr. and Joey Horton. (Tr. p. 76).
- e) Employer did not provide transportation to and from work to its employees. (Tr. p. 77).

ARGUMENT

I.

THE HEARING COMMISSIONER ERRED IN FINDING THAT EMPLOYER DID NOT PROVIDE CLAIMANT TRANSPORTATION TO AND FROM WORK.

The Claimant's case falls squarely within the exception to the going and coming rule since the Claimant's transportation was provided for by his Employer, through its agent and servant, Mark Hinson, who was acting within the course and scope of his employment, with actual and/or apparent authority. While the general rule is an injury sustained while traveling to and from work is not compensable under the Workers' Compensation Law, there are five exceptions to this Rule: (1) Where a means of transportation is provided by the employer or the time consumed is paid for or included wages; (2) Where the employee is still charged with some duty or task in connection with his employment; (3) Where the way used is inherently dangerous and is either the exclusive way of ingress and egress to and from work or constructed and maintained by the employer; (4) Where the place of injury is in close proximity to the employer's premises and is brought within the scope of employment by express and implied requirement in the contract of employment of its use by the servant in going to and coming from his work; and (5) Where the employee sustains injury while performing a special task, service, mission, or errand for his employer, even before or after customary working hours on which he does not ordinarily work. *Aughtry v. Abbeville County School District #60*, 332 S.C. 453, 504 S.E.2d 830, *reversed* 340 S.C. 604, 533 S.E.2d 885 (S.C. App. 1998).

The exception applicable to this case is the exception which renders an injury compensable if the employer provides the means of transportation. The only testimony in the record is that Mark Hinson was a foreman and the job site supervisor for the Respondent. (Tr. p. 11, lines 10-19). The Claimant was hired by Mark Hinson who came to Claimant's house and

offered him a job as a laborer. The company provided transportation since the Claimant did not have a driver's license or own a car. (Tr. p.12, lines 7-10; Tr. p. 26, lines 2-5). The Claimant was provided transportation by the Respondent's foreman and job site supervisor, Mark Hinson, every day he worked for the Respondent from the date of his hire in January to the date of the accident on the way to the job site on November 17, 2004. (Tr. p. 15, lines 4-5). Mark Hinson told Joey Horton that he was being paid \$150.00 per week for transporting him and Claimant to the job sites for the Respondent. (Tr. p. 40, lines 4-18). Claimant never had any contact with anyone employed by Respondent, other than Mark Hinson, about his hiring, the terms of his employment or his transportation to work. (Tr. p. 72, lines 4-6); Tr. p. 11, lines 14-17).

Mark Hinson was a foreman with the Respondent and had authority to hire the Claimant and convey terms of employment including wages. There is absolutely no evidence in the record that anyone other than Mark Hinson ever dealt with the Claimant concerning his hiring, wages, work hours, or transportation to and from the job site.

The Claimant's testimony concerning the circumstances of his hiring and the terms and conditions of his employment, including transportation to and from the job site, was corroborated by Joey Horton and Kimberly Ingram. (Tr. p. 42, line 24; Tr. p. 41, lines 11-14; Tr. p. 51, lines 1-7). The Respondents' course of conduct concerning a co-employee also corroborates the Claimant's testimony concerning transportation and terms of employment. (Tr. p. 38, line 20 - Tr. p. 39, lines 1-21).

Thus, the only evidence in the record is that the foreman and job site supervisor of the Respondent was given authority to hire brick masons on behalf of the Respondent and negotiate the terms and conditions of their employment. The foreman went to the home of the Claimant and with direct knowledge that the Claimant did not have a driver's license, offered him a job at a stated wage rate and informed the Claimant that the company would provide transportation to

and from the job site. Indeed, that is the only way the Claimant could have worked for the Respondent. Not only was the provision of transportation an inducement to employment, it was in fact a pre-requisite, given the fact that the Claimant had no driver's license. The terms and conditions of employment as offered by Respondent's foreman were corroborated by the Claimant's wife, Kimberly Ingram, and co-worker, Joey Horton.

The subsequent course of conduct fully corroborates this testimony as it is undisputed. Mark Hinson picked the Claimant up at his home on every work day and took him to the job site where he worked for the Employer and brought the Claimant home every day after work. Mark Hinson was paid \$150.00 per month truck allowance. While the Respondents argue this was just for incidentals such as getting ice or tools at the job site, clearly this amount is much more substantial than would be accounted for by a few trips to the convenience store every month.

The facts of this case are squarely within Medlin v. Upstate Plaster Service, 329 S.C. 92, 495 S.E.2d 447 (1998) and Eadie v. H.A. Sack Company, 322 S.C. 164, 470 S.E.2d 397 (S.C. App. 1996). In fact, the facts and circumstances of this case are almost identical to the facts and circumstances of Medlin.

In Medlin, the claimant was hired by the employer to install stucco sidings on buildings at various job sites. Before he started work, he informed the employer that he did not have a driver's license. Because the claimant could not provide his own transportation, the employer furnished him a ride to and from the job sites. While returning from a job site in North Carolina, a co-worker who was driving the employer's personal truck had an automobile accident injuring the claimant. The South Carolina Supreme Court, reversing the Workers' Compensation Commission, the Circuit Court and the Court of Appeals, found the claim to be clearly compensable as falling within the exceptions to the going and coming rule where, in going to and returning from work, the means of transportation is provided by the employer. The Court stated,

"The evidence is uncontradicted that Medlin needed transportation to work sites and the employer had agreed to provide such transportation. Medlin testified that before starting to work with the employer, he had informed Garris that he did not have a driver's license. Garris asked if Medlin could get to the office; Garris could then provide transportation from there. Garris' own testimony reveals the employer had agreed to provide transportation. In response to the question, 'But Mr. Medlin did not provide his own transportation, did he?'; Garris responded, 'No. We had to furnish him a ride. One of the men would take him . . .'. This admission by Garris clearly establishes that the provision of transportation to Medlin was not simply a gratuitous act by Garris, but was directly related to the work of the employer. As such, we find that Medlin clearly comes under the first exception of the going and coming rule." The facts of the instant case are almost identical to the facts in Medlin.

The facts in Eadie and the court's decision therein are equally applicable to the instant case. In Eadie, the claimant, Harold Eadie, was hired as a project superintendent for the employer at its Hilton Head construction project. The employer did not make a company vehicle available for Eadie, but paid him twenty-two cents per mile for using his personal vehicle driving to and from the job site. Eadie was authorized to hire his own crew. Eadie hired two employees and informed them that the employer would pay the gas costs for driving to and from the work site. Eadie and the employees would rotate driving their personal vehicles from Hampton to the job site at Hilton Head. On the way to the job site in one of the employee's personal vehicles, they were involved in an automobile accident. In affirming the Workers' Compensation Commission and the Circuit Court, the Court of Appeals noted that Eadie's provision of transportation to the employees he was authorized to hire was an inducement to employment, which is a factor which should be considered in determining whether or not the claim was compensable.

The employer argued that Eadie deviated from the company transportation policy because he was not driving his vehicle at the time of the accident, but was rather in one of the employees' vehicle and that Eadie lacked authority to obligate the company to pay transportation costs for his crew. The Court of Appeals found that Eadie clearly had apparent authority to bind the company since the company had placed him in a position such that third parties could reasonably be led to believe he had certain authority and in turn, they dealt with Eadie in reliance on that manifestation. That is exactly the circumstance in the instant case. The record reveals that Mark Hinson did in fact have such actual authority since the company left it up to Mark Hinson to hire brick masons and negotiate the terms of their employment.

However, even if Mark Hinson did not have actual authority to offer the Claimant transportation to and from the job sites as a term of employment and inducement for employment, Mark Hinson clearly had apparent authority to bind the company since he was admittedly the only employee of Respondent with which the Claimant ever dealt. The Claimant clearly had a right to rely on the representations of Mark Hinson as the foreman and job site supervisor of the Respondent when he told the Claimant that the company would provide transportation, and in fact provided such transportation for the Claimant on every day the Claimant worked for the Respondent. The Claimant thus clearly reasonably believed that Mark Hinson had the authority to provide transportation as a term of employment since he knew Claimant did not have a driver's license, told Claimant that he had such authority, told co-worker, Joey Horton, he was paid \$150.00 for transportation, and in fact provided transportation every day. Thus, under a theory of either actual authority or apparent authority, the instant claim is clearly compensable under the provision of transportation exception to the going and coming rule, pursuant to Eadie and Medlin.

ARGUMENT

II.

THE HEARING COMMISSIONER ERRED IN CONCLUDING THAT THE RESPONDENTS ARE NOT ESTOPPED UNDER THE DOCTRINE OF COLLATERAL ESTOPPEL FROM DENYING THE COMPENSABILITY OF THIS CLAIM BECAUSE OF THE COMMISSION'S DECISION IN HORTON v. PYRAMID MASONRY CONTRACTORS, INC., WCC FILE #0425180 AND THE ORDER OF JUDGE KENNETH G. GOODE, PRESIDING JUDGE SIXTH JUDICIAL CIRCUIT?

Joey Horton, employee of Pyramid Masonry Contractors, Inc., was a passenger in the automobile being operated by Mark Hinson at the time of the accident on November 17, 2004. Claimant was a passenger in same vehicle. On January 9, 2006, Commissioner Lisa G. Glover found Horton suffered a compensable injury by accident arising out of and occurring in the course and scope of his employment since Horton proved an exception to the "going and coming" rule as his employer provided transportation to and from job sites and said transportation was a condition of Horton's employment.

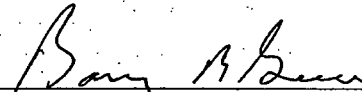
On August 11, 2006, the Appellate Panel of South Carolina Workers Compensation Commission upheld Commissioner Glover's Order.

On January 31, 2007, The Court of Common Pleas of the Sixth Judicial Circuit affirmed the Decision and Order of the South Carolina Workers Compensation Commission.

Thus, the Single Commissioner, the Appellate Panel of this Commission and a Circuit Court Judge have all found that the terms of employment negotiated by Mark Hinson included the provision of transportation for the employees of Respondent hired by Mark Hinson and thus fall within the exception to the going and coming rule. It is inconsistent for this Commission to now hold that the terms of the Appellant's employment do not fall within the exception to the going and coming rule as the facts and circumstances of his hiring and employment are identical to those of Joey Horton.

CONCLUSION

The Claimant clearly showed at the hearing, and the record reveals, that the foreman of the Respondent, acting with actual and/or apparent authority, hired the Claimant as a brick mason with knowledge that he had no driver's license and would need transportation to and from the job sites where Respondent was providing brick masons for construction projects. Mark Hinson was paid for the use of his truck and provided such transportation on every work day. Absent the provision of transportation, the Claimant could not have worked for the Respondent. The Respondent needed laborers at its various job sites in order to perform its business. Thus, the Claimant's case falls squarely within the exception to the going and coming rule where transportation of the employee is provided by the employer, or its agents and servants acting with actual and/or apparent authority.



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March 16, 2007.

CERTIFICATE OF MAILING

I, the undersigned employee of BARRY B. GEORGE, ESQUIRE, do hereby certify that I have served the foregoing document(s) by personally mailing a copy of the same, postage prepaid, on the date shown below as follows:

Richard B. Kale, Jr.
Attorney at Law
200 East Camperdown Way, Suite D
Greenville, SC 29601

3-16-07

Charlene Sloan

130

STATE OF SOUTH CAROLINA	)	
COUNTY OF FAIRFIELD	)	IN THE COURT OF COMMON PLEAS
James Clark, Jr.,	)	Civil Action #07-CP-20-00150
Employee,	)	
Claimant/Appellant,	)	
-v-	)	BRIEF OF
	)	CLAIMANT/APPELLANT
Pyramid Masonry Contractors, Inc.,	)	
Employer,	)	
and Hartford Casualty Insurance Company,	)	
Carrier,	)	
Defendants.	)	

STATEMENT OF THE CASE

On May 24, 2006, Claimant filed a Form 50 that on November 17, 2004, he was injured in a motor vehicle accident in the course and scope of his employment. On June 19, 2006, Defendants filed a Form 51, denying that Claimant's motor vehicle accident arose out of and in the course of his employment and asserting affirmative defenses.

A hearing was held before Commissioner G. Bryan Lyndon on October 11, 2006. It was undisputed that the Claimant was injured in a motor vehicle accident that occurred in the very early morning hours of November 17, 2004, on Interstate Highway I-77 in Fairfield County. At the time, Claimant and a coworker, Joey Horton, were riding in the vehicle of Mark Hinson, a foreman at Pyramid Masonry Contractors, Inc. (hereinafter "Pyramid") and were on the way to a job site in Columbia, South Carolina from Lancaster, South Carolina. Mr. Hinson died as a result of the injuries he received in the motor vehicle accident. Claimant testified that the employer, through Mr. Hinson, was providing him transportation to and from the worksite.

Therefore, he argued that the case fell within an exception to the "going to and coming from" rule. The Claimant requested a finding of compensability for the injuries suffered in the motor vehicle accident, payment of all medicals, payment of temporary total benefits from the date of the accident through the date of the hearing and continuing. Claimant contended that he had not reached maximum medical improvement. He further contended that Defendants were collaterally estopped by the Commission's decision in Joey J. Horton v. Pyramid Masonry Contractors, Inc., WCC File No. 0425180, from denying the compensability of the claim.

The Defendants denied that Claimant's injuries arose out of and in the course of his employment since he was traveling to work at the time of the accident. The employer denied that it provided transportation to Claimant while going to and from work and denied paying travel time or mileage to either the Claimant or to the foreman, Mark Hinson. Defendants denied that they were collaterally estopped because of the Horton decision, since the Horton case was on appeal and, therefore, there was no final Order.

The Commission's file, except for unstipulated medical reports and self-serving declarations, was made a part of the record in this case.

STATEMENT OF THE FACTS

In October 2004, Mark Hinson, masonry foreman for employer, went to Claimant's home in Lancaster, South Carolina and offered the Claimant a job with the employer. Mark Hinson was accompanied to Claimant's house by Joey Horton, a brick mason for employer. Kimberly Ingram, Claimant's wife, was also present when Mark Hinson offered Claimant a job. (Tr. 11, 12, 17).

Claimant testified that:

- a) He did not have a car and did not have a driver's license. (Tr. 12, 14).
- b) He did not know Mark Hinson prior to being hired. (Tr. 17).

- c) He told Mark Hinson he did not have transportation and Mark Hinson told Claimant company would provide transportation for him. (Tr. 13, 41, 42, 43, 46, 26).

In January 2004, Joey Horton, employee of Pyramid Masonry Contractors, Inc., testified that:

- a) In January 2004, Mark Hinson came to his home in Lancaster, South Carolina and offered him a job as a brick mason.
- b) He did not own a car and did not have a driver's license. (Tr. 38, 39).
- c) Mark Hinson told him that the employer would provide transportation for him through Mark Hinson to work. (Tr. 39, 40, 41).
- d) He was present at Claimant's house when Mark Hinson offered Claimant a job as a laborer.
- e) Claimant told Hinson he did not have a way to work and Hinson said "Don't worry about it. The company provides it." (Tr. 42, 43).

Kimberly Ingram, wife of Claimant, was present when Mark Hinson hired Claimant. Ingram testified that:

- a) Hinson told Claimant not to worry about transportation as the employer would provide transportation. (Tr. 51, 52).

David George Mauney testified for employer and stated that

- a) He had worked for employer for 25 years and was Regional Vice-President. (Tr. 59).
- b) He hired Mark Hinson in January 2004 as a foreman. (Tr. 59).
- c) Testified Hinson was paid \$150.00 for month for use of his vehicle during the course of workday. (Tr. 59).
- d) Testified employer does not provide transportation to its employees. (Tr. 60).
- e) Mark Hinson was not given the form about truck policy. (Tr. 65).

- f. He never told Mark Hinson he could not offer transportation. (Tr. 66).
 - g. Mark Hinson had authority to hire Claimant, set his salary, and job duties. (Tr. 67).
- Donald George Williams, testified for employer:
- a. He was a foreman for employer. (Tr. 74).
 - b. He never provided transportation for employees. (Tr. 76).
 - c. He received \$150.00 per month for gas and ice or anything job requires. (Tr. 75).
 - d. He did not know anything about the relationship of the hiring between Mark Hinson and James Clark, Jr. and Joey Horton. (Tr. 76).
 - e. Employer did not provide transportation to and from work to its employees. (Tr. 77).

ARGUMENT

I.

WHETHER THE HEARING COMMISSIONER ERRED IN FINDING THAT EMPLOYER DID NOT PROVIDE CLAIMANT TRANSPORTATION TO AND FROM WORK?

The Claimant's case falls squarely within the exception to the going and coming rule since the Claimant's transportation was provided for by his Employer, through its agent and servant, Mark Hinson, who was acting within the course and scope of his employment, with actual and/or apparent authority. While the general rule is an injury sustained while traveling to and from work are not compensable under the Workers' Compensation Law, there are five exceptions to this Rule: (1) Where a means of transportation is provided by the employer or the time consumed is paid for or included wages; (2) Where the employee is still charged with some duty or task in connection with his employment; (3) Where the way used is inherently dangerous and is either the exclusive way of ingress and egress to and from work or constructed and maintained by the employer; (4) Where the place of injury is in close proximity to the employer's premises and is brought within the scope of employment by express and implied

requirement in the contract of employment of its use by the servant in going to and coming from his work; and (5) Where the employee sustains injury while performing a special task, service, mission, or errand for his employer, even before or after customary working hours on which he does not ordinarily work. *Aughtry v. Abbeville County School District #60*, 332 S.C. 453, 504 S.E.2d 830, *reversed* 340 S.C. 604, 533 S.E.2d 885 (S.C. App. 1998).

The exception applicable to this case is the exception to the going and coming rule which renders an injury compensable if the employer provides the means of transportation. The only testimony in the record is that Mark Hinson was a foreman and the job site supervisor for the Respondent. (Tr. 11, 1.10 – 1.19). The Claimant was hired by Mark Hinson who came to Claimant's house and offered him a job as a laborer. The company provided transportation since the Claimant did not have a driver's license or own a car. (T.p.12, 1.7 – 1.10; Tr. 26, 1.2 – 1.5). The Claimant was provided transportation by the Respondent's foreman and job site supervisor, Mark Hinson, every day he worked for the Respondent from the date of his hire in January to the date of the accident on the way to the job site on November 17, 2004. (T.p.15, L.4 – L.5). Mark Hinson told Joey Horton that he was being paid \$150.00 per week for transporting him and Claimant to the job sites for the Respondent. (T.p.40, 1.4 – 1.18). Claimant never had any contact with anyone employed by Respondent, other than Mark Hinson, about his hiring, the terms of his employment or his transportation to work. (T.p.72, 1.4 – 1.6).

Mark Hinson was a foreman with the Respondent and had authority to hire the Claimant and convey terms of employment including wages. There is absolutely no evidence in the record that anyone other than Mark Hinson ever dealt with the Claimant concerning his hiring, wages, work hours, or transportation to and from the job site.

The Claimant's testimony concerning the circumstances of his hiring and the terms and conditions of his employment, including transportation to and from the job site, was corroborated

by Joey Horton and Kimberly Ingram. (T.p.42, 1.24; T.p.41, 1.11 – 1.14; T.p.51 1.1 – 1.7). The Respondents' course of conduct concerning a co-employee also corroborates the Claimant's testimony concerning transportation and terms of employment. (T.p.38, 1.20 – T.p.39, 1.1 – 1.21).

Thus, the only evidence in the record is that the foreman and job site supervisor of the Respondent was given authority to hire brick masons on behalf of the Respondent and negotiate the terms and conditions of their employment. The foreman went to the home of the Claimant and with direct knowledge that the Claimant did not have a driver's license, offered him a job at a stated wage rate and informed the Claimant that the company would provide transportation to and from the job site. Indeed, that is the only way the Claimant could have worked for the Respondent. Not only was the provision of transportation an inducement to employment, it was in fact a pre-requisite, given the fact that the Claimant had no driver's license. The terms and conditions of employment as offered by Respondent's foreman were corroborated by the Claimant's wife, Kimberly Ingram, and co-worker, Joey Horton.

The subsequent course of conduct fully corroborates this testimony as it is undisputed. Mark Hinson picked the Claimant up at his home on every work day and took him to the job site where he worked for the Employer and brought the Claimant home every day after work. Mark Hinson was paid \$150.00 per month truck allowance. While the Respondents argue this was just for incidentals such as getting ice or tools at the job site, clearly this amount is much more substantial than would be accounted for by a few trips to the convenience store every month.

The facts of this case are squarely within *Medlin v. Upstate Plaster Service*, 329 S.C. 92, 495 S.E.2d 447 (1998) and *Eadie v. H.A. Sack Company*, 322 S.C. 164, 470 S.E.2d 397 (S.C. App. 1996). In fact, the facts and circumstances of this case are almost identical to the facts and circumstances of *Medlin*.

In *Medlin*, the claimant was hired by the employer to install stucco sidings on buildings at various job sites. Before he started work, he informed the employer that he did not have a driver's license. Because the claimant could not provide his own transportation, the employer furnished him a ride to and from the job sites. While returning from a job site in North Carolina, a co-worker who was driving the employer's personal truck had an automobile accident injuring the claimant. The South Carolina Supreme Court, reversing the Workers' Compensation Commission, the Circuit Court and the Court of Appeals, found the claim to be clearly compensable as falling within the exceptions to the going and coming rule where, in going to and returning from work, the means of transportation is provided by the employer. The Court stated, "The evidence is uncontradicted that Medlin needed transportation to work sites and the employer had agreed to provide such transportation. Medlin testified that before starting to work with the employer, he had informed Garris that he did not have a driver's license. Garris asked if Medlin could get to the office; Garris could then provide transportation from there. Garris' own testimony reveals the employer had agreed to provide transportation. In response to the question, 'But Mr. Medlin did not provide his own transportation, did he?'; Garris responded, 'No. We had to furnish him a ride. One of the men would take him . . .' This admission by Garris clearly establishes that the provision of transportation to Medlin was not simply a gratuitous act by Garris, but was directly related to the work of the employer. As such, we find that Medlin clearly comes under the first exception of the going and coming rule." The facts of the instant case are almost identical to the facts in *Medlin*.

The facts in *Eadie* and the court's decision therein are equally applicable to the instant case. In *Eadie*, the claimant, Harold Eadie, was hired as a project superintendent for the employer at its Hilton Head construction project. The employer did not make a company vehicle available for Eadie, but paid him twenty-two cents per mile for using his personal vehicle driving

to and from the job site. Eadie was authorized to hire his own crew. Eadie hired two employees and informed them that the employer would pay the gas costs for driving to and from the work site. Eadie and the employees would rotate driving their personal vehicles from Hampton to the job site at Hilton Head. On the way to the job site in one of the employee's personal vehicles, they were involved in an automobile accident. In affirming the Workers' Compensation Commission and the Circuit Court, the Court of Appeals noted that Eadie's provision of transportation to the employees he was authorized to hire was an inducement to employment, which is a factor which should be considered in determining whether or not the claim was compensable.

The employer argued that Eadie deviated from the company transportation policy because he was not driving his vehicle at the time of the accident, but was rather in one of the employees' vehicle and that Eadie lacked authority to obligate the company to pay transportation costs for his crew. The Court of Appeals found that Eadie clearly had apparent authority to bind the company since the company had placed him in a position such that third parties could reasonably be led to believe he had certain authority and in turn, they dealt with Eadie in reliance on that manifestation. That is exactly the circumstance in the instant case. The record reveals that Mark Hinson did in fact have such actual authority since the company left it up to Mark Hinson to hire brick masons and negotiate the terms of employment.

However, even if Mark Hinson did not have actual authority to offer the Claimant transportation to and from the job sites as a term of employment and inducement for employment, Mark Hinson clearly had apparent authority to bind the company since he was admittedly the only employee of Respondent which the Claimant ever dealt with. The Claimant clearly had a right to rely on the representations of Mark Hinson as the foreman and job site supervisor of the Respondent when he told the Claimant that the company would provide

transportation, and in fact provided such transportation for the Claimant on every day the Claimant worked for the Respondent. The Claimant thus clearly reasonably believed that Mark Hinson had the authority to provide transportation as a term of employment since he knew Claimant did not have a driver's license, told Claimant that he had such authority, told co-worker, Joey Horton, he was paid \$150.00 for transportation, and in fact provided transportation every day. Thus, under a theory of either actual authority or apparent authority, the instant claim is clearly compensable under the provision of transportation exception to the going and coming rule, pursuant to *Eadie* and *Medlin*.

ARGUMENT

II.

THE TESTIMONY OF THE WITNESSES AT THE HEARING CONCERNING STATEMENTS MADE BY MARK HINSON DURING THE HIRING OF THE CLAIMANT AND JOEY HORTON ARE NOT HEARSAY.

The argument of the Respondents concerning hearsay show a fundamental misunderstanding of the hearsay Rule. Rule 801(d)(2) clearly states that a statement is not hearsay if it is offered against a party and is either the party's own statement in either an individual or a representative capacity, or a statement of which the party has manifested an adoption of belief in its truth, or a statement by a person authorized by the party to make a statement concerning the subject, or a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship. Clearly then, the statements made by Mark Hinson concerning the hiring and terms of employment of the Claimant are not hearsay as he admittedly had authority to approach, negotiate terms of employment and hire the Claimant. His statements made in his capacity as an agent or employee of the Respondent are not hearsay under the South Carolina Rules of Evidence.

Even if such statements were hearsay, the record is complete with corroboration of those statements as they have been corroborated by Kimberly Ingram and Joey Horton, and have been completely corroborated by the subsequent course of conduct of Mark Hinson and the Claimant. From the time of his hiring to the date of the accident in question. The Claimant was picked up at his home by Mark Hinson, the foreman of the Respondent, and taken to work on every work day during that period of time.

Therefore, the statements of Mark Hinson concerning the provision of transportation for the Claimant, as a condition of his employment, is not hearsay and even if it were it has been completely corroborated.

ARGUMENT

III.

DID THE HEARING COMMISSIONER ERR IN CONCLUDING THAT THE RESPONDENTS ARE NOT ESTOPPED UNDER THE DOCTRINE OF COLLATERAL ESTOPPEL FROM DENYING THE COMPENSABILITY OF THIS CLAIM BECAUSE OF THE COMMISSION'S DECISION IN HORTON v. PYRAMID MASONRY CONTRACTORS, INC., WCC FILE #0425180 AND ORDER OF JUDGE KENNETH G. GOODE, PRESIDING JUDGE SIXTH JUDICIAL CIRCUIT?

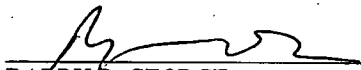
Joey Horton, employee of Pyramid Masonry Contractors, Inc., was a passenger in the automobile being operated by Mark Hinson at the time of the accident on November 17, 2004. Claimant was a passenger in same vehicle. On January 9, 2006, Commissioner Lisa G. Glover found Horton suffered a compensable injury by accident arising out of and occurring in the course and scope of his employment and Horton proved an exception to the "going and coming" rule since his employee provided transportation to and from job sites and said transportation was a condition of Claimant's employment.

On August 11, 2006, Appellate panel of South Carolina Workers Compensation Commission upheld Commissioner Glover's Order.

On January 31, 2007, The Court of Common Pleas of the Sixth Judicial Circuit affirmed the Decision and Order of the South Carolina Workers Compensation Commission.

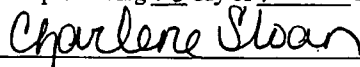
CONCLUSION

The Claimant clearly showed at the hearing, and the record reveals, that the foreman of the Respondent, acting with actual and/or apparent authority, hired the Claimant as a brick mason with knowledge that he had no driver's license and would need transportation to and from the job sites where Respondent was providing brick masons for construction projects. Mark Hinson was paid for the use of his truck and provided such transportation on every work day. Absent the provision of transportation, the Claimant could not have worked for the Respondent. The Respondent needed laborers at its various job sites in order to perform its business. Thus, the Claimant's case falls squarely within the exception to the going and coming rule where transportation of the employee is provided by the employer, or its agents and servants acting with actual and/or apparent authority.


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December 18, 2007.

Certificate of Mailing
I hereby certified that a copy of the foregoing
pleading was mailed to all counsel of record
in this proceeding 18 day of Dec. 2007.


Charlene Sloan

THE STATE OF SOUTH CAROLINA
In The Appeals Court

2008 MAR 24 A 9 04

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 07-CP-20-150

RECEIVED

MAR 13 2008

SC Court of Appeals

James Clark, Jr., ... Appellant,

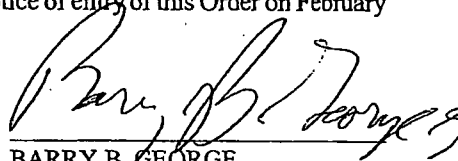
v.

Pyramid Masonry Contractors, Inc., Employer and
Hartford Fire Insurance Company, Carrier Respondents.

NOTICE OF APPEAL

James Clark, Jr. appeals the Order of the Honorable Brooks P. Goldsmith dated February 22, 2008. Appellant received written notice of entry of this Order on February 26, 2008.

March 11, 2008.



BARRY B. GEORGE
1419 Bull Street
Columbia, South Carolina 29201
(803) 254-7222
Attorney for Appellant

Other Counsel of Record:

Richard B. Kale, Jr.
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
(864) 527-3272
Attorney for Respondents

142

THE STATE OF SOUTH CAROLINA
In The Appeals Court

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

RECEIVED

MAR 19 2008

Case No. 07-CP-20-150

SC Court of Appeals

James Clark, Jr., ... Appellant,

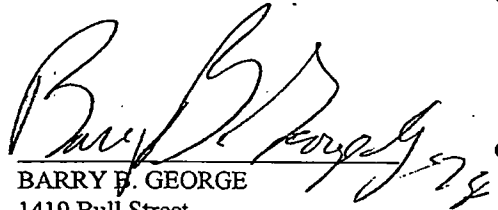
v.

Pyramid Masonry Contractors, Inc., Employer and
Hartford Fire Insurance Company, Carrier Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondents by depositing a copy of it in the United States Mail, postage prepaid, on March 11, 2008, addressed to their attorney of record, Richard B. Kale, Jr., Esquire, at 872 S. Pleasantburg Drive, Greenville, South Carolina 29607.

March 19, 2008.



BARRY P. GEORGE
1419 Bull Street
Columbia, South Carolina 29201
(803) 254-7222

Attorney for Appellant

2008 MAR 24 A 9:04
FAIRFIELD COUNTY
CLERK OF COURT
BETTY IN McWHAM

**PYRAMID MASONRY CONTRACTORS, INC.**

3401 SERVICE STREET • CHARLOTTE, NC 28206 • PHONE: (704) 632-9898 • FAX: (704) 632-9899

TO: Prospective Employee
FROM: Pyramid Masonry Contractors, Inc.

Please read the following job descriptions. They are the minimum standards for your acceptability as an employee of Pyramid Masonry. If there is any item you do not understand, please ask the foreman or superintendent that you are making this application to for an explanation.

We ask that you sign below acknowledging that you have read and understand the Job Descriptions. Your signature does not represent any type of employment contract between you and Pyramid Masonry. It is an acknowledgement that you have read and understand the Job Description.

11/11/04

Date

Employee's Signature

James Clark

Employee's Address

1461 Phil Thurman Dr**DEFENDANT'S
EXHIBIT**

#1 CLARK

10-11-04

Received Time Oct. 9. 3:02PM

R 598

JOB DESCRIPTIONLABOR - TENDER

1. Must be able to stock scaffolds with masonry material. This includes 12" masonry units weighting up to 75 lbs.
2. Must be able to load mortar mixer with up to 94 pound bags of cement and one cubic foot box of sand.
3. Must have working knowledge of scaffold erection and dismantling procedures.
4. Must be able to climb ladders or steps to reach scaffolds. (Note: Scaffold in some instances may be 50-100 feet high.)
5. Must be able to handle loaded wheel barrows of brick, block, mortar or trash on jobsite conditions. (Note: This may include soft, muddy or rough terrain.)
6. Must be able to work 40 hour weeks.
7. Must be willing to abide by OSHA Safety Standards.
8. Must be willing to follow Pyramid Job Rules and Safety Rules (these are in conjunction with OSHA Standards) and be willing to sign off on acceptance of these policies.
9. Must have identification and proof of employment eligibility.
10. Must have means of transportation to and from project ✓

Received Time Oct. 9. 3:02PM

R 599

Form W-4 (2004)

Purpose. Complete Form W-4 so that your employer can withhold the correct Federal income tax from your pay. Because your tax situation may change, you may want to refigure your withholding each year.

Exemption from withholding. If you are exempt, complete only lines 1, 2, 3, 4, and 7 and sign this form to validate it. Your exemption for 2004 expires February 16, 2005. See Pub. 505, Tax Withholding and Estimated Tax.

Note: You cannot claim exemption from withholding if: (a) your income exceeds \$800 and includes more than \$250 of unearned income (e.g., interest and dividends) and (b) another person can claim you as a dependent on their tax return.

Basic instructions. If you are not exempt, complete the Personal Allowances Worksheet below. The worksheets on page 2 adjust your withholding allowances based on itemized

deductions, certain credits, adjustments to income, or two-earner/two-job situations. Complete all worksheets that apply. However, you may claim fewer (or zero) allowances.

Head of household. Generally, you may claim head of household filing status on your tax return only if you are unmarried and pay more than 50% of the costs of keeping up a home for yourself and your dependent(s) or other qualifying individuals. See line E below.

Tax credits. You can take projected tax credits into account in figuring your allowable number of withholding allowances. Credits for child or dependent care expenses and the child tax credit may be claimed using the Personal Allowances Worksheet below. See Pub. 919, How Do I Adjust My Tax Withholding? for information on converting your other credits into withholding allowances.

Nonwage income. If you have a large amount of nonwage income, such as interest or dividends, consider making estimated tax payments using

Form 1040-ES, Estimated Tax for Individuals. Otherwise, you may owe additional tax.

Two earners/two jobs. If you have a working spouse or more than one job, figure the total number of allowances you are entitled to claim on all jobs using worksheets from only one Form W-4. Your withholding usually will be most accurate when all allowances are claimed on the Form W-4 for the highest paying job and zero allowances are claimed on the others.

Nonresident alien. If you are a nonresident alien, see the instructions for Form 8233 before completing this Form W-4.

Check your withholding. After your Form W-4 takes effect, use Pub. 919 to see how the dollar amount you are having withheld compares to your projected total tax for 2004. See Pub. 919, especially if your earnings exceed \$125,000 (Single) or \$175,000 (Married).

Recent name change? If your name on line 1 differs from that shown on your social security card, call 1-800-772-1213 to initiate a name change and obtain a social security card showing your correct name.

Personal Allowances Worksheet (Keep for your records.)

A	Enter "1" for yourself if no one else can claim you as a dependent	A	1
B	Enter "1" if: - You are single and have only one job; or - You are married, have only one job, and your spouse does not work; or - Your wages from a second job or your spouse's wages (or the total of both) are \$1,000 or less.	B	
C	Enter "1" for your spouse. But, you may choose to enter "-0-" if you are married and have either a working spouse or more than one job. (Entering "-0-" may help you avoid having too little tax withheld.)	C	
D	Enter number of dependents (other than your spouse or yourself) you will claim on your tax return	D	
E	Enter "1" if you will file as head of household on your tax return (see conditions under Head of household above)	E	
F	Enter "1" if you have at least \$1,500 of child or dependent care expenses for which you plan to claim a credit (Note: Do not include child support payments. See Pub. 503, Child and Dependent Care Expenses, for details.)	F	
G	Child Tax Credit (including additional child tax credit): - If your total income will be less than \$52,000 (\$77,000 if married), enter "2" for each eligible child. - If your total income will be between \$52,000 and \$84,000 (\$77,000 and \$119,000 if married), enter "1" for each eligible child plus "1" additional if you have four or more eligible children.	G	
H	Add lines A through G and enter total here. Note: This may be different from the number of exemptions you claim on your tax return.	H	
F	For accuracy, complete all worksheets that apply. - If you plan to itemize or claim adjustments to income and want to reduce your withholding, see the Deductions and Adjustments Worksheet on page 2. - If you have more than one job or are married and you and your spouse both work and the combined earnings from all jobs exceed \$35,000 (\$25,000 if married) see the Two-Earner/Two-Job Worksheet on page 2 to avoid having too little tax withheld. - If neither of the above situations applies, stop here and enter the number from line H on line 5 of Form W-4 below.		

Cut here and give Form W-4 to your employer. Keep the top part for your records.

Form W-4		Employee's Withholding Allowance Certificate		OMB No. 1545-0010
Department of the Treasury Internal Revenue Service		Your employer must send a copy of this form to the IRS if: (a) you claim more than 10 allowances or (b) you claim "Exempt" and your wages are normally more than \$200 per week.		2004
1. Type or print your first name and middle initial <u>James Charles</u>		Last name <u>Clark</u>		2. Your social security number <u>251 95 4421</u>
Home address (number and street or rural route) <u>1401 Phil Thurman Dr.</u>		3. ☒ Single ☐ Married ☐ Married, but withhold at higher Single rate Note: If married, but legally separated, or spouse is a nonresident alien, check the "Single" box.		
City or town, state, and ZIP code <u>Winchester S.C. 29726</u>		4. If your last name differs from that shown on your social security card, check here. You must call 1-800-772-1213 for a new card. ☐		
5. Total number of allowances you are claiming (from line H above or from the applicable worksheet on page 2)		5 <u>1</u>		
6. Additional amount, if any, you want withheld from each paycheck		6 \$ <u>0</u>		
7. I claim exemption from withholding for 2004, and I certify that I meet both of the following conditions for exemption: - Last year I had a right to a refund of all Federal income tax withheld because I had no tax liability and - This year I expect a refund of all Federal income tax withheld because I expect to have no tax liability. If you meet both conditions, write "Exempt" here		7 <u>Exempt</u>		
Under penalties of perjury, I certify that I am entitled to the number of withholding allowances claimed on this certificate, or I am entitled to claim exempt status.				
Employee's signature (For use if not valid unless you sign it.) <u>James Charles Clark</u>		Date <u>11-1-04</u>		
8. Employer's name and address (Employer: Complete lines 8 and 10 only if sending to the IRS) <u>Pyramid Masonry Contractors, Inc.</u> <u>6104 Pecan Dr. 3401 Service Street</u> <u>Winchester S.C. 29726</u>		9. Office code (optional)		10. Employer's identification number (EIN) <u>46</u>

For Privacy Act and Received Time: Oct. 9. 10 3:02PM page 2.

Call No 132700

Form W-4 (2004)

R 600

Form
NC-4
(Rev. 11/31)

Employee's Withholding Allowance Certificate

North Carolina Department of Revenue

PURPOSE. Complete Form NC-4 so that your employer can withhold the correct amount of State income tax from your pay. **EXEMPTION FROM WITHHOLDING.** Read line 6 of the certificate below to see if you can claim exempt status. If exempt, only complete the certificate; but do not complete lines 4 and 5. No State income tax will be withheld from your pay.

BASIC INSTRUCTIONS. If you are not exempt, complete the Personal Allowances Worksheet. An additional worksheet is provided on page 2 for employees to adjust their withholding allowances based on itemized deductions, adjustments to income, or tax credits. The worksheets will help you figure the number of withholding allowances you are entitled to claim. However, you may claim fewer allowances if you wish to increase the tax withheld during the year. If your withholding allowances decrease, you must file a new NC-4 with your employer within 10 days after the change occurs except that a new NC-4 is not required until the next year in the following cases:

- 1 When a dependent dies during the year
- 2 When an individual ceases to be a dependent during the year and the support furnished will be

- 3 the chief support for the year.
- When an individual ceases to be head of household after maintaining the household for the major portion of the year

HEAD OF HOUSEHOLD. Generally you may claim head of household status on your tax return only if you are unmarried and pay more than 50% of the costs of keeping up a home for yourself and your dependent(s) or other qualifying individuals. Note: "Head of Household" for State tax purposes is the same as for federal tax purposes.

QUALIFYING WIDOW(ER). You may claim qualifying widow(er) status only if your spouse died in either of the two preceding tax years and you meet the following requirements:

- 1 Your home is maintained as the main household of a child or stepchild for whom you can claim an exemption, and
- 2 You were entitled to file a joint return with your spouse in the year of your spouse's death

Note: "Qualifying Widow(er)" for State tax purposes is the same as for federal tax purposes. Because the

standard deduction used in the tax tables for married and qualifying widow(er) is \$2,750 and you are entitled to a standard deduction of \$5,500, you may elect to claim an additional personal withholding allowance on line C below to avoid having too much tax withheld.

MARRIED AND SPOUSE DOES NOT WORK OR HAS WAGE INCOME OF LESS THAN \$3,500. The withholding tax tables are based on both spouses earning wages during the year. If your spouse does not work or will earn wages of less than \$3,500 during the year, you may elect to complete line B below to avoid having too much tax withheld.

TWO JOBS. If you have more than one job, figure the total number of allowances you are entitled to claim on all jobs using only one form NC-4. This total should be divided among all jobs. Your withholding will usually be most accurate when all allowances are claimed on the NC-4 filed for the higher paying job and zero allowances are claimed for the other.

NONWAGE INCOME. If you have a large amount of nonwage income, such as interest or dividends, you should consider making estimated tax payments using Form NC-40.

Personal Allowances Worksheet

- A Enter "1" for yourself if no one else can claim you as a dependent A _____
- IN ADDITION TO A. ABOVE:
- B Enter "1" if you are married and you expect your spouse's wages to be from \$1,000 to \$3,500 B _____
Enter "2" if you are married and your spouse has no income or expects to earn less than \$1,000 .. B. _____
- C Enter "1" if you are a qualifying widow(er) C _____
- D Enter the number of dependents (other than your spouse or yourself) whom you will claim on your tax return D _____
- E If you plan to itemize, claim adjustments to income, or have allowable tax credits and want to reduce your withholding, complete the Deductions, Adjustments, and Tax Credits Worksheet on page 2 and enter number from line 14 E _____
- F Add lines A through E and enter total here and on line 4 of your Employee's Withholding Allowance Certificate F. _____

Cut here and give this certificate to your employer. Keep the top portion for your records

Form **NC-4** Employee's Withholding Allowance Certificate
North Carolina Department of Revenue

1 Print your first name and middle initial James Jr. Last name Clark

2 Your social security number 251-45-4421

3 Marital Status ☒ Single
☐ Married or Qualifying Widow(er)
☐ Head of Household

4 Total number of allowances you are claiming (from line F above) 4 1

5 Additional amount, if any, you want deducted from each pay period 5 \$

6 I claim exemption from withholding and I certify that I meet ALL of the following conditions for exemption:

- Last year I was entitled to a refund of ALL State income tax withheld because I had NO tax liability. AND
- This year I expect a refund of ALL State income tax withheld because I expect to have NO tax liability

I am claiming exempt, the statement is effective for one calendar year only and a new statement must be completed and given to your employer by next February 15.

you meet all of the above conditions, enter the year effective and write "EXEMPT" here 6 20

7 Are you a full-time student? (Note: Full-time students are not automatically exempt) 7 ☐ Yes ☐ No

I certify under penalties provided by law that the withholding allowances claimed on this certificate do not exceed the amount to which I am entitled.

8 Employee's signature James Clark Jr. Date 11/01/04 20

9 Employer's name and address (Employer: Complete 8 and 9 only if sending to NCDOR)
Pyramid Masonry Contractors, Inc.
Received Time Oct. 9, 3:02PM

R 601

PYRAMID MASONRY CONTRACTORS, INC.
2330 MELLON COURT
DECATUR, GEORGIA 30035

J.S. Department of Justice
Immigration and Naturalization Service

Form I-9 (Rev. 11-21-91) N
Employment Eligibility Verification

Please read instructions carefully before completing this form. The instructions must be available during completion of this form. **ANTI-DISCRIMINATION NOTICE.** It is illegal to discriminate against work eligible individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification. To be completed and signed by employee at the time employment begins.

Print Name: Last <u>Clark</u> First <u>James D.</u> Middle Initial _____	Maiden Name _____
Address (Street Name and Number) <u>1011 Phil Thurman Dr</u>	Date of Birth (month/day/year) <u>12/22/71</u>
City <u>Lancaster, S.C.</u> State <u>S.C.</u> Zip Code <u>29720</u>	Social Security # <u>251-45-4421</u>

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):
☐ A citizen or national of the United States
☐ A Lawful Permanent Resident (Alien # A) _____
☐ An alien authorized to work until _____ (Alien # or Admission #) _____

Employee's Signature James Clark Date (month/day/year) 11-1-04

Prepare and/or Translator Certification. (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature _____ Print Name _____
 Address (Street Name and Number, City, State, Zip Code) _____ Date (month/day/year) _____

Section 2. Employer Review and Verification. To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C as listed on the reverse of this form and record the title, number and expiration date, if any, of the document(s).

List A	OR	List B	AND	List C
Document title _____	OR	_____		_____
Issuing authority _____		_____		_____
Document # _____		_____		_____
Expiration Date (if any) _____		_____		_____
Document # _____		_____		_____
Expiration Date (if any) _____		_____		_____

CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appears to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) _____ and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative _____ Print Name _____
 Business or Organization Name _____ Address (Street Name and Number, City, State, Zip Code) _____
 Date (month/day/year) _____

Section 3. Updating and Reverification. To be completed and signed by employer

A. New Name (if applicable) _____	B. Date of rehire (month/day/year) (if applicable) _____
C. Employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility	
Document Title _____	Document # _____ Expiration Date (month/day/year) _____

I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appears to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative _____
 Received Time Oct. 9, 3:02PM

R 602

JOB PLACEMENT INFORMATION

The health information requested below is to be used by your employer to properly place you on the job and to guide supervision in planning your activities.

Emp.oyee Telephone 1-803-283-3991 Birthdate 12-12/71

LAST THREE EMPLOYERS

Company Name	Month and Year Worked
	From To
1. <u>Boral Bricks</u>	<u>2/92</u> <u>12/92</u>
2. <u>Tyson Food</u>	<u>11/92</u> <u>4/01</u>
3. <u>Wal-Mart</u>	<u>12/02</u> <u>4/03</u>

Last Medical Examination: Date _____ Place _____
Doctor _____

PAST ILLNESS	Yes	No		Yes	No
Ruptured or Hernia.....	()	(☒)	Heart Trouble.....	()	(☒)
High/Low Blood Pressure	()	(☒)	Headaches/Dizziness.....	()	(☒)
Back Pain/Strain.....	()	(☒)	Nervousness.....	()	(☒)

Have you lost time from work due to illness or injury in the past 2 year? No
If yes, explain: _____

Have you ever filed a compensation claim or received benefits as a result of an industrial injury or disease? No If yes, explain: _____

Has your work ever been limited or restricted because of your health? No
If yes, explain: _____

Are you now taking any drugs or medications? No If yes, explain: _____

Have you any condition requiring a special work assignment? No If yes, explain: _____

PERSON TO NOTIFY IN EMERGENCIES

Name and Address 717 Taylor St. Telephone No. 313-283-283
Joann Rabb 717 Taylor St.

[Signature]
EMPLOYEE'S SIGNATURE
DATE 11-04

Received Time Oct. 9. 3:02PM

R 603

149

Aug 16 05 10:09a Pyramid
08/16/2005 09:33

7046329899

NO. 434 P. 2
Wade

*John
COPD*



PYRAMID MASONRY CONTRACTORS, INC.
P.O. BOX 35087 DECATUR, GEORGIA 30035 (404) 987-4750

January 1, 1989

TRUCK ALLOWANCE

This expense is paid monthly. It is for the intended use of reimbursement for the use of personal vehicles on the jobsite. This pertains only for picking up or delivering incidentals and not to be interpreted as mileage.

CLC

**DEFENDANT'S
EXHIBIT**

#2 Clark

10-11-06

OFFICES LOCATED IN ATLANTA, CHARLOTTE & ORLANDO

Received Time Aug 16 2005 10:04AM

R 604

JOB DESCRIPTIONLABOR - TENDER

1. Must be able to stock scaffolds with masonry material. This includes 12" masonry units weighting up to 75 lbs.
2. Must be able to load mortar mixer with up to 94 pound bags of cement and one cubic foot box of sand.
3. Must have working knowledge of scaffold erection and dismantling procedures.
4. Must be able to climb ladders or steps to reach scaffolds. (Note: Scaffold in some instances may be 50-100 feet high.)
5. Must be able to handle loaded wheel barrows of brick, block, mortar or trash on jobsite conditions. (Note: This may include soft, muddy or rough terrain.)
6. Must be able to work 40 hour weeks.
7. Must be willing to abide by OSHA Safety Standards.
8. Must be willing to follow Pyramid Job Rules and Safety Rules (these are in conjunction with OSHA Standards) and be willing to sign off on acceptance of these policies.
9. Must have identification and proof of employment eligibility.
10. Must have means of transportation to and from project.

DEFENDANT'S
EXHIBIT

#3 Clark

10-11-06

Received Time Aug. 24 3:14PM

R 605

JOB DESCRIPTION

MASON

1. Must have a complete set of brick and blocklayer tools in good condition.
2. Must be experienced in coursing and laying out masonry.
3. Must be able to build corners and leads and all other masonry true and plumb to industry standards.
4. Must be able to work forty hour work weeks meeting productivity as determined by jobsite supervisor. Productivity to be determined on a job by job basis.
5. Must be able to lay 12" masonry units weighting up to 75 lbs on a daily basis if required.
6. Must be able to work off various types of scaffolds and be able to climb ladders or steps to reach scaffolds. (Note: Scaffold in some instances may be 50-100 feet high).
7. Must be willing to abide by OSHA Safety Standards.
8. Must be willing to follow Pyramid Job Rules and Safety Rules (these are in conjunction with OSHA standards) and be willing to sign off on acceptance of these policies.
9. Must have identification and proof of employment eligibility.
10. Must have means of transportation to and from project.

DEFENDANT'S
EXHIBIT

#4 Clark

10-1106

Received Time Aug 24 3:14PM

159

R 606

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2011-CP-20-436

Case Tracking No. 2012-212898

James Clark, Jr.,

Respondent,

v.

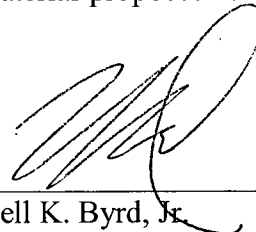
Pyramid Masonry Contractors, Inc., and
Hartford Fire Insurance Company,

Appellants.

CERTIFICATE

I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

May 20, 2013



Mitchell K. Byrd, Jr.
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
(864) 527-3295

Attorney for Appellants

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2011-CP-20-436

Case Tracking No. 2012-212898

James Clark, Jr.,

Respondent,

v.

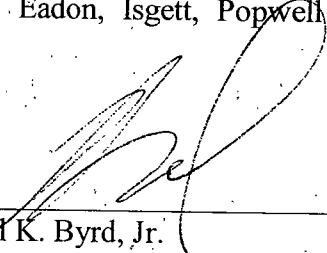
Pyramid Masonry Contractors, Inc., and
Hartford Fire Insurance Company,

Appellants.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on May 20, 2013, addressed to their attorney of record, Gary W. Popwell, Jr., Esquire, Lee, Eadon, Isgett, Popwell and Reardon, P.A., 1505, Columbia, SC 29202.

May 20, 2013



Mitchell K. Byrd, Jr.
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
(864) 527-3295
Attorney for Appellants

RECEIVED

MAY 22 2013

SC Court of Appeals