

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Melody James, Commissioner for the Appellate Panel

Appellate Case No. 2013-001763

RECEIVED

DEC 18 2013

SC Court of Appeals

Everett Davis, Employee, Claimant,

Appellant,

v.

Southlake Transport, Inc., Employer, and Lumberman's Underwriting Alliance, Carrier,
Defendants,

Respondents.

RECORD ON APPEAL

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APPELLATE PANEL DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1119380

Everett Davis

EMPLOYEE,
CLAIMANT/RESPONDENT

VS.

Southlake Transport, Inc.

EMPLOYER,

AND

Lumberman's Underwriting Alliance

CARRIER,
DEFENDANTS/APPELLANTS,

Appellate Panel Review held in Columbia, South
Carolina, on June 18, 2013 per notices timely
And properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

8-12-13

APPEARANCES: Claimant/Appellant represented by John D. Clark, Esquire

Defendants/Respondents represented by M. Chad Abramson, Esquire

STATEMENT OF THE CASE

Everett Davis alleged that he was injured in a compensable work-related injury that occurred on November 28, 2011. In particular, Mr. Davis alleged that he was involved in a motor vehicle accident that caused injuries to his left knee and back. Defendants initially denied this claim as compensable but, pursuant to a Consent Order, agreed to provide causally-related medical treatment pursuant to S.C. Code Ann. Section 42-15-60 to Claimant's back and left knee. Mr. Davis filed a Form 50 seeking an award for additional medical treatment for his left knee and back, to include a total knee replacement. Claimant further alleged that he had sustained an aggravation of the pre-existing arthritis in his left knee and low back.

Defendants denied that Claimant was entitled to additional medical treatment and contended that his pre-existing arthritis was unrelated to this workers' compensation claim. Further, Defendants requested that the Single Commissioner issue an award finding that Claimant had reached maximum medical improvement.

A hearing was held before the Single Commissioner in Lexington, South Carolina on November 21, 2012. Pursuant to a Decision and Order dated January 29, 2013, the Single Commissioner found, *inter alia*, that Claimant had reached maximum medical improvement for the injuries to his left knee and low back that occurred in the compensable work-related accident on November 28, 2011, and that Claimant's current left knee complaints were not causally related to his workers' compensation claim; therefore, his claim for additional medical treatment to the left knee was denied. The Single Commissioner did not rule on the issue of permanency, holding that issue in abeyance as the hearing was set on Claimant's Form 50 and Claimant had not requested a determination of that issue on his Form 50.

On February 8, 2013 the Claimant/Appellant timely filed a Form 30, Request for

Commission Review. Both parties served timely briefs supporting their positions for review. A Review Hearing was held before the Appellate Panel of the Workers' Compensation Commission (Full Commission) on June 18, 2013. The Order of the Full Commission is as follows:

EVIDENCE OF THE CASE

Before the Single Commissioner, the following evidence was presented:

Testimony of Claimant:

Mr. Davis testified that he is fifty years old and lives in Sumter. (H. Tr. p. 6, ll. 21-24). He is currently divorced and has three children, one of whom he supports. (H. Tr. p. 7, ll. 1-7). Mr. Davis also testified that he takes care of his grandchildren. (H. Tr. p. 7, ll. 8-10). He graduated from high school and then attended Central Carolina Technical College where he studied Industrial Maintenance. (H. Tr. p. 7, ll. 14-21).

Mr. Davis has a commercial driver's license that he has had for about fifteen years. (H. Tr. p. 9, ll. 2-3). His previous employment history consists of working in the Bosch Plant for 10-11 years and also working in a warehouse. (H. Tr. p. 8, ll. 7-14). He testified that approximately twenty years ago, he had surgery on his left knee. (H. Tr. p. 8, ll. 20-24). Mr. Davis said that he has not received medical treatment to his knee in the past twenty years. (H. Tr. p. 9, ll. 2-4). He further indicates that he has not had previous problems with his back before the accident. (H. Tr. p. 9, ll. 5-7).

When asked to describe the accident, Mr. Davis testified that he was heading north toward Philadelphia to pick up a load around 5:00 in the evening. He heard a loud boom and thought he may have blown a tire on the truck. All of the sudden the truck lunged forward, so he proceeded to pull over to the left of the road when he saw something shoot past the driver's side

of the truck. Upon looking in his rearview mirror he saw a car driving erratically and by the time he pulled onto the side of the road, the car was spinning in the median. (H. Tr. pp. 9-10, ll. 11-23). Mr. Davis said that when the truck lunged forward, he hit his left knee on the bottom of the dashboard. (H. Tr. p. 11, l. 14). The skin on his knee was broken and it was bleeding a little bit. (H. Tr. p. 11, ll. 20-21). Mr. Davis said his knee was hurting after the accident, but he did not think anything of it. (H. Tr. p. 12, ll. 9-10). As time went on, Mr. Davis said the pain started hurting more. (H. Tr. p. 12, ll. 13-15). Mr. Davis did not go to the doctor because he had a previously scheduled appointment for a physical so he planned to talk to the doctor about it then. (H. Tr. p. 12, ll. 18-23). Mr. Davis testified that the pain was gradual and increased each week. He also said that his back started to bother him gradually. He assumed it was from putting pressure on his other leg. (H. Tr. p. 13, ll. 6-18).

Before the accident, Mr. Davis testified that he walked with a limp which was due to him undergoing a surgical procedure in the past. (H. Tr. p. 13, ll. 19-25). He said that his limp is worse now. Sometimes he is in so much pain that he can barely walk or he will have to stop walking. He testified that he can walk without knee pain or back pain for a city block. (H. Tr. p. 14, ll. 7-16). Mr. Davis said that after a period of standing, his back hurts but sitting does not bother him. (H. Tr. p. 14, ll. 17-24). Mr. Davis testified that he is not currently taking any medication and he has continued to work. (H. Tr. p. 15, ll. 1-3). He said that his knee pain has increased since the accident. (H. Tr. p. 15, ll. 17 - 22).

Mr. Davis testified that he wants additional treatment for his left knee and his back because the pain is unbearable. (H. Tr. p. 16, ll. 2 -9). He said he cannot afford to take off of work because he has bills to pay and he has always worked. (H. Tr. p. 16, ll. 10-18).

On cross-examination, Mr. Davis testified that he did not ask the State Trooper at the

time of the accident to call an ambulance for him. (H. Tr. p. 18, ll. 1-3). Further, Mr. Davis testified that he continued to drive from the accident scene to Philadelphia which was approximately three hours. (H. Tr. p. 18, ll. 10-16). The following day, he drove from Philadelphia to Florida. (H. Tr. p. 18, ll. 24-25). Mr. Davis admitted that he drove through South Carolina on his way to Florida. (H. Tr. p. 19, ll. 6-10). Mr. Davis admitted that his knee was not bothering him the following day to the extent that he needed medical treatment. (H. Tr. p. 19, ll. 11-18). He further admitted that he did not ask anyone with the employer to send him to the doctor for his left knee or low back. (H. Tr. p. 20, ll. 3-7). Mr. Davis continued to perform his normal job duties after his accident. (H. Tr. p. 20, ll. 8-10). Mr. Davis first sought medical treatment for his alleged injuries on December 27, 2011. (H. Tr. p. 20, ll. 19-22). This appointment was scheduled before the injury happened at work. (H. Tr. p. 21, ll. 3-6).

Mr. Davis testified that since his work accident, *he has not missed any time from work due to his left knee pain and low back pain.* (H. Tr. p. 21, ll. 19-23). He has driven approximately eleven hours per day, working five, six or seven days per week. This equates to approximately 50 hours per week and an average of 2,900 miles per week. (H. Tr. p. 22, ll. 1-14). Mr. Davis *has not made complaints to any of his supervisors about ongoing left knee or low back pain.* (H. Tr. p. 22, ll. 15-18).

When asked if Mr. Davis had prior problems with his left knee, he testified no. (H. Tr. p. 24, ll. 11-17). However, Defense counsel produced a medical record (Defendants' APA p. 29), from Dr. Compton dated September 7, 2011 in which Dr. Compton notes occasional pains in the left knee from arthroscopy about fifteen years ago. Mr. Davis continued to deny that he suffered from occasional left knee pain. (H. Tr. p. 25, ll. 15-24). Thereafter, Defense counsel asked Mr. Davis if he recalled testifying in his deposition that he was not having any pain in his left knee

before the accident, and he said he was not having pain. (H. Tr. p. 27, ll. 8-16). Mr. Davis also denied receiving medical treatment for his left knee prior to the accident, yet he saw Dr. Compton on September 7, 2011 for his left knee.

Mr. Davis testified that he is *not taking any medication for his left knee pain*. (H. Tr. p. 28, ll. 22-24), *nor is he taking medication for his low back*. (H. Tr. p. 29, ll. 2-4). However, he did testify that he takes both Advil and Tylenol. (H. Tr. p. 30, ll. 13-15).

Testimony of Carrie Glenn:

Ms. Glenn testified that she is employed as the Safety Director at Southlake Transport and has been working there for twelve years. (H. Tr. p. 21, ll. 20-25). Ms. Glenn knows Claimant and is familiar with his accident. She testified that after the accident, he did not request medical attention nor did he miss any time from work. (H. Tr. p. 33, ll. 1-10). Ms. Glenn said that Claimant did not ask for any medical treatment in 2012 for his low back and left knee. In fact, she was not even aware that he was treating for his problems. (H. Tr. p. 33, ll. 15-19). Further, Ms. Glenn said that Claimant has been working his regular job duties, which entails driving a truck approximately 500-600 miles a day delivering dry goods. (H. Tr. p. 33, ll. 20-24).

Ms. Glenn said that Claimant would open the swing doors on the trailer, roll down landing gear and switch out trailers as a part of his normal job duties. She testified he does this 5-6 days per week and drives approximately 2,800-3,000 miles per week. (H. Tr. p. 34, ll. 4-13). Ms. Glenn asked Claimant after the accident if he was suffering from any injuries and he said no. In January, he came into her office rubbing his knee and told her that the doctor said he may have some arthritis. (H. Tr. p. 34, ll. 17-25).

Ms. Glenn testified that the company policy for reporting a workers' compensation claim is that the driver files a report within 24 hours of the injury, which she said was not done in this

case. (H. Tr. p. 35, ll. 9-11). If for instance Mr. Davis came to her indicating that he was suffering from knee pain that would prevent him from working, Ms. Glenn said they would immediately call the workers' compensation carrier and file a claim. (H. Tr. p. 36, ll. 1-5). Ms. Glenn said that Mr. Davis has not reported low back pain to her and she has not noticed him walking with a noticeable limp. (H. Tr. p. 36, ll. 14-20)

On cross-examination, Ms. Glenn testified that the majority of Mr. Davis' time is spent away from the office. (H. Tr. p. 37, ll. 3-5). Further, Ms. Glenn indicates that she does not make the decisions about whether Mr. Davis receives medical treatment for a work-related accident. (H. Tr. p. 38, ll. 21-25). However, she would decide if he was given time off from work for his injuries, and he never asked for time off. (H. Tr. p. 39, ll. 1-3).

Summary of Medical Evidence:

1. On September 7, 2011, Claimant reports to his family physician, Dr. Compton, that he has occasional pains in his left knee from arthroscopy about fifteen years ago. (Defendants' APA p. 29).

2. On December 27, 2011, Claimant reports that approximately two weeks ago he was in a car accident where he banged his left knee against the dashboard of his car. He reports that several days later, his pain began to intensify and now for the last several days, it hurts to walk or even to move out of a sitting position. (Defendants' APA p. 29).

3. On December 27, 2011, Claimant was sent for x-rays at Tuomey Medical Center. The x-ray of his left knee shows degenerative changes with no obvious acute osseous abnormality.

4. On January 30, 2012, Claimant was seen by Dr. Michael K. Drakelford. Claimant reports left knee pain to include a constant ache/pain, limited range of motion and indicates that

the pain has been present for one month, but no significant pain until motor vehicle accident 1½ months ago. Dr. Drakeford finds that he has left knee arthralgia with severe degenerative joint disease, genu varum, and intra articular loose body. (Claimant's APA pp. 4-5).

5. On May 31, 2012, Claimant was seen by Dr. Robert DaSilva. He reports left knee and lower back pain. In particular, Dr. DaSilva notes that Claimant has chronic pain in the left knee and with a recent accident he has noticed increased pain. Dr. DaSilva further finds that the patient has an antalgic gait using no assistive devices. Claimant shows full range of motion of the lumbar spine. Dr. DaSilva indicates that there is severe arthritis of the left knee pre-existing and not related to the injury. Dr. DaSilva recommends a knee replacement which is again unrelated and pre-existing to the injury. (Defendants' APA p. 31).

6. On August 30, 2012, Claimant was seen by Dr. LaMotta regarding his lower back pain. Dr. LaMotta notes that the medical records he reviewed do not indicate reports of back pain after the accident. However, Claimant reports back pain that has gotten worse in the past two months. An x-ray of his lumbar spine shows mild anterior lumbar spondylosis. Dr. LaMotta opines that Claimant has arthritis affecting the lumbar spine and severe arthritis affecting the left knee. He indicates that the diagnosis for left knee pain and low back pain are not causally related to his accident. (Defendants' APA p. 36).

Summary of Deposition Testimony of Robert M. DaSilva:

On December 27, 2012 the deposition testimony of Dr. Robert M. DaSilva was taken. Dr. DaSilva is an orthopedic surgeon with Midlands Orthopaedics. (Depo. p. 4 ll. 10-14). Dr. DaSilva evaluated the Claimant on May 31, 2012. (Depo. p. 4 ll. 19-23). Dr. DaSilva testified that when he saw the Claimant, he was given a history of chronic left knee pain. (Depo. p. 6 ll. 22-24). Further, the Claimant told him that he had a recent accident and noticed increased pain in

the left knee. (Depo. p. 7 ll. 1-3). Dr. DaSilva reviewed or ordered an x-ray which showed severe arthritis. (Depo. p. 7 ll. 14-16). Dr. DaSilva testified that the Claimant had severe arthritis that pre-existed the accident and the accident didn't cause the arthritis. (Depo. p. 8 ll. 8-13). He did note that the Claimant had increased pain from the accident and an antalgic gate which he cannot say whether it was worse after the accident or not. (Depo. p. 8 ll. 17-25).

Dr. DaSilva further found that the Claimant had positive pain on the median and lateral joint line. He cannot say whether this was present before the accident, but would assume that with severe arthritis he had some discomfort of the knee. (Depo. p. 9 ll. 11-23). However, Dr. DaSilva did say that the Claimant complained of increased pain after the accident. (Depo p. 10 ll. 4-6).

Dr. DaSilva went on to testify regarding his recommendation that the Claimant undergo a total knee replacement. He indicates that a patient with severe knee arthritis has options. To continue as they are and the only surgical option is a knee replacement. (Depo. p. 11 ll. 5-12). Further, when he recommends a knee replacement, the timing is up to the patient and with the Claimant he gave him the two options. (Depo. p. 11 ll. 13-22). Dr. DaSilva thinks the Claimant has three options, no treatment at all as arthritis is the natural aging process, medical treatment which is anti-inflammatories or injections, and surgery. (Depo. p. 12 ll. 1-24 and p. 13 ll. 1-9). In Dr. DaSilva's opinion, you have to have severe arthritis both radiographically and clinically before proceeding with a knee replacement. (Depo. p. 13 ll. 24-25 and p. 14 ll. 1-5). In the Claimant's case, he has severe arthritis and it's up to the patient to determine if he wants a knee replacement based on the amount of pain and discomfort he's having. (Depo p. 14 ll. 6-15).

Dr. DaSilva also notes that the Claimant has loose bodies, but does not recommend removal. He explains his reasoning indicating that if someone has a loose body and no arthritis,

you recommend arthroscopy in the knee to remove the loose body. (Depo. p. 14 ll. 22-25). However in the Claimant's case, he would put him through an option that would not change the outcome of his health. (Depo. p. 15 ll. 5-8).

With regards to Dr. DaSilva's finding that the Claimant has pain on the median and lateral joint line, he indicates that he uses his index finger and pushes on the medial and lateral joint line to see if it solicits pain. (Depo. p. 15 ll. 17-22). Dr. DaSilva does not know whether the Claimant had this pain before the accident. (Depo. p. 16 ll. 2-5) Dr. DaSilva does not know whether his knee is more painful now than it was before the accident. (Depo. p. 16 ll. 12-14). Based on the Claimant's history it is more painful now, but he cannot tell that objectively. (Depo. p. 16 ll. 16-23).

Dr. DaSilva testified that if the Claimant had pre-existing arthritis but did *not* have an increase in pain, he would not recommend a total knee replacement. (Depo. p. 17 ll. 14-18). In order to make a recommendation for a knee replacement, it depends on the amount of pain a patient is in. (Depo. p. 19 ll. 12-16). Dr. DaSilva hasn't seen anything indicating that the Claimant has been complaining of pain over the past twenty years. (Depo. p. 19 ll. 21-24).

On cross-examination, Dr. DaSilva further testified that based on his review of a report dated September 7, 2011 from Dr. Arland H. Compton, the Claimant was complaining of occasional pains in his left knee. Further, Dr. Compton diagnosed the Claimant with degenerative joint disease of the left knee. (Depo p. 22 ll. 5-8 and ll. 11-12), which was consistent with what he found objectively on his examination as well. (Depo p. 22 ll. 13-16).

Dr. DaSilva indicates that the patient has chronic pain in his left knee which means that it's been going on a long time. (Depo. p. 22 ll. 19 - 25). Dr. DaSilva testified that his opinion recommending a knee replacement was unrelated and pre-existing to the injury is that he

believed to a reasonable degree of medical certainty that the Claimant did not require a knee replacement surgery because of his work accident. (Depo. p. 23 ll. 9-20). Dr. DaSilva further testified that the Claimant's condition could be aggravated but the aggravation is not what prompts him to proceed with a knee replacement. This is a chronic condition. (Depo. p. 24 ll. 9-19). An aggravation can cause the pain, but in his medical experience, with severe arthritis of the knee, that's not the causative factor. (Depo. p. 24 ll. 22-25 and p. 25 ll. 1-2). Dr. DaSilva then indicates that based on the information that the Claimant has continued to work for the employer doing the same job since the work accident, to a reasonable degree of medical certainty, the Claimant does not require knee replacement surgery because of any type of aggravation caused by this accident. (Depo p. 25 ll. 20-25 and p. 26 ll. 1-4).

On re-direct, Dr. DaSilva notes that the report he reviewed from Dr. Compton was for a physical. (Depo. p. 26 ll. 25). Further, that the pain the Claimant complained of to him was different than what was described in Dr. Compton's report. (Depo. p. 28 ll. 5-9). However, Dr. DaSilva said that the main part of recommending a knee replacement is that he has severe arthritis on an x-ray. (Depo. p. 30 ll. 12-17). If the Claimant presented with mild arthritis or even moderate arthritis and had the same accident and the same amount of pain, he would not recommend a knee replacement. (Depo. p. 30 ll. 22-25). Dr. DaSilva cannot provide an opinion that if he had increased pain from the accident and now needs knee replacement that the increased pain is what tipped the scales in favor of the knee replacement. (Depo. p. 32 ll. 15-25 and p. 33 ll. 1).

On re-cross, Dr. DaSilva maintained his opinion that to a reasonable degree of medical certainty, the work accident that the Claimant was involved in did not exacerbate his pre-existing arthritis to the extent where he now requires a total knee replacement. (Depo. 34 ll. 15-22). The

knee replacement is not treating something the injury did. (Depo. p. 36 ll. 8-9).

FINDINGS OF FACT OF THE SINGLE COMMISSIONER

Based upon the testimony and evidence submitted by both parties, the Single Commissioner made the following Findings of Fact in the Decision and Order of January 29, 2013:

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Commission Act.

2. Claimant's average weekly wage is Eight Hundred Ninety-Seven and 43/100 (\$897.43) Dollars with a corresponding compensation rate of Five Hundred Ninety-Eight and 32/100 (\$598.32) Dollars. I base this finding upon stipulation of the parties.

3. Claimant was injured in a compensable work-related accident on November 28, 2011 and suffered from an injury to his left knee and back. I base this finding upon stipulation of the parties.

4. Claimant has not missed any time from work due to his injury, and I find that he is a hard working individual who is still driving for this company. I base this finding upon stipulation of the parties, Claimant's testimony and testimony of Carrie Glenn.

5. Claimant currently drives an average of 11 hours per day, 5-7 days a week and does not take any medications now for either his low back or his left knee. I base this finding upon Claimant's testimony, testimony of Carrie Glenn, and the medical records in evidence.

6. Claimant continues to complain of pain in his left knee; however, based on the evidence as a whole, specifically the reports and testimony of Drs. DaSilva and LaMotta, I find that his complaints are not causally related to his work injury. I base this finding upon Claimant's testimony and medical evidence in the record.

7. Claimant's current left knee problems are not causally related to his work injury. I base this finding upon the deposition testimony of Dr. DaSilva.

8. Based on the evidence as a whole, I do not find that Claimant has proven that his current need for additional medical treatment to his left knee, specifically a left knee replacement, is causally related to this accident. I base this finding upon Dr. DaSilva's deposition testimony and Dr. LaMotta's medical records. Both opine that the degeneration process in Claimant's knee has caused the need for his further medical treatment. The evidence on this point could not be more clear. I cannot speculate, like Dr. DaSilva does (in part) that Claimant's pain (a subjective component) is sufficient to meet his burden of proof in this case.

9. Claimant is at maximum medical improvement for his left knee and his back. I base this finding upon the medical evidence in the record.

10. As permanency was not requested in Claimant's Form 50, that issue is held in abeyance pending any future Hearing requests from either party.

CONCLUSIONS OF LAW OF THE SINGLE COMMISSIONER

The Single Commissioner reached the following Conclusions of Law in the Decision and Order of January 29, 2013:

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.

2. Pursuant to S.C. Code Ann. Sections 42-1-130 and 42-1-140, Claimant was an employee of the Employer.

3. Pursuant to S.C. Code Ann. Section 42-1-40 and 42-1-50, Claimant's average weekly wage is \$897.43 with a corresponding compensation rate of \$598.32.

4. Pursuant to S.C. Code Ann. Section 42-1-60, Claimant suffered from a

compensable injury by accident to his left knee and low back on November 28, 2011.

5. Pursuant to S.C. Code Ann. Section 42-15-20, notice of the accident was given to the Employer.

6. Pursuant to S.C. Code Ann. Section 42-15-60, Defendants provided causally related medical treatment to Claimant.

7. Pursuant to S.C. Code Ann. Section 42-15-60, Claimant is not entitled to additional medical treatment to his left knee, specifically a left knee replacement as it is not causally related to this accident.

8. Pursuant to S.C. Code Ann. Section 42-15-60, Claimant is at maximum medical improvement for his left knee and low back.

As stated above, within the statutory period, Claimant/Appellant filed an Application for Review in the case, copies of which were furnished to all parties. By appeal, Appellant respectfully contends the Single Commissioner erred in the following manner:

- 1) Whether the Single Commissioner erred in finding that Claimant's current left knee problems are not causally related to his work injury, based upon the deposition testimony of Dr. DaSilva.
- 2) Whether the Single Commissioner erred in finding that Claimant has not proven that his current need for additional medical treatment to his left knee, specifically a left knee replacement, is causally related to this work accident.
- 3) Whether the Single Commissioner erred in finding that Claimant's pain is sufficient to meet his burden of proof in this case.
- 4) Whether the Single Commissioner erred in finding that Claimant is at maximum medical improvement for his left knee and his back.

All proffered testimony and documentary evidence has been taken and delivered to the individual members of the Appellate Panel for their study and consideration. In addition, the parties have briefed and orally argued their positions before the Panel.

In an Appellate Panel review under S. C. Code Ann. § 42-17-50, the Commission's Appellate Panel shall review the award, weigh the evidence as presented at the initial Hearing,

and, if good grounds be shown therefore, make its own findings and conclusions consistent with or inconsistent with those of the Single Commissioner.

After careful review of the record in this case, the Commission, by unanimous vote, has determined that all of the Single Commissioner's Findings of Fact and Conclusions of Law are correct as stated. The Single Commissioner's Order is affirmed in its entirety, and the Findings of Fact and Conclusions of Law and Order, as set forth below, are hereby the law of this case:

FINDINGS OF FACTS

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Commission Act.
2. Claimant's average weekly wage is Eight Hundred Ninety-Seven and 43/100 (\$897.43) Dollars with a corresponding compensation rate of Five Hundred Ninety-Eight and 32/100 (\$598.32) Dollars. This finding is based upon stipulation of the parties.
3. Claimant was injured in a compensable work-related accident on November 28, 2011 and suffered from an injury to his left knee and back. This finding is based upon stipulation of the parties.
4. Claimant has not missed any time from work due to his injury, and we find that he is a hard working individual who is still driving for this company. We base this finding upon stipulation of the parties, Claimant's testimony and testimony of Carrie Glenn.
5. Claimant currently drives an average of 11 hours per day, 5-7 days a week and does not take any medications now for either his low back or his left knee. We base this finding upon Claimant's testimony, testimony of Carrie Glenn, and the medical records in evidence.
6. Claimant continues to complain of pain in his left knee; however, based on the evidence as a whole, specifically the reports and testimony of Drs. DaSilva and LaMotta, we find

that his complaints are not causally related to his work injury. We base this finding upon Claimant's testimony and medical evidence in the record.

7. Claimant's current left knee problems are not causally related to his work injury. We base this finding upon the deposition testimony of Dr. DaSilva.

8. Based on the evidence as a whole, we do not find that Claimant has proven that his current need for additional medical treatment to his left knee, specifically a left knee replacement, is causally related to this accident. We base this finding upon Dr. DaSilva's deposition testimony and Dr. LaMotta's medical records. Both opine that the degeneration process in Claimant's knee has caused the need for his further medical treatment. The evidence on this point could not be more clear. We cannot speculate, like Dr. DaSilva does (in part) that Claimant's pain (a subjective component) is sufficient to meet his burden of proof in this case.

9. Claimant is at maximum medical improvement for his left knee and his back. We base this finding upon the medical evidence in the record.

10. As permanency was not requested in Claimant's Form 50, that issue is held in abeyance pending any future Hearing requests from either party.

CONCLUSIONS OF LAW

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.

2. Pursuant to S.C. Code Ann. Sections 42-1-130 and 42-1-140, Claimant was an employee of the Employer.

3. Pursuant to S.C. Code Ann. Section 42-1-40 and 42-1-50, Claimant's average weekly wage is \$897.43 with a corresponding compensation rate of \$598.32.

4. Pursuant to S.C. Code Ann. Section 42-1-60, Claimant suffered from a

compensable injury by accident to his left knee and low back on November 28, 2011.

5. Pursuant to S.C. Code Ann. Section 42-15-20, notice of the accident was given to the Employer.

6. Pursuant to S.C. Code Ann. Section 42-15-60, Defendants provided causally related medical treatment to Claimant.

7. Pursuant to S.C. Code Ann. Section 42-15-60, Claimant is not entitled to additional medical treatment to his left knee, specifically a left knee replacement as it is not causally related to this accident.

8. Pursuant to S.C. Code Ann. Section 42-15-60, Claimant is at maximum medical improvement for his left knee and low back.

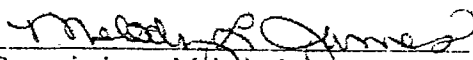
ORDER

IT IS HEREBY ORDERED, that Claimant has reached maximum medical improvement for the injuries to his left knee and low back that occurred in a compensable work-related accident on November 28, 2011.

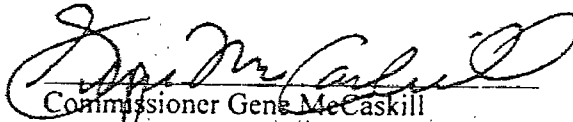
IT IS FURTHER ORDERED that Claimant's current left knee complaints are not causally related to his workers' compensation claim; therefore, his claim for additional medical treatment to the left knee is denied.

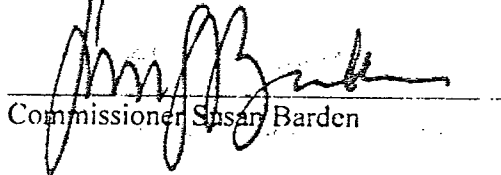
IT IS FINALLY ORDERED that no costs are assessed for this Hearing.

SO ORDERED.


Commissioner Melody James
For the Appellate Panel

WE CONCUR:


Commissioner Gene McCaskill


Commissioner Susan Barden

CERTIFICATE OF SERVICE

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

By Valerie Deller on August 12, 2013

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1119380

EVERETT DAVIS,

Employee,

Claimant,

vs.

SOUTHLAKE TRANSPORT, INC.,

Employer,

AND

LUMBERMEN'S UNDERWRITING
ALLIANCE,

Carrier,

Defendants.

DECISION AND ORDER

DATE OF HEARING:

Hearing held in Lexington, South Carolina on November 21, 2012.

APPEARANCES:

Claimant appeared and represented by John D. Clark, Esquire, of Clark Law Firm, LLC of Sumter, South Carolina.

Defendants represented by M. Chad Abramson, Esquire of McAngus Goudelock & Courie, L.L.C. of Columbia, South Carolina.

PURPOSE OF THE HEARING:

To determine all issues as set forth in Forms 50 and 51.

COMMISSIONER:

Commissioner Derrick L. Williams

FILED:

January 29, 2013

STIPULATIONS

It is stipulated among the parties that:

1. Claimant was an employee of Southlake Transport, Inc. on the date of the injury.
2. The South Carolina Workers' Compensation Commission has jurisdiction over this claim.
3. Notice of the Hearing was timely and properly served upon the parties of interest.
4. Venue is proper in Columbia, South Carolina.
5. Claimant's average weekly wage is Eight Hundred Ninety-Seven and 43/100 (\$897.43) Dollars, with a corresponding compensation rate of Five Hundred Ninety-Eight and 32/100 (\$598.32) Dollars.
6. The South Carolina Workers' Compensation Commission file is made a part of the record, with the exception of unstipulated medical records and self-serving declarations.

APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act and Regulations of the South Carolina Workers' Compensation Commission, the following records were submitted into evidence:

Claimant's submissions:

1. Arland H. Compton, M.D., 12/27/11-04/27/12, pages 1-3;
2. Michael K. Drakeford, M.D., 01/30/12, pages 4-8;
3. Maryland State Police Accident Report, 11/28/11, pages 9-11;
4. Employer detailed Crash Report, 03/23/12, pages 12-19;
5. Ivan E. LaMotta, M.D., Midlands Orthopaedics, 08/30/12, pages 20-26; and

6. Donald R. Johnson, II, M.D., Southeastern Spine Institute, 10/01/12-10/25/12, pages 27-28B.

Defendants' submissions:

7. Arland H. Compton, M.D., 04/06/10-12/27/11, page 29;

8. Robert M. DaSilva, M.D., Midlands Orthopaedics, P.A., 05/31/12, pages 30-32;

9. Ivan E. LaMotta, M.D., Midlands Orthopaedics, P.A., 08/30/12, pages 33-36;

Ex. 1. Consent Order, 05/15/12, pages 37-39; and

Ex 2. Photographs of Claimant's truck following motor vehicle accident, pages 40-42.

STATEMENT OF THE CASE

Everett Davis alleges that he was injured in a compensable work-related injury that occurred on November 28, 2011. In particular, Mr. Davis alleges that he was involved in a motor vehicle accident that caused injuries to his left knee and back. Defendants initially denied this claim as compensable but, pursuant to a Consent Order, agreed to provide causally-related medical treatment pursuant to S.C. Code Ann. Section 42-15-60 to Claimant's back and left knee. Mr. Davis filed a Form 50 seeking an award for additional medical treatment for his left knee and back, to include a total knee replacement. Claimant further contends that he has sustained an aggravation of the pre-existing arthritis in his left knee and low back.

Defendants deny that Claimant is entitled to additional medical treatment and contend that his pre-existing arthritis is unrelated to this workers' compensation claim. Further, Defendants request that the Commission issue an award indicating that Claimant has reached maximum medical improvement.

EVIDENCE OF THE CASE

Testimony of Claimant:

Mr. Davis testified that he is fifty years old and lives in Sumter. (H. Tr. p. 6, ll. 21-24). He is currently divorced and has three children, one of whom he supports. (H. Tr. p. 7, ll. 1-7). Mr. Davis also testified that he takes care of his grandchildren. (H. Tr. p. 7, ll. 8-10). He graduated from high school and then attended Central Carolina Technical College where he studied Industrial Maintenance. (H. Tr. p. 7, ll. 14-21).

Mr. Davis has a commercial driver's license that he has had for about fifteen years. (H. Tr. p. 9, ll. 2-3). His previous employment history consists of working in the Bosch Plant for 10-11 years and also working in a warehouse. (H. Tr. p. 8, ll. 7-14). He testified that approximately twenty years ago, he had surgery on his left knee. (H. Tr. p. 8, ll. 20-24). Mr. Davis said that he has not received medical treatment to his knee in the past twenty years. (H. Tr. p. 9, ll. 2-4). He further indicates that he has not had previous problems with his back before the accident. (H. Tr. p. 9, ll. 5-7).

When asked to describe the accident, Mr. Davis testified that he was heading north toward Philadelphia to pick up a load around 5:00 in the evening. He heard a loud boom and thought he may have blown a tire on the truck. All of the sudden the truck lunged forward, so he proceeded to pull over to the left of the road when he saw something shoot past the driver's side of the truck. Upon looking in his rearview mirror he saw a car driving erratically and by the time he pulled onto the side of the road, the car was spinning in the median. (H. Tr. pp. 9-10, ll. 11-23). Mr. Davis said that when the truck lunged forward, he hit his left knee on the bottom of the dashboard. (H. Tr. p. 11, l. 14). The skin on his knee was broken and it was bleeding a little bit.

(H. Tr. p. 11, ll. 20-21). Mr. Davis said his knee was hurting after the accident, but he did not think anything of it. (H. Tr. p. 12, ll. 9-10). As time went on, Mr. Davis said the pain started hurting more. (H. Tr. p. 12, ll. 13-15). Mr. Davis did not go to the doctor because he had a previously scheduled appointment for a physical so he planned to talk to the doctor about it then. (H. Tr. p. 12, ll. 18-23). Mr. Davis testified that the pain was gradual and increased each week. He also said that his back started to bother him gradually. He assumed it was from putting pressure on his other leg. (H. Tr. p. 13, ll. 6-18).

Before the accident, Mr. Davis testified that he walked with a limp which was due to him undergoing a surgical procedure in the past. (H. Tr. p. 13, ll. 19-25). He said that his limp is worse now. Sometimes he is in so much pain that he can barely walk or he will have to stop walking. He testified that he can walk without knee pain or back pain for a city block. (H. Tr. p. 14, ll. 7-16). Mr. Davis said that after a period of standing, his back hurts but sitting does not bother him. (H. Tr. p. 14, ll. 17-24). Mr. Davis testified that he is not currently taking any medication and he has continued to work. (H. Tr. p. 15, ll. 1-3). He said that his knee pain has increased since the accident. (H. Tr. p. 15, ll. 17 - 22).

Mr. Davis testified that he wants additional treatment for his left knee and his back because the pain is unbearable. (H. Tr. p. 16, ll. 2 -9). He said he cannot afford to take off of work because he has bills to pay and he has always worked. (H. Tr. p. 16, ll. 10-18).

On cross-examination, Mr. Davis testified that he did not ask the State Trooper at the time of the accident to call an ambulance for him. (H. Tr. p. 18, ll. 1-3). Further, Mr. Davis testified that he continued to drive from the accident scene to Philadelphia which was approximately three hours. (H. Tr. p. 18, ll. 10-16). The following day, he drove from Philadelphia to Florida. (H. Tr. p. 18, ll. 24-25). Mr. Davis admitted that he drove through South

Carolina on his way to Florida. (H. Tr. p. 19, ll. 6-10). Mr. Davis admitted that his knee was not bothering him the following day to the extent that he needed medical treatment. (H. Tr. p. 19, ll. 11-18). He further admitted that he did not ask anyone with the employer to send him to the doctor for his left knee or low back. (H. Tr. p. 20, ll. 3-7). Mr. Davis continued to perform his normal job duties after his accident. (H. Tr. p. 20, ll. 8-10). Mr. Davis first sought medical treatment for his alleged injuries on December 27, 2011. (H. Tr. p. 20, ll. 19-22). This appointment was scheduled before the injury happened at work. (H. Tr. p. 21, ll. 3-6).

Mr. Davis testified that since his work accident, *he has not missed any time from work due to his left knee pain and low back pain.* (H. Tr. p. 21, ll. 19-23). He has driven approximately eleven hours per day, working five, six or seven days per week. This equates to approximately 50 hours per week and an average of 2,900 miles per week. (H. Tr. p. 22, ll. 1-14). Mr. Davis *has not made complaints to any of his supervisors about ongoing left knee or low back pain.* (H. Tr. p. 22, ll. 15-18).

When asked if Mr. Davis had prior problems with his left knee, he testified no. (H. Tr. p. 24, ll. 11-17). However, Defense counsel produced a medical record (Defendants' APA p. 29), from Dr. Compton dated September 7, 2011 in which Dr. Compton notes occasional pains in the left knee from arthroscopy about fifteen years ago. Mr. Davis continued to deny that he suffered from occasional left knee pain. (H. Tr. p. 25, ll. 15-24). Thereafter, Defense counsel asked Mr. Davis if he recalled testifying in his deposition that he was not having any pain in his left knee before the accident, and he said he was not having pain. (H. Tr. p. 27, ll. 8-16). Mr. Davis also denied receiving medical treatment for his left knee prior to the accident, yet he saw Dr. Compton on September 7, 2011 for his left knee.

Mr. Davis testified that he is *not taking any medication for his left knee pain*. (H. Tr. p. 28, ll. 22-24), *nor is he taking medication for his low back*. (H. Tr. p. 29, ll. 2-4). However, he did testify that he takes both Advil and Tylenol. (H. Tr. p. 30, ll. 13-15).

Testimony of Carrie Glenn:

Ms. Glenn testified that she is employed as the Safety Director at Southlake Transport and has been working there for twelve years. (H. Tr. p. 21, ll. 20-25). Ms. Glenn knows Claimant and is familiar with his accident. She testified that after the accident, he did not request medical attention nor did he miss any time from work. (H. Tr. p. 33, ll. 1-10). Ms. Glenn said that Claimant did not ask for any medical treatment in 2012 for his low back and left knee. In fact, she was not even aware that he was treating for his problems. (H. Tr. p. 33, ll. 15-19). Further, Ms. Glenn said that Claimant has been working his regular job duties, which entails driving a truck approximately 500-600 miles a day delivering dry goods. (H. Tr. p. 33, ll. 20-24).

Ms. Glenn said that Claimant would open the swing doors on the trailer, roll down landing gear and switch out trailers as a part of his normal job duties. She testified he does this 5-6 days per week and drives approximately 2,800-3,000 miles per week. (H. Tr. p. 34, ll. 4-13). Ms. Glenn asked Claimant after the accident if he was suffering from any injuries and he said no. In January, he came into her office rubbing his knee and told her that the doctor said he may have some arthritis. (H. Tr. p. 34, ll. 17-25).

Ms. Glenn testified that the company policy for reporting a workers' compensation claim is that the driver files a report within 24 hours of the injury, which she said was not done in this case. (H. Tr. p. 35, ll. 9-11). If for instance Mr. Davis came to her indicating that he was suffering from knee pain that would prevent him from working, Ms. Glenn said they would

immediately call the workers' compensation carrier and file a claim. (H. Tr. p. 36, ll. 1-5). Ms. Glenn said that Mr. Davis has not reported low back pain to her and she has not noticed him walking with a noticeable limp. (H. Tr. p. 36, ll. 14-20)

On cross-examination, Ms. Glenn testified that the majority of Mr. Davis' time is spent away from the office. (H. Tr. p. 37, ll. 3-5). Further, Ms. Glenn indicates that she does not make the decisions about whether Mr. Davis receives medical treatment for a work-related accident. (H. Tr. p. 38, ll. 21-25). However, she would decide if he was given time off from work for his injuries, and he never asked for time off. (H. Tr. p. 39, ll. 1-3).

Summary of Medical Evidence:

1. On September 7, 2011, Claimant reports to his family physician, Dr. Compton, that he has occasional pains in his left knee from arthroscopy about fifteen years ago. (Defendants' APA p. 29).

2. On December 27, 2011, Claimant reports that approximately two weeks ago he was in a car accident where he banged his left knee against the dashboard of his car. He reports that several days later, his pain began to intensify and now for the last several days, it hurts to walk or even to move out of a sitting position. (Defendants' APA p. 29).

3. On December 27, 2011, Claimant was sent for x-rays at Tuomey Medical Center. The x-ray of his left knee shows degenerative changes with no obvious acute osseous abnormality.

4. On January 30, 2012, Claimant was seen by Dr. Michael K. Drakeford. Claimant reports left knee pain to include a constant ache/pain, limited range of motion and indicates that the pain has been present for one month, but no significant pain until motor vehicle accident 1½

months ago. Dr. Drakeford finds that he has left knee arthralgia with severe degenerative joint disease, genu varum, and intra articular loose body. (Claimant's APA pp. 4-5).

5. On May 31, 2012, Claimant was seen by Dr. Robert DaSilva. He reports left knee and lower back pain. In particular, Dr. DaSilva notes that Claimant has chronic pain in the left knee and with a recent accident he has noticed increased pain. Dr. DaSilva further finds that the patient has an antalgic gait using no assistive devices. Claimant shows full range of motion of the lumbar spine. Dr. DaSilva indicates that there is severe arthritis of the left knee pre-existing and not related to the injury. Dr. DaSilva recommends a knee replacement which is again unrelated and pre-existing to the injury. (Defendants' APA p. 31).

6. On August 30, 2012, Claimant was seen by Dr. LaMotta regarding his lower back pain. Dr. LaMotta notes that the medical records he reviewed do not indicate reports of back pain after the accident. However, Claimant reports back pain that has gotten worse in the past two months. An x-ray of his lumbar spine shows mild anterior lumbar spondylosis. Dr. LaMotta opines that Claimant has arthritis affecting the lumbar spine and severe arthritis affecting the left knee. He indicates that the diagnosis for left knee pain and low back pain are not causally related to his accident. (Defendants' APA p. 36).

Summary of Deposition Testimony of Robert M. DaSilva:

On December 27, 2012 the deposition testimony of Dr. Robert M. DaSilva was taken. Dr. DaSilva is an orthopedic surgeon with Midlands Orthopaedics. (Depo. p. 4 ll. 10-14). Dr. DaSilva evaluated the Claimant on May 31, 2012. (Depo. p. 4 ll. 19-23). Dr. DaSilva testified that when he saw the Claimant, he was given a history of chronic left knee pain. (Depo. p. 6 ll. 22-24). Further, the Claimant told him that he had a recent accident and noticed increased pain in the left knee. (Depo. p. 7 ll. 1-3). Dr. DaSilva reviewed or ordered an x-ray which showed severe

arthritis. (Depo. p. 7 ll. 14-16). Dr. DaSilva testified that the Claimant had severe arthritis that pre-existed the accident and the accident didn't cause the arthritis. (Depo. p. 8 ll. 8-13). He did note that the Claimant had increased pain from the accident and an antalgic gait which he cannot say whether it was worse after the accident or not. (Depo. p. 8 ll. 17-25).

Dr. DaSilva further found that the Claimant had positive pain on the median and lateral joint line. He cannot say whether this was present before the accident, but would assume that with severe arthritis he had some discomfort of the knee. (Depo. p. 9 ll. 11-23). However, Dr. DaSilva did say that the Claimant complained of increased pain after the accident. (Depo p. 10 ll. 4-6).

Dr. DaSilva went on to testify regarding his recommendation that the Claimant undergo a total knee replacement. He indicates that a patient with severe knee arthritis have options. To continue as they are and the only surgical option is a knee replacement. (Depo. p. 11 ll. 5-12). Further, when he recommends a knee replacement, the timing is up to the patient and with the Claimant he gave him the two options. (Depo. p. 11 ll. 13-22). Dr. DaSilva thinks the Claimant has three options, no treatment at all as arthritis is the natural aging process, medical treatment which is anti-inflammatories or injections, and surgery. (Depo. p. 12 ll. 1-24 and p. 13 ll. 1-9). In Dr. DaSilva's opinion, you have to have severe arthritis both radiographically and clinically before proceeding with a knee replacement. (Depo. p. 13 ll. 24-25 and p. 14 ll. 1-5). In the Claimant's case, he has severe arthritis and it's up to the patient to determine if he wants a knee replacement based on the amount of pain and discomfort he's having. (Depo p. 14 ll. 6-15).

Dr. DaSilva also notes that the Claimant has loose bodies, but does not recommend removal. He explains his reasoning indicating that if someone has a loose body and no arthritis, you recommend arthroscopy in the knee to remove the loose body. (Depo. p. 14 ll. 22-25).

However in the Claimant's case, he would put him through an option that would not change the outcome of his health. (Depo. p. 15 ll. 5-8).

With regards to Dr. DaSilva's finding that the Claimant has pain on the median and lateral joint line, he indicates that he uses his index finger and pushes on the medial and lateral joint line to see if it solicits pain. (Depo. p. 15 ll. 17-22). Dr. DaSilva does not know whether the Claimant had this pain before the accident. (Depo p. 16 ll. 2-5) Dr. DaSilva does not know whether his knee is more painful now than it was before the accident. (Depo. p. 16 ll. 12-14). Based on the Claimant's history it is more painful now, but he cannot tell that objectively. (Depo. p. 16 ll. 16-23).

Dr. DaSilva testified that if the Claimant had pre-existing arthritis but did *not* have an increase in pain, he would not recommend a total knee replacement. (Depo. p. 17 ll. 14-18). In order to make a recommendation for a knee replacement, it depends on the amount of pain a patient is in. (Depo. p. 19 ll. 12-16). Dr. DaSilva hasn't seen anything indicating that the Claimant has been complaining of pain over the past twenty years. (Depo. p. 19 ll. 21-24).

On cross-examination, Dr. DaSilva further testified that based on his review of a report dated September 7, 2011 from Dr. Arland H. Compton, the Claimant was complaining of occasional pains in his left knee. Further, Dr. Compton diagnosed the Claimant with degenerative joint disease of the left knee. (Depo p. 22 ll. 5-8 and ll. 11-12), which was consistent with what he found objectively on his examination as well. (Depo p. 22 ll. 13-16).

Dr. DaSilva indicates that the patient has chronic pain in his left knee which means that it's been going on a long time. (Depo. p. 22 ll. 19 – 25). Dr. DaSilva testified that his opinion recommending a knee replacement was unrelated and pre-existing to the injury is that he believed to a reasonable degree of medical certainty that the Claimant did not require a knee

replacement surgery because of his work accident. (Depo. p. 23 ll. 9-20). Dr. DaSilva further testified that the Claimant's condition could be aggravated but the aggravation is not what prompts him to proceed with a knee replacement. This is a chronic condition. (Depo. p. 24 ll. 9-19). An aggravation can cause the pain, but in his medical experience, with severe arthritis of the knee, that's not the causative factor. (Depo. p. 24 ll. 22-25 and p. 25 ll. 1-2). Dr. DaSilva then indicates that based on the information that the Claimant has continued to work for the employer doing the same job since the work accident, to a reasonable degree of medical certainty, the Claimant does not require knee replacement surgery because of any type of aggravation caused by this accident. (Depo p. 25 ll. 20-25 and p. 26 ll. 1-4).

On re-direct, Dr. DaSilva notes that the report he reviewed from Dr. Compton was for a physical. (Depo. p. 26 ll. 25). Further, that the pain the Claimant complained of to him was different than what was described in Dr. Compton's report. (Depo. p. 28 ll. 5-9). However, Dr. DaSilva said that the main part of recommending a knee replacement is that he has severe arthritis on an x-ray. (Depo. p. 30 ll. 12-17). If the Claimant presented with mild arthritis or even moderate arthritis and had the same accident and the same amount of pain, he would not recommend a knee replacement. (Depo. p. 30 ll. 22-25). Dr. DaSilva cannot provide an opinion that if he had increased pain from the accident and now needs knee replacement that the increased pain is what tipped the scales in favor of the knee replacement. (Depo. p. 32 ll. 15-25 and p. 33 ll. 1).

On re-cross, Dr. DaSilva maintained his opinion that to a reasonable degree of medical certainty, the work accident that the Claimant was involved in did not exacerbate his pre-existing arthritis to the extent where he now requires a total knee replacement. (Depo. 34 ll. 15-22). The knee replacement is not treating something the injury did. (Depo. p. 36 ll. 8-9).

FINDINGS OF FACT

Based upon the testimony and evidence submitted by both parties, the undersigned Commissioner makes the following Findings of Fact:

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Commission Act.
2. Claimant's average weekly wage is Eight Hundred Ninety-Seven and 43/100 (\$897.43) Dollars with a corresponding compensation rate of Five Hundred Ninety-Eight and 32/100 (\$598.32) Dollars. I base this finding upon stipulation of the parties.
3. Claimant was injured in a compensable work-related accident on November 28, 2011 and suffered from an injury to his left knee and back. I base this finding upon stipulation of the parties.
4. Claimant has not missed any time from work due to his injury, and I find that he is a hard working individual who is still driving for this company. I base this finding upon stipulation of the parties, Claimant's testimony and testimony of Carrie Glenn.
5. Claimant currently drives an average of 11 hours per day, 5-7 days a week and does not take any medications now for either his low back or his left knee. I base this finding upon Claimant's testimony, testimony of Carrie Glenn, and the medical records in evidence.
6. Claimant continues to complain of pain in his left knee; however, based on the evidence as a whole, specifically the reports and testimony of Drs. DaSilva and LaMotta, I find that his complaints are not causally related to his work injury. I base this finding upon Claimant's testimony and medical evidence in the record.
7. Claimant's current left knee problems are not causally related to his work injury. I base this finding upon the deposition testimony of Dr. DaSilva.

8. Based on the evidence as a whole, I do not find that Claimant has proven that his current need for additional medical treatment to his left knee, specifically a left knee replacement, is causally related to this accident. I base this finding upon Dr. DaSilva's deposition testimony and Dr. LaMotta's medical records. Both opine that the degeneration process in Claimant's knee has caused the need for his further medical treatment. The evidence on this point could not be more clear. I cannot speculate, like Dr. DaSilva does (in part) that Claimant's pain (a subjective component) is sufficient to meet his burden of proof in this case.

9. Claimant is at maximum medical improvement for his left knee and his back. I base this finding upon the medical evidence in the record.

10. As permanency was not requested in Claimant's Form 50, that issue is held in abeyance pending any future Hearing requests from either party.

CONCLUSIONS OF LAW

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.

2. Pursuant to S.C. Code Ann. Sections 42-1-130 and 42-1-140, Claimant was an employee of the Employer.

3. Pursuant to S.C. Code Ann. Section 42-1-40 and 42-1-50, Claimant's average weekly wage is \$897.43 with a corresponding compensation rate of \$598.32.

4. Pursuant to S.C. Code Ann. Section 42-1-60, Claimant suffered from a compensable injury by accident to his left knee and low back on November 28, 2011.

5. Pursuant to S.C. Code Ann. Section 42-15-20, notice of the accident was given to the Employer.

6. Pursuant to S.C. Code Ann. Section 42-15-60, Defendants provided causally related medical treatment to Claimant.

7. Pursuant to S.C. Code Ann. Section 42-15-60, Claimant is not entitled to additional medical treatment to his left knee, specifically a left knee replacement as it is not causally related to this accident.

8. Pursuant to S.C. Code Ann. Section 42-15-60, Claimant is at maximum medical improvement for his left knee and low back.

ORDER

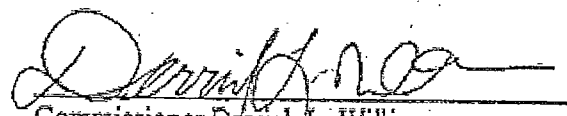
IT IS THEREFORE ORDERED that Claimant has reached maximum medical improvement for the injuries to his left knee and low back that occurred in a compensable work-related accident on November 28, 2011.

IT IS FURTHER ORDERED that Claimant's current left knee complaints are not causally related to his workers' compensation claim; therefore, his claim for additional medical treatment to the left knee is denied

IT IS FINALLY ORDERED that no costs are assessed for this Hearing.

IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


Commissioner Derrick L. Williams

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to

the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.

January 29, 2013

By: Renee Smith, Administrative Assistant to
Commissioner Williams

SC Workers' Compensation Commission

333 Main Street, suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
803)737-5723



WCC File #: 1119380

Carrier File #: 30110561265-0001

Carrier Code #: 341

Employer FEIN #:

Everett Davis

Claimant's Name

SSN

Address City State Zip

Home Phone #

M. Chad Abramson

Preparer's Name

Work Phone #

McAngus Goudelock & Courie

Law Firm

Southlake Transport, Inc.

Employer's Name

1828A Two Notch Road

Lexington, South Carolina 29073-8990

Address City State Zip

Lumbermen's Underwriting Alliance

Insurance Carrier

(803) 227-2239

Phone Number

Date of Accident: 11/28/11

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: Pending further investigation, it is denied that Claimant sustained compensable injuries to the back and left knee by accident arising out of and in the course and scope of his employment on 11/28/11.
2. It is denied that both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: See Number 1 above.
3. It is denied that the relationship of employer and employee existed at the time in question. The reasons for denial are: See Number 1 above.
4. It is denied that at the time in question the employee was performing service growing out of and incidental to his employment. The reasons for denial are: See Number 1 above.
5. It is denied that notice of injury was given to the employer. The reasons for denial are: Pending further investigation, it is denied that Claimant provided adequate notice of his injuries as required by Section 42-15-20.
6. It is denied that the employee needs/is entitled to additional medical care as a result of the injury. The reasons for denial are: Pending further investigation, it is denied that Claimant is entitled to any causally-related medical treatment for his alleged work injuries.
7. It is denied that the employee is entitled to temporary total disability for the period(s) of: No lost time by reason of compensable injury by accident.
8. It is denied that the employee is permanently disabled. The reasons for denial are: No evidence of same.
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: Defendants reserve the right to assert any and all affirmative defenses that are determined to be applicable following completion of discovery.
12. Estimated time needed for hearing: 45 minutes.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to:

John D. Clark, Esquire
Clark Law Firm, LLC
Post Office Drawer 880
Sumter, South Carolina 29151

on the 23rd day of March, 2012 by ☒ first class mail; ☐ personal service; ☐ certified mail.

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

Preparer's Signature

Attorney for Employer/Carrier

Title

cabramson@mcclaw.com

Email

March 23, 2012

Date

Refer to R.67-204 through R.67-210 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.

SC Workers' Compensation Commission

333 Main Street, suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803)737-5723



WCC File #: 1119380

RECEIVED
Carrier Code #: 341

FILED FEB 2012

Everett Davis

Claimant's Name

SSN

Address City State Zip

Home Phone #

M. Chad Abramson

Preparer's Name

Work Phone #

McAngus Goudebeck & Courie

Law Firm

Southlake Transport, Inc.

Employer's Name

1828A Two Notch Road, SC Workers' Comp Comm

Lexington, South Carolina 29073-8990

Address City State Zip

Lumbermen's Underwriting Alliance

Insurance Carrier

(803) 227-2239

Phone Number

Date of Accident: 11/28/11

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 admitted that the employee sustained an injury on or about the date set forth in the application. The reasons for denial are:
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:
3. It is admitted that the relationship of employer and employee existed at the time in question. The reasons for denial are:
4. It is admitted that at the time in question the employee was performing service growing out of and incidental to his employment. The reasons for denial are:
5. It is admitted that notice of injury was given to the employer. The reasons for denial are:
6. It is admitted in part that the employee needs/is entitled to additional medical care as a result of the injury. The reasons for denial are: It is admitted that Claimant is entitled to ongoing treatment for the spine pending the results of the independent medical evaluation of Ivan E. LaMotta, M.D. conducted on 08/16/12. It is denied that Claimant is entitled to any further causally-related medical care for the left knee based on the 05/31/12 report of the authorized treating physician, Robert M. DaSilva, M.D., in which he opines that Claimant requires no further causally-related medical care to the left knee as a result of his 11/28/11 work accident.
7. It is denied that the employee is entitled to temporary total disability for the period(s) of: No evidence of same.
8. It is denied that the employee is permanently disabled. The reasons for denial are: No evidence of same.
9. It is denied that the employee has a serious disfigurement.
10. Per consent of the parties via Consent Order executed by Commissioner Melody James on 05/15/12, Claimant's average weekly wage is \$897.43, with a corresponding compensation rate of \$598.32.
11. Further contentions or grounds of defense are: Defendants reserve the right to assert any and all affirmative defenses that are determined to be applicable following completion of discovery.
12. Estimated time needed for hearing: 45 minutes.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to:

John D. Clark, Esquire
Clark Law Firm, LLC
Post Office Drawer 880
Sumter, South Carolina 29151

on the 17th day of August, 2012 by ☒ first class mail; ☐ personal service; ☐ certified mail.
I verify the contents of this form are accurate and true to the best of my knowledge.

A. Chad Abramson

Preparer's Signature

Attorney for Employer/Carrier
Title

cabramson@mgclaw.com
Email

August 17, 2012
Date

Refer to R.67-204 through R.67-210 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.

E. Davis

4/19/10 47 YO BM DSS foster parent/adoptive parent physical. HHx basically neg. as is ROS other than injury to right forearm about 15 years ago, healed after surgery and no difficulties now. Does not smoke, no alcohol or drugs, no prescription meds. Weight stable. No hospitalizations, broken bones.

O: Healthy appearing, NAD, healed surgical scar proximal right forearm but no impairment of motion. OC clear, neck, heart, lungs, abdomen, extremities, back, gait, skin all benign.

A: Healthy male.

P: PPD, no restrictions.

4/19/10 PPD neg

7/20/10 DNKA next day

E. Davis

7/23/10 Would like to have lab work done for HIV, cholesterol, etc. Had CDL physical several days back which was normal and was given 2 year extension of his license. Int. hx basically neg.

A: Healthy male.

P: Multichem, HIV. Sample pack of Viagra 100. AFU.

Rx 7/29 (8-3 Rx)

E. Davis

6/5/11 Annual physical. Doing well since last OV. Does have occasional pains in left knee from arthroscopy about 15 years ago from an 8th grade injury. Forearm is doing well from fx about the same amount of time ago. No hayfever, allergies, dyspnea. Bowels and urine move well. Still active physically.

O: NAD, old deformities noted left knee but right is benign. Good ROM in knees, hips, ankles. No calf tenderness, good ankle pulses. Neck w/o adenopathy, heart, lungs WNL. Abd. exam neg.

DJD left knee. ED.

P: PSA. Sample pack of Staxyn. AFU.

E. Davis

12/27/11 Two weeks ago approximately was in a car accident where he banged his left knee against the dash board of his car. Initially there was no discomfort other than abrasion on surface of the knee laterally. Several days later however pain began to intensify and now for the last several days hurts to walk or even to move out of a sitting position. Has been using some topical Rx and Advil but without much improvement. Otherwise ROS neg.

O: Mild distress, some discomfort and slight increased warmth to left knee compared to right. Healing nickel size abrasion lateral aspect left knee. Calf and hip appear benign.

: Contusion left knee superimposed on preexisting DJD (last Tuomey x-ray in 1991).

P: Renew x-ray of left knee. Ansaed 100 mg once or twice daily. Activity as tolerated. FUNC.

5 to my attention 1/10/12

MIDLANDS ORTHOPAEDICS, P.A. • 1910 Blanding Street, COLUMBIA SC 29201-3520

DAVIS, EVERETT (id # , dob:)

Encounter Summary

Patient

Name DAVIS, EVERETT (49, M) ID# Appt. Date/Time 05/31/2012 10:45AM
DOB Service Dept. Blanding Street

Provider ROBERT DASILVA, MD

Insurance Med 0: LUMBERMANS
Policy/Group # :
Employer Name : SOUTHLAKE
TRANSPORT INC
Case # :
Case Injury Date : 11/28/2011
Prescription: RHPHI - Member is eligible.

Chief Complaint

Left Knee Pain, Lower Back Pain

DOI 12/28/11

Problems

Reviewed patient problem history (as of 05/31/2012) without changes
• Osteoarthritis, localized, not specified whether primary or secondary; lower leg (715.36)

Patient's Providers

Insurance Adjuster (Worker's Comp): CANDICE HOAGLAND: Ph (866) 794-0360, Fax (866) 368-2951

Medications

No medications reported

Allergies

Reviewed allergy history (no data recorded) without changes
NKDA

Past Medical History

Reviewed past medical history.

Surgical History

Reviewed patient surgical history (as of 05/31/2012) without changes
• Orthopaedic Surgery - Lt Knee

Family History

Reviewed family history (as of 05/31/2012) without changes
Mother - High Blood Pressure
- Stroke

Social History

Reviewed Social History & made changes

Ortho

Alcohol intake: None.

Number of children: 3.

Marital status: Divorced.

Diet: Regular.

Chewing tobacco: none.

Cigar/Pipe Use: N.

Non-smoker.

Smoking Status: Never smoker.

Are you currently employed?: Y.

Hand Dominance: Right.

Occupation: Truck Driver.

Employer: Southlake.

Vitals

BP: 142/93 sitting

Ht: 5 ft 11 in

Wt: 220 lbs

BMI: 30.7

HPI

MIDLANDS ORTHOPAEDICS, P.A. • 1910 Blanding Street, COLUMBIA SC 29201-3520

DAVIS, EVERETT (id # [redacted], dob: [redacted])

Lower Back

Reported by patient.

Location: left; also c/o l knee pain

Quality: throbbing; sharp; dull; constant

Severity: severe; pain level 8/10; worst pain 10/10

Duration: 12/28/11

Timing: acute

Context: work injury; MVA

Alleviating Factors: standing

Aggravating Factors: standing; walking; lifting; bending/squatting; going from sit to stand; upstairs; downstairs

Associated Symptoms: no weakness; no numbness; no tingling; no swelling; no redness; no warmth; no ecchymosis; no catching/locking; no popping/clicking; no buckling; no grinding; no instability; no radiation down leg; no drainage; no fever; no chills; no weight loss; no change in bowel/bladder habits; pain

Previous Surgery: none

Prior Imaging: x ray

Previous Injections: none

Previous PT: none

Work Related: no

Working: regular duty

ROS

Patient reports back pain but reports no muscle aches, no muscle weakness, no arthralgias/joint pain, and no swelling in the extremities. He reports no fever, no night sweats, no significant weight gain, no significant weight loss, and no exercise intolerance. He reports no dry eyes, no irritation, and no vision change. He reports no difficulty hearing and no ear pain. He reports no frequent nosebleeds and no nose/sinus problems. He reports no sore throat, no bleeding gums, no snoring, no dry mouth, no mouth ulcers, no oral abnormalities, and no teeth problems. He reports no chest pain, no arm pain on exertion, no shortness of breath when walking, no shortness of breath when lying down, no palpitations, and no known heart murmur. He reports no cough, no wheezing, no shortness of breath, and no coughing up blood. He reports no abdominal pain, no vomiting, normal appetite, no diarrhea, and not vomiting blood. He reports no incontinence, no difficulty urinating, no hematuria, and no increased frequency. He reports no abnormal mole, no jaundice, and no rashes. He reports no loss of consciousness, no weakness, no numbness, no seizures, no dizziness, and no headaches. He reports no depression, no sleep disturbances, feeling safe in relationship, and no alcohol abuse. He reports no fatigue. He reports no swollen glands and no bruising. He reports no runny nose, no sinus pressure, no itching, no hives, and no frequent sneezing.

Physical Exam

None recorded.

Assessment / Plan

Independent medical examination. Patient with chronic pain in left knee. Recent accident patient has noticed increased pain in left knee. Patient had a knee arthroscopy about 20 years ago according to patient. Pain in left knee now. Worsening with time. Patient also complains about right knee pain since the accident secondary to putting weight on the right leg patient also noticed a loose body in the left knee

Left knee

Palpable loose body

The patient is alert and oriented x 3.

The patient has an antalgic gait using no assistive devices. Both lower extremities were examined. The affected extremity has a positive crepitation in the knee. Positive pain over the medial and lateral joint line of the knee. Good range of motion of the knee with pain upon flexion and extension. The unaffected knee has none of the above.

Both hips were examined and were stable. Straight leg raise was negative. Neurological status is normal. Sensation, pulses and strength were normal. Range of motion of the lumbar spine is full. Deep tendon reflexes are 2+. Bilateral foot and ankle examinations are normal. Skin is in good condition throughout.

Severe arthritis left knee pre-existing not related to injury

Loose body left knee secondary to arthritis

Would not recommend removal of loose body because main problem is arthritis. Recommend knee replacement. Again unrelated and pre-existing to injury

1. OSTEOARTHRITIS, LOCALIZED, NOT SPECIFIED WHETHER PRIMARY OR SECONDARY; LOWER LEG (715.36)

Return to Office

- as needed

MIDLANDS ORTHOPAEDICS, P.A. • 1910 Blanding Street, COLUMBIA SC 29201-3520

DAVIS, EVERETT (id #: , dob:)

Encounter Sign-Off

Encounter signed-off by Robert Dasilva, MD, 05/31/2012.

Encounter performed and documented by Robert Dasilva, MD

Encounter reviewed & signed by Robert Dasilva, MD on 05/31/2012 at 12:08pm

MIDLANDS ORTHOPAEDICS, P.A. • 1910 Blanding Street, COLUMBIA SC 29201-3520

DAVIS, EVERETT (id # , dob:)

Encounter Summary

Patient

Name	DAVIS, EVERETT (49, M) ID#	Appt. Date/Time	08/30/2012 08:30AM
DOB		Service Dept.	Blanding Street
Provider	IVAN E. LAMOTTA, MD		
Insurance	Med O: LUMBERMANS		
	Policy/Group # :		
	Employer Name : SOUTHLAKE		
	TRANSPORT INC		
	Case # :		
	Case Injury Date : 11/28/2011		
	Prescription: RHPHI - Member is eligible.		

Chief Complaint

Lower Back Pain

Lower back pain IME doi ON 11/28/2011

Problems

Reviewed patient problem history & made changes

- Lumbago (724.2)

Patient's Providers

Insurance Adjuster (Worker's Comp): CANDICE HOAGLAND: Ph (868) 794-0360, Fax (868) 368-2951

Medications

Reviewed patient's medication history (as of 08/15/2012) without changes

Name	Date
HYDROCODONE-ACETAMINOPHEN 5 MG-500 MG TABLET	08/14/12 filled
PENICILLIN V POTASSIUM 500 MG TABLET	08/06/12 filled

Allergies

Reviewed allergy history (no data recorded) without changes

NKDA

Past Medical History

Reviewed past medical history.

Surgical History

Reviewed patient surgical history (as of 05/31/2012) without changes

- Orthopaedic Surgery--lt knee

Patient History - Other

Reviewed patient's history (no data recorded) without changes

Family History

Reviewed family history (as of 05/31/2012) without changes

Mother - High Blood Pressure

- Stroke

Social History

Reviewed Social History & made changes

Ortho

Alcohol intake: None.

Number of children: 3.

Marital status: Divorced.

Diet: Regular.

Chewing tobacco: none.

Cigar/Pipe Use: N.

Non-smoker.

Smoking Status: Never smoker.

Are you currently employed?: Y.

Hand Dominance: Right.

MIDLANDS ORTHOPAEDICS, P.A. • 1910 Blanding Street, COLUMBIA SC 29201-3520

DAVIS, EVERETT (id #7, dob: 7/1/72)

Occupation: Truck Driver.
Employer: Southlake.

Vitals

BP: 140/80
BMI: 30.7Ht: 5 ft 11 in
Pulse: 67 bpm

Wt: 220 lbs

HPI

Lower Leg

Reported by patient.

Quality: aching; stabbing; sharp; dull; frequent

Severity: pain level 8/10; worst pain 8/10

Duration: 9 months

Timing: acute

Context: MVA

Alleviating Factors: lying down; twisting, coughing & sneezing

Aggravating Factors: sitting; standing; walking; bending/squatting; exercise

Associated Symptoms: weakness; numbness; tingling

Previous Surgery: none

Prior Imaging: none

Previous Injections: none

Previous PT: none

Work Related: yes

Working: no

Initial evaluation. The patient is here for an independent medical evaluation regarding his back pain. The patient was involved in a motor vehicle accident in mid December 2011. The patient is unsure the exact date of the accident. During the accident, he was not wearing this he felt that he was thrust forward in his left knee hit the dashboard. After that the patient started complaining of increasing amounts of left knee pain. There is no documentation in the medical record provided to me of any complaints of low back pain after the accident. However, now the patient states that since the accident he started having mild back pain in the low back radiating bilaterally into the buttocks and has gotten worse during the past 2 months. He rates the back pain 8/10, left knee pain 8 out 10.

Both the left knee and low back are giving him problems on a daily basis during his work and with activities of daily. He denies any mechanical symptoms the left knee.

The patient does have a history of of her knee arthroscopy approximately 20 years ago and a residual left knee complaints after that. He had been previously diagnosed with knee arthritis by his primary care doctor.

The patient states that since the accident he has not been treated with any type of medicine, injection, or physical therapy.

ROS

Patient reports back pain but reports no muscle aches, no muscle weakness, no arthralgias/joint pain, and no swelling in the extremities. He reports no fever, no night sweats, no significant weight gain, no significant weight loss, and no exercise intolerance. He reports no dry eyes, no irritation, and no vision change. He reports no difficulty hearing and no ear pain. He reports no frequent nosebleeds and no nose/sinus problems. He reports no sore throat, no bleeding gums, no snoring, no dry mouth, no mouth ulcers, no oral abnormalities, and no teeth problems. He reports no chest pain, no arm pain on exertion, no shortness of breath when walking, no shortness of breath when lying down, no palpitations, and no known heart murmur. He reports no cough, no wheezing, no shortness of breath, and no coughing up blood. He reports no abdominal pain, no vomiting, normal appetite, no diarrhea, and not vomiting blood. He reports no incontinence, no difficulty urinating, no hematuria, and no increased frequency. He reports no abnormal mole, no jaundice, and no rashes. He reports no loss of consciousness, no weakness, no numbness, no seizures, no dizziness, and no headaches. He reports no depression, no sleep disturbances, feeling safe in relationship, and no alcohol abuse. He reports no fatigue. He reports no swollen glands and no bruising. He reports no runny nose, no sinus pressure, no itching, no hives, and no frequent sneezing.

Physical Exam

Patient is a 49-year-old male.

Constitutional: General Appearance: healthy-appearing, NAD, normal body habitus, and overweight.

Psychiatric: Orientation: oriented to time, place, and person. Mood and Affect: normal mood and affect and active and alert.

Gait and Station: Appearance: ambulating with no assistive devices and limp; lateral thrust left knee noted.

Cardiovascular System: Arterial Pulses Right: dorsalis pedis normal, posterior tibialis normal, femoral normal, and popliteal normal. Arterial Pulses Left: dorsalis pedis normal, posterior tibialis normal, femoral normal, and popliteal normal. Edema Right: none. Edema Left: none. Varicosities Right: no varicosities and capillary refill test normal. Varicosities Left: no varicosities and capillary refill test normal.

Lymph Nodes: Inspection/Palpation Right: no inguinal LAD. Inspection/Palpation Left: no inguinal LAD.

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DAVIS, EVERETT (id # , dob: .)

Skin: Lumbosacral Spine: normal skin.

Lumbar Spine: Inspection: no induration, ecchymosis, or swelling and normal alignment. Bony Palpation of the Lumbar Spine: no tenderness of the spinous process, the transverse process, the sacral promontory, the sacrum, or the coccyx. Bony Palpation of the Right Hip: no tenderness of the iliac crest, the ASIS, the PSIS, the pubic tubercle, the iliac tubercle, the sciatic notch, the ischial tuberosity, the SI joint, or the greater trochanter. Bony Palpation of the Left Hip: no tenderness of the iliac crest, the ASIS, the PSIS, the pubic tubercle, the iliac tubercle, the sciatic notch, the ischial tuberosity, the SI joint, or the greater trochanter. Soft Tissue Palpation on the Right: no tenderness of the supraspinous ligament, the paraspinal region, the ilio-lumbar region, the gluteus maximus, the gluteus medius, the sciatic nerve, the anterior abdominal muscles, the inguinal ligament, or the piriformis. Soft Tissue Palpation on the Left: no tenderness of the supraspinous ligament, the paraspinal region, the ilio-lumbar region, the gluteus maximus, the gluteus medius, the sciatic nerve, the anterior abdominal muscles, the inguinal ligament, or the piriformis. Active Range of Motion: rotation normal, lateral flexion normal, extension normal, flexion normal, and no pain with motion; mildly decreased. Passive Range of Motion: rotation normal, lateral flexion normal, extension normal, flexion normal, and no pain with motion.

Motor Strength: L1 Motor Strength on the Right: hip flexion iliopsoas 5/5. L1 Motor Strength on the Left: hip flexion iliopsoas 5/5. L2-L4 Motor Strength on the Right: knee extension quadriceps 5/5. L2-L4 Motor Strength on the Left: knee extension quadriceps 5/5. L5 Motor Strength on the Right: great toe extension extensor hallucis longus 5/5 and ankle dorsiflexion tibialis anterior 5/5. L5 Motor Strength on the Left: great toe extension extensor hallucis longus 5/5 and ankle dorsiflexion tibialis anterior 5/5. S1 Motor Strength on the Right: plantar flexion gastrocnemius 5/5. S1 Motor Strength on the Left: plantar flexion gastrocnemius 5/5.

Neurological System: Coordination: heel-to-shin normal. Babinski Reflex Right: plantar reflex absent. Babinski Reflex Left: plantar reflex absent. Special Tests: Valsalva's test negative. Ankle Reflex Right: normal (2). Ankle Reflex Left: normal (2). Knee Reflex Right: normal (2). Knee Reflex Left: normal (2). Sensation on the Right: S1 normal, L5 normal, T12 normal, normal distal extremities, L4 normal, L1 normal, L2 normal, S2 normal, and L3 normal. Sensation on the Left: S1 normal, L5 normal, T12 normal, normal distal extremities, L4 normal, L1 normal, L2 normal, S2 normal, and L3 normal. Special Tests on the Right: no clonus of the ankle/knee, compression test negative, Patrick-Fabere test negative, supine straight leg raising test negative, seated straight leg raising test negative, and femoral nerve traction test negative. Special Tests on the Left: no clonus of the ankle/knee, compression test negative, Patrick-Fabere test negative, supine straight leg raising test negative, seated straight leg raising test negative, and femoral nerve traction test negative.

left knee examination reveals a 5° flexion contraction, slight laxity with varus and valgus testing, significant crepitus with range of motion, palpable loose body along the suprapatellar lateral aspect of the knee but otherwise neurologically intact.

Results / Interpretations**X-RAY, LUMBAR SPINE**

• View: 3 View; Position: Standing, Possibility of Pregnancy: N
mild anterior lumbar spondylosis, slight L3-L4 anterolisthesis with slight left lateral listhesis L3 onto L4

EXTERNAL RESULT

outside radiographs of the left knee reveal varus angulation, markedly severe medial knee and patellofemoral arthritis, loose body noted.

Previous Assessment / Plan**Date of Service**

05/31/2012

Independent medical examination. Patient with chronic pain in left knee. Recent accident patient has noticed increased pain in left knee. Patient had a knee arthroscopy about 20 years ago according to patient. Pain in left knee now. Worsening with time. Patient also complains about right knee pain since the accident secondary to putting weight on the right leg patient also noticed a loose body in the left knee

Left knee

Palpable loose body

The patient is alert and oriented x 3.

The patient has an antalgic gait using no assistive devices. Both lower extremities were examined. The affected extremity has a positive crepitation in the knee. Positive pain over the medial and lateral joint line of the knee. Good range of motion of the knee with pain upon flexion and extension. The unaffected knee has none of the above.

Both hips were examined and were stable. Straight leg raise was negative. Neurological status is normal. Sensation, pulses and strength were normal. Range of motion of the lumbar spine is full. Deep tendon reflexes are 2+. Bilateral foot and ankle examinations are normal. Skin is in good condition throughout.
Severe arthritis left knee pre-existing not related to injury

WIDLANDS ORTHOPAEDICS, P.A. • 1910 Blanding Street, COLUMBIA SC 29201-3520

DAVIS, EVERETT (id # [redacted], dob: [redacted])

Loose body left knee secondary to arthritis

Would not recommend removal of loose body because main problem is arthritis. Recommend knee replacement. Again unrelated and pre-existing to injury

1. OSTEOARTHRITIS, LOCALIZED, NOT SPECIFIED WHETHER PRIMARY OR SECONDARY; LOWER LEG (715.36)

Assessment / Plan

Severe left knee arthritis

Lumbar spondylosis

Left knee pain

Low back pain

1. LUMBAGO (724.2)

• X-RAY, LUMBAR SPINE

View: 3 View

Position: Standing

Possibility of Pregnancy: N

Discussion: : In my opinion, the patient has arthritis affecting the lumbar spine and severe arthritis affecting the left knee. I agree with Dr. DaSilva in that both of these diagnoses are pre-existing and not related to his motor vehicle collision sustained December 2011. Therefore, the diagnoses of left knee pain and low back pain are not casually related to his accident.

My recommendation would be for conservative care of the lumbar spine in the form of anti-inflammatory medications as well as physical therapy. I do not see any surgical indication for his lumbar spine. The patient would greatly benefit from a total knee arthroplasty. I would not recommend any less invasive procedure.

The above analysis is based on the available information at this time, including the medical records and the imaging studies & results provided. It is assumed that the information provided to me is correct. If more information becomes available at a later date, an additional report may be requested. Such information may or may not change the opinions rendered in this documents.

All opinions rendered in this document are based upon a reasonable degree of medical certainty and are impartial. Comments on the appropriateness of care are professional opinions based upon the specifics of this case and should not be generalized.

Thank you for allowing me to review this medical record. If you have any other further questions please do not hesitate to contact me.

Return to Office

- as needed

Encounter Sign-Off

Encounter signed-off by Ivan E. Lamotta, MD, 08/30/2012.

Encounter performed and documented by Ivan E. Lamotta, MD

Encounter reviewed & signed by Ivan E. Lamotta, MD on 08/30/2012 at 10:32am

36

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1119380

EVERETT DAVIS,

Employee,

Claimant,

vs.

SOUTHLAKE TRANSPORT, INC.,

Employer,

AND

LUMBERMEN'S UNDERWRITING
ALLIANCE,

Carrier,

Defendants.

CONSENT ORDER

THIS MATTER was scheduled to be heard before the undersigned Commissioner on May 17,

2012 upon the filing of Workers' Compensation Forms 50 and 51. Claimant requested the Commission find he sustained injuries to the back and left knee arising out of his employment. He alleged entitlement to additional medical treatment and payment for prior causally-related care. Defendants generally denied Claimant's allegations pending further investigation. Claimant is represented by John D. Clark, Esquire, and Defendants are represented by M. Chad Abramson, Esquire.

Prior to the scheduled Hearing, the parties advised the Commission that an agreement had been reached regarding the issues presented for determination at the Hearing. The parties now desire the agreement to be embodied into a Consent Order of the Commission. Therefore, the agreement of the parties is as follows:

1. The South Carolina Workers' Compensation Commission has jurisdiction over the parties and subject matter of the claim.

2. The Claimant has an average weekly wage of Eight Hundred Ninety-Seven and 43/100 (\$897.43) Dollars and a corresponding compensation rate of Five Hundred Ninety-Eight and 32/100 (\$598.32) Dollars.

3. Claimant sustained a compensable injury to his back and left knee arising out of and in the course of his employment with Southlake Transport, Inc.

4. Defendants agree to provide evaluation and treatment of the spine with Ivan E. LaMotta, M.D. of Midlands Orthopaedic or another physician of their choosing.

5. Defendants agree to provide evaluation and treatment of the left knee with Robert M. DaSilva, M.D. of Midlands Orthopaedic or another physician of their choosing.

6. Defendants will reimburse Claimant's medical providers, and/or Claimant directly, for all causally-related treatment from the date of injury to May 11, 2012. Defendants will continue to provide authorized causally-related treatment from May 11, 2012 and continuing until Claimant reaches maximum medical improvement, further agreement of the parties, or further Order of the Workers' Compensation Commission.

7. This matter shall be placed in general files.

8. All other issues are held in abeyance and such matters may be presented at a future hearing before the jurisdictional Commissioner at the request of either party.

NOW THEREFORE, on joint motion of John D. Clark, Esquire, attorney for Claimant, and M. Chad Abramson, Esquire, attorney for Defendants, it is

HEREBY ORDERED, ADJUDGED AND DECREED that the agreement of the parties as set forth above is hereby adopted as an Order of this Commission as if fully set forth herein.

IT IS SO ORDERED.



Commissioner Melody L. James

May 15, 2012

Consent Signature Lines on Following Page

We Consent:



John D. Clark, Esquire
Attorney for Claimant



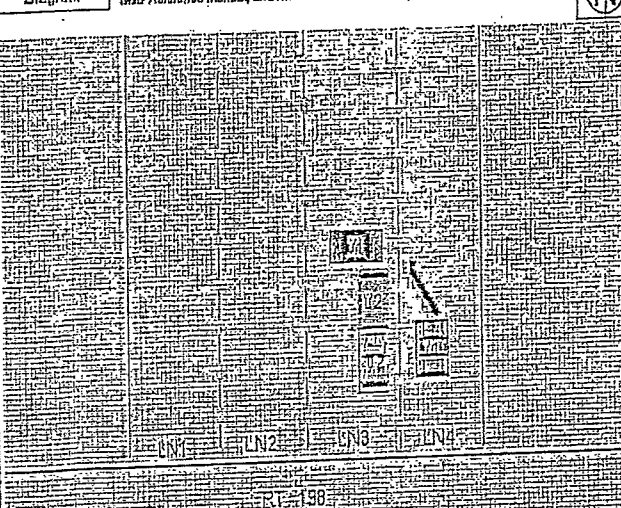
M. Chad Abramson, Esquire
Attorney for Defendants

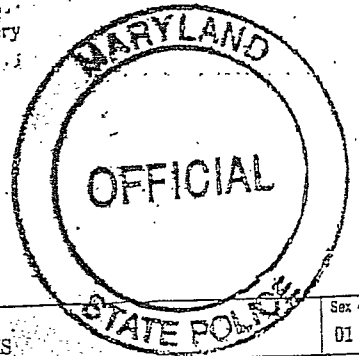
CERTIFICATE OF SERVICE

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

By Tamara Morris on May 15, 2012

State of Maryland Motor Vehicle Accident Report

Report No. 11943285	Page of 1 of 2	Accident Date 11/28/11	Accident Time 17:44	Report Type ☐ Fatal ☐ Injury ☒ PDO ☐ Hit + Run ☐ Non-Traffic	Research 0	Local Case No. 1166012958	Local Code 000	Photos? ☒ No ☐ Yes	County 16														
Investigating Officer ID Tpr Shelley, Z 5978	Agency and Area MSP 66	Supervising Officer ID SGT Sweltzer, C 3675	Code - Auto - Name of Municipality 000 Not Applicable																				
Rd Char 18 01	RTE RUM Accident Occurred On IS 00095	Road Name NO NAME	In Lane 19 N 3	Tral Stop ☒ No ☐ Yes	On Ramp ☒ No ☐ Yes	Ramp Number (Direction) 0	In Intersection ☒ No ☐ Yes																
Rd Cond 24 01	Intersecting Route MD 00198	Intersecting Road Name or Log Mile Reference Manual description SANDY SPRING RD	Mile PT 032.70	Dir N	Dist. of Acc fr INT-RTE/Rel. & Dir. 000.50																		
Rd Div 30 04	Accident Diagram 	Describe Accident briefly, identify units by numbers. Also identify the following (a) the object damaged & nature of damage (property other than vehicles) and (b) the name & address of owner when applicable. Vehicle 1 and vehicle 2 were both traveling N/B I-95 just North of Rt. 198. Vehicle 1 was in lane 4 and vehicle 2 was in lane 3. Vehicle 1 then made an unsafe lane change from lane 4 into lane 3, striding vehicle 2 in the front right portion. Vehicle 1 then traveled in front of vehicle 2 causing damage to vehicle 2's left side and trailer portion. Vehicle 1 traveled off the left side of the roadway and came to rest in a ditch. Owner of damaged property: State of Maryland Property damaged: Trees / Shrubbery																					
Srt Cond 34 02																							
Cam Zone 35 ☒ N ☐ Y																							
Junct'n 36 00																							
Event-1 37 01																							
Event-2 38 00																							
Fix Ch 39 00																							
Coll Ty 4 07																							
Light 41 04																							
Weather 42 01																							
Unit 43 01	NAME (First, Middle, Last) RAYMOND JUNWEI CHANG	Sex 01	Unit 43 02	NAME (First, Middle, Last) EVERETTE NMN DAVIS	Sex 01																		
Type of 46 Unit ☒ Driver ☐ PED	Address (No., Street, City, State, Zip) Res	Inj 48 01	Type of 45 Unit ☒ Driver ☐ PED	Address (No., Street, City, State, Zip) Res	Inj 48 01																		
Cond'n 51 01	Subst 52 01	Test 53 00	Result 54 N/A	For Peds Only ☐	Age 55 00	Type 56 00	Locat'n 57 00	Obey 58 00	Visibl 59 00														
Speed Limit 60 65	Saf. Equ 61 13	Eq Prob 62 01	Eject 63 01	Citation Number(s) HG29481	State 68 MD	Class 69 C	Going 65 01	Driver's License Number 01	State 68 SC														
Continue 70 01	DR Date of Birth 71 01	Irregular Condition ☐ Caught Fire 72 ☐ Parked ☐ Hit & Run ☐ Driverless ☒ N ☐ Y	HM Split 73 ☒ N ☐ Y	Haz Mat No. N/A	Continue 70 01	DR Date of Birth 71 01	Irregular Condition ☐ Caught Fire 72 ☐ Parked ☐ Hit & Run ☐ Driverless ☒ N ☐ Y	HM Split 73 ☒ N ☐ Y	Haz Mat No. N/A														
Body Ty 7 02	Commercial Vehicle Only N/A	U.S. DOT Number N/A	ICC Number N/A	Body Ty 78 00	Body Ty 7 07	Commercial Vehicle Only 00914309	U.S. DOT Number N/A	ICC Number N/A	Body Ty 78 03														
Most HE 80 01	Owner or Carrier Name (Write "SAME" if Driver) LIHSUNG A CHANG	Tel 803-458-2916	Most HE 80 01	Owner or Carrier Name (Write "SAME" if Driver) SOUTH L TRANSPORT (Res)	Tel 803-458-2916																		
Domestic Circumstances 82-1 09	Owner / Carrier Address 14232 MASTERPIECE LANE NORTH POTOMAC MD 20878	Towed Vehicles 00 00 00	Domestic Circumstances 82-1 00	Owner / Carrier Address PO BOX 2488 LEXINGTON SC 29071	Towed Vehicles 01 00 00																		
82-2 07	Year & Make of Vehicle 2001 TOYOTA	Model CAMRY	82-2 00	Year & Make of Vehicle 2007 INTERNAT	Model 9400																		
82-3 00	Exp Yr & Registr # State 02/13 JDZ284 MD	Areas Damaged 14 13 12	82-3 00	Exp Yr & Registr # State 12/11 P774018 SC	Areas Damaged 3 2 16																		
82-4 00	Vehicle ID Number 4T1BG28K51U0808260	Vehicle ID Number 4028805235	82-4 00	Vehicle ID Number 2HSCNAPR17C489480	Vehicle ID Number 8CA0641824																		
Dam Ext 84 04	Vehicle Removed By PASCIANDROSENE	Vehicle Removed To TOW LOT	84 03	Vehicle Removed By DRIVER	Vehicle Removed To DRIVER																		
<table border="1"> <tr> <td>EMS Unit</td> <td>Injured 100 Taken To</td> <td>Injured 109 Taken To</td> <td>EMS Run Record # 110</td> <td>Injured 100 Taken By 105</td> <td>Injured 109 Taken To</td> <td>EMS Run Record # 110</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>										EMS Unit	Injured 100 Taken To	Injured 109 Taken To	EMS Run Record # 110	Injured 100 Taken By 105	Injured 109 Taken To	EMS Run Record # 110							
EMS Unit	Injured 100 Taken To	Injured 109 Taken To	EMS Run Record # 110	Injured 100 Taken By 105	Injured 109 Taken To	EMS Run Record # 110																	



State Maryland Motor Vehicle Accident Report

Report No. 11943285	Page of 2 of 2	Accident Date 11/28/11	Accident Time 17:44	Report Type ☐ Fatal ☐ Injury ☒ PDO ☐ Hit + Run ☐ Non-Traffic	Research 6	Local Case No. 1166012958	Local Codes 1 B	Photos? ☒ No ☐ Yes													
Investigating Officer ID Tpr Shelley, Z 5978	Agency and Area MSP 66	Supervising Officer ID SGT Sweltzer, C 3675	Reviewer ID SGT Sweltzer, C 3675	County 000 Not Applicable	Cops - And - Name of Municipality 16																
Rd Char 16 01	RTENUM Accident Occurred On IS 00095	Road Name NO NAME	In Lane 19 N 3	Traf Sig ☒ No ☐ Yes	On Ramp ☒ No ☐ Yes	Ramp Number (Direction) 0	0-Not Ramp 1 N-W 2 W-N 3 E-N 4 N-E 5 S-E 6 E-S 7 W-S 8 S-W 9 Other	In Intersection ☒ No ☐ Yes													
Rd Cond 24 01	Intersecting Route MD 00198	Intersecting Road Name or Log Mile Reference Manual description SANDY SPRING RD	Mile PT 032.70	Dir N	Dist of Acc fr INT-RTR/Rel. & Dir. 000.50	☒ FI ☐ N															
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Unit 43 02									NAME (First, Middle, Last) 00	Sex 45 00	Unit 43 00	NAME (First, Middle, Last) 00	Sex 45 00								
Type of 46 Unit ☐ Driver ☐ PED	Address (No., Street, City, State, Zip) Tel 47	Inj 48 00	Type of 46 Unit ☐ Driver ☐ PED	Address (No., Street, City, State, Zip) Tel 47	Inj 48 00																
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82-4 00	Vehicle ID Number 1JJV532D9AL445126	82-4 00	Vehicle ID Number 1JJV532D9AL445126																		
Dam Ext 94 02	Vehicle Removed By DRIVER	Dam Ext 94 02	Vehicle Removed By DRIVER																		
<table border="1"> <tr> <td>TRAC Unit 99</td> <td>Unit 99</td> <td>Age 101</td> <td>Sex 102</td> <td>Eq Prob 103</td> <td>Injury 104</td> <td>Eject 105</td> <td>EMS Unit 106</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>						TRAC Unit 99	Unit 99	Age 101	Sex 102	Eq Prob 103	Injury 104	Eject 105	EMS Unit 106								
TRAC Unit 99	Unit 99	Age 101	Sex 102	Eq Prob 103	Injury 104	Eject 105	EMS Unit 106														

**SUPPLEMENTAL
REPORT**

State of Maryland Motor Vehicle Accident Report

Report No. 11943285	Page of 3 of 3	Accident Date Time 11/28/11 17:44	Report Type ☐ Fatal ☐ Injury ☒ PDO ☐ Hit + Run ☐ Non-Traffic	Research	Local Case No. 1166012958	Local Codes	☐ Photos?
PERSONS							
ADDITIONAL COMMENTS							
STATEMENTS							



STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1119380

Everett Davis,

Employee,

v.

Southlake Transport,

Employer,

and

Lumbermens Underwriters Alliance,

Carrier/Defendants,

(COPY)

FULL COMMISSION PANEL HEARING

Tuesday, June 18, 2013
11:30 a.m. - 11:53 a.m.

The Full Commission Panel Hearing was held before the South Carolina Workers' Compensation Commission, 1333 Main Street, 5th Floor, Columbia, South Carolina, on the 18th day of June, 2013 before Jill H. Vickers, Certified Court Reporter and Notary Public in and for the State of South Carolina.

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1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

APPEARANCES:COMMISSION PANEL:

Susan Barden, Chair
 Melody James
 Gene McCaskill

John D. Clark, Esquire
 Clark Law Firm
 22 East Liberty Street
 Sumter, South Carolina 29150
 Attorney for the Claimant

M. Chad Abramson, Esquire
 McAngus, Goudelock & Courie
 1320 Main Street, 10th Floor
 Columbia, South Carolina 29201
 Attorney for the Defendants

INDEXPAGE

Certificate 18

EXHIBITS

(There were no exhibits marked during this hearing.)

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1 COURT REPORTER: Today is June 18th, 2013. This is
2 South Carolina Workers' Compensation Case
3 Number 1119380. This is the case of Everett
4 Davis, Claimant, versus Southlake Transport,
5 Employer, and Lumbermens Underwriters Alliance
6 is the Carrier. The Appellant is the Claimant,
7 represented by John D. Clark. The Respondent
8 represented by M. Chad Abramson.

9 MR. CLARK: Good morning. This case involves the
10 issue of aggravation of a pre-existing
11 condition and whether the claimant is entitled
12 to medical treatment when the aggravation is in
13 the nature of increased pain. I would submit
14 to the Commission that the law in South
15 Carolina is clear that an aggravation case in
16 the nature of increased pain is compensable,
17 and the claimant is entitled to additional
18 medical treatment, and I rely on the cases of
19 Murphy versus Owens Corning, which I cite in
20 any brief, as well as Anderson versus Baptist
21 Medical Center. This case involves my client,
22 Everett Davis, who is a 50 year old gentleman.
23 He's a truck driver. He was involved in a
24 trucking accident. He had severe pre-existing
25 arthritis in his left knee. He struck his left

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1 knee on the dashboard when a car impacted the
2 front of his truck. He struck his knee on the
3 dash. It did bruise the knee. It did cause
4 bleeding. It's important to know here that
5 this is an admitted case of injury to his left
6 knee. The defendants admit that he hurt his
7 left knee. The issue is whether he's entitled
8 to additional medical treatment. The
9 authorized treating physician was Dr. DaSilva,
10 which we submitted his deposition transcript.

11 Dr. DaSilva said that there were two options --
12 three options that this man could take. He
13 could do nothing, he could get injections, or
14 he could get a knee replacement. We asked for
15 the knee replacement. The single Commissioner,
16 in my opinion, erroneously, denied the knee
17 replacement, as well as alternatively,
18 erroneously denied injections that Dr. DaSilva
19 said was an option. The single Commissioner
20 committed error because he denied the
21 additional treatment simply because the
22 complaints were complaints of pain which he
23 said were subjective. And I submit to the
24 Commission that the test to determine whether
25 a person is entitled to medical treatment for

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1 an aggravation is not whether the complaints
2 are subjective, but whether it causes
3 disability. In this case, there is disability.
4 Dr. DaSilva testified unequivocally that there
5 was, and I would refer to his deposition
6 testimony on Page 17 where he was asked the
7 question, "Is it also correct that his ability
8 to get around, work has also been affected by
9 the increase in pain based on his history and
10 what he told you?" Answer: "Based on the
11 history, yes". ~~So, the only evidence in the~~
12 record that this accident and this increased
13 pain has caused Mr. Davis some increased
14 disability. Now, what the defense argued and
15 what the single Commissioner held is that this
16 man's problem is caused by his pre-existing
17 arthritis, and he's not entitled to a knee
18 replacement or any treatment because he has
19 pre-existing arthritis. Well, Dr. DaSilva
20 testified that, yes, it is true that he had
21 pre-existing arthritis, but the increased pain
22 is what necessitates the knee replacement, that
23 without the increased pain, he would not
24 recommend a knee replacement. The record is
25 replete with the opinion by Dr. DaSilva that,

1 A, he had increased pain. Now, Commissioner
2 Williams called the increased pain a subjective
3 complaint, which it is, but Dr. DaSilva said,
4 based on the objective tests that he did, Mr.
5 Davis has increased pain and all before the
6 accident, had the increased pain, and a knee
7 replacement was not warranted. So, the issue
8 is, whether medical treatment is ordered based
9 on subjective complaints. Commissioner
10 Williams said "No", but I submit that's not the
11 test, and he said "no" because it was a
12 subjective complaint. I think his finding of
13 fact was, "I can't speculate because I need
14 more than a subjective complaint. Well, I
15 would submit that's an error, because most
16 every case that comes forward is based on a
17 subjective complaint, and that is not the test.
18 The test is whether it causes him disability,
19 and that the uncontradicted evidence is that it
20 does. Did he have pre-existing arthritis, yes,
21 but the record indicates that he worked 20
22 years. He had surgery 20 years ago, but he
23 worked 20 years without medical treatment.
24 COMMISSIONER MCCASKILL: Mr. Clark, in
25 Commissioner Williams' order, it says --

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1 there's a statement that says "Dr. DaSilva
2 indicates that there is severe arthritis of the
3 left knee pre-existing and not related to the
4 injury". Do you think that is a correct
5 characterization of what Dr. DaSilva said?

6 MR. CLARK: Yes, sir, and that is absolutely
7 correct. Of course, the pre-existing arthritis
8 is not related to the injury. It was there all
9 along. But when he bumped his knee, that
10 caused the increase pain, and therefore, he's
11 entitled to benefits under the Workers' Comp.
12 Act. So, yes, he did have pre-existing
13 arthritis.

14 COMMISSIONER MCCASKILL: And it aggravated it?

15 MR. CLARK: Yes, sir, and that's what this case is
16 about, and the cases that I cited, particularly
17 the Murphy versus Owens Corning case is a
18 carpal tunnel case where the Supreme Court --
19 the Court of Appeals, I'm sorry, said that
20 "Increased pain -- aggravation manifesting
21 itself in the nature of increased pain is
22 compensable", and that's the very same factual
23 scenario that we have here. Now my counterpart
24 today, Mr. Abramson, he did a very good job
25 arguing the case. Obviously, he convinced the

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1 single Commissioner, but what he argued was
2 that Mr. Davis kept working after this
3 accident. He did, but Dr. DaSilva said, that
4 does not mean he didn't have increased in pain,
5 but I think Dr. DaSilva also said whether a
6 person continues to work or not is based on a
7 lot of factors, their work ethic, their
8 economic situation, the type of job they had.
9 In fact, Commissioner Williams found the man to
10 be -- made a finding that he was a hard worker,
11 and I think it's also interesting to note that
12 Commissioner Williams did not find him
13 incredible. He didn't say "I don't believe
14 him". He simply said, "Because it's a
15 subjective complaint, I'm not going to award a
16 knee replacement", and I got the impression
17 that he didn't feel that it was fair for the
18 carrier to do a knee replacement when the man
19 had severe arthritis, but a knee replacement
20 wasn't the only option that Dr. DaSilva said he
21 could pursue.

22 COMMISSIONER MCCASKILL: Now, let me ask you one
23 question about that, if I might. He says,
24 "Dr. DaSilva testified that the Claimant had
25 pre-existing arthritis, but he did not have an

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1 increase in pain, and he would not recommend a
2 total knee replacement".

3 MR. CLARK: That's the whole point right there,
4 Commissioner. He had the severe arthritis. He
5 worked for 20 years, did not have disability.
6 He had this accident. He has increased, and
7 under the Owens Corning case, he's entitled to
8 treatment. And I think -- like I said, Mr.
9 Abramson did a good job of arguing, "Well, the
10 knee replacement is not necessitated by the

11 pain. That's not the only factor. And that's
12 what Dr. DaSilva said. He said, "No, I'm not
13 saying he needs a knee replacement because of
14 pain, but he needs a knee replacement because
15 of the pre-existing arthritis and the pain that
16 came from this accident", and that would be our
17 position. Also, as far as the Commissioner
18 Williams' finding that Mr. Davis was at MMI for
19 his back, I would submit that has to be
20 reversed because his order does not have
21 specific and detailed findings for which to
22 base that conclusion on. There is not one
23 single specific and detailed finding in the
24 order that goes to the back, and therefore,
25 this order is not based on sufficient findings

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1 of fact; and with regard to the back, that must
2 be reversed. In addition to Dr. DaSilva,
3 though, Dr. Drakeford, who is an orthopedic
4 surgeon down in Sumter who Mr. Davis saw before
5 he saw Dr. DaSilva, gave the exact same
6 opinion, that, yes, the man has pre-existing
7 arthritis, and the increased pain now makes him
8 a candidate for a knee replacement, and as Dr.
9 DaSilva said, knee injections, as well, before
10 we go to the knee replacement.

11 ~~COMMISSIONER MCCASKILL:~~ Mr. Abramson, can I ask you
12 one question before you start?

13 MR. ABRAMSON: Yes, sir.

14 COMMISSIONER MCCASKILL: As I read here, Dr. DaSilva
15 testified that his opinion recommending a knee
16 replacement was unrelated and pre-existing to the
17 injury -- to the injury that he believed -- to a
18 reasonable degree of medical certainty that the
19 claimant did not require knee replacement surgery
20 because of his work accident. Is that a correct
21 characterization of what he said?

22 MR. ABRAMSON: Yes, sir, Your Honor. May it please
23 the Commission. Dr. DaSilva testified that
24 this gentleman would need a knee replacement in
25 the future because of severe pre-existing

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1 arthritis in that knee that pre-existed this
2 automobile accident. What I believe that he
3 said was that, in the future, when this pain
4 was at such a level to where he could no longer
5 function, that would be when he would actually
6 need to have the procedure done, and he went on
7 to testify about pain is different for
8 different individuals, have different
9 thresholds of pain, but the key component to
10 look at in this case is Dr. DaSilva's
11 testimony, which is undisputed, that he did not
12 believe to a reasonable degree of medical
13 certainty that the need for the knee
14 replacement was causally related to this work
15 accident, and we believe that the Hearing
16 Commissioner correctly found that the need for
17 the knee replacement is not because of an
18 aggravation or acceleration of the pre-existing
19 condition due to this automobile accident which
20 was relatively minor. Now, if you examine the
21 record as a whole, you will see that this
22 gentleman was doing his regular job duties as
23 a long-haul truck driver. He was en route to
24 a drop-off, I believe, in the Philadelphia area
25 from South Carolina. He was involved in an

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1 automobile accident somewhere south of DC on
2 95. He, at the scene did not ask for medical
3 attention. That's in the record. After the
4 accident, he drove on to Philadelphia, which
5 was about three more hours, spent the night --
6 and this is very important. He got up the next
7 morning and drove all the way down the Florida,
8 okay, went through the state of South
9 Carolina -- this was pointed out in the record
10 to the single Commissioner. He made judicial
11 notice of that. He did not ask for medical
12 attention from his employer. He didn't stop in
13 South Carolina to go to his family doctor
14 because of increases knee pain or low back
15 pain, went on down to Florida, dropped off his
16 load and came back to South Carolina. He
17 didn't seek medical attention from this
18 accident until a month later, and that was with
19 his family doctor, for an appointment that was
20 already scheduled with his family doctor for a
21 routine physical. So, again, the preponderance
22 of the evidence demonstrates that there was not
23 a significant exacerbation of his pre-existing
24 condition to the level that would necessitate
25 a procedure like a knee replacement surgery, a

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1 total arthroplasty. So, Dr. DaSilva got it
2 right in our opinion with respect to the need
3 for that type of procedure. Again, this case
4 was denied initially because of the fact in the
5 case which demonstrated that this gentleman was
6 not disabled. We talk about disability. We
7 know what the definition of disability is under
8 the Act, the inability or incapacity to earn
9 the same wages that one earned before their
10 accident. This man did not lose any time from
11 work after this accident. He never lost any
12 time. He's continue to work doing his regular
13 job duties as a truck driver, working 50 hours
14 a week, 2,900 miles a week on average. That's
15 in the record. We accepted this claim as a
16 compensable soft tissue accident injury by
17 accident involving soft tissue injuries with a
18 minor exacerbation of a pre-existing condition
19 with that knee that resumed to baseline.
20 Dr. DaSilva opined that he had reached maximum
21 medical improvement, that he could not say to
22 a reasonable degree of medical certainty that
23 the need for a total knee arthroplasty was
24 caused by his trucking accident with respect to
25 the lumbar spine. By a consent order, both

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1 parties chose, Dr. Lamata to assess his low
2 back pain. Dr. Lamata opined to a reasonable
3 degree of medical certainty that he's at
4 maximum medical improvement, that he didn't
5 require any additional medical treatment, and
6 Dr. DaSilva, again, has opined that he has
7 significant pre-existing arthritis not
8 exacerbated to the level where he would require
9 any ongoing causal medical care, and that's in
10 the doctor's deposition. So, we respectfully

11 request that you uphold the single
12 Commissioner's decision finding that this
13 gentleman is at maximum medical improvement for
14 both his left knee and his lumbar spine, and he
15 requires no future causally related medical
16 care. And I'll answer any other questions the
17 panel may have at this time.

18 COMMISSIONER BARDEN: No questions. Thank you. Mr.
19 Clark?

20 MR. CLARK: Thank you. I want to go back to the
21 question about Dr. DaSilva's opinion and ask
22 the panel to refer to Page 17 of Dr. DaSilva's
23 deposition, because he clarifies on Page 17 the
24 relationship of the pain to the pre-existing
25 injury, and I would point to Page 17, Line 14,

1 and I asked him the question, "If he had
2 pre-existing arthritis, did not have an
3 increase in pain, you would not under those
4 circumstances recommend a total knee
5 replacement then, would you", and he said,
6 "Right". "And at this point, it's only being
7 recommended because of the increase in pain",
8 and then he says, "You mean recommended because
9 of pain", and I said, "Uh-huh", and he said
10 "Radiographic and clinical pain -- recommended
11 because objectively, he has pain". And then,
12 on the next page, it says "Okay, and
13 objectively, you have clinical and radiographic
14 evidence of severe arthritis", but the key is
15 where he says the two together, and that's why
16 the knee replacement is being recommended, not
17 simply because of the pre-existing arthritis,
18 but the two together, and pain being one factor
19 based on the Corning case, and an aggravation
20 of a pre-existing condition, that's why he
21 needs the knee replacement, not just because of
22 the pain, not just because of the pre-existing
23 arthritis, but because of both of them. And
24 that's where Dr. DaSilva clarifies his opinion,
25 and that's why Commissioner Williams committed

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1 an error in denying any treatment for this
2 man's knee in an admitted case.

3 COMMISSIONER JAMES: Well, I'm going to read the
4 whole deposition of Dr. DaSilva, but doesn't he
5 go on later to say that that he doesn't believe
6 that that's what prompts -- the aggravation is
7 not what prompts you to proceed with the knee
8 replacement? And I believe -- I mean, I know
9 you're quoting from Page 17, but doesn't he
10 equivocate somewhere in his deposition?

11 ~~MR. CLARK:~~ Well, he's trying to do his best to
12 field questions from both lawyers, but I would
13 appreciate you reading the whole transcript,
14 because I think it will become clear that what
15 the sum of his testimony is, is that it's not
16 simply because of the pain, but it's the pain
17 and the pre-existing condition, and this is an
18 aggravation case. And so, he says, "It's
19 because of the two", and he goes back and
20 forth, but that's his opinion. When you ask
21 him, "Is it simply because of the increased
22 pain", he said, "No", because that's the right
23 answer, but when you ask him, "Is it because of
24 the two", he says, "Yes", and that's why Mr.
25 Davis is entitled to treatment for his knee.

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1 I would also ask the Commission to look at Page
2 37 in regards to the argument about the ability
3 to work, because he says that, just because he
4 continues to work doesn't mean he doesn't have
5 increased pain. Thank you very much.

6 COMMISSIONER BARDEN: Thank you. That concludes
7 this proceeding.

8 (Whereupon, the Full Commission Panel Hearing
9 concluded at 11:53 o'clock a.m.)
10

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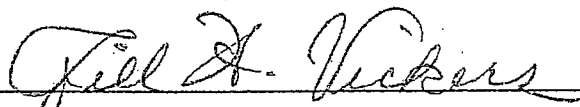
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CERTIFICATE

This is to certify that the within hearing consisting of Seventeen (17) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup. *stenotype*

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on September 12, 2013.



Jill H. Vickers
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: July 5, 2016

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1119380

 **COPY**

EMPLOYEE/CLAIMANT: EVERETT DAVIS

EMPLOYER: SOUTHLAKE TRANSPORT, INC.

CARRIER: LUMBERMENS UNDERWRITING ALLIANCE

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 7TH DAY OF
JANUARY, 2013, COMMENCING AT THE HOUR OF 9:32 A.M., IN
COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE DERRICK
L. WILLIAMS, ATTENDED BY COUNSEL AS FOLLOWS:

TIMMI A. PARRISH
VERBATIM REPORTER

TIMMI A. PARRISH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, SC 29376
864-921-8743

APPEARANCES

JOHN D. CLARK, ESQUIRE, OF THE
CLARK LAW FIRM, LLC
POST OFFICE DRAWER 88
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ATTORNEY FOR THE CLAIMANT,

M. CHAD ABRAMSON, ESQUIRE, OF THE FIRM
McANGUS GOUDELOCK & COURIE, LLC
POST OFFICE BOX 12519
COLUMBIA, SOUTH CAROLINA 29211

ATTORNEY FOR THE EMPLOYER/CARRIER.

ALSO ATTENDING: MS. CARRIE GLENN

I N D E X

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CARRIE GLENN:

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1 PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
2 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
3 PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN COLUMBIA,
4 SOUTH CAROLINA.

5 * * * * *

6 BY COMMISSIONER WILLIAMS:

7 TODAY'S DATE, JANUARY 7TH, 2013. THIS IS THE
8 WORKERS' COMPENSATION CASE OF MR. EVERETT DAVIS
9 VERSUS SOUTHLAKE TRANSPORT, INC. THIS IS WCC FILE
10 NUMBER 1119380. ATTORNEY JOHN CLARK FOR THE
11 CLAIMANT; ATTORNEY CHAD ABRAMSON FOR THE EMPLOYER
12 AND CARRIER. DATE OF ACCIDENT, NOVEMBER 28TH OF
13 2011. AVERAGE WEEKLY WAGE IS \$897.43, CORRESPONDING
14 COMP RATE OF \$598.32. THIS HEARING IS SET ON THE
15 ~~FORMS 50 AND 51. I HAVE APA SUBMISSIONS FROM BOTH~~
16 PARTIES, AND I HAVE THE DEPOSITIONS OF DR. DASILVA,
17 D-A-S-I-L-V-A, DR. DRAKEFORD, D-R--A-K-E-F-O-R-D,
18 AND THE DEPOSITION OF THE CLAIMANT AS WELL. ANY
19 OBJECTIONS TO JURISDICTION, VENUE, OR THE APA
20 SUBMISSIONS?

21 BY MR. CLARK:

22 NO, SIR.

23 BY MR. ABRAMSON:

24 NO, SIR, YOUR HONOR.

25 BY THE COMMISSIONER:

1 THEN THE COMMISSION FILE IS PART OF THE RECORD
2 WITH THE EXCEPTION OF ANY SELF-SERVING DECLARATIONS
3 OR ANY UNSTIPULATED MEDICAL REPORTS. ADMITTED
4 INJURY TO THE BACK AND THE LEFT KNEE. THE ISSUE
5 TODAY WOULD BE FURTHER MEDICAL TREATMENT FOR THE
6 BACK AND THE LEFT KNEE. THE CLAIMANT WILL ALLEGE HE
7 IS IN NEED OF A TOTAL KNEE REPLACEMENT IN THIS CASE.
8 HE WOULD RELY ON THE MEDICAL EVIDENCE IN THIS CASE
9 FROM DR. DASILVA, DR. JOHNSON, FOR HIS BACK. THE
10 EMPLOYER/CARRIER WOULD ARGUE THAT THE CLAIMANT HAS
11 REACHED M.M.I. FOR HIS BACK AND FOR HIS LEFT KNEE.
12 THEY WOULD ARGUE THAT A CONSENT ORDER WAS ENTERED
13 INTO SENDING THE CLAIMANT TO DR. DASILVA AND DR.
14 LAMOTTA IN THIS CASE. IN ANY EVENT, THEY BOTH RELY
15 ON THE DEPOSITION OF DR. DASILVA IN THIS CASE AND ON
16 THE MEDICAL EVIDENCE.

17 THAT BEING STATED, DO THE PARTIES WANT TO STATE
18 ANYTHING FOR THE RECORD?

19 BY MR. CLARK:

20 JUST THAT WE ALSO RELY ON DR. DRAKEFORD'S
21 DEPOSITION AS WELL.

22 BY THE COMMISSIONER:

23 OKAY, DR. DRAKEFORD AS WELL; THAT'S NOTED.

24 BY MR. CLARK:

25 ON THE KNEE.

1 BY MR. ABRAMSON:

2 NOTHING ELSE, YOUR HONOR. THANK YOU.

3 BY THE COMMISSIONER:

4 ALL RIGHT. LET'S SWEAR MR. DAVIS IN, PLEASE.

5 BY THE COURT REPORTER:

6 SIR, IF YOU WOULD RAISE YOUR RIGHT HAND,
7 PLEASE.

8 * * * * *

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

12 EVERETT DAVIS,

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

14 BY THE COMMISSIONER:

15 MR. CLARK?

16 BY MR. CLARK:

17 THANK YOU, SIR.

18 Everett Davis - Direct Examination by Mr. Clark

19 Q. STATE YOUR FULL NAME, SIR.

20 A. EVERETT DAVIS.

21 Q. AND, MR. DAVIS, ARE YOU 50 YEARS OLD?

22 A. YES.

23 Q. WHERE ARE YOU FROM, SIR?

24 A. SUMTER.

25 Q. ALL RIGHT. AND WHAT IS YOUR MARITAL STATUS?

- 1 A. DIVORCED.
- 2 Q. AND HOW MANY CHILDREN DO YOU HAVE?
- 3 A. THREE.
- 4 Q. ARE ANY OF THOSE CHILDREN MINORS?
- 5 A. ONE.
- 6 Q. OKAY, AND YOU SUPPORT THAT CHILD?
- 7 A. YES.
- 8 Q. WHAT ABOUT GRANDKIDS; DO YOU TAKE CARE OF YOUR
- 9 GRANDKIDS AS WELL?
- 10 A. YES.
- 11 Q. ALL RIGHT. AND HAVE YOU EVER BEEN CONVICTED OF A
- 12 CRIME, SIR?
- 13 A. NO.
- 14 Q. ALL RIGHT. AND DID YOU GRADUATE FROM HIGH SCHOOL?
- 15 A. YES.
- 16 Q. AND AFTER HIGH SCHOOL DID YOU ATTEND CENTRAL
- 17 CAROLINA TECHNICAL COLLEGE?
- 18 A. YES.
- 19 Q. AND I BELIEVE YOU STUDIED INDUSTRIAL MAINTENANCE
- 20 THERE?
- 21 A. YES.
- 22 Q. DID YOU GET A CERTIFICATE OR SOMETHING?
- 23 A. YES.
- 24 Q. ALL RIGHT. NOW, YOU HAVE A COMMERCIAL DRIVER'S
- 25 LICENSE?

- 1 A. YES, I DO.
- 2 Q. HOW LONG HAVE YOU HAD THAT LICENSE?
- 3 A. ABOUT 15 YEARS.
- 4 Q. ALL RIGHT. AND YOU HAVE -- HAVE YOU BEEN DRIVING
- 5 TRUCKS 15 YEARS?
- 6 A. YES.
- 7 Q. NOW, PRIOR TO BEING A TRACTOR TRAILER DRIVER, DID
- 8 YOU WORK IN A PLANT DOWN AT BOSCH BRAKING SYSTEMS?
- 9 A. YES.
- 10 Q. HOW LONG DID YOU WORK THERE?
- 11 A. ABOUT 10, 11 YEARS.
- 12 Q. OKAY. AND DID YOU DO SOME WAREHOUSE WORK AT ONE
- 13 POINT?
- 14 A. YES.
- 15 Q. HAVE YOU EVER HAD A WORKERS' COMP CLAIM BEFORE?
- 16 A. NO.
- 17 Q. NOW, PRIOR TO THIS ACCIDENT, HAD YOU HAD ANY
- 18 TREATMENT FOR YOUR LEFT KNEE?
- 19 A. NO.
- 20 Q. ALL RIGHT. SOME YEARS AGO DID YOU HAVE SURGERY ON
- 21 YOUR LEFT KNEE?
- 22 A. YES, I DID.
- 23 Q. HOW MANY YEARS AGO WAS THAT?
- 24 A. ABOUT OVER -- MAYBE OVER 20 YEARS.
- 25 Q. OKAY. AND THAT WAS ARTHROSCOPIC SURGERY?

1 A. YES.

2 Q. NOW, IN THE 20 YEARS HAVE YOU EVER GONE TO THE
3 DOCTOR FOR TREATMENT FOR THAT KNEE?

4 A. NO.

5 Q. AND WHAT ABOUT YOUR BACK; DID YOU HAVE ANY PROBLEMS
6 WITH YOUR BACK BEFORE THIS ACCIDENT?

7 A. NO.

8 Q. NOW, JUST SINCE IT'S AN ADMITTED CASE, CAN YOU
9 BRIEFLY DESCRIBE FOR THE COMMISSIONER HOW THIS
10 ACCIDENT HAPPENED.

11 A. I WAS HEADING UP NORTH TOWARD BALTIMORE, REALLY TO
12 PHILADELPHIA TO PICK UP A LOAD, AND IT WAS PROBABLY
13 ABOUT MAYBE 5:00 IN THE EVENING, SO TRAFFIC WAS KIND
14 OF HEAVY DURING THAT TIME, AND IT WAS AT NIGHT. AND
15 ALL I HEARD WAS A LOUD BOOM, AND I DIDN'T KNOW WHAT
16 IT WAS. I THOUGHT IT WAS MAYBE I BLEW A TIRE,
17 'CAUSE THAT'S HOW IT SOUNDS WHEN YOU BLOW A TIRE ON
18 A TRUCK. SO I WAS LOOKING IN MY REARVIEW FOR SOME
19 RUBBER, 'CAUSE USUALLY THAT'S WHAT HAPPENS AFTER A
20 TIRE BLOWS; IT'LL SLING RUBBER ALL OVER THE PLACE.
21 BUT IT WASN'T ANY. SO I JUST ASSUMED THAT THE TRUCK
22 WAS ALL RIGHT, AND I DIDN'T KNOW WHAT IT WAS, AND I
23 WAS HEADING TO THE TRUCK STOP ANYWAY TO STOP TO GET
24 SOME FUEL, SO I FIGURED I'LL WAIT 'TIL I GOT THERE
25 TO CHECK THE TRUCK OUT. BUT THEN ALL OF A SUDDEN

1 THE TRUCK JUST LUNGED FORWARD REAL HARD AS IF YOU
2 HIT THE BRAKES ON IT, AND I DIDN'T KNOW WHAT IT WAS,
3 YOU KNOW, THAT CAUSED IT TO START IT TO SLOW DOWN.
4 SO THEN I SAID, WELL, LET ME GET OFF THIS ROAD
5 BEFORE THE TRUCK COMES TO A STOP SO I WON'T BE IN
6 TRAFFIC. SO AS I PROCEED TO PULL OVER TO THE LEFT
7 OF THE ROAD, I SEEN SOMETHING JUST SHOT PASSED THE
8 DRIVER'S SIDE OF THE TRUCK. I JUST SAW A LIGHT SHOT
9 PASSED THE DRIVER'S SIDE OF THE TRUCK, AND I DIDN'T
10 KNOW WHAT IT WAS. WHEN I LOOKED IN THE MIRROR, I
11 SEEN A CAR BEHIND ME DRIVING ALL, YOU KNOW,
12 ERRATICALLY, AND WHAT NOT, AND I DIDN'T -- I THOUGHT
13 MAYBE HE HIT SOMETHING THAT FELL OFF OF THE TRUCK,
14 FROM THE LOAD BOOM. SO BY THE TIME I GOT OVER TO
15 THE SIDE OF THE ROAD HE HAD DONE SPIN OUT INTO THE
16 MEDIAN, AND HE WAS OFF INTO THE MEDIAN BY THE TIME I
17 PULLED OVER AND GOT OUT THE TRUCK. THEN HE CAME
18 WALKING UP THE MEDIAN, WANTED TO SEE WAS I ALL
19 RIGHT, AND I WAS ASKING HIM WAS HE OKAY, BECAUSE
20 NEITHER ONE OF US KNEW WHAT HAD HAPPENED, 'CAUSE,
21 YOU KNOW, IT HAPPENED SO QUICK, I GUESS, AND HE
22 DIDN'T REALIZE WHAT HAD HAPPENED EITHER, 'CAUSE IT
23 JUST -- LIKE I SAY, IT JUST HAPPENED.

24 Q. CAN YOU ---

25 A. AND ---

1 Q. I'M SORRY; ARE YOU FINISHED?

2 A. YEAH.

3 BY MR. CLARK:

4 COMMISSIONER, WE'VE ATTACHED A COPY OF THE
5 ACCIDENT REPORT AS APA THREE.

6 BY THE COMMISSIONER:

7 OKAY.

8 BY MR. CLARK:

9 WHICH SHOWS THE CAR KIND OF WRAPPED AROUND THE
10 FRONT OF THE TRUCK, KIND OF UNUSUAL ACCIDENT.

11 DIRECT EXAMINATION RESUMED BY MR. CLARK:

12 Q. NOW, WHEN THE TRUCK LUNGED FORWARD, DID YOU HIT YOUR
13 BODY ON ANYTHING IN THE TRUCK?

14 A. YEAH. MY KNEE HIT THE BOTTOM OF THE DASHBOARD.

15 Q. OKAY. AND WHICH -- SO YOUR LEFT KNEE HIT THE BOTTOM
16 OF THE DASHBOARD?

17 A. YES.

18 Q. ALL RIGHT. AND WHEN YOUR LEFT KNEE HIT THE BOTTOM
19 OF THE DASHBOARD, DID IT CAUSE YOUR KNEE TO BLEED?

20 A. YES. IT BROKE THE SKIN ON THE KNEE, AND IT WAS
21 BLEEDING A LITTLE BIT.

22 Q. OKAY. SO IT HIT RIGHT UP UNDER THE DASHBOARD?

23 A. YEAH.

24 Q. DID IT HIT HARD?

25 A. YES.

1 Q. NOW, JUST BEFORE THIS ACCIDENT, THE DAY OF THE
2 ACCIDENT WERE YOU HAVING ANY PROBLEMS WITH YOUR
3 KNEE?

4 A. NO.

5 Q. WERE YOU HAVING ANY PROBLEMS WITH YOUR BACK?

6 A. NO.

7 Q. WHAT ABOUT RIGHT AFTER THE ACCIDENT; WERE YOU HAVING
8 ANY PROBLEMS WITH YOUR KNEE?

9 A. YEAH. IT WAS HURTING, BUT I DIDN'T THINK NOTHING OF
10 IT AT THE TIME. YOU KNOW, I JUST THOUGHT MAYBE IT
11 WAS JUST A LITTLE PAIN AND EVENTUALLY IT WOULD STOP.

12 Q. OKAY, ALL RIGHT. DID IT STOP?

13 A. NO. AS -- AS TIME WENT ON IT STARTED HURTING EVEN
14 MORE. YOU KNOW, AS A WEEK, COUPLE WEEKS WENT BY, IT
15 STARTED PROGRESSING.

16 Q. ALL RIGHT. NOW, DID YOU ASK FOR A DOCTOR AT THAT
17 TIME?

18 A. NO, BECAUSE I HAD ALREADY HAD AN APPOINTMENT TO SEE
19 MY DOCTOR FOR A PHYSICAL, AND I FIGURED, YOU KNOW,
20 MAYBE IT WAS JUST SOME PAIN THAT WAS HAPPENING FROM
21 THE KNOCK ON THE DASH, THAT IT WOULD EVENTUALLY JUST
22 STOP. SO I FIGURED SINCE I WAS GOING TO SEE MY
23 DOCTOR ANYWAY THAT I WOULD ASK HIM ABOUT IT.

24 Q. SO YOU HAD AN APPOINTMENT SCHEDULED FOR YOUR DOCTOR
25 IN DECEMBER?

1 A. YES.

2 Q. AND YOU WAITED TO SEE HIM?

3 A. YES.

4 Q. NOW, THE PAIN THAT YOU FELT, DID IT COME ABOUT ALL
5 OF A SUDDEN?

6 A. NO, IT JUST STARTED HAPPENING GRADUALLY. IT WOULD
7 -- LIKE I SAID, IT JUST STARTED -- THE PAIN STARTED
8 TO INCREASE. IT -- LIKE MAYBE THE FIRST WEEK IT WAS
9 JUST LIKE AN ACHING PAIN. THEN THE SECOND WEEK IT
10 WAS LIKE A NAGGING PAIN. THEN, YOU KNOW, AS TIME
11 WENT ON IT JUST STARTED HURTING MORE AND MORE.

12 Q. ALL RIGHT. AND HAS YOUR BACK STARTED TO BOTHER YOU
13 AFTER THIS ACCIDENT?

14 A. YES. IT -- LIKE I -- THAT STARTED GRADUALLY, TOO,

15 BECAUSE I JUST ASSUMED THAT IT CAME FROM WHEN --
16 FROM ME HAVING TO PUT SO MUCH PRESSURE ON MY OTHER
17 LEG TO KEEP THE OTHER LEG FROM HURTING THAT IT MIGHT
18 HAVE CAUSED MY BACK TO START HURTING.

19 Q. ALL RIGHT. NOW, DID YOU WALK WITH A LIMP BEFORE
20 THIS ACCIDENT?

21 A. BARELY.

22 Q. YOU HAD A SLIGHT LIMP BEFORE THIS ACCIDENT?

23 A. YEAH. IT WASN'T REALLY NOTICEABLE. IT WAS JUST
24 FROM ME HAVING THE SURGERY AND LEARNING HOW TO WALK
25 AGAIN. YOU GRADUALLY JUST HAVE A -- YOU KNOW WHAT I

1 MEAN? YOU'RE GONNA GRADUALLY FAVOR THAT LEG BECAUSE
2 OF THE -- YOU KNOW, THE SURGERY. BUT THEN AS TIME
3 WENT ON, YOU KNOW, IT -- LIKE I SAID, IT WAS JUST A
4 GRADUAL LIMP TO WHERE IT DIDN'T EVEN -- WASN'T
5 REALLY NOTICEABLE.

6 Q. SO, HOW IS YOUR LIMP NOW?

7 A. IT'S WORSE. IT'S WORSE. SOMETIME, LIKE I SAY, I BE
8 IN SO MUCH PAIN SOMETIME TO WHERE I CAN BARELY WALK,
9 OR IT MIGHT BE SOMETIME WHERE I COULD BE WALKING AND
10 IT WOULD START HURTING SO MUCH TO WHERE I HAVE TO
11 STOP.

12 Q. HOW LONG CAN YOU WALK WITHOUT KNEE PAIN?

13 A. MAYBE ABOUT A CITY BLOCK.

14 Q. OKAY. AND WHAT ABOUT YOUR BACK?

15 A. WELL, IT'LL START HURTING, TOO, AFTER -- AFTER THE
16 SAME PERIOD OF TIME.

17 Q. WHAT ABOUT STANDING; CAN YOU STAND?

18 A. I CAN, BUT AFTER I HAVE BEEN STANDING FOR A PERIOD
19 OF TIME IT STARTS TO HURT.

20 Q. WHAT ABOUT SITTING; HOW DOES THAT AFFECT YOU?

21 A. SITTING DOESN'T REALLY BOTHER ME AS MUCH AS IT DOES
22 WHEN I'M STANDING. BUT I COULD BE SITTING SOMETIME,
23 AND IT'LL HURT, AND THEN SOMETIME IT WON'T. YOU
24 KNOW, IT JUST ALL DEPENDS ON HOW I'M SITTING.

25 Q. ALL RIGHT. DO YOU TAKE ANY MEDICATION?

1 A. NO.

2 Q. NOW, YOU HAVE CONTINUED TO WORK?

3 A. YES.

4 Q. HAS THE PAIN BEEN SO BAD WHERE YOU CAN'T WORK; HOW
5 CAN YOU EXPLAIN THAT?

6 A. AT TIMES IT GETS SO BAD TO WHERE -- I DEAL WITH IT,
7 BUT IT GETS -- LIKE SOMETIME WHEN I -- AFTER SITTING
8 FOR A PERIOD OF TIME, WHEN I GO TO GET UP, I WOULD
9 HAVE TO JUST STAND THERE FOR A WHILE BEFORE I COULD
10 MOVE BECAUSE MY BACK BE HURTING SO BAD, AND THEN I
11 HAVE TO LIKE KIND OF LIKE WALK SLOWLY TO LOOSEN
12 EVERYTHING UP. ONCE I START MOVING, THEN I'M OKAY.

13 Q. ALL RIGHT. WHAT ABOUT YOUR KNEE?

14 A. KNEE, THE SAME WAY. WELL, USUALLY, ONCE I START

15 WALKING AROUND, AND WHATNOT, IT KIND OF LOOSEN UP A
16 LITTLE BIT, BUT IT STILL -- I STILL BE IN PAIN.

17 Q. OKAY. AND SO, HAS YOUR KNEE PAIN INCREASED AFTER
18 THE ACCIDENT?

19 A. YES, IT DID.

20 Q. OKAY, ALL RIGHT. WOULD YOU SAY IT INCREASED A
21 LITTLE BIT, A LOT, OR WHAT?

22 A. A LOT.

23 Q. AND YOU TALKED WITH DR. DASILVA ABOUT YOUR TREATMENT
24 OPTIONS; IS THAT CORRECT?

25 A. YES.

1 Q. AND WHAT KIND OF TREATMENT DO YOU WANT?

2 A. WELL, I WANT SOME TREATMENT FOR MY KNEE AND MY BACK,
3 I MEAN, BECAUSE, LIKE I SAY, THE PAIN IS SO BEARABLE
4 -- UNBEARABLE AT MOST OF THE TIME TO WHERE IT JUST
5 -- YOU KNOW, YOU JUST CAN'T REALLY HARDLY DO
6 NOTHING. I CAN'T REALLY -- LIKE I LIKE WALKING. I
7 CAN'T WALK, YOU KNOW, AND I BE STANDING A LOT, AND
8 THERE BE TIMES WHEN I CAN'T STAND WITHOUT LEANING
9 OVER OR SOMETHING TO KIND OF RELIEVE THE PAIN.

10 Q. CAN YOU AFFORD TO TAKE TIME OFF WORK AT THIS POINT?

11 A. NO.

12 Q. WHY NOT?

13 A. BECAUSE I -- I MEAN, I HAVE PEOPLE THAT I'M
14 RESPONSIBLE FOR, AND NOT ONLY THAT, I HAVE BILLS
15 THAT I HAVE TO PAY, YOU KNOW, AND I'M NOT USED TO
16 SITTING AROUND WAITING ON SOMEBODY TO JUST SEND ME
17 SOME -- YOU KNOW, I ALWAYS WORKED, AND IT'S JUST
18 WHAT I KNOW TO DO.

19 Q. ALL RIGHT. IF YOU HAD NOT BEEN ABLE TO DRIVE THE
20 TRUCK FROM THE ACCIDENT SITE, WHAT WOULD HAVE
21 HAPPENED TO THE LOAD AND YOUR SCHEDULE AND THE
22 EMPLOYER; CAN YOU EXPLAIN WHAT WOULD HAVE HAPPENED?

23 A. WELL, FIRST OF ALL, THEY WOULD HAVE HAD TO SEND
24 SOMEBODY OUT TO GET THE TRUCK. SECOND OF ALL, I
25 WOULDN'T HAVE BEEN ABLE TO PICK UP THE LOAD. THEY

1 PROBABLY EITHER HAD TO EITHER RESCHEDULE IT OR HAVE
2 SOMEONE ELSE TO GO GET IT. AND THEN, YOU KNOW, THAT
3 WOULD HAVE JUST THROW EVERYTHING ELSE BACK, AND THEN
4 THEY HAD TO RESCHEDULE EVERYTHING ELSE.

5 Q. ALL RIGHT. AND WERE YOU ON A TIME SCHEDULE TO BE
6 SOMEWHERE ELSE?

7 A. YES.

8 Q. WHERE WAS THAT?

9 A. I HAD TO BE WHERE I NEEDED TO BE TO PICK UP THE LOAD
10 BY SOMETIME THAT NIGHT, I THINK.

11 BY MR. CLARK:

12 OKAY. THANK YOU, SIR. THAT'S ALL I HAVE.

13 BY THE COMMISSIONER:

14 ALL RIGHT; MR. ABRAMSON?

15 BY MR. ABRAMSON:

16 THANK YOU, COMMISSIONER.

17 Everett Davis - Cross Examination by Mr. Abramson

18 Q. MR. DAVIS, ISN'T IT TRUE THAT AFTER YOUR TRUCKING
19 ACCIDENT YOU DID NOT COMPLAIN TO THE STATE TROOPER
20 THAT WORKED THE ACCIDENT ABOUT ANY PROBLEMS WITH
21 YOUR LEFT KNEE OR YOUR BACK; ISN'T THAT TRUE?

22 A. NO, THAT'S NOT TRUE. I TOLD -- HE ASKED ME WAS I
23 OKAY, AND I TOLD HIM THAT I HIT MY KNEE ON THE DASH
24 AND IT HURT A LITTLE BIT, BUT, YOU KNOW, IT WASN'T
25 -- TO ME, AT THE TIME IT WASN'T NO BIG DEAL.

1 Q. YOU DIDN'T ASK HIM TO CALL AN AMBULANCE FOR YOU, DID
2 YOU?

3 A. I DIDN'T FEEL LIKE I NEEDED ONE.

4 Q. SO IT'S TRUE THAT YOU DIDN'T TELL THE TROOPER THAT
5 YOU HAD INJURED YOUR KNEE TO THE EXTENT TO WHERE YOU
6 FELT LIKE YOU NEEDED MEDICAL ATTENTION?

7 A. NO.

8 Q. SAME THING WITH RESPECT TO YOUR BACK?

9 A. RIGHT.

10 Q. NOW, IT'S ALSO TRUE THAT YOU CONTINUED DRIVING FROM
11 THE ACCIDENT SCENE, WHICH WAS THE D.C./BALTIMORE
12 AREA, ON TO PHILADELPHIA; ISN'T THAT TRUE?

13 A. YES, IT IS.

14 Q. AND THAT TRIP TOOK YOU ROUGHLY ABOUT THREE HOURS;
15 ISN'T THAT RIGHT?

16 A. I ASSUME.

17 Q. AND ISN'T IT TRUE THAT AFTER MAKING THE DELIVERY THE
18 NEXT DAY IN PHILADELPHIA THAT YOU DROVE ON DOWN TO
19 FLORIDA?

20 A. NO. I WASN'T MAKING A DELIVERY; I WAS GOING TO PICK
21 UP.

22 Q. BUT YOU DROVE YOUR TRUCK ---

23 A. YES.

24 Q. --- FROM PHILADELPHIA ALL THE WAY DOWN TO FLORIDA?

25 A. YES, I DID.

1 Q. WHERE IN FLORIDA DID YOU GO?

2 A. I DON'T EXACTLY RECALL, BUT I KNOW IT EITHER HAD TO
3 HAVE BEEN LAKE LAND OR EITHER TAMPA. I THINK I WENT
4 OVER TO POTTSVILLE TO PICK UP SOME BOTTLES AND TAKE
5 BACK DOWN TO TAMPA.

6 Q. OKAY. AND DURING THAT TRIP YOU DROVE THROUGH SOUTH
7 CAROLINA; ISN'T THAT TRUE?

8 A. NO.

9 Q. YOU DID NOT DRIVE ---

10 A. WELL, YEAH, YEAH, YEAH.

11 Q. OKAY. SO, ISN'T IT TRUE THAT YOUR KNEE WASN'T
12 BOTHERING YOU ENOUGH AFTER THE ACCIDENT -- THE NEXT
13 DAY AFTER THIS IMPACT WHEN YOU ALLEGEDLY HIT YOUR --
14 STRUCK YOUR KNEE ON THAT DASH TO THE EXTENT TO WHERE

15 IT ACTUALLY BLED, ISN'T IT TRUE THAT THE DAY YOUR
16 KNEE WASN'T BOTHERING YOU ENOUGH TO WHERE YOU FELT
17 LIKE YOU NEEDED MEDICAL TREATMENT; ISN'T THAT TRUE?

18 A. YES.

19 Q. OKAY, BECAUSE YOU DROVE THROUGH SOUTH CAROLINA?

20 A. YES.

21 Q. OKAY. AND YOU DIDN'T STOP TO GO SEE A DOCTOR?

22 A. RIGHT.

23 Q. OKAY. SO YOU DROVE ON DOWN TO FLORIDA, PICKED UP A
24 LOAD. WHERE DID YOU GO NEXT?

25 A. I DON'T RECALL.

1 Q. OKAY. BUT YOU KEPT ON DRIVING; ISN'T THAT RIGHT?

2 A. YES.

3 Q. OKAY, ALL RIGHT. AND ISN'T IT TRUE THAT AFTER THE
4 ACCIDENT YOU DIDN'T ASK ANYONE WITH YOUR EMPLOYER TO
5 SEND YOU TO THE DOCTOR TO HAVE YOUR LEFT KNEE OR
6 YOUR LOW BACK EVALUATED?

7 A. NO.

8 Q. AND IT'S ALSO TRUE THAT AFTER YOUR ACCIDENT YOU KEPT
9 DOING YOUR NORMAL JOB DUTIES OF DRIVING THAT TRUCK?

10 A. YES, I DID.

11 Q. OKAY. AND AS A PART OF THOSE REGULAR JOB DUTIES,
12 ISN'T IT TRUE THAT YOU HAVE TO USE YOUR LEFT LEG TO
13 DEPRESS THAT CLUTCH IN YOUR TRUCK ON A DAILY BASIS?

14 A. NOT ON A REGULAR. I MEAN, TO START MOVING, YES, BUT
15 AFTER THAT YOU CAN FLOAT THE GEARS.

16 Q. WHEN YOU SAY, "FLOAT THE GEARS," WHAT DO YOU MEAN?

17 A. YOU CAN STILL CHANGE THE GEARS WITHOUT USING THE
18 CLUTCH.

19 Q. NOW, IT IS TRUE THAT YOU DIDN'T SEEK MEDICAL
20 ATTENTION FOR THAT LEFT KNEE UNTIL DECEMBER 27,
21 2011, WHEN YOU SAW DR. COMPTON; ISN'T THAT RIGHT?

22 A. YES.

23 Q. AND YOU'VE ALREADY TESTIFIED THAT THAT EVALUATION
24 WAS A PART OF YOUR YEARLY PHYSICAL?

25 A. WELL, NO, IT WASN'T A PART OF MY YEARLY PHYSICAL. I

1 FIGURED SINCE I WAS GOING TO SEE HIM TO TAKE A
2 PHYSICAL THAT I WOULD ASK HIM ABOUT MY KNEE.

3 Q. RIGHT. BUT YOU ALREADY HAD THAT APPOINTMENT
4 SCHEDULED BECAUSE THAT WAS WHEN YOU HAD YOUR YEARLY
5 PHYSICAL DONE, RIGHT?

6 A. RIGHT. YES, YES.

7 Q. SO, YOU DIDN'T SCHEDULE THAT APPOINTMENT TO HAVE
8 YOUR LEFT KNEE OR YOUR LOW BACK LOOKED AT, CORRECT?

9 A. NO, NO.

10 Q. OKAY. AND THAT'S BECAUSE YOUR LEFT KNEE AND YOUR
11 LOW BACK WEREN'T HURTING YOU ENOUGH TO SCHEDULE AN
12 APPOINTMENT WITH THE DOCTOR SPECIFICALLY TO HAVE THE
13 LEFT KNEE AND THE LOW BACK LOOKED AT; ISN'T THAT
14 TRUE?

15 A. NO, THAT'S NOT RIGHT. I DIDN'T SCHEDULE IT BECAUSE
16 I WAS ALREADY GOING TO SEE HIM, AND I FIGURED SINCE
17 I WAS GOING TO SEE HIM ANYWAY THAT I WOULD ASK HIM
18 TO LOOK AT MY BACK AND MY LOWER KNEE.

19 Q. MR. DAVIS, ISN'T IT TRUE THAT SINCE YOUR WORK
20 ACCIDENT YOU'VE MISSED NO TIME FROM WORK BECAUSE OF
21 YOUR LEFT KNEE PAIN AND YOUR LOW BACK PAIN; ISN'T
22 THAT TRUE?

23 A. YES.

24 Q. IT'S ALSO TRUE, MR. DAVIS, THAT SINCE YOUR WORK
25 ACCIDENT YOU'VE BEEN ABLE TO DRIVE APPROXIMATELY 11

1 HOURS PER DAY ON AVERAGE; ISN'T THAT TRUE?

2 A. YES.

3 Q. OKAY.. HOW MANY DAYS A WEEK DO YOU WORK?

4 A. FIVE, SOMETIMES SIX, SOMETIMES SEVEN; IT ALL
5 DEPENDS.

6 Q. SO YOU'RE DRIVING AND WORKING IN EXCESS OF 50 HOURS
7 A WEEK; ISN'T THAT TRUE?

8 A. YES. BUT DURING THE TIME THAT I'M STILL DOING THIS
9 DRIVING I'M STILL -- WAS IN PAIN. BUT, LIKE I SAY,
10 I WAS JUST WAITING UNTIL SOMEONE WAS ABLE TO DO
11 SOMETHING ABOUT IT.

12 Q. AND ISN'T IT ALSO TRUE THAT YOU AVERAGE ABOUT 2,900
13 MILES A WEEK DRIVING?

14 A. YES.

15 Q. AND YOU HAVEN'T BEEN COMPLAINING TO ANY OF YOUR
16 SUPERVISORS WITH YOUR EMPLOYER ABOUT ANY ONGOING
17 LEFT KNEE OR LOW BACK PAIN, HAVE YOU?

18 A. NO, I HAVEN'T BEEN COMPLAINING ABOUT THEM BECAUSE I
19 HAVE ALREADY BEEN SEEING DOCTORS AND STUFF ABOUT IT.

20 Q. BUT YOUR LEFT KNEE PAIN IS NOT SIGNIFICANT ENOUGH TO
21 WHERE YOU COMPLAIN TO YOUR SUPERVISOR ABOUT ONGOING
22 PROBLEMS; ISN'T THAT TRUE?

23 A. WELL, I DIDN'T -- LIKE I SAY, I DIDN'T FEEL THAT I
24 HAD TO COMPLAIN TO THEM ABOUT IT BECAUSE I WAS
25 ALREADY GOING THROUGH THIS PROCEDURE AND THEN I WAS

1 ALREADY SEEING DOCTORS AT THE TIME ABOUT IT.

2 Q. BUT ISN'T IT FAIR TO SAY, MR. DAVIS, THAT YOUR
3 CURRENT LEFT KNEE PAIN IS NOT SIGNIFICANT ENOUGH TO
4 PREVENT YOU FROM DOING YOUR REGULAR JOB DUTIES AND
5 DRIVING YOUR TRUCK?

6 A. IT'S -- NO, I WOULDN'T SAY THAT. IT IS, BUT, LIKE I
7 SAY, I DON'T USE MY -- MY LEG AS MUCH AS YOU THINK
8 THAT I DO DRIVING THE TRUCK. I WOULD SAY DURING THE
9 COURSE OF A DAY OF DRIVING THAT TRUCK I MIGHT HAVE
10 TO USE THAT CLUTCH -- TO USE MY CLUTCH MAYBE A THIRD
11 PERCENT OF THE DAY BECAUSE THE MAJORITY OF THE TIME
12 I FLOAT THE GEARS, AND THEN IT BE TIME -- THERE HAS
13 BEEN TIMES WHERE I THOUGHT I MIGHT HAVE HAD TO CALL
14 SOMEBODY TO COME AND GET THE TRUCK BECAUSE MY KNEE
15 WOULD BE HURTING SO BAD TO WHERE I COULDN'T PUT
16 PRESSURE ON IT. YOU KNOW, I HAVE A PIECE OF BONE
17 THAT FLOATS AROUND IN MY KNEE, AND IT GET TO PLACES
18 SOMETIME TO WHERE IN ORDER FOR ME TO BEND MY KNEE I
19 HAVE TO ALMOST JUST RUB IT TO TRY TO MOVE THAT PIECE
20 OF BONE SO IT WON'T CAUSE ME ANY MORE PAIN THAN IT
21 ALREADY HAS, AND THEN IT'S TIMES THAT I CAN USE IT
22 LIKE HOW I WANT TO. BUT, LIKE I SAY, FOR THE
23 MAJORITY OF THE TIME I CAN SIT IN THAT TRUCK AND GO
24 TO GET OUT OF IT AND I WOULD HAVE TO STAND THERE FOR
25 A WHILE BEFORE I COULD EVEN MOVE.

1 Q. BUT, AGAIN, DESPITE THESE ALLEGED PROBLEMS THAT YOU
2 HAVE YOU ARE NOT TELLING YOUR SUPERVISOR ABOUT IT;
3 ISN'T THAT TRUE?

4 A. WELL, I -- I -- TO BE HONEST WITH YOU, I'M NOT THE
5 TYPE OF PERSON THAT COMPLAIN ABOUT MUCH OF ANYTHING,
6 AND IF I'M ALREADY SEEKING TREATMENT ABOUT IT,
7 THERE'S NOT A WHOLE LOT THAT MY SUPERVISOR CAN DO
8 FOR ME -- I FELT THAT THEY COULD DO FOR ME, AND I
9 NEEDED TO WORK. SO, THEREFORE, I JUST KEPT ON
10 WORKING BECAUSE I NEEDED TO WORK.

11 Q. OKAY. NOW, IT IS TRUE, MR. DAVIS, THAT YOU HAD
12 PROBLEMS WITH THAT LEFT KNEE BEFORE THIS ACCIDENT?

13 A. NO.

14 Q. ALL RIGHT. I'M GOING TO ASK YOU ONE MORE TIME. IT
15 IS TRUE, MR. DAVIS, THAT BEFORE THIS ACCIDENT YOU
16 HAD SOME PAIN AND DISCOMFORT IN THAT KNEE?

17 A. NO, I DIDN'T HAVE ANY PAIN OR DISCOMFORT. I HAD
18 TOLD MY DOCTOR THAT EVERY NOW AND THEN THAT IT WOULD
19 BE, NOT EVEN -- NOT PAIN, BUT I COULD FEEL SOMETHING
20 SLIGHTLY THAT WHERE IT DIDN'T MAKE A DIFFERENCE,
21 BECAUSE IT BECAME SO NORMAL AT THE TIME TO WHERE IT
22 DIDN'T EVEN BOTHER ME LIKE THAT.

23 BY MR. ABRAMSON:

24 COMMISSIONER, MAY I APPROACH THE WITNESS?

25 BY THE COMMISSIONER:

1 SURE.

2 BY MR. ABRAMSON:

3 AND I'M REFERENCING DEFENDANTS' APAs, PAGE 29.

4 BY THE COMMISSIONER:

5 ALL RIGHT. I GOT IT.

6 BY MR. ABRAMSON:

7 THANK YOU.

8 CROSS EXAMINATION RESUMED BY MR. ABRAMSON:

9 Q. MR. DAVIS, I'M SHOWING YOU DR. COMPTON'S SEPTEMBER
10 7TH, 2011, REPORT, AND IT STATES, QUOTE, "DOES HAVE
11 OCCASIONAL PAINS IN LEFT KNEE FROM ARTHROSCOPY ABOUT
12 15 YEARS AGO FROM AN EIGHTH GRADE INJURY." IS THAT
13 NOT WHAT THE REPORT SAYS?

14 A. YES, THAT'S WHAT IT SAYS.

15 Q. SO I'M GOING TO ASK YOU AGAIN, ISN'T IT TRUE THAT
16 BEFORE THIS TRUCKING ACCIDENT YOU HAD SOME
17 OCCASIONAL LEFT KNEE PAIN; ISN'T THAT TRUE?

18 A. WELL, THE PAIN THAT YOU -- THE WAY THAT YOU'RE
19 DESCRIBING THAT AND FROM THE WAY THAT HE PUT IT
20 ISN'T WHAT -- LIKE WHAT I TOLD HIM. I TOLD HIM THAT
21 I WAS HAVING PAIN, BUT IT WASN'T NO LIKE PAIN THAT
22 HAPPENED ALL THE TIME. IT MIGHT BE SOMETHING THAT
23 HAPPEN EVERY BLUE MOON, EVERY -- NOT EVEN SO OFTEN,
24 EVERY NOW AND THEN.

25 Q. MY QUESTION IS JUST VERY SIMPLE.

1 A. OKAY, WELL, WHAT I'M TRYING TO EXPLAIN TO YOU WAS
2 THE QUESTION THAT YOU ARE ASKING ME, AND THE
3 QUESTION THAT YOU ARE ASKING ME, YOU SAY OCCASIONAL
4 PAIN, THAT -- TO ME, THAT SOUND LIKE YOU'RE SAYING
5 THAT I HAD PAIN EVERY NOW AND THEN, LIKE HERE AND
6 THERE, YOU KNOW, OFTEN. BUT IT WASN'T OFTEN THAT I
7 HAD PAIN. IT WAS LIKE MAYBE, SHOOT, I MIGHT HAVE
8 PAIN -- A PAIN MIGHT HIT ME THIS YEAR OR TODAY, AND
9 I MIGHT NOT FEEL NOTHING FOR THE NEXT WHO KNOW HOW
10 LONG. AND THEN, LIKE I SAY, IT DIDN'T HAPPEN
11 OCCASIONALLY. OCCASIONALLY TO ME MEAN IT HAPPENED
12 KIND OF OFTEN.

13 Q. DO YOU REMEMBER IN YOUR DEPOSITION WHEN I ASKED YOU
14 IF YOU WERE HAVING ANY PROBLEMS WITH THAT KNEE
15 BEFORE THIS ACCIDENT; DO YOU REMEMBER ME ASKING YOU
16 THAT QUESTION?

17 A. YEAH, I REMEMBER YOU ASKING ME THAT.

18 Q. AND WHAT WAS YOUR ANSWER?

19 A. I TOLD YOU I HAD SOME PAIN EVERY -- EVERY -- EVERY
20 NOW AND THEN THAT I HAD SOME PAIN BUT IT WASN'T NO
21 OCCASIONALLY PAIN.

22 BY MR. ABRAMSON:

23 MAY I APPROACH THE WITNESS, YOUR HONOR?

24 BY THE COMMISSIONER:

25 SURE.

1 BY MR. ABRAMSON:

2 AND I'M READING AT LINE 15.

3 BY THE COMMISSIONER:

4 WHICH PAGE?

5 BY MR. ABRAMSON:

6 I'M SORRY; PAGE 12 AT LINE 15.

7 CROSS EXAMINATION RESUMED BY MR. ABRAMSON:

8 Q. MY QUESTION WAS, "OKAY, WERE YOU HAVING ANY PROBLEMS
9 WITH THAT KNEE AT THE TIME OF YOUR ACCIDENT? I'M
10 TALKING ABOUT BEFORE THE ACCIDENT." AND YOUR ANSWER
11 WAS?

12 A. "NO."

13 Q. SO, YOU DIDN'T TELL ME THAT YOU WERE HAVING
14 OCCASIONAL PAIN IN THAT LEFT KNEE BEFORE THE
15 ACCIDENT, DID YOU?

16 A. NO, BECAUSE IT WASN'T OCCASIONAL PAIN. LIKE I SAID,
17 IT WAS SOMETHING THAT HAPPENED AS IF YOU WALK AND
18 TWIST YOUR -- TWIST YOUR ANKLE, AND IT HURTING RIGHT
19 THEN, BUT THEN IT DON'T HURT NO MORE.

20 Q. AND I ALSO ASKED YOU IN YOUR DEPOSITION IF YOU HAD
21 EVER -- WHETHER OR NOT YOU HAD HAD ANY MEDICAL
22 TREATMENT FOR THAT LEFT KNEE BEFORE THE ACCIDENT.

23 A. AND I TOLD YOU NO.

24 Q. YOU DON'T CONSIDER THAT VISIT WITH DR. COMPTON
25 MEDICAL TREATMENT FOR YOUR KNEE?

1 A. THAT WAS AFTER THE ACCIDENT.

2 Q. SIR, I JUST SHOWED YOU THAT REPORT. THAT WAS DATED
3 9-7-11. YOUR ACCIDENT WAS ON 11-28-11.

4 A. OKAY, I DID NOT WENT TO GO SEE DR. COMPTON ABOUT MY
5 KNEE BECAUSE I WASN'T HAVING ANY PROBLEMS WITH IT.
6 I DIDN'T GO SEE HIM ABOUT PROBLEMS WITH MY KNEE. I
7 WENT TO GO SEE -- I -- I THINK I WENT TO GO DO A
8 D.O.T. PHYSICAL OR EITHER A CHECKUP OR SOMETHING. I
9 DON'T REMEMBER WHAT IT WAS.

10 Q. BUT HE'S A DOCTOR?

11 A. YES, HE'S MY PERSONAL DOCTOR.

12 Q. AND YOU COMPLAINED TO HIM ABOUT KNEE PAIN, DIDN'T
13 YOU?

14 A. NO, I DIDN'T. I TOLD HIM -- HE ASKED ME DOES MY
15 KNEE BOTHER ME, 'CAUSE WHEN HE DO -- WHEN THEY DO A
16 PHYSICAL THEY CHECK YOUR KNEES; THEY CHECK
17 EVERYTHING. AND HE ASKED ME ABOUT THE SCARS ON MY
18 KNEE, AND HE ASKED ME DOES IT BOTHER ME. I SAID,
19 "NO, NOT REALLY, YOU KNOW, EVERY -- EVERY NOW AND
20 THEN IT MIGHT, BUT IT'S NOT NOTHING TO WHERE IT HAD
21 KEEP ME FROM DOING WHAT I NORMALLY DO."

22 Q. NOW, ISN'T IT TRUE, SIR, THAT YOU ARE NOT TAKING ANY
23 MEDICATION RIGHT NOW FOR THIS ---

24 A. NO.

25 Q. --- LEFT KNEE PAIN THAT YOU'RE HAVING?

1 A. NO, I'M NOT.

2 Q. AND YOU'RE NOT TAKING ANY MEDICATION FOR YOUR LOW
3 BACK; IS THAT TRUE?

4 A. NO, I'M NOT.

5 BY MR. ABRAMSON:

6 I DON'T HAVE ANYTHING ELSE. THANK YOU, SIR.

7 BY THE COMMISSIONER:

8 ALL RIGHT. ANY REDIRECT?

9 BY MR. CLARK:

10 YES, JUST BRIEFLY, COMMISSIONER. MAY I
11 APPROACH THE WITNESS, COMMISSIONER?

12 BY THE COMMISSIONER:

13 SURE.

14 Everett Davis - Redirect Examination by Mr. Clark

15 Q. MR. DAVIS, I'M GOING TO SHOW YOU THE SAME MEDICAL
16 REPORT THAT MR. ABRAMSON SHOWED YOU FROM 9-7-11 ON
17 PAGE 29 OF DEFENDANTS' APA SUBMISSION.

18 BY THE COMMISSIONER:

19 GOT IT.

20 REDIRECT EXAMINATION RESUMED BY MR. CLARK:

21 Q. AND WHERE IT SAYS 9-7-11, THE FIRST TWO WORDS THERE,
22 DOES THAT SAY WHY YOU WERE AT THE DOCTOR BEFORE THIS
23 ACCIDENT?

24 A. YES, IT DOES.

25 Q. AND WHAT DOES IT SAY?

1 A. ANNUAL PHYSICAL.

2 Q. OKAY. SO, YOU DIDN'T GO TO HIM FOR YOUR KNEE, DID
3 YOU?

4 A. NO, I DIDN'T.

5 Q. ALL RIGHT. NOW, ARE THERE ANY MEDICAL RECORDS SINCE
6 YOU HAD SURGERY ON YOUR KNEE, PRIOR TO THIS ACCIDENT
7 -- AND YOU HAD SURGERY ON YOUR KNEE 15 OR 20 YEARS
8 AGO?

9 A. YES, I DID.

10 Q. HAVE YOU BEEN TO ANY DOCTORS DURING THAT TIME PERIOD
11 FOR PROBLEMS WITH YOUR KNEE?

12 A. NO, I HAVEN'T.

13 Q. ALL RIGHT. AND, NOW, DO YOU TAKE ANY OVER-THE-
14 COUNTER MEDICATION FOR YOUR KNEE?

15 A. ADVIL AND TYLENOL.

16 Q. ALL RIGHT. AND MR. ABRAMSON ASKED YOU -- NOW, OF
17 ALL THE DOCTORS THAT YOU'VE SEEN, DR. DRAKEFORD, DR.
18 DASILVA, AND DR. COMPTON, HAS ANYBODY GIVEN YOU ANY
19 MEDICATION TO TAKE FOR YOUR KNEE?

20 A. NO, THEY HAVEN'T.

21 Q. IF THEY HAD GIVEN IT TO YOU, WOULD YOU TAKE IT?

22 A. YES.

23 Q. ALL RIGHT. HE QUESTIONED YOU ABOUT WHY DIDN'T --
24 ABOUT YOU NOT STOPPING IN SOUTH CAROLINA AFTER THE
25 ACCIDENT. WHY DIDN'T YOU STOP IN SOUTH CAROLINA?

1 A. BECAUSE THE PAIN WASN'T THAT SEVERE.

2 BY MR. CLARK:

3 THAT'S ALL I HAVE, COMMISSIONER.

4 BY THE COMMISSIONER:

5 ALL RIGHT. MR. ABRAMSON, ANYTHING ELSE?

6 BY MR. ABRAMSON:

7 NO, SIR, YOUR HONOR.

8 BY THE COMMISSIONER:

9 ALL RIGHT. ANY OTHER WITNESSES FOR THE

10 CLAIMANT?

11 BY MR. CLARK:

12 NO, SIR.

13 BY THE COMMISSIONER:

14 ALL RIGHT. YOU CAN STEP DOWN, SIR. MR.

15 ABRAMSON, ANYTHING ELSE FROM THE EMPLOYER/CARRIER?

16 BY MR. ABRAMSON:

17 YES, SIR, YOUR HONOR. JUST VERY BRIEFLY I'M

18 GOING TO CALL MS. GLENN, CARRIE GLENN.

19 BY THE COMMISSIONER:

20 OKAY, COME ON UP, MA'AM. C-A-R-R-I-E?

21 BY THE WITNESS:

22 YES, SIR.

23 BY THE COMMISSIONER:

24 G-L-E-N-N?

25 BY THE WITNESS:

1 YES, SIR.

2 BY THE COMMISSIONER:

3 ALL RIGHT. SWEAR MS. GLENN IN, PLEASE.

4 BY THE COURT REPORTER:

5 MA'AM, IF YOU WOULD RAISE YOUR RIGHT HAND,
6 PLEASE.

7 * * * * *

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

11 CARRIE GLENN,

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

13 BY THE COMMISSIONER:

14 ALL RIGHT; MR. ABRAMSON?

15 BY MR. ABRAMSON:

16 THANK YOU, YOUR HONOR.

17 Carrie Glenn - Direct Examination by Mr. Clark

18 Q. STATE YOUR NAME FOR THE RECORD, PLEASE, MA'AM.

19 A. CARRIE GLENN.

20 Q. WHERE ARE YOU EMPLOYED?

21 A. SOUTHLAKE TRANSPORT.

22 Q. AND WHAT IS YOUR POSITION WITH THE COMPANY?

23 A. SAFETY DIRECTOR.

24 Q. HOW LONG HAVE YOU BEEN WITH THE COMPANY?

25 A. TWELVE YEARS.

1 Q. DO YOU KNOW MR. DAVIS?

2 A. YES, SIR.

3 Q. AND ARE YOU FAMILIAR WITH HIS WORK ACCIDENT?

4 A. YES.

5 Q. FOLLOWING HIS WORK ACCIDENT, MS. GLENN, DID MR.
6 DAVIS REQUEST MEDICAL ATTENTION?

7 A. NO.

8 Q. DID HE MISS ANY TIME FROM WORK BECAUSE OF THE
9 ACCIDENT?

10 A. NO, NOT THAT I'M AWARE OF. HE'S HAD QUITE A FEW
11 DENTIST APPOINTMENTS, AND WHATNOT, BUT AS FAR AS
12 ANYTHING HAVING TO DO WITH THE ACCIDENT I WAS NOT
13 AWARE OF ANY DOCTORS' APPOINTMENTS RELATED TO THE
14 ACCIDENT.

15 Q. OKAY. AND SINCE THE ACCIDENT -- WELL, IN 2012, LAST
16 YEAR, DID HE ASK YOU FOR ANY MEDICAL TREATMENT FOR
17 THE LEFT KNEE OR THE LOW BACK?

18 A. NO. I WASN'T EVEN AWARE THAT HE WAS BEING TREATED
19 FOR ANY OF THOSE PROBLEMS.

20 Q. HAS HE CONTINUED TO DO HIS REGULAR JOB DUTIES?

21 A. YES.

22 Q. AND WHAT DO THOSE JOB DUTIES ENTAIL?

23 A. HE'S AN OVER-THE-ROAD TRUCK DRIVER, DRIVES
24 APPROXIMATELY 500 TO 600 MILES A DAY DELIVERING DRY
25 GOODS.

1 Q. AND IN TERMS OF WHAT HE HAS TO DO FROM A PHYSICAL
2 STANDPOINT, IS HE ON HIS FEET WHEN HE GETS OUT OF
3 THE CAB; WHAT'S HE DOING?

4 A. YES. HE WOULD -- HE WOULD DO THINGS LIKE, YOU KNOW,
5 OPENING THE SWING DOORS ON THE TRAILER, ROLLING DOWN
6 THE LANDING GEAR, SWITCHING OUT TRAILERS, THINGS OF
7 THAT NATURE.

8 Q. OKAY. AND HE'S DOING THAT HOW MANY DAYS A WEEK?

9 A. FIVE TO SIX.

10 Q. OKAY. AND HOW MANY MILES IS HE DRIVING DOING THAT
11 KIND OF WORK?

12 A. APPROXIMATELY 2,800 TO 3,000 MILES PER WEEK, AN
13 AVERAGE OF ABOUT 2,900.

14 Q. OKAY. SINCE THIS ACCIDENT, HAS MR. DAVIS GIVEN YOU
15 ANY INDICATION THAT HE IS SUFFERING FROM A CHRONIC,
16 SEVERE LEFT KNEE PAIN?

17 A. NO. AFTER THE ACCIDENT, WHEN I SPOKE WITH HIM I
18 ASKED HIM IF HE HAD ANY INJURIES, AND HE SAID NO.
19 THAT WAS IN NOVEMBER. IN JANUARY, LATE JANUARY, HE
20 CAME INTO MY OFFICE RUBBING HIS KNEE. I SAID,
21 "WHAT'S WRONG WITH YOUR KNEE?" HE SAID, "WELL, THE
22 DOCTOR SAID I MIGHT HAVE A LITTLE BIT OF ARTHRITIS
23 IN IT." THAT WAS THE LAST I HEARD OF ANYTHING UNTIL
24 I GOT A LETTER STATING THAT HE HAD HIRED AN ATTORNEY
25 AND FILED A WORKERS' COMP CLAIM. OTHER THAN THAT, I

1 HAD NO IDEA THAT HE WAS GOING TO A DOCTOR FOR ANY
2 PROBLEMS. HE DIDN'T HAVE ANY TIME OFF WORK. I JUST
3 WASN'T AWARE THAT THERE WAS AN INJURY.

4 Q. OKAY. AND WHAT IS YOUR COMPANY'S POLICY WITH
5 RESPECT TO ADMITTING CLAIMS LIKE THIS? IF SOMEONE
6 IS HAVING PROBLEMS AND THEY COME TO YOU AND SAY THEY
7 ARE IN PAIN AND THEY PRESENT YOU WITH A NOTE FROM A
8 DOCTOR WRITING THEM OUT OF WORK, WHAT DO YOU DO?

9 A. WELL, IN THE CASE OF WORKERS' COMP WE WOULD REQUIRE
10 THAT THE DRIVER FILE A REPORT WITHIN 24 HOURS OF THE
11 INJURY, AND THAT WAS NOT DONE.

12 Q. OKAY. BUT IF A DRIVER COMES TO YOU WITH A NOTE FROM
13 A DOCTOR IN AN ADMITTED CLAIM, LIKE WE HAVE HERE
14 TODAY, WRITING THEM OUT OF WORK, WHAT DOES YOUR
15 COMPANY DO? DO THEY COMPLY WITH THAT?

16 A. YOU MEAN IF IT'S AN INJURY CLAIM?

17 Q. RIGHT, IF IT'S A WORKERS' COMP ADMITTED CLAIM.

18 A. OH, YEAH, I MEAN, THEY CAN TAKE TIME OFF FOR A
19 DOCTOR'S APPOINTMENT OR THINGS LIKE THAT. BUT AS
20 FAR AS TIME OFF, THAT WOULD GO THROUGH THE INSURANCE
21 COMPANY.

22 Q. RIGHT, THROUGH YOUR WORKERS' COMP CARRIER?

23 A. RIGHT.

24 Q. RIGHT. SO, MY POINT IS, IF MR. DAVIS CAME TO YOU
25 SAYING THAT HE WAS HAVING SIGNIFICANT LEFT KNEE PAIN

1 THAT WOULD PREVENT HIM FROM WORKING, WHAT WOULD YOU
2 DO?

3 A. HE WOULD HAVE IMMEDIATELY HAD TO CALL THE WORKERS'
4 COMP CARRIER, THE INSURANCE COMPANY, AND FILE A
5 CLAIM WITH THEM.

6 Q. FOR WEEKLY CHECKS TO BE OUT OF WORK?

7 A. RIGHT, OR EVEN JUST FILE AN INJURY REPORT.
8 SOMETIMES, YOU KNOW, A DRIVER MIGHT CUT HIS FINGER,
9 BUT IT'S REALLY NOT A WORKERS' COMP CLAIM, BUT THEY
10 STILL NEED TO REPORT THE INJURY.

11 Q. RIGHT. ALL RIGHT. DO YOU HAVE ANY -- HAVE YOU HAD
12 ANY INDICATION THAT MR. DAVIS IS SUFFERING FROM LOW
13 BACK PAIN RIGHT NOW?

14 A. NO, I HAVE NOT HEARD ANYTHING OF LOWER BACK PAIN.

15 Q. OKAY. AND HAVE YOU OBSERVED MR. DAVIS WALKING WITH
16 A LIMP, A NOTICEABLE LIMP, SINCE THIS ACCIDENT?

17 A. NOT A NOTICEABLE LIMP. I MEAN, NOT THAT I WOULD
18 SAY, "OH, YOU'RE STILL LIMPING." THE ONLY
19 INDICATION I HAD WAS WHEN HE WAS RUBBING HIS KNEE
20 THAT ONE DAY AND I ASKED HIM WHAT WAS WRONG.

21 BY MR. ABRAMSON:

22 I DON'T HAVE ANYTHING ELSE. THANK YOU, MA'AM.

23 BY THE COMMISSIONER:

24 MR. CLARK?

25 BY MR. CLARK:

1 THANK YOU; JUST BRIEFLY.

2 Carrie Glenn - Cross Examination by Mr. Corbett

3 Q. MS. GLENN, DO YOU AGREE THAT MOST OF HIS TIME AT
4 WORK IS SPENT AWAY FROM YOUR OFFICE?

5 A. OH, YEAH.

6 Q. ALL RIGHT. SO, IF HE'S HAVING PROBLEMS, YOU
7 WOULDN'T BE IN A POSITION TO OBSERVE HIM, WOULD YOU,
8 BECAUSE HE'S ON THE ROAD?

9 A. WELL, NO.

10 Q. HE'S ON THE ROAD, RIGHT?

11 A. RIGHT. YEAH, IF HE'S WORKING ---

12 Q. RIGHT.

13 A. --- AND NOT NEEDING TIME OFF, THEN I'M ASSUMING THAT
14 THERE'S NO ISSUE.

15 Q. I UNDERSTAND WHAT YOU ARE ASSUMING, BUT I'M ASKING
16 YOU ABOUT WHAT YOU HAD A CHANCE TO OBSERVE ABOUT
17 HIM. YOU WOULDN'T HAVE HAD A CHANCE TO OBSERVE HIM
18 OVER 90 PERCENT OF THE TIME THAT HE'S WORKING, WOULD
19 YOU?

20 A. NO. HE'S OVER-THE-ROAD.

21 Q. AND THE TIME THAT YOU DID SEE HIM, YOU SAW HIM
22 RUBBING HIS KNEE AT WORK ONE TIME, DIDN'T YOU; ISN'T
23 THAT WHAT YOU JUST SAID?

24 A. ONE TIME I SAW HIM RUBBING HIS KNEE.

25 Q. ALL RIGHT. NOW, DESPITE ALL THAT YOU SAID, HE

1 DIDN'T REPORT IT OR HE DIDN'T SAY THIS OR THAT, THIS
2 CLAIM WAS ACCEPTED, WASN'T IT?

3 A. AS FAR AS I KNOW.

4 Q. RIGHT. AND YOU SAID THAT YOU GOT NOTICE OF THE
5 CLAIM IN JANUARY, RIGHT?

6 A. ACTUALLY, I GOT NOTICE OF THE CLAIM IN FEBRUARY
7 THROUGH THE ---

8 Q. INSURANCE COMPANY.

9 A. --- INSURANCE COMPANY.

10 Q. ALL RIGHT. WELL, ISN'T IT TRUE THAT EVEN AFTER YOU
11 GOT NOTICE OF THE CLAIM HE WASN'T GIVEN ANY MEDICAL
12 TREATMENT FOR SIX MONTHS AFTER THAT, EVEN WHEN YOU
13 KNEW HE WAS CLAIMING HE WAS HURT?

14 A. WELL, THAT WOULD BE BETWEEN HIM AND THE INSURANCE
15 COMPANY.

16 Q. I UNDERSTAND.

17 A. I WOULDN'T GET INVOLVED AT THAT POINT, BUT ---

18 Q. RIGHT. SO -- GO AHEAD; I'M SORRY.

19 A. BUT I WASN'T AWARE THAT HE WAS GETTING MEDICAL
20 TREATMENT.

21 Q. RIGHT. SO, ALL THE QUESTIONS MR. ABRAMSON ASKED YOU
22 ABOUT WHETHER HE WOULD HAVE GOT MEDICAL TREATMENT
23 FOR A WORK-RELATED ACCIDENT, YOU DON'T MAKE THAT
24 DECISION, DO YOU?

25 A. NO. BUT HE WOULD HAVE BEEN ALLOWED TIME OFF. THAT

1 WOULD BE MY PART OF THE DECISION.

2 Q. OKAY, BUT HE NEVER ASKED FOR TIME OFF?

3 A. NO, NEVER.

4 Q. OKAY. AND DESPITE THE FACT THAT YOU WERE -- THAT
5 YOU PERSONALLY WERE AWARE IN FEBRUARY THAT HE WAS
6 FILING A CLAIM AND HE CLAIMED HE HURT HIS LEFT KNEE
7 AND HIS BACK, DID YOU GET HIM ANY MEDICAL TREATMENT
8 THEN?

9 A. WELL, FIRST OF ALL, I DIDN'T KNOW HE HAD HURT HIS
10 BACK. I HAD NEVER HEARD THAT ISSUE. AND IT'S NOT
11 MY RESPONSIBILITY TO GET HIM MEDICAL TREATMENT. I
12 BELIEVE THE WORKERS' COMP CARRIER DIRECTED HIM TO A
13 PHYSICIAN.

14 Q. DO YOU KNOW WHEN THE FIRST TIME IT WAS THAT THEY
15 DIRECTED HIM TO A PHYSICIAN?

16 A. NO, I DON'T.

17 Q. WOULD IT SURPRISE YOU THAT IT WAS AUGUST OF 2012?
18 CAN YOU DISPUTE THAT IT WAS AUGUST THAT ---

19 A. I DO NOT KNOW WHEN. HE SAID HE WENT TO THE DOCTOR
20 IN DECEMBER.

21 Q. YES.

22 A. AND I DIDN'T EVEN KNOW ABOUT THAT ONE, SO I DON'T
23 KNOW.

24 Q. I'M ASKING ABOUT TREATMENT PROVIDED BY THE EMPLOYER.

25 A. I DON'T KNOW.

1 Q. RIGHT. WELL, DO YOU DISPUTE THAT IT WAS AUGUST EVEN
2 THOUGH YOU KNEW ABOUT ---

3 A. I DON'T KNOW WHEN HIS FIRST DOCTOR'S APPOINTMENT WAS
4 THAT WAS DIRECTED BY THE INSURANCE CARRIER.

5 Q. SO, YOU DON'T KNOW?

6 A. I DON'T KNOW.

7 BY MR. CLARK:

8 OKAY. THANK YOU, MA'AM. THAT'S ALL I HAVE.

9 BY MR. ABRAMSON:

10 I DON'T HAVE ANYTHING ELSE. THANK YOU.

11 BY THE COMMISSIONER:

12 ALL RIGHT. ANYTHING ELSE FROM THE
13 EMPLOYER/CARRIER?

14 BY MR. ABRAMSON:

15 NO, SIR, YOUR HONOR.

16 BY THE COMMISSIONER:

17 ALL RIGHT. MR. CLARK, ANYTHING ELSE?

18 BY MR. CLARK:

19 NO, COMMISSIONER.

20 BY THE COMMISSIONER:

21 ALL RIGHT. THAT BEING THE CASE, THAT WILL

22 CONCLUDE THIS HEARING.

23 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS

24 CONCLUDED AT THE HOUR OF 10:09 A.M.)

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1119380

EMPLOYEE/CLAIMANT: EVERETT DAVIS

EMPLOYER: SOUTHLAKE TRANSPORT, INC.

CARRIER: LUMBERMENS UNDERWRITING ALLIANCE

I, TIMMI A. PARRISH, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 40 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF EVERETT DAVIS, TAKEN ON THE 7TH DAY OF JANUARY, 2013.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND OFFICIAL SEAL THIS 22ND DAY OF JANUARY, 2013.

TIMMI A. PARRISH
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 11-20-2018

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

STATE OF SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 1119380

Everett Davis, Employee,)
Claimant,)
vs.)
Southlake Transport, Inc.,)
Employer,)
and)
Lumbermens Underwriting)
Alliance,)
Carrier,)
Defendants.)

Deposition of MICHAEL K. DRAKEFORD, M.D., taken
by Doris Tompkins Brown, Certified Verbatim Reporter
and Notary Public in and for the State of South
Carolina, commencing at 5:18 P.M. on October 24, 2012,
at the offices of Palmetto Orthopaedics & Sports
Medicine Clinic, 595 West Wesmark Boulevard, Sumter,
South Carolina.

Doris Tompkins Brown

COPY

Certified Verbatim Reporter
Post Office Box 853
Sumter, South Carolina 29151
(803) 499-7434

COPY

APPEARANCES

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(No exhibits introduced into deposition)

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(COURT REPORTER'S NOTE: --- INDICATES INTERRUPTION,
INCOMPLETE PHRASE, TRAILING OFF, INCOMPLETE SENTENCE)

EVERETT DAVIS VS. SOUTHLAKE TRANSPORT, INC.
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1 The deposition of Michael K. Drakeford, M.D. is being
2 taken pursuant to Notice before the South Carolina Workers'
3 Compensation Commission and in accordance with the South
4 Carolina Rules of Civil Procedure and Amendments as adopted
5 by the Supreme Court which shall control the taking of said
6 deposition and its use thereof.

7 Counsel, with the specific consent of the witness,
8 waives the reading and signing of the deposition prior to
9 the time it is filed with the Court.

10 (Michael K. Drakeford, M.D., having been duly sworn,
11 testifies as follows:)

12 **Dr. Michael K. Drakeford - Examination by Mr. Clark**

13 Q. Dr. Drakeford, my name is John Clark. We met earlier.
14 I represent Mr. Everett Davis in a Workers'
15 Compensation claim and I'm here to take your
16 deposition for use in a Hearing before the Workers'
17 Comp. Commission. Would you please tell the
18 Commission and me today a summary of your professional
19 background, please?

20 A. I went to college at Clemson University, graduated in
21 1978 with a B.S. in Zoology because they didn't have
22 premed back then. Then I went to Medical University
23 of South Carolina from '78 to '82, graduated in '82
24 with a Medical Degree. I did two years of general
25 surgery residency at Spartanburg Regional Medical

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1 Center and then went in the Army and did an
2 orthopaedic surgery fellowship. I was at the Army
3 Medical Center at Augusta, Georgia. Then I had to pay
4 back two years to the Army, which the last part
5 included Desert Storm. I got out and then did a -- I
6 got out in '91 and then did a fellowship at Johns
7 Hopkins in artificial joint replacement and came back
8 to Sumter in 1992, where I've been in practice ever
9 since then.

10 Q. All right. And you practice here at Palmetto
11 Orthopaedics ---

12 A. Orthopaedics and Sports Medicine Clinic. That's
13 correct.

14 Q. How long have you been in practice here? You might
15 have said it already.

16 A. I've been practicing orthopaedics in Sumter since
17 February '92, but this actual entity, Palmetto
18 Orthopaedics, started in '94.

19 Q. All right. Have you ever been designated as an expert
20 in the Courts of South Carolina ---

21 A. Yes, sir.

22 Q. -- in the field of orthopaedic medicine?

23 A. Yes, sir.

24 MR. CLARK: I would offer Dr. Drakeford
25 as an expert.

1 MR. ABRAMSON: Without objection.

2 Q. All right. Dr. Drakeford, I've reviewed your medical
3 records, and I believe you indicated you examined Mr.
4 Davis on January 30, 2012?

5 A. Yes, sir.

6 Q. And that he was referred to you by Dr. Compton?

7 A. Yes, sir.

8 Q. Did you take a history from him at that time, please?

9 A. Yes, I did.

10 Q. Can you tell us what that was?

11 A. Well, he presented as a forty-nine (49) year old male
12 with the chief complaint of left knee pain. He al --
13 in addition to the pain, he felt as if there was some
14 type of object moving around inside his knee that
15 would move to different spots in his knee. He
16 described the pain as generalized in the front of the
17 knee, what we call the anterior, and as a constant
18 ache or pain. He had crepitus which is the crunching
19 or crackling sound in the knee, decreased range of
20 motion with pain, difficulties with steps and stairs,
21 having to take one step at a time and hold onto the
22 handrail. Positive theatre sign which means his knee
23 would start to hurt if he sat down for prolonged
24 periods. Positive stiffness. Pain could also be
25 precipitated by walking up or down a slope, like a

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1 hill. He said it had been present for about a month
2 and seemed to have begun after a motor vehicle
3 accident a month and a half ago, and as I recall,
4 denied pain before then.

5 Q. All right.

6 A. He said during -- go ahead, I'm sorry.

7 Q. No, go ahead.

8 A. I was just saying that he said that during the MVA,
9 that his knee hit the bottom of a dashboard.

10 Q. And when you say "MVA", you mean motor vehicle
11 accident?

12 A. Correct.

13 Q. All right. And did you do any diagnostic tests?

14 A. We did X-rays while he was here. And, of course, a
15 physical exam as well.

16 Q. Can you tell me about the physical exam that you
17 performed and any X-ray findings, please?

18 A. Probably, the main pertinent findings that he had in
19 his left knee, tenderness over his knee, you know,
20 joint line, with some palpable subcutaneous
21 osteophytes, which means bone spurs palpable under the
22 skin in the subcutaneous area. The lateral
23 retinacular ligament which is the ligament that goes
24 from the outside, outer kneecap to your thigh bone was
25 tight, but he didn't really have any pain when we

1 palpated along the outside of his patella femoral
2 joint which is where the kneecap articulates with the
3 thigh bone. As far as -- he had a somewhat bowlegged
4 deformity, what we call a varus deformity, of three to
5 four degrees which is about nine degrees more
6 bowlegged than normal alignment, nine to ten degrees.
7 He was flexing to a hundred and eight (108) degrees
8 and lacked eleven (11) degrees from full extension
9 which is a decreased range of motion plane when
10 compared to normal. When we did what we call a medial
11 ACT which is Apley's Compression Test, it caused some
12 pain over his inner joint, which is called the medial
13 joint, along with crepitus which is again that
14 crackling sensation. And there was a questionable
15 palpable loose body in the suprapatellar pouch area
16 which is a compartment of the knee just above the
17 kneecap region. Those were probably the main physical
18 exam findings.

19 Q. All right. What was your diagnosis or impression,
20 Doctor?

21 A. Severe degenerative joint disease of his left knee
22 with a genu varum, which is basically a bowlegged
23 deformity, and then he probably had a loose body or
24 loose piece of bone inside his knee called
25 intraarticular loose body.

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1 Q. All right. And do you believe those conditions were
2 caused by his motor vehicle accident that he told you
3 about on November 28th, 2011?

4 A. The X-ray changes looked like they were chronic and
5 had been going on for several years and were probably
6 not caused by the MVA.

7 Q. All right. Do you believe the MVA aggravated the
8 preexisting condition that existed before the MVA?

9 A. Just based on his history and the fact that he said he
10 didn't have knee pain until he had the MVA, it seems
11 to have precipitated or exacerbated the symptoms from
12 his left knee.

13 Q. And would you agree that the aggravation of the
14 preexisting condition manifested itself in the pain
15 that he was feeling in his knee?

16 A. Based on the history that he gave me, that's correct.

17 Q. All right. And is it -- and what -- what kind of
18 treatment did you recommend for him?

19 A. We reviewed the treatment spectrum of nonoperative
20 measures and surgical measures. The nonoperative
21 typical things are anti-inflammatory medicines which
22 sometimes we get guidance from their primary care
23 physician due to possible other medical conditions
24 that they have chronically. The physical therapy
25 which can do things, reduce your pain as well as try

1 to improve his range of motion and strengthen the
2 functions of the knee. And also, corticosteroid
3 injection to decrease the pain and inflammation inside
4 his knee hopefully at least for several months. The
5 surgical option or the arthroscopy was not pushed or
6 recommended, but we just mentioned it for completeness
7 sake. If the loose body itself and its mechanical
8 problems of it rolling around inside his knee were his
9 chief concern, you could arthroscopically remove it,
10 but it would not cure the arthritis in his knee or any
11 symptoms directly related to that arthritis. So, if
12 his desire was more long-term definitive care of his
13 knee pain symptoms, then a total knee arthroplasty was
14 recommended.

15 Q. Now, is your opinion that the treatment, recommended
16 treatment, was causally related to the aggravation of
17 the preexisting condition?

18 A. Yeah. His symptoms precipitated those treatment
19 recommendations.

20 Q. This man works as a truck driver, Doctor. Do you --
21 did you expect him to have any limitations on his
22 ability to work at this point?

23 A. Well, possibly with the use of the clutch in his
24 truck, prolonged sitting, you know, could exacerbate
25 the knee symptoms. I don't know if he has to help do

1 any loading of his truck or heavy lifting, but
2 carrying heavy loads across an arthritic knee can also
3 exacerbate his symptoms.

4 Q. Okay.

5 A. And repetitive bending or climbing up ladders on the
6 truck can exacerbate the knee condition or its
7 symptoms.

8 Q. And the opinions that you have given today, are they
9 stated to a reasonable degree of medical certainty?

10 A. Yeah, based on his history that he gave me.

11 Q. Okay.

12 MR. CLARK: Doctor, I believe those
13 are all the questions I have. I hope
14 I'm not leaving something out.

15 DR. DRAKEFORD: Okay.

16 **Dr. Michael K. Drakeford - Examination by Mr. Abramson**

17 Q. Doctor, my name is Chad Abramson. I represent
18 Southlake Transport, Incorporated, Mr. Davis'
19 employer, and their Workers' Compensation Insurance
20 carrier. Let me ask you this if -- if I'm following
21 your testimony correctly, you issued an opinion to a
22 reasonable degree of medical certainty that because
23 Mr. Davis told you that he was not having problems
24 with that knee before this work accident. ---

25 A. Uh-huh (affirmative response).

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1 Q. -- that's why you believe to a reasonable degree of
2 medical certainty that he had sustained an aggravation
3 of his preexisting condition, the preexisting
4 condition being degenerative arthritis in that left
5 knee; is that correct?

6 A. Correct.

7 Q. Okay. So, if I demonstrate to you today or provide
8 you with evidence today that contradicts that fact,

9 ---

10 A. Uh-huh (affirmative response).

11 Q. -- would that change your opinion?

12 A. It would make me less certain if he was not
13 asymptomatic before it happened.

14 Q. Okay. Doctor, I'm going to show you first of all an
15 excerpt from Mr. Davis' deposition, sworn testimony,
16 that was taken on April 19th, 2012 of this year.

17 A. Okay.

18 Q. And I'm referring specifically to Page 60, and I'm
19 going to let you see this.

20 MR. CLARK: Can I just see that?

21 MR. ABRAMSON: Sure.

22 MR. CLARK: All right.

23 Q. Okay. All right. Doctor, I'll let you read beginning
24 at Line Eight, and the question that I asked when I
25 conducted the deposition to Mr. Davis was, "Okay. All

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1 right. This is important, too. Before this accident,
2 were you having some symptoms in that knee some?" And
3 his answer was ---

4 A. "No".

5 Q. Okay. Now, Line Twelve. "Occasional discomfort or
6 not"? And his answer was ---

7 A. "No".

8 Q. Okay. All right. And Doctor, I'm going to show you
9 what is marked as Defendant's ---

10 MR. CLARK: Is that in the Brief?

11 MR. ABRAMSON: This is in the Prehearing
12 Brief.

13 MR. CLARK: The present one?

14 MR. ABRAMSON: Correct. This is the present
15 Prehearing Brief ---

16 MR. CLARK: Okay.

17 MR. ABRAMSON: --- from October 25th, 2012.

18 MR. CLARK: I don't believe I have it. When
19 did you put that in the mail? I just mailed mine
20 yesterday, I think.

21 MR. ABRAMSON: I'm not sure.

22 MR. CLARK: Can I just take a look at it?

23 MR. ABRAMSON: Yeah, you can take a look at
24 it.

25 MR. CLARK: I haven't got that one yet.

1 MR. ABRAMSON: Okay.

2 MR. CLARK: This is Dr. Compton?

3 MR. ABRAMSON: This is Dr. Compton.

4 MR. CLARK: Okay. All right. That's the
5 only one?

6 MR. ABRAMSON: Yeah, yeah, that's all I'm
7 showing him.

8 MR. CLARK: All right. Okay. All right.

9 Q. This is marked in the Defendant's APA Submissions,
10 Page 29 for the record.

11 A. Uh-huh (affirmative response).

12 Q. This is Dr. Compton's September 7th, 2011 report.

13 A. Uh-huh (affirmative response).

14 Q. And doesn't it state in that report that the patient
15 reported to Dr. Compton, quote, "Does have occasional
16 pains in left knee from arthroscopy about fifteen (15)
17 years ago from 8th grade injury"?

18 A. That's what it says.

19 Q. Okay. So, that would contradict not only the
20 patient's testimony that I just showed you, sworn
21 testimony, but also what he told you when you saw him
22 initially; is that correct?

23 A. Correct.

24 Q. Okay. So, my -- my question to you, Doctor, is very
25 simple. Can you say to a reasonable degree of medical

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1 certainty now having been shown this evidence that Mr.
2 Davis' work accident, the automobile accident that
3 occurred on November 28th, 2011, aggravated his
4 preexisting arthritis in his left knee enough ---

5 A. Uh-huh (affirmative response).

6 Q. -- to require medical treatment?

7 A. I'm reviewing this history I have, but it seems that
8 the -- on his right knee, that he had occasional knee
9 pain and he does have some arthritis in his knee. So,
10 my only thing that I'm wondering in my head after
11 hearing that is, was the quality of the pain worse
12 afterwards. In other words, he had occasional ache
13 like he did with his right knee now, but did it worsen
14 after the accident. And, according to my sense of it
15 is, the way he presented it as these symptoms he was
16 currently having he didn't have until the MVA.

17 Q. But you've clearly been shown a medical report from
18 Dr. Compton that indicates that he was having some
19 discomfort; is that right?

20 A. Yeah, and we -- we had in our thing that he had a knee
21 scope twenty years ago is what our record says, and
22 that's why I specifically asked him when I wrote down
23 in these handwritten notes here, "Not significant pain
24 until MVA one and a half months ago".

25 Q. Right.

1 A. So, my sense of it is, he may have had occasional
2 aches, but he didn't consider it really that
3 significant and not on the level it is now. So, still
4 kind of going by that qualitative aspect of his
5 history, it seems like there was some exacerbation
6 after the MVA. But I do note, it was not the sole
7 cause of his knee pain.

8 Q. But is it fair to say that the -- because you've been
9 shown evidence, medical evidence, ---

10 A. Uh-huh (affirmative response).

11 Q. -- that was from September of 2011, this accident
12 happened in November of 2011; so that's roughly two
13 months before this accident.

14 A. Uh-huh (affirmative response).

15 Q. Isn't it fair to say that based on your examination of
16 his knee combined with that medical report that showed
17 it, this -- this man has a significant degenerative
18 arthritis in that left knee that was causing him
19 chronic problems before this work accident?

20 A. Yeah, he had definitely had preexisting severe
21 arthritis, but again, based on his history, it seemed
22 to reach a qualitatively a worse level symptom-wise
23 after the accident.

24 Q. Okay.

25 A. That's the sense I get of it.

1 Q. But was it -- is it fair to say that the impact of --
2 of the accident when the knee hit the dashboard was
3 not significant enough to require my clients to pay
4 for a total knee arthroplasty? Is that fair to say?

5 MR. CLARK: I object to the question.

6 A. Yeah, that part I can't really give -- in all fairness
7 other than ---

8 MR. CLARK: Let me just note. That
9 calls for a legal opinion.

10 Q. Okay. Well, ---

11 MR. CLARK: I object to that.

12 MR. ABRAMSON: Okay.

13 Q. Okay. Let me ask you this. I'll put it in different
14 terms. Can you state to a reasonable degree of
15 medical certainty that the automobile accident that
16 occurred on November 28th, 2011 resulted in a serious
17 enough aggravation of a preexisting condition to
18 warrant a total knee replacement?

19 A. I haven't seen him but this one time; so, I don't know
20 how the progression of the symptoms have gone or how
21 they cooled down or anything like that. My
22 recommendation for a total knee replacement is really
23 an option. We don't tell him they have to have a
24 total knee. We say, "This is the ultimate thing you
25 can have done if you want definitive long-term relief.

1 If it's not bothering you bad enough, you don't have
2 to do anything. Or if it's to a lesser degree and you
3 try cortisone shots." So, we base it on his symptoms,
4 and he states his symptoms did not start getting that
5 bad until after the MVA, just going by his history.

6 Q. Right.

7 A. The MVA, you know, certainly didn't cause it, and as
8 far as causing me to recommend the total knee, again,
9 I just presented it as an option. I didn't tell him
10 he had to have one. I just said, "If your symptoms
11 are bad enough, here it is." And he said his symptoms
12 didn't get to this degree until the MVA; so, that's
13 all I can really tell you about it.

14 Q. Okay.

15 A. It's based on his history.

16 Q. If he is -- so, if I'm following you correctly, if
17 he's continued to work as a truck driver since you
18 last saw him doing his regular job, that he's driving
19 the truck, ---

20 A. Uh-huh (affirmative response).

21 Q. -- would that be indicative -- would that be evidence
22 that would be indicative of the fact that he does not
23 necessarily need a total knee replacement at this
24 point?

25 A. It either means he's got a fairly high pain tolerance

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1 or is somebody who can tolerate the symptoms enough,
2 and as I tell patients, we don't treat the X-ray. We
3 have some people who have X-rays that aren't near as
4 bad as him but they're in severe pain and can't stand
5 anymore and they have a total knee. I have people who
6 have worse than his who just live with it and say --
7 it hasn't bothered me that bad and I'm not going
8 through that surgery. So, that's all I can say is
9 that his symptoms cooled down, and he is the kind of
10 guy that can tolerate it.

11 Q. Okay. Based on the X-ray that you took of the knee,
12 is it fair to say to a reasonable degree of medical
13 certainty that, prior to this automobile accident,
14 there was enough degenerative arthritis in that knee
15 to -- to warrant a total knee replacement at that
16 time?

17 A. Purely based on the X-rays, correct.

18 Q. Okay.

19 A. But our main criteria is symptoms, and that's what
20 pulls the trigger on the decision to get a total knee
21 replacement.

22 Q. Okay. And has he been -- has he been contacting your
23 office? Have you seen him -- when was the last time
24 you saw him, based on your records?

25 A. From my knowledge, based on the records, that was the

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1 one and only time on January 30th, 2012.

2 Q. Okay. Is there anything in your file materials to
3 indicate that he's been calling you to request any
4 kind of follow-up treatment or evaluation?

5 A. No.

6 Q. Okay. And did you prescribe any medication for his
7 symptoms after you saw him on that -- that one visit?

8 A. I think we just discussed that he can try
9 anti-inflammatories, Dr. Compton can even manage those
10 for you because you're going to be on them long-term,
11 and sometimes you have to take blood tests because
12 they can affect your kidneys and anemia and so forth.
13 And sometimes, we'll even initiate them here and if
14 they're going to be on them long-term, the PCP takes
15 over, primary care physician, but I think we just
16 mentioned for completeness sake, but he never was
17 prescribed anything or and I don't know if he went to
18 Dr. Compton and got any or not.

19 Q. Okay. All right.

20 A. As my notes seem to indicate, he wanted to kind of
21 think about all the options and contact us when he
22 wanted to.

23 Q. Okay. And you haven't heard anything back from him?

24 A. Not as our records indicate, no.

25 Q. Okay. All right.

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1 MR. ABRAMSON: Okay, Doctor, that's
2 all the questions I have for you at this
3 time. Thank you for answering my questions.

4 **Dr. Michael K. Drakeford - Examination by Mr. Clark**

5 Q. Doctor, just quickly, a couple of follow-ups. As far
6 as hearing back from the patient with additional
7 complaints, ---

8 A. Uh-huh (affirmative response).

9 Q. -- if you were advised that the Workers' Comp carrier
10 actually sent Mr. Davis to another doctor to evaluate
11 his knee, ---

12 A. Uh-huh (affirmative response).

13 Q. -- wouldn't that -- does that explain why he wouldn't
14 -- you haven't gotten any calls?

15 A. Yeah, if his care was taken over by somebody else, he
16 wouldn't have a need to call me.

17 Q. All right.

18 A. Unless he wanted to.

19 Q. Right. And -- and in fact, when you saw him, he told
20 you he needed to talk to his lawyer to look at the
21 legal aspect of this case; is that right?

22 A. Correct. Yes.

23 Q. All right. And are you saying that, because he
24 continues to work, he doesn't need any treatment for
25 his knee?

1 A. No, it just means he has again a higher pain tolerance
2 possibly or somebody who can put up with the symptoms
3 so to speak ---

4 Q. All right.

5 A. -- and has learned how to live with it.

6 Q. And it could mean that he's waiting for the outcome of
7 this case, couldn't it?

8 A. Could be. It's an elective procedure; you never have
9 to do the surgery. It's totally based on your
10 tolerance of the symptoms.

11 Q. Uh-huh (affirmative response).

12 A. And no other options potentially working.

13 Q. And one of the treatment options you said was an
14 injection; right?

15 A. Correct.

16 MR. CLARK: May I see Dr. Compton's
17 records?

18 MR. ABRAMSON: Yeah. Sure.

19 A. Again, not being the cure, but giving transient
20 periods of relief.

21 Q. Right. Okay. Now, I would ask you to look at Dr.
22 Compton's -- an excerpt of Dr. Compton's record and
23 not the highlighted portion that Mr. Abramson asked
24 you to look at; but the entries before that. Can you
25 see when the first -- in that first -- was that April,

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1 2010?

2 A. It looks like April 6, 2010.

3 Q. All right. And is there any complaint of knee pain in
4 that visit that you can see?

5 A. Not that he mentioned in this visit.

6 Q. What is he going for that day?

7 A. A physical exam to be selected as a DSS foster parent
8 or adoptive parent.

9 Q. No complaint of knee pain on that visit?

10 A. Not that he indicated.

11 Q. All right. And then I think there's another one here
12 from 7/20/10. Is there any mention of knee pain on
13 that day?

14 A. No.

15 Q. All right. And then on the date that Mr. Abramson
16 asked you about, 9/7/11, ---

17 A. Uh-huh (affirmative response).

18 Q. -- does it appear that -- why does it appear he even
19 went to the doctor?

20 A. Annual physical.

21 Q. And ---

22 A. Says, "Doing well since last office visit".

23 Q. Okay. And when he saw you, his symptoms were quite
24 different than what he described to Dr. Compton,
25 weren't they?

1 A. Correct.

2 Q. And so, in looking at what he described to Dr. Compton
3 and, Doctor -- and what he described to you, would you
4 agree that his complaints after the accident were much
5 more acute than they were before?

6 A. Yeah, qualitatively, they seemed to have reached a
7 different level and were more bothersome to him.

8 Q. Okay. And with the complaints that he made to you, if
9 those symptoms preexisted the auto accident or the
10 motor vehicle accident, ---

11 A. Uh-huh. (affirmative response).

12 Q. -- would you expect to see a record of that in Dr.
13 Compton's records?

14 A. Yes. I mean, you would expect if they were as
15 significant as they were as he explained to me.

16 Q. And is it still your opinion to a reasonable degree of
17 medical certainty that this motor vehicle accident
18 aggravated Mr. Davis' preexisting condition?

19 A. Based on this history of symptoms, it does appear that
20 way.

21 Q. And that the treatment that you recommended is
22 causally related to the aggravation?

23 A. Correct.

24 Q. And Mr. Abramson asked you whether his preexisting
25 condition warranted a knee replacement. Remember when

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1 he asked you that question?

2 A. Yes.

3 Q. Well, Doctor, is it true that the decision to have the
4 knee replacement -- I think you made a reference to X-
5 rays -- a lot of it's based on the pain, isn't it?

6 A. That's the primary decision maker is your symptoms and
7 pain.

8 Q. All right. So, you can have significant degeneration
9 and even a loose body, but -- and osteophytes and
10 everything else you mentioned, ---

11 A. Uh-huh (affirmative response).

12 Q. -- but if your pain isn't significant or unbearable,
13 you would never recommend a knee replacement, would
14 you?

15 A. No, not just seeing the X-rays and the physical exam.
16 It's based on symptom relief and its interference with
17 their quality of life, and the patient ultimately
18 makes that decision.

19 Q. All right.

20 MR. CLARK: Thank you, Doctor. I
21 think that's all.

22 DR. DRAKEFORD: You're welcome.

23 Dr. Michael K. Drakeford - Examination by Mr. Abramson

24 Q. And Doctor, just so I'm clear and the Commission is
25 clear with respect to your opinion, you've been shown

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1 sworn deposition testimony from the patient that
2 clearly indicates that he said -- he denied having any
3 symptoms, left knee symptoms, before the accident; is
4 that true?

5 A. Yes, sir.

6 Q. Okay. And I've also shown you a medical report from
7 Dr. Compton dated September 7th of 2011, which states,
8 quote, "does have occasional pains in left knee from
9 arthroscopy about fifteen years ago from an eighth
10 grade injury."

11 A. That's correct.

12 Q. Correct?

13 A. Correct.

14 Q. You've already testified that when you asked the
15 patient during your initial evaluation whether or not
16 he had had any problems with the knee before this
17 accident, ---

18 A. Uh-huh (affirmative response). No -- no ---

19 Q. -- that he denied any; correct?

20 MR. CLARK: Let him answer the
21 question now.

22 A. Yes, no significant pain prior to the MVA.

23 Q. Okay. All right. So, despite being shown this
24 evidence, it's still your opinion to a reasonable
25 degree of medical certainty that there was a

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1 significant enough aggravation of the significant
2 preexisting degenerative arthritis, ---

3 A. Yeah.

4 Q. -- to require him or to necessitate him to have
5 medical treatment including but not limited to a total
6 knee replacement surgery; is that your testimony?

7 A. To require the options being presented based on his
8 symptoms and the degree of medical certainty is based
9 on his history and assuming he's telling me the truth.
10 I don't have a truth meter I can stick into him to
11 tell if he's telling me the truth or not. So, I
12 assume that if he's telling me the truth, that his
13 symptoms were exacerbated historically by that MVA
14 which -- and because of those increased symptoms he
15 was then given the plethora of options, one of which
16 included a total knee, but not recommended or told to
17 get a total knee.

18 Q. Okay. And again, assuming he's been doing his regular
19 job duties since you last saw him, ---

20 A. Uh-huh (affirmative response).

21 Q. -- which require him to be on that leg, ---

22 A. Uh-huh (affirmative response).

23 Q. -- would you assume if you saw him -- if you saw him
24 next week and he came in with those -- with those
25 facts ---

1 A. Uh-huh (affirmative response).

2 Q. -- being true, that he has been working since all this
3 time, what would your recommendation be treatment-wise
4 for the knee?

5 A. I'd have to know other things. You're back to work;
6 how much is it bothering you at work, is it limiting
7 your hours, is it limiting what you do, is it limiting
8 your ADL's, does it wake you up at night? I'd have to
9 know a bunch more symptoms, and then I could ascertain
10 the gravity of it.

11 Q. Okay. Assuming he's been working full-time.

12 A. If he came back and said -- it's back to where it was,
13 it's kind of annoying, but I'm able to put up with it
14 and go to work, then we wouldn't say do anything
15 differently. I mean, we wouldn't recommend any
16 intervention because, again, it's based on his
17 symptoms.

18 Q. Okay.

19 A. If he said -- I've got to work and I'm putting up with
20 it but it's killing me and it's limiting what I do and
21 it keeps me awake all night, then we'd say, well, here
22 are the options, shot, surgery, etcetera. and how far
23 do you want to do with it, and let him make the
24 decision.

25 Q. Okay. So, if I'm following your testimony correctly,

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1 when you saw him, the pain was not significant enough
2 at that time to -- to warrant a total knee replacement
3 surgery at that time; is that fair to say?

4 A. Based on his decision that he wanted to defer that
5 option and talk to his attorney.

6 Q. All right.

7 MR. ABRAMSON: Doctor, I don't have
8 any further questions. Thank you, sir.

9 DR. DRAKEFORD: Okay.

10 Dr. Michael K. Drakeford - Examination by Mr. Clark

11 Q. Doctor, when you saw him, if he had -- if he told you
12 -- if he had told you then that -- yeah, I want to go
13 ahead and have the knee replacement, you would --
14 would you have recommended it then?

15 A. If he had said that I'm tired of living with this
16 knee, I want to get long-term definitive relief, we
17 would have done the surgery.

18 Q. All right. Now, just finally, if -- if Mr. Davis told
19 Dr. Compton that he has occasional pain in the knee
20 and then he told you that he has no significant -- he
21 had no significant prior pain in the knee, are those
22 two statements inconsistent in your opinion?

23 A. Not necessarily. Some people can have aches and pains
24 and not consider them significant.

25 Q. Right.

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1 MR. CLARK: Thank you, Doctor, that's
2 all I have.

3 DR. DRAKEFORD: You're welcome.

4 **Dr. Michael K. Drakeford - Examination by Mr. Abramson**

5 Q. Well, Doctor, would you -- would you not agree that --
6 that I asked the patient, your patient, Mr. Davis, in
7 his deposition Page Sixty, Line Fourteen, "Okay, have
8 you had any medical treatment for that left knee you
9 already testified about the surgery fifteen (15) years
10 ago or a long time ago; right?" And he answered --
11 his answer was, "Right." "Had you had any medical
12 treatment for that left knee before this accident?"
13 "No" was his answer. Isn't it true that he had
14 actually seen a doctor on September 7th, 2011 and had
15 complained about knee pain? Isn't -- isn't that true?

16 A. As I recall, he was being seen for an annual physical
17 or something.

18 Q. Correct.

19 A. And it sounds like he asked him what all -- I'm
20 guessing on this -- what all problems you have, and he
21 admitted -- I have occasional knee pain, but that
22 wasn't the reason he was coming there ---

23 Q. Right.

24 A. -- and he wasn't treated for it.

25 Q. Okay. But he complained to a -- a doctor about having

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1 pain in his knee; correct?

2 A. He acknowledged that he has occasional pain in his
3 left knee to Dr. Compton on that date of the physical
4 or annual physical.

5 Q. And -- and again, he told you when you saw him
6 initially that he had not been having any pain in that
7 knee until the automobile accident?

8 A. No, I think his words were, "No significant pain." Or
9 it led me to believe to where I wrote it down, "No
10 significant pain".

11 Q. Okay. All right.

12 MR. ABRAMSON: All right. Thank you,
13 Doctor.

14 MR. CLARK: Thank you, Doctor. Nothing
15 further.

16 A. All right.

17 (THERE BEING NO FURTHER QUESTIONS, THE DEPOSITION WAS
18 CONCLUDED AT 5:57 P.M.).
19

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER) CERTIFICATE

I, Doris Tompkins Brown, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, certify that I did have Michael K. Drakeford, M.D. appear before me commencing at 5:18 P.M. on October 24, 2012, at the office of Palmetto Orthopaedics & Sports Medicine Clinic, Sumter, South Carolina; that the witness was duly sworn and cautioned to tell the truth; that the foregoing pages constitute a true and accurate transcript of the testimony given at that time and place.

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

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 31st day of October, 2012.

Doris Tompkins Brown, CVR
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: 5-02-2015

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 1119380

EVERETT DAVIS,
Claimant,

vs.

SOUTHLAKE TRANSPORT, INC.,
Employer.

AND

LUMBERMENS UNDERWRITING
ALLIANCE,
Carrier,
Defendant.

Thursday, December 27, 2012

ORAL DEPOSITION OF ROBERT M. DaSILVA,

M.D., taken at Midlands Orthopaedics, P.A.,
1910 Blanding Street, Columbia, South Carolina,
commencing at 1:10 p.m., before Tami I. Watters, a
Federally Approved Registered Professional Reporter
and Notary Public.

EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29201
803-212-0012

APPEARANCES:

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cabramson@mgclaw.com
Representing the Employer/Defendant

(INDEX AT REAR OF TRANSCRIPT.)

- - -

1 (It is hereby stipulated and agreed by
2 and between counsel for the respective parties
3 that this deposition is being taken in
4 accordance with the South Carolina Workers'
5 Compensation Commission and the Administrative
6 Procedures Act; that all objections, except as
7 to the form of the question, are reserved
8 until the time of trial; and that the deponent
9 waives reading and signing of this deposition
10 transcript.

11
12 ROBERT M. DaSILVA, M.D., after having
13 been first duly sworn, was examined and
14 testified as follows:
15

16 **Dr. Robert M. DaSilva - Examination by Mr. Clark**

17
18 BY MR. CLARK:

19 Q Good afternoon, again, Doctor. My name
20 is John Clark. We met a few minutes ago. I
21 represent Everett Davis and have asked you to allow
22 us to take your deposition in this case today, so
23 we appreciate you being here.

24 I have your report, and I just want to
25 ask you a couple of questions to clarify your

1 opinions in this case.

2 Do you have any -- if you don't
3 understand what I'm asking you or if you have any
4 questions or need me to repeat it, please tell me,
5 okay?

6 A Okay.

7 Q All right, sir. First of all, state your
8 full name, please.

9 A Robert Mario DaSilva.

10 Q And, Dr. DaSilva, you're an orthopedic
11 surgeon?

12 A Yes.

13 Q With Midlands Orthopaedics?

14 A Yes.

15 Q How long have you been an orthopedic
16 surgeon?

17 A I finished residency and fellowship 22
18 years ago, 23 years ago.

19 Q All right. Doctor, my -- the medical
20 records indicate that you performed an independent
21 medical evaluation on Mr. Davis's left knee on or
22 about May 31st of 2012?

23 A Correct.

24 Q And I have a copy of your medical
25 records. I just want you to -- I kind of have some

1 highlighted areas. Nothing of any importance.

2 Just some of the things I was highlighting.

3 I want you, if you would, please, to
4 identify those as being the records. I just want
5 to put them in the record here today.

6 MR. CLARK: And, Mr. Abramson, I'll be
7 happy to let you look at them. I think I took
8 them right out of your brief.

9 MR. ABRAMSON: That's fine.

10 BY MR. CLARK:

11 Q Are these your records, Doctor?

12 A Yes.

13 MR. CLARK: I want to make this
14 Plaintiff's Exhibit 1, please.

15

16 ~~(Medical Records marked Plaintiff's~~

17 Exhibit Number 1, for identification.)

18

19 BY MR. CLARK:

20 Q And, Dr. DaSilva, you brought a copy of
21 your records here today?

22 A Yes, I did.

23 Q Doctor, as you mentioned earlier, you
24 performed this evaluation on March 31st, 2012. And
25 I got the report and I read some comments by

1 Dr. LaMotta, and --

2 A Uh-huh.

3 Q And what I want to ask you is: Did
4 Dr. LaMotta examine Mr. Davis's knee or did he just
5 examine his back? Because both of them were
6 examined at this clinic.

7 A I'm not sure.

8 Q But do you have any knowledge of
9 Dr. LaMotta examining the knee along with you?

10 A Just a minute ago I was given the records
11 and had Dr. LaMotta's IME. Prior to looking at
12 that 10 minutes ago, I did not know that he saw
13 him.

14 Q All right. So your opinions regarding
15 the knee are independent of anything that

16 Dr. LaMotta has added?

17 A That's right, yes.

18 Q Okay. Now, Dr. DaSilva, when you saw
19 Mr. Davis, what kind of history did you take from
20 him?

21 A History concerning his knee.

22 Q And what was the history? What did he
23 tell you?

24 A He had chronic left knee pain.

25 Q Uh-huh.

1 A He had a recent accident; that he had
2 noticed increased pain in the left knee. He had an
3 arthroscopy of that knee 20 years ago.

4 Q Okay.

5 A And the pain was worsening recently.

6 Q Okay. Now, in your examination, did you
7 take any x-rays or MRI or did you review any --

8 A I later took some or reviewed them. I
9 can't recall which.

10 Q All right. Is that reflected in your
11 report?

12 A Yes.

13 Q Can you show me where that is, please?

14 A Severe arthritis -- where I have it where
15 it says severe arthritis, that would have said that
16 ~~I either ordered an x-ray or I reviewed them.~~

17 Q And that is on --

18 A In the assessment and plan, which is the
19 second page of my -- my report.

20 I don't have, according to this
21 report --

22 Usually if I got them in the office, it
23 would have a little area that would have an
24 interpretation area. I don't see that here, so I'm
25 assuming that these are x-rays that I reviewed from

1 elsewhere.

2 Q All right.

3 A But I don't know that.

4 Q All right. And he told you about a
5 recent accident that he had and that his pain had
6 increased in the left knee?

7 A Yes.

8 Q All right. Now, you indicated that he
9 had severe arthritis that preexisted the accident.

10 A Right.

11 Q And, I believe, I understand your
12 opinion, the accident didn't cause the arthritis?

13 A Correct.

14 Q But you did assess him with increased
15 pain; is that correct?

16 A Yes.

17 Q Now, you indicated that -- and was that
18 increased pain from the accident?

19 A Yes.

20 Q You indicated that he had an antalgic
21 gait. And that's a limp, right?

22 A Right.

23 Q Do you know if the limp got worse after
24 the accident or --

25 A I don't know.

1 Q -- have any idea? All right. And you
2 also indicated that he has a positive crepitation,
3 right? And that's the cracking of the knee?

4 A Uh-huh.

5 Q And --

6 MR. ABRAMSON: Doctor, is that a yes?

7 THE WITNESS: Yes.

8 MR. ABRAMSON: I'm sorry.

9 MR. CLARK: Thank you, Chad.

10 BY MR. CLARK:

11 Q And you also indicated he had positive
12 pain on the median and lateral joint line?

13 A Yes.

14 Q And was that an objective finding or was
15 that based on what he said or --

16 A That's an objective finding.

17 Q That's an objective finding. Okay. And
18 do you know whether that pain existed prior to this
19 accident that he had this past year -- this year?

20 A The -- since I had not seen him before
21 the accident, I don't know for sure. But with
22 severe arthritis, I would assume that he had some
23 discomfort of that knee.

24 Q And do you believe that this accident
25 made the pain worse?

1 A I don't know that.

2 Q Okay. But you did find that he had
3 increased pain following this accident?

4 A He said he had increased pain.

5 Q Right. And that was your assessment?

6 A Based on his history, yes.

7 Q Okay. All right. Now, you made a note
8 in your report that says something about
9 osteoarthritis primary versus secondary.

10 What do you mean by that?

11 A These are codes that we use, okay?

12 And --

13 THE WITNESS: Can I go off the record a
14 minute?

15 MR. CLARK: Sure, if that's all right
16 with you, Chad.

17 MR. ABRAMSON: Yeah.

18 - - -

19 (Discussion held off the record.)

20 - - -

21 BY MR. CLARK:

22 Q Now -- and you've already said that the
23 arthritis wasn't caused by the accident.

24 A Right.

25 Q Now, I believe you recommended a total

1 knee replacement for this man; is that right?

2 A Yes.

3 Q And how is the decision to have a knee
4 replacement determined? How is that arrived at?

5 A And what I would have done, and -- what I
6 usually would do -- I still do it with the IME. I
7 tell the patient, "You have severe knee arthritis.
8 Your options are continuing as you are -- I mean,
9 that's perfectly good medical treatment.

10 "The only surgical option that would
11 apply to you would be a knee replacement." That's

12 a recommendation.

13 When you do a knee replacement, the
14 timing is basically the patient's decision once
15 that recommendation's made.

16 ~~It's no harder to do a knee replacement~~
17 three years from now, generally, than it is today.
18 So what I -- I assume I did with Mr. Davis also is
19 that I said, "This is -- these are your options.
20 If you have a surgical option, a knee replacement
21 is the only surgical option that would apply to
22 you."

23 Q All right. So is that the only treatment
24 option that he has?

25 A No. I think his treatment options would

1 be basically three, okay?

2 Q Okay.

3 A Column one would be no treatment at all.
4 Arthritis is the natural aging process.

5 Q Okay.

6 A Arthritis is -- develops over many years.
7 If somebody comes into the office with minimal
8 complaints of arthritis, option one, no treatment
9 at all, is perfectly acceptable and is very good
10 treatment.

11 Q Okay.

12 A Option two has two parts. Option two is
13 the medical treatment of arthritis. The first part
14 of option two would be anti-inflammatories;
15 Celebrex, Voltaren, Mobic.

16 ~~These are arthritic pills that are~~
17 nonaddictive, they don't make one drowsy, and,
18 basically, are the keystone treatment of arthritis
19 in its conservative form.

20 The second part of option two would be
21 injections. And there are two types of injections:
22 There is Hyaluronic acid injection, which is good
23 for mild and moderate arthritis, and then there's
24 cortisone derivatives which are good for mild,
25 moderate or severe. And both those types of

1 injections are very appropriate with arthritis.

2 Then the third treatment for arthritis
3 are the surgical options. If somebody has mild
4 arthritis of the knee with a degenerative meniscus
5 tear, an option might be an arthroscopy, which
6 would be an outpatient minor operation.

7 With severe arthritis, that is no longer
8 appropriate medical treatment. The surgical option
9 would be a knee replacement.

10 Q Okay.

11 A So when I talk about knee replacement

12 patients, I rarely ever say, "This is -- this is
13 what you need to do today."

14 It's, "These are the options you have,"
15 and then go from there.

16 Q All right. So it's determined by the
17 patient and the level of pain and discomfort that
18 they're having?

19 A Kind of two ways: One, if somebody has
20 mild arthritis and they have a terrible amount of
21 pain, no, a knee replacement would not be
22 appropriate.

23 I think you have to have -- in my
24 estimation, you have to have severe arthritis both
25 radiographically and clinically. And then, after

1 that, that's determined by the physician reviewing
2 the x-rays.

3 Once that's done, the determination
4 whether you proceed with a knee replacement, yes,
5 is the patient's decision.

6 Q And so in this case, there's no question
7 he had severe arthritis?

8 A Yes.

9 Q He meets that prong, right?

10 A Yes.

11 Q And as far as the knee replacement, the
12 ultimate call would be by the patient based on the
13 amount of pain and discomfort that he's having; is
14 that correct?

15 A Yes. Correct.

16 Q And, in this case, you did -- I notice
17 your report says that you wouldn't recommend the
18 loose -- removal of the loose bodies. You would
19 recommend knee replacement.

20 Was that based on your conversations with
21 him and how --

22 A Based on several things. A loose body is
23 another common thing we see. If you have loose
24 body and have no arthritis, then you recommend
25 arthroscope in the knee and taking the loose body

1 out.

2 Q Right.

3 A In his case, arthroscope in his knee and
4 taking loose body out would be like going to a
5 forest fire with a bucket of water. It's not going
6 to really address his problem. It would put him
7 through an option that, in my opinion, would not
8 change the outcome of his health.

9 Q Okay. Now, going back to the positive
10 pain on the median and lateral joint line, now, you
11 said that was an objective finding, right?

12 A Yes.

13 Q Okay. Can you tell the commissioner, who
14 is ultimately going to read this transcript, what
15 examination was done, how did you reach that
16 conclusion, etc?

17 A That one is a simple -- with your index
18 finger --

19 Q Uh-huh.

20 A -- pushing on the medial and lateral
21 joint line and does it solicit pain. It's about as
22 simple as a diagnostic test could be.

23 Q Okay. And we all know objective findings
24 is what you actually found based on objective
25 evidence; is that correct?

1 A Correct. Yes, sir.

2 Q And do you know whether Mr. Davis had
3 that pain on the median and lateral joint line
4 before this accident?

5 A No.

6 Q If he didn't, then his pain level would
7 have increased from this accident, correct?

8 A Yes.

9 Q And he certainly told you that it had
10 increased; is that correct?

11 A Yes.

12 Q And, in your opinion, is his knee more
13 painful now than it was?

14 A I don't know.

15 Q You have to basically go by what he says?

16 A Go by -- yeah. I wasn't -- I didn't have
17 the privilege of examining him before, so I don't
18 know --

19 By -- objectively, I can't tell whether
20 it was or not.

21 Q Okay. And --

22 A Based on his history, yes. But, again,
23 objectively, I don't know.

24 Q So based on his history that you were
25 made aware of, his pain has increased in that knee

1 following this accident?

2 A Yes.

3 Q And is it also correct that his ability
4 to get around, his ability to work, has also been
5 affected by the increase in pain based on his
6 history and what he told you?

7 A Based on the history, yes.

8 Q All right. And if a person has the
9 arthritic condition that he had, did not have this
10 accident, did not have the increase in pain, then
11 you would not have recommended a knee replacement,

12 would you?

13 A I'm sorry. Repeat --

14 Q If he -- if he had the preexisting
15 arthritis, did not have the increase in pain, you
16 ~~would not, under those circumstances, recommend a~~
17 total knee replacement then, would you?

18 A Right. Correct.

19 Q And, at this point, it's only being
20 recommended because of the increase in pain?

21 A You mean recommended because pain --

22 Q Uh-huh.

23 A -- and radiographic and clinical --

24 Pain -- recommended because subjectively
25 he has pain.

1 Q Okay.

2 A And, objectively, you have clinical and
3 radiographic evidence of severe arthritis. The two
4 together.

5 Q And then you also have the objective
6 findings of pain, right?

7 A Yes. Yes.

8 Q Okay. Because a person with this kind of
9 arthritis, if they're getting around fine and they
10 don't have an intolerable level of pain, how would
11 you treat that?

12 A Option one or two.

13 Q Option one or two? Okay. And so in your
14 report where you indicate that the knee replacement
15 is unrelated and --

16 ~~Well, you said -- I'm reading exactly~~
17 ~~your words here -- "Recommend knee replacement,~~
18 ~~again, unrelated and preexisting to injury."~~

19 Is it correct that what you mean is that
20 the -- he had a bad knee from the beginning; is
21 that correct?

22 A Correct.

23 Q But you're not saying the pain that he's
24 suffering now is unrelated to the accident, are
25 you, or the increased pain?

1 A Based on his history.

2 Q Right.

3 A The increased pain, yes.

4 Q Is related to his accident?

5 A Yes.

6 Q All right. And that's what tips the
7 scales in favor of the second and third options
8 that you mentioned, the increased pain; is that
9 correct?

10 A The -- and I'm being -- I may be being
11 too specific and too --

12 What tips the scales from going from
13 option one to two to three is pain, whether it was
14 increased or not; whether they -- you know, whether
15 they have pain and they've had it for three or four
16 years.

17 Not so much the increase in pain, you
18 know. It has to be how much pain are you having.

19 Q Right.

20 A Yeah.

21 Q Right. And have you seen anything that
22 shows this man complaining of pain over the past 20
23 years in his knee?

24 A No.

25 Q So wouldn't you have to assume that this

1 accident increased the pain?

2 A Yes. He did have an arthroscopy that I
3 did not have the record from 20 years ago, so I
4 don't know -- I was not privileged to see what the
5 findings were at the time, whether he had arthritis
6 at that point or not.

7 Q All right. So if you assume that he was
8 able to get around for 20 years and then he has
9 this accident that increased his pain, that
10 would -- I mean, if you assume that, then the
11 logical conclusion would be that this accident
12 increased his pain and now he needs something done
13 about it; is that correct?

14 A Yes.

15 Q And I understand the arthritic condition
16 was there all along, but people get around with
17 that all the time, don't they?

18 A Yes.

19 Q Without any treatment?

20 A Yes.

21 MR. CLARK: Doctor, I think those are all
22 the questions I have. I know Mr. Abramson has
23 some for you, and I might have a few followup
24 for you when he's done.

25 - - -

Dr. Robert M. DaSilva - Examination by Mr. Abramson

BY MR. ABRAMSON:

Q Dr. DaSilva, my name is Chad Abramson. I represent Southlake Transport, Inc. and their workers' compensation carrier in this claim brought by Mr. Davis.

Doctor, I want to show you what is Defendant's APA page 18 from our prehearing brief.

This is a report from Arland H. Compton,

M.D.

This is the -- a doctor that evaluated Mr. Davis prior to his work accident that occurred on 11/28/11.

~~MR. CLARK: Can I see that, please? I~~

~~just want to make sure --~~

MR. ABRAMSON: Yeah. It's page 18 of my brief.

MR. CLARK: Which date are you referring to?

MR. ABRAMSON: I'm looking -- I'm gonna show him the 9/7/11 report on that page.

MR. CLARK: Okay. All right.

1 BY MR. ABRAMSON:

2 Q Doctor, take a look at that 9/7/11 entry
3 for me, please, sir.

4 A Okay.

5 Q Does this report indicate that on the
6 date of Dr. Compton's evaluation, that Mr. Davis
7 was complaining of occasional pains in the left
8 knee?

9 A Yep.

10 Q And looks like -- what was one of the
11 diagnoses on that particular day?

12 A Degenerative joint disease of left knee.

13 Q Okay. Would that be consistent with what
14 you found objectively on your examination on
15 5/31/2012 with respect to this patient's left knee?

16 A Yes.

17 Q Okay. Under your assessment and plan
18 paragraph of your report, you indicate, quote,
19 "Patient with chronic pain in left knee."

20 Is that right?

21 A Yes.

22 Q Okay. Why did you put that in your
23 report?

24 A Chronic is a broad term meaning it's been
25 going on a long time.

1 Q Is that what the patient told you?

2 A I don't recollect exactly how I came to
3 that was chronic. Somehow something made me put
4 that in there.

5 I'm not sure whether he told me that or I
6 got that from talking to him. I'm not sure.

7 Q Okay. Fair enough. All right. Going
8 back to your same report, you indicate, quote,
9 "Recommend -- I'm sorry -- would not recommend
10 removal of loose body because main problem is
11 arthritis. Recommend knee replacement, again,

12 unrelated and preexisting to injury."

13 Did you put that in your report?

14 A Yes.

15 Q Okay. Did you mean, when you placed
16 ~~these words into your report, that you did not~~
17 believe, to a reasonable degree of medical
18 certainty, that Mr. Davis required a knee
19 replacement surgery because of his work accident?

20 A Yeah. I don't -- what I meant to
21 say -- what I think I said there is that he has
22 knee arthritis -- severe knee arthritis, which, if
23 you choose a surgical route, the surgical -- the
24 surgery I would recommend would be a knee
25 replacement, not a removal of loose bodies, and

1 that the cause -- that that -- that's preexisting
2 in injury, the injury of concern.

3 Q So if I'm following your testimony
4 correctly, you do not believe that his knee
5 was -- his preexisting arthritis was aggravated
6 enough to the degree to where the work accident
7 would have caused the need for the knee
8 replacement; is that fair to say?

9 A I believe, putting together that you have
10 severe arthritis and that you're at the point where
11 you have severe pain, I don't believe that could be
12 caused by the aggravation, okay? That is a chronic
13 condition.

14 You could aggravate it, but the
15 aggravation is not what prompts you to proceed to a
16 knee replacement.

17 It's not the main factor, I guess, is
18 the -- the main factor that prompts you to start
19 talking about a knee replacement.

20 Does that make sense?

21 Q It does.

22 A A little bit of a fine line, but, I
23 think, an aggravation can cause the pain. That's
24 certainly possible.

25 But, in my medical experience, with a

1 severe arthritis of the knee, that's not the
2 causative factor.

3 Does that make --

4 Q It does.

5 A -- sense?

6 Q It does to me. Let me ask you this:
7 You've seen this report --

8 A Yes.

9 Q -- that's been presented to you that
10 demonstrates that he objectively complained of pain
11 on 9/7/11, correct?

12 A Yes.

13 Q In the left knee?

14 A Yep.

15 Q So you know objectively you have a report
16 that's been presented to you that demonstrates that

17 Mr. Davis was complaining of knee pain before this
18 automobile accident.

19 A Yes.

20 Q Okay. Let me tell you this as well:
21 Assume that Mr. Davis has continued to work for my
22 client doing the same job since this work accident
23 driving a truck, okay?

24 Assuming all of that evidence, is it your
25 opinion, to a reasonable degree of medical

1 certainty, that Mr. Davis does not require a knee
2 replacement surgery because of any type of
3 aggravation caused by this accident?

4 A Yes.

5 Q Okay.

6 MR. ABRAMSON: I don't have anything
7 else.

8

9 **Dr. Robert M. DaSilva - Examination by Mr. Clark**

10

11 BY MR. CLARK:

12 Q All right, Doctor. I just want to follow
13 up a minute.

14 The fact that he continues to work, that
15 doesn't mean that he doesn't need a knee
16 replacement, does it?

17 A No.

18 Q All right. Now, I want you to look at
19 that 9/7/11 medical report and see -- tell me if it
20 says why he's at the doctor.

21 A It says annual physical.

22 Q Right. So don't you have to assume that
23 he didn't even go to the doctor for the pain in his
24 knee on that day in particular?

25 A Looks to me like just an annual physical.

1 Q And isn't that a significant factor in
2 considering his prior complaints, Doctor, that the
3 only medical report that you were presented with is
4 one from an annual physical where he says that he
5 has occasional pain in his knee?

6 Isn't that significant that that's the
7 only medical report that you have been presented
8 with that says that he had prior knee pain?

9 A I wouldn't --

10 Q I mean -- well, he didn't go -- he went
11 to the doctor for a physical, right?

12 A Correct.

13 Q And he says his knee occasionally affects
14 him.

15 A Right.

16 ~~Q Wouldn't you -- wouldn't it indicate that~~
17 he has problems with his knee if he actually went
18 to the doctor for a knee problem?

19 A Right.

20 Q And so -- but, in this case, it's only
21 for a physical, right?

22 A Right.

23 Q And you don't know whether he had the
24 pain over the medial and lateral joint line on that
25 day, do you?

1 A Only thing he said in his physical exam,
2 he has old deformities.

3 Q Right. Okay.

4 A And that's --

5 Q All right. Now -- and the kind of pain
6 that Mr. Davis described to you is somewhat
7 different than what's described to Dr. Compton on
8 September 7, 2012, isn't it?

9 A Yes.

10 Q Or '11. Was that '12?

11 A 9/7/11.

12 Q '11, yeah. And so wouldn't you agree
13 that --

14 The pain that Mr. Davis complained to you
15 of was more severe than what he complained to
16 Dr. Compton, now, wasn't it?

17 A Yes.

18 Q And, Doctor, wouldn't you -- with an
19 arthritic knee that he had prior to the accident,
20 wouldn't you expect him to have occasional pain?

21 A Yep.

22 Q Now, Doctor, I want to show you page
23 three of the claimant's APA submission. And that's
24 a -- I want you to take a look at it, please.

25 A Okay.

1 Q And that's a statement from Dr. Compton.

2 A Yes.

3 Q The doctor that made the entry of 9/7/11.

4 A Yes.

5 Q And he indicates that Mr. Davis injured
6 his knee in the accident, doesn't he?

7 A Yes.

8 Q And what kind of weight do you give
9 Dr. Compton, his PCP who saw him before and after
10 the accident?

11 What kind of weight do you give that

12 report -- or that statement by him?

13 A Well, whether the injury was caused by
14 the accident is, I think, pretty --

15 He injured his knee.

16 Q In this accident?

17 A Yeah.

18 Q All right.. So you don't disagree that he
19 injured his knee in this accident?

20 A No.

21 Q All right. And when you say the
22 aggravation was not the main factor in
23 necessitating the knee replacement, do you mean
24 that it's a factor that's considered with the prior
25 arthritis as well?

1 A And -- let me kind of clarify that,
2 because we're going back and forth.

3 But if Mr. Davis presented and had no
4 arthritis or mild arthritis or moderate arthritis
5 and had aggravated pain from an accident, that
6 aggravation would not be -- not cause me to
7 recommend a knee replacement.

8 You have to put -- there's not -- and in
9 medicine, being an art and not a science, there are
10 many things that will contribute to your decision
11 making.

12 My opinion, the main part of recommending
13 a knee replacement -- and all on report, you can't
14 disregard any one.

15 Q Right.

16 A But the main one is that he's got severe
17 arthritis on an x-ray.

18 Q Right.

19 A That tells me that he's an end-stage
20 knee, okay? That is what's gonna make me recommend
21 a knee replacement.

22 If he presented with mild arthritis or
23 even moderate arthritis and had the same accident
24 and the same amount of pain, I would not be
25 recommending a knee replacement to him.

1 Does that clarify?

2 Q Yes, sir. Yes, sir. Now, if he had -- I
3 like the end-stage knee. That's simpler. Is that
4 okay to use that term?

5 A That's pretty -- yes. Severe arthritis,
6 end-stage arthritis, yes.

7 Q All right. If he had severe arthritis,
8 also known as end-stage arthritis --

9 A I'm not sure it's known as that. That's
10 just my description. I like it, though.

11 Q If he had severe arthritis and he had the
12 complaint of occasional pain on an annual physical,
13 what treatment would you recommend?

14 A Conservative care.

15 Q All right.

16 A Option one or two.

17 Q All right. Then let's jump forward to
18 when you saw him.

19 He has the severe arthritis and now he
20 has the increase in pain and -- what did I do with
21 your report here -- he has increased pain in the
22 left knee, pain in left knee now, what treatment do
23 you recommend now?

24 A Knee replacement.

25 Q All right. And so -- and you agree that

1 he did injure his knee in this accident, yes?

2 A Yes. Yes.

3 Q And that that -- his pain was aggravated?

4 A Yes.

5 Q And, at this point, cutting through --
6 without regard to the legal aspects of it, based on
7 the severe arthritis, the severe pain, now a knee
8 replacement is recommended?

9 A Yes.

10 Q All right. And so if the increased pain
11 came from the accident -- which you believe it did,
12 correct?

13 A Yes.

14 Q And now he needs a knee replacement,
15 wouldn't it stand to reason that the increased pain
16 is what tipped the scales in favor of the knee
17 replacement?

18 THE WITNESS: Off the record.

19

20 (Discussion held off the record.)

21

22 BY MR. CLARK:

23 Q I'll ask you another question, Doctor. I
24 appreciate your honesty.

25 A I like the reason. I just don't know I

1 can make that stretch.

2 Q I understand. Now, let's look at option
3 number two.

4 If you go with the anti-inflammatories
5 and/or the injections, you can say that that's
6 directly related to the increased knee pain, can't
7 you, Doc?

8 A And to the arthritis both.

9 Q Right. But none of this was needed, in
10 your opinion, before this accident; is that
11 correct?

12 A I don't -- I wasn't taking care of him
13 before, so I -- but based on the only note that we
14 had, no.

15 Q Okay. All right. And, Doctor, have all
16 of your opinions that you've given here today been
17 to a reasonable degree of medical certainty?

18 A Yes.

19 MR. CLARK: I don't have any further
20 questions.

21 - - -

22 **Dr. Robert M. DaSilva - Examination by Mr. Abramson**

23 - - -

24 BY MR. ABRAMSON:

25 Q And the last question I've got, Doctor,

1 is: Do you still maintain your opinion, to a
2 reasonable degree of medical certainty, that the
3 work accident Mr. Davis was involved in did not
4 aggravate his preexisting arthritis to the extent
5 to where the workers' comp carrier should pay for a
6 knee replacement?

7 MR. CLARK: I'll object. That's a legal
8 question. I don't think the doctor could
9 testify to what the workers' comp carrier
10 could pay for.

11 MR. ABRAMSON: I'll withdraw that. I'll
12 withdraw it.

13 MR. CLARK: All right. Thank you.

14 BY MR. ABRAMSON:

15 Q Doctor, is it still your opinion, to a
16 reasonable degree of medical certainty, that the
17 work accident that Mr. Davis was involved in did
18 not exacerbate his preexisting arthritis to the
19 extent to where he now requires a total knee
20 replacement because of the impact of the work
21 accident?

22 A Yes.

23 MR. ABRAMSON: Okay.

24 MR. CLARK: What was that question again
25 now?

1 MR. ABRAMSON: Sure.

2 BY MR. ABRAMSON:

3 Q Is it still your opinion, to a reasonable
4 degree of medical certainty, that because of the
5 impact of the work accident, the trucking accident,
6 that Mr. Davis does not require a total knee
7 replacement surgery because of the impact of the
8 trucking accident?

9 Is that your opinion?

10 A Yes.

11 MR. ABRAMSON: Okay.

12

13 **Dr. Robert M. DaSilva - Examination by Mr. Clark**

14

15 BY MR. CLARK:

16 Q Now, I've got to follow up, Doctor, just
17 briefly. Just briefly.

18 A That's all right.

19 Q That's your opinion because what the knee
20 replacement is fixing already existed; is that
21 correct?

22 A Yeah. It's -- it's going back to the
23 decision making.

24 And the little pieces of the puzzle all
25 are important, but the main decision on whether

1 this gentleman needs a knee replacement is his
2 radiographic findings of his -- that's the main
3 one.

4 Q That's the main one?

5 A The main one. But you can't totally
6 dismiss the other ones.

7 But, based on that, then I would say that
8 the -- that the knee replacement would not be
9 treating what the -- something the injury did.
10 It's more of an arthritic process.

11 Q Right. But you're not discounting the
12 additional pain?

13 A No, not discounting that.

14 Q Because that is a factor in your
15 decision, isn't it?

16 A Yes, sir.

17 Q And it's a factor on why he needs a knee
18 replacement?

19 A Yes.

20 MR. CLARK: All right. Thank you, sir.

21

Dr. Robert M. DaSilva - Examination by Mr. Abramson

22

23

24 BY MR. ABRAMSON:

25 Q Objectively, would he have needed a knee

1 replacement before the work accident, based on the
2 radiographic evidence of the arthritis in the knee?

3 A If he had pain associated with that, yes.

4 Q Okay. All right. And let me ask you
5 this: Based on -- you've seen many workers' comp
6 patients throughout your practice; is that right?

7 A Yes.

8 Q When a patient, typically after an
9 automobile accident in which they injured their
10 knee similar to what Mr. Davis has done in this
11 case, continues to work in a job, in a truck

12 driving job, a job that requires them to operate a
13 truck -- if they continue to work after that
14 accident doing their regular job duties, is that
15 typically an indicator that that individual is not
16 suffering from severe pain if they're able to
17 continue to work?

18 A Not necessarily.

19 Q What do you mean by that?

20 A I think that is also multifactorial. I
21 think some patients, after seeing them and
22 assessing them, my medical opinion would be that
23 they do not have a serious problem or even a
24 problem that, in my opinion, would cause a lot of
25 pain. However, that patient refuses to work and

1 won't go to work.

2 And I have some patients who I see and
3 that patient really is hurting and they continue to
4 work.

5 I think it has to do with the person, I
6 think it has to do with the pay of the job,
7 economic times. There's multiple factors in that.

8 Q Okay. Fair enough.

9 MR. ABRAMSON: Thank you.

10 MR. CLARK: Nothing to follow up, Doc.

11 Thank you. Pleased to meet you.

12 - - -

13 (Witness excused.)

14 - - -

15 (Deposition concluded at 1:42 p.m.)

16 - - -

17

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CERTIFICATE OF REPORTER

I, Tami I. Watters, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.
Witness my hand, I have hereunto affixed my official seal this 27th day of December, 2012, at Lexington, Lexington County, South Carolina.



Tami I. Watters,
Registered Professional Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
February 6, 2019

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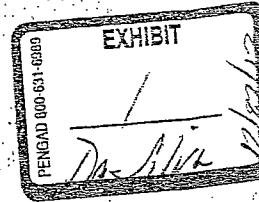
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DAVIS, EVERETT (id # , dob:)

Encounter Summary

Patient

Name	DAVIS, EVERETT (49, M) ID#	Appt. Date/Time	05/31/2012 10:45AM
DOB		Services Dept.	Blanding Street
Provider	ROBERT DASILVA, MD		
Insurance	Med G: LUMBERMANS		
	Policy/Group #:		
	Employer Name: SOUTHLAKE		
	TRANSPORT INC		
	Case #:		
	Case Injury Date: 11/28/2011		
	Prescription: RHPH - Member is eligible.		



Chief Complaint

Left Knee Pain, Lower Back Pain

DOI 12/28/11

Problems

Reviewed patient problem history (as of 05/31/2012) without changes

- Osteoarthritis, localized, not specified whether primary or secondary, lower leg (715.35)

Patient's Providers

Insurance Adjuster (Worker's Comp): CANDICE HOAGLAND: Ph (888) 794-0380, Fax (888) 566-2351

Medications

No medications reported

Allergies

Reviewed allergy history (no data recorded) without changes

NKDA

Past Medical History

Reviewed past medical history.

Surgical History

Reviewed patient surgical history (as of 05/31/2012) without changes

- Orthopaedic Surgery - lt knee

Family History

Reviewed family history (as of 05/31/2012) without changes

Mother - High Blood Pressure

- Stroke

Social History

Reviewed Social History & made changes

Ortho

Alcohol intake: None.

Number of children: 3.

Marital status: Divorced.

Diet Regular.

Chewing tobacco: none.

Cigar/Pipe Use: N.

Non-smoker.

Smoking Status: Never smoker.

Are you currently employed?: Y.

Hand Dominance: Right.

Occupation: Truck Driver.

Employer: Southlake.

Vitals

BP: 142/83 sitting

BMI: 30.7

Ht 5 ft 11 in

Wt 220 lbs

HPI

AVIS, EVERETT (id # 7, dob:)

Lower Back

Reported by patient

Location: left also c/o knee pain

Quality: throbbing, sharp, dull, constant

Severity: severe pain level 10, worst pain 10/10

Duration: 12/25/11

Timing: acute

Context: work injury, MVA

Alleviating Factors: standing

Aggravating Factors: standing; walking; lifting; bending/squatting; going from sit to stand; upstairs; downstairs

Associated Symptoms: no weakness; no numbness; no tingling; no swelling; no redness; no warmth; no ecchymosis; no catching/locking; no popping/clicking; no buckling; no grinding; no instability; no radiation down leg; no drainage; no fever; no chills; no weight loss; no change in bowel/bladder habits; pain

Previous Surgery: none

Prior Imaging: x ray

Previous Injections: none

Previous PT: none

Work Related: no

Working: regular duty

ROS

Patient reports back pain but reports no muscle aches, no muscle weakness, no arthralgias/joint pain, and no swelling in the extremities. He reports no fever, no night sweats, no significant weight gain, no significant weight loss, and no exercise intolerance. He reports no dry eyes, no irritation, and no vision change. He reports no difficulty hearing and no ear pain. He reports no frequent nosebleeds and no nose/sinus problems. He reports no sore throat, no bleeding gums, no snoring, no dry mouth, no mouth ulcers, no oral abnormalities, and no tooth problems. He reports no chest pain, no arm pain on exertion, no shortness of breath when walking, no shortness of breath when lying down, no palpitations, and no known heart murmur. He reports no cough, no wheezing, no shortness of breath, and no coughing up blood. He reports no abdominal pain, no vomiting, normal appetite, no diarrhea, and not vomiting blood. He reports no incontinence, no difficulty urinating, no hematuria, and no increased frequency. He reports no abnormal mole, no jaundice, and no rashes. He reports no loss of consciousness, no weakness, no numbness, no seizures, no dizziness, and no headaches. He reports no depression, no sleep disturbances, feeling safe in relationship, and no alcohol abuse. He reports no fatigue. He reports no swollen glands and no bruising. He reports no runny nose, no sinus pressure, no itching, no hives, and no frequent sneezing.

Physical Exam

None recorded.

Assessment / Plan

Independent medical examination. Patient with chronic pain in left knee. Recent accident, patient has noticed increased pain in left knee. Patient had a knee arthroscopy about 20 years ago according to patient. Pain in left knee now worsening with time. Patient also complains about right knee pain since the accident secondary to putting weight on the right leg patient also noticed a loose body in the left knee

Left knee

Palpable loose body

The patient is alert and oriented x 3.

The patient has an antalgic gait using no assistive devices. Both lower extremities were examined. The affected extremity has a positive crepitation in the knee. Positive pain over the medial and lateral joint line of the knee. Good range of motion of the knee with pain upon flexion and extension. The unaffected knee has none of the above.

Both hips were examined and were stable. Straight leg raise was negative. Neurological status is normal. Sensation, pulses and strength were normal. Range of motion of the lumbar spine is full. Deep tendon reflexes are 2+. Bilateral foot and ankle examinations are normal. Skin is in good condition throughout.

Severe arthritis left knee pre-existing not related to injury

Loose body left knee secondary to arthritis

Would not recommend removal of loose body because main problem is arthritis. Recommend knee replacement. Again unrelated and pre-existing to injury

1. OSTEOARTHROSIS, LOCALIZED, NOT SPECIFIED WHETHER PRIMARY OR SECONDARY, LOWER LEG (715.30)

Return to Office

• as needed

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DAVIS, EVERETT (id #1, dob:)

Encounter Sign-Off

Encounter signed-off by Robert Dasilva, MD, 05/31/2012.

Encounter performed and documented by Robert Dasilva, MD

Encounter reviewed & signed by Robert Dasilva, MD on 05/31/2012 at 12:08pm

IS, EVERETT (id #

dob:

~~Loose body left knee secondary to arthritis
Would not recommend removal of loose body because of the problems associated with knee replacement surgery and pre-existing injury~~

1. OSTEOARTHROSIS, LOCALIZED, NOT SPECIFIED WHETHER PRIMARY OR SECONDARY; LOWER LEG (715.36)

Assessment / Plan

Severe left knee arthritis

Lumbar spondylosis

Left knee pain

Low back pain

1. LUMBAGO (724.2)

• X-RAY, LUMBAR SPINE

View: 3 View

Position: Standing

Possibility of Pregnancy: N

Discussion: In my opinion, the patient has arthritis affecting the lumbar spine and severe arthritis affecting the left knee. I agree with Dr. Dasilva in that both of these diagnoses are pre-existing and not related to his motor vehicle collision sustained December 2011. Therefore, these diagnoses of left knee pain and low back pain are not causally related to his accident.

My recommendation would be for conservative care of the lumbar spine in the form of anti-inflammatory medications as well as physical therapy. I do not see any surgical indication for his lumbar spine. The patient would greatly benefit from a total knee arthroplasty. I would not recommend any less invasive procedure.

The above analysis is based on the available information at this time, including the medical records and the imaging studies & results provided. It is assumed that the information provided to me is correct. If more information becomes available at a later date, an additional report may be requested. Such information may or may not change the opinions rendered in this documents.

All opinions rendered in this document are based upon a reasonable degree of medical certainty and are impartial. Comments on the appropriateness of care are professional opinions based upon the specifics of this case and should not be generalized.

Thank you for allowing me to review this medical record. If you have any other further questions please do not hesitate to contact me.

Return to Office

• as needed

Encounter Sign-Off

Encounter signed-off by Ivan E. Lamotta, MD, 08/30/2012.

Encounter performed and documented by Ivan E. Lamotta, MD

Encounter reviewed & signed by Ivan E. Lamotta, MD on 08/30/2012 at 10:32am

IS, EVERETT (49)
Encounter Summary

Patient

Name DAVIS, EVERETT (49, M) ID# App Date/Time 05/30/2012 08:30AM
DOB Service Dept Blanding Street
Provider IVAN E. LAMOTTA, MD
Insurance Med Q: LUMBERMANS
Policy/Group # :
Employer Name: SOUTHLAKE
TRANSPORT INC
Case # :
Case Injury Date: 11/25/2011
Prescription: RHPHI - Member is eligible.

Chief Complaint

Lower Back Pain

Lower back pain IME doi ON 11/25/2011

Problems

Reviewed patient problem history & made changes
• Lumbago (724.2)

Patient's Providers

Insurance Adjuster (Worker's Comp): CANDICE HOAGLAND: Ph (863) 784-0380, Fax (863) 366-2951

Medications

Reviewed patient's medication history (as of 05/15/2012) without changes.

Name	Date
HYDROCODONE-ACETAMINOPHEN 5 MG-500 MG TABLET	08/14/12 filled
PENICILLIN V POTASSIUM 500 MG TABLET	08/03/12 filled

Allergies

Reviewed allergy history (no data recorded) without changes
NKDA

Past Medical History

Reviewed past medical history.

Surgical History

Reviewed patient surgical history (as of 05/31/2012) without changes
• Orthopaedic Surgery - lt knee

Patient History - Other

Reviewed patient's history (no data recorded) without changes

Family History

Reviewed family history (as of 05/31/2012) without changes
Mother - High Blood Pressure
- Stroke

Social History

Reviewed Social History & made changes
Ortho

Alcohol Intake: None.
Number of children: 3.
Marital status: Divorced.
Diet: Regular.
Chewing tobacco: none.
Cigar/Pipe Use: N.
Non-smoker.
Smoking Status: Never smoker.
Are you currently employed? Y.

/S, EVERETT (id # , dob:)

Occupation: Truck Driver.
Employer: Souhlake.

Vitals

BP: 140/80
BMI: 30.7

Ht 5 ft 11 in
Pulse: 67 bpm

Wt 220 lbs

HPI

Lower Leg

Reported by patient.

Quality: aching, stabbing, sharp, dull, frequent
Severity: pain level 8/10; worst pain 8/10

Duration: 9 months

Timing: acute

Context: MVA

Alleviating Factors: lying down; twisting, coughing & sneezing

Aggravating Factors: sitting; standing; walking; bending/squatting; exercise

Associated Symptoms: weakness; numbness; tingling

Previous Surgery: none

Prior Imaging: none

Previous Injections: none

Previous PT: none

Work Related: yes

Working: no

Initial evaluation. The patient is here for an independent medical evaluation regarding his back pain. The patient was involved in a motor vehicle accident in mid December 2011. The patient is unsure the exact date of the accident. During the accident, he was not wearing his seat belt and he was thrust forward in his left knee hit the dashboard. After that the patient started complaining of increasing amounts of left knee pain. There is no documentation in the medical record provided to him of any complaints of low back pain after the accident. However, now the patient states that since the accident he started having mild back pain in the low back radiating bilaterally into the buttocks and has gotten worse during the past 2 months. He rates the back pain 8/10, left knee pain 8 out of 10.

Both the left knee and low back are giving him problems on a daily basis during his work and with activities of daily. He denies any mechanical symptoms of his left knee.

The patient does have a history of her knee arthroscopy approximately 20 years ago and a residual left knee complaint after that. He had been previously diagnosed with knee arthritis by his primary care doctor. The patient states that since the accident he has not been treated with any type of medicine, injection, or physical therapy.

ROS

Patient reports back pain but reports no muscle aches, no muscle weakness, no arthralgias/joint pain, and no swelling in the extremities. He reports no fever, no night sweats, no significant weight gain, no significant weight loss, and no exercise intolerance. He reports no dry eyes, no irritation, and no vision change. He reports no difficulty hearing and no ear pain. He reports no frequent nosebleeds and no nose/sinus problems. He reports no sore throat, no bleeding gums, no snoring, no dry mouth, no mouth ulcers, no oral abnormalities, and no teeth problems. He reports no chest pain, no arm pain on exertion, no shortness of breath when walking, no shortness of breath when lying down, no palpitations, and no known heart murmur. He reports no cough, no wheezing, no shortness of breath, and no coughing up blood. He reports no abdominal pain, no vomiting, normal appetite, no diarrhea, and no vomiting blood. He reports no incontinence, no difficulty urinating, no hematuria, and no increased frequency. He reports no abnormal mole, no jaundice, and no rashes. He reports no loss of consciousness, no weakness, no numbness, no seizures, no dizziness, and no headaches. He reports no depression, no sleep disturbances, feeling safe in relationship, and no alcohol abuse. He reports no fatigue. He reports no swollen glands and no bruising. He reports no runny nose, no sinus pressure, no itching, no hives, and no frequent sneezing.

Physical Exam

Patient is a 48-year-old male.

Constitutional: General Appearance: healthy-appearing, NAD, normal body habitus, and overweight.

Psychiatric: Orientation: oriented to time, place, and person. Mood and Affect: normal mood and affect and active and alert.

Gait and Station: Appearance: ambulating with no assistive devices and limp; lateral thrust left knee noted.

Cardiovascular System: Arterial Pulses Right: dorsalis pedis normal, posterior tibialis normal, femoral normal, and popliteal normal. Arterial Pulses Left: dorsalis pedis normal, posterior tibialis normal, femoral normal, and popliteal normal. Edema Right: none. Edema Left: none. Varicosities Left: no varicosities and capillary refill test normal. Varicosities Right: no varicosities and capillary refill test normal.

Lymph Nodes: Inspection/Palpation Right: no inguinal LAD. Inspection/Palpation Left: no inguinal LAD.

IS, EVERETT (id # _____, dob: _____)

Skin: Lumbosacral Spine: normal skin.

Lumbar Spine: Inspection: no induration, ecchymosis, or swelling and normal alignment. Bony Palpation of the Lumbar Spine: no tenderness of the spinous process, the transverse process, the sacral promontory, the sacrum, or the coccyx. Bony Palpation of the Right Hip: no tenderness of the iliac crest, the ASIS, the PSIS, the pubic tubercle, the iliac tubercle, the sciatic notch, the ischial tuberosity, the SI joint, or the greater trochanter. Bony Palpation of the Left Hip: no tenderness of the iliac crest, the ASIS, the PSIS, the pubic tubercle, the iliac tubercle, the sciatic notch, the ischial tuberosity, the SI joint, or the greater trochanter. Soft Tissue Palpation on the Right: no tenderness of the supraspinous ligament, the paraspinal region, the lumbolumbar region, the gluteus maximus, the gluteus medius, the sciatic nerve, the anterior abdominal muscles, the inguinal ligament, or the piriiformis. Soft Tissue Palpation on the Left: no tenderness of the supraspinous ligament, the paraspinal region, the lumbolumbar region, the gluteus maximus, the gluteus medius, the sciatic nerve, the anterior abdominal muscles, the inguinal ligament, or the piriiformis. Active Range of Motion: rotation normal, lateral flexion normal, extension normal, flexion normal, and no pain with motion; mildly decreased. Passive Range of Motion: rotation normal, lateral flexion normal, extension normal, flexion normal, and no pain with motion.

Motor Strength: L1 Motor Strength on the Right: hip flexion iliopsoas 5/5. L1 Motor Strength on the Left: hip flexion iliopsoas 5/5. L2-L4 Motor Strength on the Right: knee extension quadriceps 5/5. L2-L4 Motor Strength on the Left: knee extension quadriceps 5/5. L5 Motor Strength on the Right: great toe extension extensor hallucis longus 5/5 and ankle dorsiflexion tibialis anterior 5/5. L5 Motor Strength on the Left: great toe extension extensor hallucis longus 5/5 and ankle dorsiflexion tibialis anterior 5/5. S1 Motor Strength on the Right: plantar flexion gastrocnemius 5/5. S1 Motor Strength on the Left: plantar flexion gastrocnemius 5/5.

Neurological System: Coordination: heel-to-shin normal. Babinski Reflex Right: plantar reflex absent. Babinski Reflex Left: plantar reflex absent. Special Tests: Valsalva's test negative. Ankle Reflex Right: normal (2). Ankle Reflex Left: normal (2). Knee Reflex Right: normal (2). Knee Reflex Left: normal (2). Sensation on the Right: S1 normal, L5 normal, T12 normal, normal distal extremities, L4 normal, L1 normal, L2 normal, S2 normal, and L3 normal. Sensation on the Left: S1 normal, L5 normal, T12 normal, normal distal extremities, L4 normal, L1 normal, L2 normal, S2 normal, and L3 normal. Special Tests on the Right: no clonus of the ankle/knee, compression test negative, Patrick-Fabere test negative, supine straight leg raising test negative, seated straight leg raising test negative, and femoral nerve traction test negative. Special Tests on the Left: no clonus of the ankle/knee, compression test negative, Patrick-Fabere test negative, supine straight leg raising test negative, seated straight leg raising test negative, and femoral nerve traction test negative.

left knee examination reveals a 5° flexion contraction, slight laxity with varus and valgus testing, significant crepitus with range of motion, palpable loose body along the suprapatellar lateral aspect of the knee but otherwise neurologically intact.

Results / Interpretations**X-RAY, LUMBAR SPINE**

• View: S-View, Position: Standing, Possibility of Pregnancy: N

mild anterior lumbar spondylosis, slight L3-L4 anterolisthesis with slight left lateral listhesis L3 onto L4-

EXTERNAL RESULT

outside radiographs of the left knee reveal varus angulation, markedly severe medial knee and patellofemoral arthritis, loose body noted.

Previous Assessment / Plan**Date of Service**

05/31/2012

Independent medical examination. Patient with chronic pain in left knee. Recent accident patient has noticed increased pain in left knee. Patient had a knee arthroscopy about 20 years ago according to patient. Pain in left knee now. Worsening with time. Patient also complains about right knee pain since the accident secondary to putting weight on the right leg patient also noticed a loose body in the left knee.

Left knee

Palpable loose body

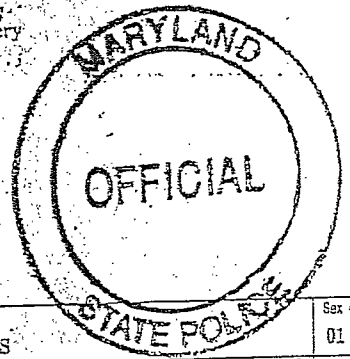
The patient is alert and oriented x 3.

The patient has an analgesic gait using no assistive devices. Both lower extremities were examined. The affected extremity has a positive crepitation in the knee. Positive pain over the medial and lateral joint line of the knee. Good range of motion of the knee with pain upon flexion and extension. The unaffected knee has none of the above.

Both hips were examined and were stable. Straight leg raise was negative. Neurological status is normal. Sensation, pulses and strength were normal. Range of motion of the lumbar spine is full. Deep tendon reflexes are 2+. Bilateral foot and ankle examinations are normal. Skin is in good condition throughout.

State of Maryland Motor Vehicle Accident Report

Report No. 11943285		Page of 2 1 of 2		Accident Date 11/28/11		Accident Time 17:44		Report Type ☐ Fatal ☐ Injury ☒ PDO ☐ Hit + Run ☐ Non-Traffic		Research 0		Local Case No. 1166012958		Local Codes		Photos? ☒ No ☐ Yes	
Investigating Officer ID Tpr Shelley, Z 5978				Agency and Area MSP 66		Supervising Officer ID SGT Sweltzer, C 3675		Power ID SGT Sweltzer, C 3675		Code - Auto - Name of Municipality 000 Not Applicable		County 16					
Rd Char 18 01		RTE/RUM Accident Occurred On IS 00095		Road Name NO NAME		In Lane 18 N 3		Traf Sig 20 ☒ No ☐ Yes		On Ramp 21 ☒ No ☐ Yes		Ramp Number (Direction) 0 1 N-W 2 W-N 3 E-N 4 N-E 5 S-E 6 E-S 7 W-S 8 S-W 9 Other		In Intersection 23 ☒ No ☐ Yes			
Rd Cond 24 01		Intersecting Route MD 00198		Intersecting Road Name or Log Mile Reference Manual description SANDY SPRING RD		Mile PT 27 032.70		Dir 28 N		Elev of Acc frt INT-RTE Ref. & Dir. 000.50		☒ FL ☐ NJ ☐ N					
Rd Chg 30 04		Accident Diagram		Show Label: Roads, Traffic Units, the Travel Direction, consistent with the Log Mile Reference Manual, and Movement of Traffic Units.				Describe Accident briefly, identify units by numbers. Also identify the following (a) the object damaged & nature of damage (property other than vehicles) and (b) the name & address of owner when applicable. Vehicle 1 and vehicle 2 were both traveling N/B I-95 just North of Rt. 198. Vehicle 1 was in lane 4 and vehicle 2 was in lane 3. Vehicle 1 then made an unsafe lane change from lane 4 into lane 3, striding vehicle 2 in the front right portion. Vehicle 1 then traveled in front of vehicle 2 causing damage to vehicle 2's left side and trailer portion. Vehicle 1 traveled off the left side of the roadway and came to rest in a ditch. Owner of damaged property: State of Maryland Property damaged: Trees / Shrubbery									
Sf Cond 34 02		Cali Zone 35 ☒ N ☐ Y		Justifn 36 00		Event-1 37 01		Event-2 38 00		Fix Chg 39 00		Coll Ty 4 07		Light 41 04		Weather 42 01	
Unit 43 01		NAME (First, Middle, Last) RAYMOND JUNWRI CHANG		Sex 45 01		Unit 43 02		NAME (First, Middle, Last) EVERETTE NMN DAVIS		Sex 45 01		Type of 46 Unit ☒ Driver ☐ PED		Address (No, Street, City, State, Zip) 47 Res		Inj 48 01 EMS 49 00	
Movement 50 07		Condtn 51 01		Subst 52 01		Test 53 00		Result 54 N/A		For Pch Cdy		Age 55 00		Type 56 00		Locatn 57 00	
Speed Limit 60 65		Saf. Equ 61 13		Eq Prob 62 01		Eject 63 01		Citizen Number(s) HG29481		Fair 65 ☒ No ☐ Yes		Speed Limit 60 65		Saf. Equ 61 13		Eq Prob 62 01	
Going 66 01		Driver's License Number MD		State 68 MD		Class 69 C		Going 66 01		Driver's License Number SC		State 68 SC		Class 69 CDL			
Continue 70 01		DR Date of Birth 71 01		Irregular Condition ☐ Caught Fire 72 ☐ HM Split 73 ☒ N/A		Haz Mat No. 74 N/A		Continue 70 01		DR Date of Birth 71 01		Irregular Condition ☐ Caught Fire 72 ☐ HM Split 73 ☒ N/A		Haz Mat No. 74 N/A			
Body Ty 7 02		Commercial Vehicle Only		U.S. DOT Number 76 N/A		ICC Number 77 N/A		Body Ty 78 00		U.S. DOT Number 76 00914309		ICC Number 77 N/A		Body Ty 78 03			
Most HE 80 01		Owner or Carrier Name (Write "SAME" if Driver) LIHSUNG A CHANG		Tel 803-458-2916		Most HE 80 01		Owner or Carrier Name (Write "SAME" if Driver) SOUTHEAST TRANSPORT (Res)		Tel 803-458-2916		Owner or Carrier Address PO BOX 2488 LEXINGTON SC 29071		Towed Vehicles 84 00 00 00			
82-2 07		Year & Make of Vehicle 2001 TOYOTA		Model 86 CAMRY		1st Impact Pt 87 13		Main Impact 88 14		82-2 00		Year & Make of Vehicle 2007 INTERNAT		Model 86 9400			
82-3 00		Exp Yr & Registr # State 02/13 JDZ284 MD		Areas Damaged 90 14 13 12		Insured GEICO		Policy No 4028805235		82-3 00		Exp Yr & Registr # State 12/11 P774018 SC		Areas Damaged 90 3 2 16			
82-4 00		Vehicle ID Number 4T1BG28K51U080260		Vehicle ID Number 2HSCNAP17C489480		Vehicle ID Number 2HSCNAP17C489480		Vehicle ID Number 2HSCNAP17C489480		82-4 00		Vehicle ID Number 2HSCNAP17C489480		Vehicle ID Number 2HSCNAP17C489480			
Dam Ext 94 04		Vehicle Removed By PAST AND PRESENT		Vehicle Removed By TOW LOT		Dam Ext 94 03		Vehicle Removed By DRIVER		Dam Ext 94 03		Vehicle Removed By DRIVER		Vehicle Removed By DRIVER			
Inj 100 00		Injured 109 00		Elev Ref 00		Elev Ref 00		Inj 100 00		Injured 109 00		Elev Ref 00		Elev Ref 00			



State of Maryland Motor Vehicle Accident Report

Report No. 11943285	Page of 2 of 2	Accident Date 11/28/11	Accident Time 17:44	Report Type ☐ Fatal ☐ Injury ☒ PDO ☐ Hit + Run ☐ Non-Traffic	Research ☐	Local Code No. 11166012958	Local Code 11166012958	Photos? ☒ No ☐ Yes
Investigating Officer ID Tpr Shalley, Z	Agency and Area MSP 66	Supervising Officer ID SGT Sweltzer, C	3675	SGT Sweltzer, C	3675	Code - And - Name of Municipality 000 Not Applicable	County 16	
Rd Char 16 01	RTE NUM Accident Occurred On IS 00095	Road Name NO NAME	In Lane N 3	Traffic Sign ☒ No ☐ Yes	On Ramp ☒ No ☐ Yes	Ramp Number (Direction) 0-Not Ramp 1 N-W 2 W-N 3 E-N 4 N-E 5 S-E 6 E-S	In Intersection ☒ No ☐ Yes	
Rd Cond 24 01	Intersecting Route MD 00198	Intersecting Road Name or Log Mile Reference Manual description SANDY SPRING RD	Mile PT 032.70	Dir N	Dist. of Acc fr INT-RT-Ref. & Dir. 000.50	☐ R ☒ N ☐ L	☐ N ☐ S	
Rd Dir 30 04	Accident Diagram 	Describe Accident briefly identify units by numbers. Also identify the following (a) the object damaged & nature of damage (property other than vehicles) and (b) the name & address of owner when applicable.						
Strt Cond 34 02								
CAH Zone 35 ☒ N ☐ Y								
Junctn 36 00								
Event-1 37 01								
Event-2 38 00								
Flx Obj 39 00								
Collty 4 07								
Light 41 04								
Weather 42 01								
Unit 43 02	NAME (First, Middle, Last)	Sex 45 00	Unit 43 00	NAME (First, Middle, Last)	Sex 45			
Type of 46 Unit ☐ Driver ☒ 'PED'	Address (No., Street, City, State, Zip)	Inj 43	Type of 46 Unit ☐ Driver ☒ 'PED'	Address (No., Street, City, State, Zip)	Inj 43			
Movement 50 01	Condition 51	Subst 52	Test 53	Result 54	For Peds Only	Age 55	Type 56	
Speed Limit 60 65	Saf. Equ 61	Eq Prob 62	Eject 63	Citation Number(s)	64	Unit 65	Unit 65	
Going 66 01	Driver's License Number	67	State 68	Class 69	Going 66	Driver's License Number	67	
Continue 70 01	DR Date of Birth 71	Irregular Condition ☐ Caught Fire 72	HM Spd 73	Har Mat No. 74	Continue 70	DR Date of Birth 71	Irregular Condition ☐ Caught Fire 72	
Body Ty 75 88	Commercial Vehicle Only	U.S. DOT Number 76	ICC Number 77	Body Ty 78	CDL? ☒ N ☐ Y	Body Ty 75	Commercial Vehicle Only	
Most HE 80 01	Owner or Carrier Name (Write "SAME" if Driver)	Tel	81	Most HE 80	Owner or Carrier Name (Write "SAME" if Driver)	Tel	81	
Contb Circumstances 82-1 00	Owner / Carrier Address P.O. BOX 2488 LEXINGTON SC 29071	Towed Vehicles 84 00 00 00	85	Contb Circumstances 82-1 00	Owner / Carrier Address	Towed Vehicles 84 00 00 00	85	
82-2 Year & Make of Vehicle 2010 WABASH	Model TRAILER	1st Impact Pt 87 0	88	82-2 Year & Make of Vehicle 2010 WABASH	Model TRAILER	1st Impact Pt 87 0	88	
82-3 Exp Yr & Registr # State 12/11 344604Z MA	Areas Damaged 90 0 0 0	Insurance 91 ISTARINS GO	92	82-3 Exp Yr & Registr # State 12/11 344604Z MA	Areas Damaged 90 0 0 0	Insurance 91 ISTARINS GO	92	
82-4 Vehicle ID Number 1JTV532D9AL445126	Vehicle ID Number 1JTV532D9AL445126	Vehicle ID Number 1JTV532D9AL445126	82-4	82-4 Vehicle ID Number 1JTV532D9AL445126	Vehicle ID Number 1JTV532D9AL445126	Vehicle ID Number 1JTV532D9AL445126	82-4	
Dam Ext 84 02	Vehicle Removed By DRIVER	Vehicle Removed By DRIVER'S SIDE	85	Dam Ext 84 02	Vehicle Removed By DRIVER	Vehicle Removed By DRIVER'S SIDE	85	
Injured 109 Injured 109 Taken By 100								
Injured 109 Injured 109 Taken By 100								
Injured 109 Injured 109 Taken By 100								
Injured 109 Injured 109 Taken By 100								
Injured 109 Injured 109 Taken By 100								



**SUPPLEMENTAL
REPORT**

State of Maryland Motor Vehicle Accident Report

Report No. 11943285	Page of 3 of 3	Accident Date Time 11/28/11 17:44	Report Type ☐ Fatal ☐ Injury ☒ PDO ☐ Hit + Run ☐ Non-Traffic	Research	Local Case No. 1166012958	Local Codes	☐ Photos?
PERSONS							
ADDITIONAL COMMENTS							
STATEMENTS							



U.S. Department of Transportation
Federal Motor Carrier Safety Administration
A&I Online: Safety Measurement System

SOUTHLAKE TRANSPORT INC

DOT#:914309

Print

State Reported Crashes - Detailed Crash Report (As of March 23, 2012)		Crash Date & Time: 11/29/2011, 1744	
		Report State: MD	
		Report #: MD1111943295	
Carrier Information			
Carrier Name	Southlake Transport Inc	US DOT #	914309
Carrier Address	1828 A Two Notch Road Lexington, SC 29073	MC #	396332
		State Census #	
Crash Information			
# of Fatalities	0	# of Injuries	0
Towaway	Yes	# of Vehicles in Crash	2
Location		Reporting Data	
Crash Date & Time	11/29/2011, 1744	Report State	MD
Location	No Name	Reporting Agency	MSP 38
City		Officer Badge #	6979
County	PRINCE GEORGES	Report #	MD1111943295
Crash State	MD	Federally Reportable	Yes
		State Reportable	Yes
Crash Environment			
Roadway Trafficway	Two-Way Trafficway, Divided, Positive Barrier	Weather Condition	No Adverse Conditions
Road Access Control	Full Control	Light Condition	Dark - Not Lighted
Road Surface Condition	Dry		
Driver Information			
Name*	Everette Davis	License #*	008785761
D.O.B.			
Age	49	Citation Issued	Unknown
License State	SC	Valid License	Yes
*Driver Name and Driver License Number is sensitive information, please handle in accordance with FMCSA guidelines.			
Vehicle Information			
Identification		Hazardous Materials	
Veh. Identification #	2HSCNAPR17C483480	HM Placards	No
Vehicle Plate #	P774018	Release of Cargo	No
Vehicle License State	SC	Material #	
		Material Name	
		HM Class	
Vehicle Type			
Vehicle Configuration	Truck/Trailer		
Cargo Body Type	Van/Enclosed Box		
Gross Vehicle Weight			
Gross Vehicle Weight Range	More Than 28,000 Pounds		



Feedback | Privacy Policy | USA.gov | Freedom of Information Act (FOIA) | Accessibility | CIG Hotline | Web Policies and Important Links | Site Map | Page 4/4

Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE, Washington, DC 20590 • 1-800-832-6655 • TTY: 1-800-877-8333 • Field Office Contacts

Fax Cover Sheet

SOUTHLAKE TRANSPORT, INC.
1828-A TWO NOTCH RD.
LEXINGTON, SC 29073
803-957-6982 FAX 803-996-3680

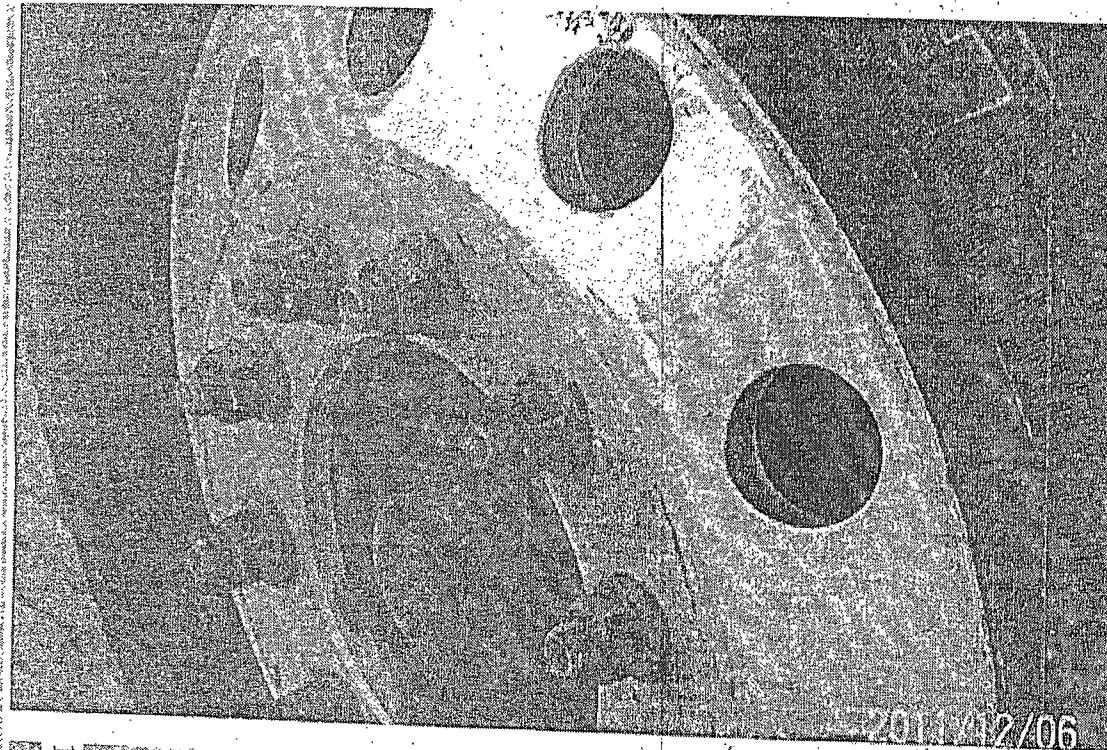
Send to: Geico	From: Carrie Glenn
Attention: Claims Dept.	Date: 12/7/2011
Office Location:	Office Location:
Fax Number: 703-738-2188	Phone Number:

- ☐ Urgent
- ☐ Reply ASAP
- ☐ Please comment
- ☐ Please Review
- ☐ For your Information

Total pages, including cover: 4

Comments: CLAIM # 0080297790101054

Please contact me regarding the above referenced claim. Repair estimate is attached.
Thank you,
Carrie Glenn
Safety Director
803-957-6982 x 21



2011/12/06



2103

SOUTHERN
TRANSPORT
MCB888
USDOT-81
NYU-179
VIN-7G4

20

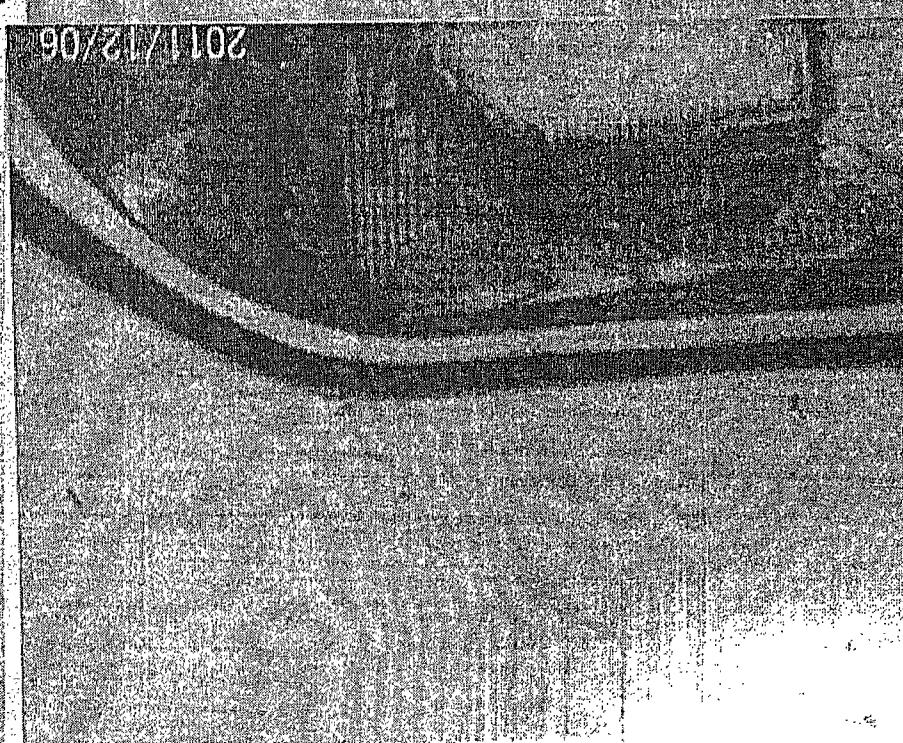
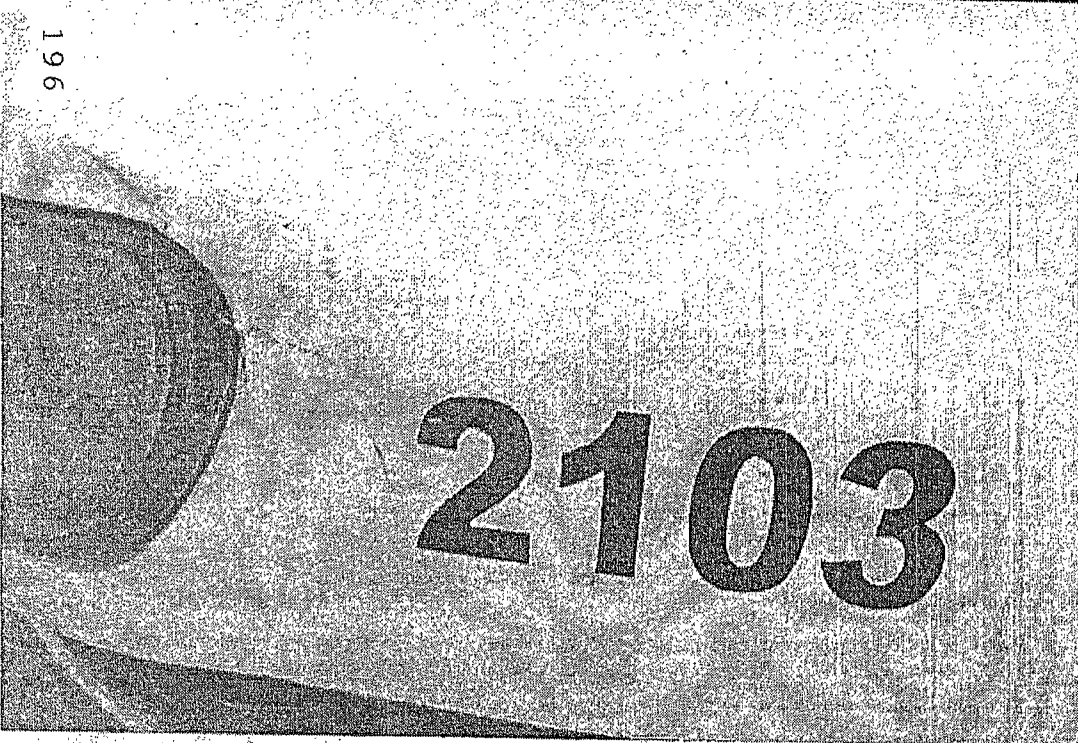
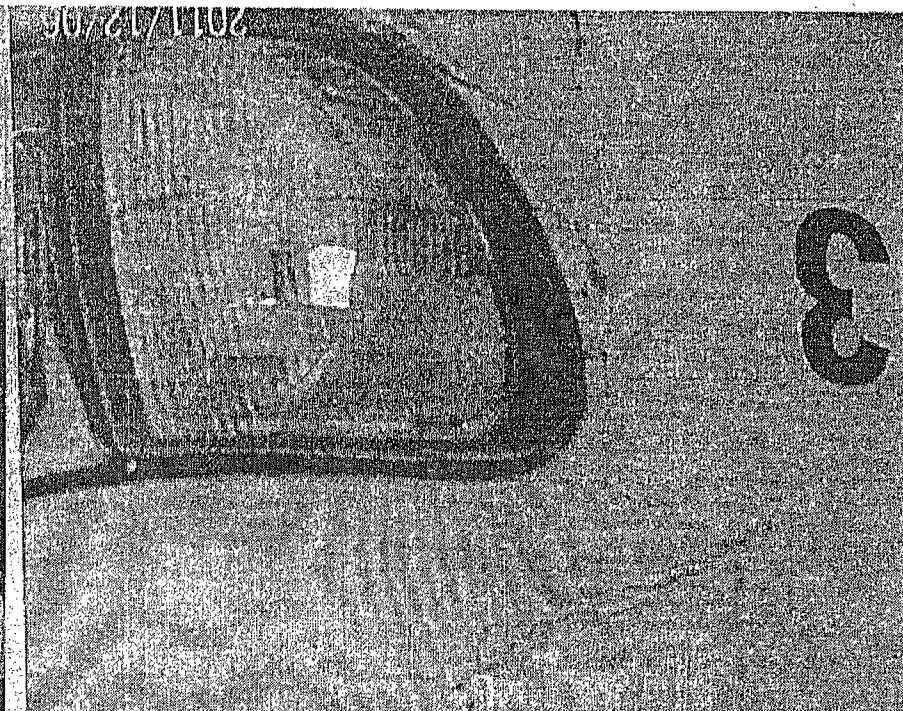
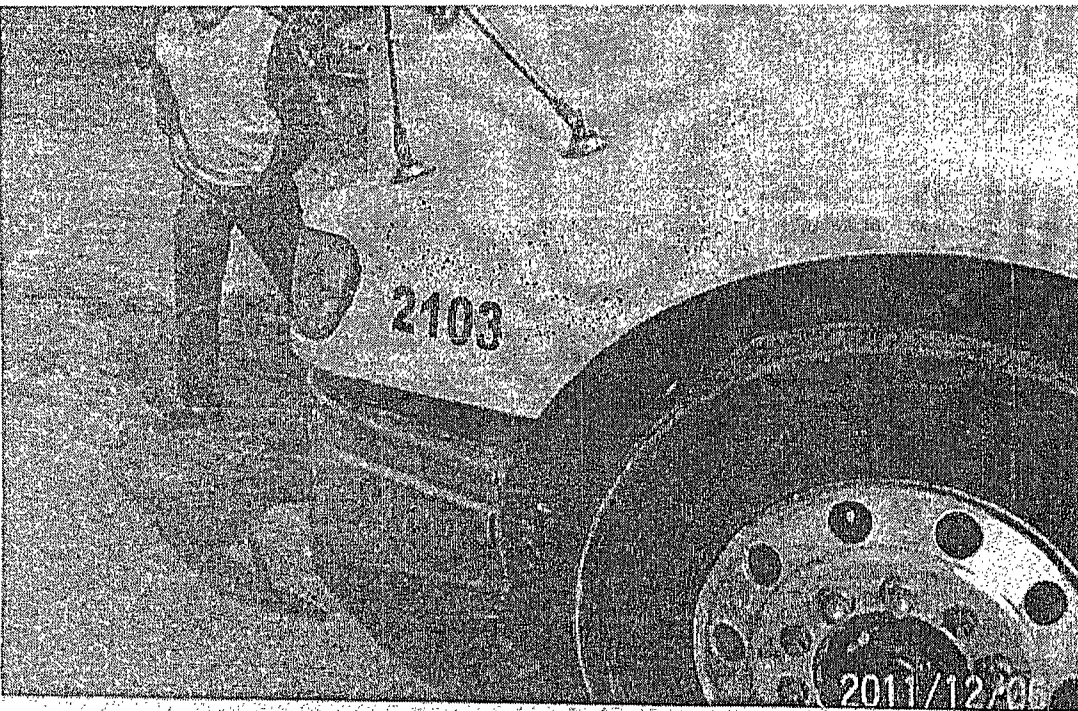


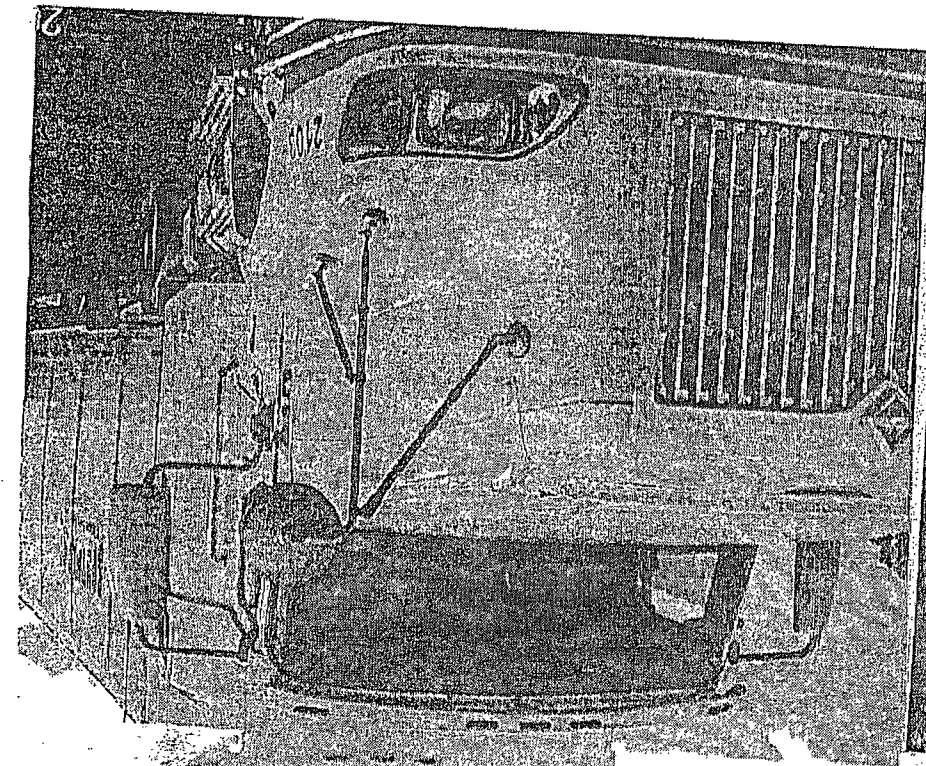
2011/12/06



2

195

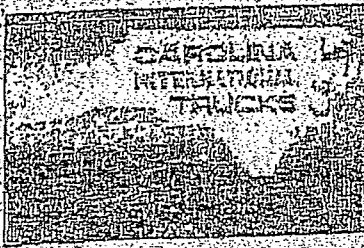




197

2011/12/05

2011/12/05



9.96r 3680

1618 Bluff Road
Columbia, SC 29201
Office: (803) 799-4923
Toll-Free: 800-855-4923
Fax: (803) 799-2812

2103

DATE: DEC 7 2011

Prepared By: TIM SHEFFIELD

UNIT 2103

Make	Year	Model	Vehicle Identification Number	Mileage/Hrs.	Lic. Plate #	Year	State
INTL	2007	9400	7C488420	749,867			

Sign:

Authorization To Repair Must Come From Vehicle Owner.

Customer: SOUTHLAKE

Street No.:

City:

State:

Zip:

Fax #

Phone No.:

Labor:	34.4 hrs. at \$ 68.00	\$ 2,339.20
Gross parts	Less 8%	\$ 1,659.40
	Sublet	\$ 8.00
	Towing & Recovery	\$ -
Sub-Total	Tax at 7.00%	\$ 116.16
	Gross Total:	\$ 4,122.76

TRUCK AND HEAVY EQUIPMENT ESTIMATE OF REPAIRS

198 12:00 PM 12/07/11

17

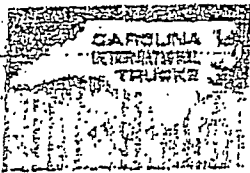


Chart No.

2

Truck and Heavy Equipment Estimate of Repairs

Code	Re-Place	Re-Pair	DETAILS OF REPAIRS AND REPLACEMENTS	Labor Hours	Parts At List	Sublet and Net Items
1	X		FRONT BUMPER	1.7	\$ 942.06	
2						
3			R & I HOOD AND ADJUST	1.5		
4		X	LEFT HOOD FENDER	6.5		
5			R&I LEFT HEADLIGHT	0.6		
6			R&I LEFT FENDER MIRROR	0.5		
7						
8		X	RIGHT HOOD FENDER	14.0		
9			R&I RIGHT HEADLIGHT	0.6		
10			R&I RIGHT FENDER MIRROR	0.5		
11						
12		X	RIGHT AND LEFT FRONT REINFORCEMENT	3.0		
13						
14	X		HOOD BUG SCREEN	1.0	\$ 255.77	
15						
16			PAINT AND MATERIALS	4.5	\$ 157.50	
17			SHOP SUPPLIES		\$ 279.07	
18			HZ			\$ 8.00
19			UNIT # DECALS		\$ 25.00	
20						
21						
22						
23						
24						
25						
26						
27						
28						
29						
30						
31						
32						
33						
34						
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37						
38						
39						
40						
41						
42						
43						
44						
45						
Sub-Totals for this sheet				34.4	\$ 1,859.40	\$ 8.00

GEICO GENERAL INSURANCE CO
ONE GEICO BLVD
FREDERICKSBURG, VA 22412-000

NO. N 124193617

Claim #
00802977901D1054

Date of Loss
11/28/2011

Date
02/03/2012

Field Claim Center:
05 Fredericksburg

Adjuster Code:
F155

Payment Type:
LOSS

Tax ID/SS#/Atty ADJ Code

Claimant Name
SOUTH LAKE TRANSPORT CO

Total Amount
\$*****4,122.76

Insured Name
LIHSIUNG A CHANG

Pay To
SOUTHLAKE TRANSPORT, INC

IP and Feature and Amount
03 APD \$***4,122.76

In Payment Of
PROPERTY DAMAGE COVERAGE

Visit geico.com

Now, parties involved in a GEICO claim can track the progress of the claim, view damage photos and more at geico.com! *GEICO policyholders can make a payment, change drivers or vehicles and request additional coverages. *Not insured with GEICO? 15 minutes could save you 15% or more on car insurance. Of course, we're also available for policy or claim service 24/7 at 1-800-841-3000. * These online services are unavailable to Assigned Risk policyholders.

CLMSCHK

PLEASE DETACH AND KEEP FOR YOUR RECORDS

GEICO GENERAL INSURANCE CO ONE GEICO BLVD FREDERICKSBURG, VA 22412-000		Bank of America HARTFORD, CT 06120		NO. N 124193617	
Claimant: SOUTHLAKE TRANSPORT CO		Claim Number: 00802977901D1054		VOID AFTER 10 DAYS Date: 02/03/2012	
Insured Name: LIHSIUNG A CHANG		Insured Name: LIHSIUNG A CHANG		Amount: \$*****4,122.76	
Feature Symbol & Amount: LOSS		In Payment of: PROPERTY DAMAGE COVERAGE			
Mail To: SOUTHLAKE TRANSPORT, INC 1328 A TWO NOTCH ROAD LEXINGTON, SC 29073		<i>C. G. Schmitt</i>			

1A

147/02

223

E. Davis

Two weeks ago approximately was in a car accident where he banged his left knee against the dash board of his car. Initially there was no discomfort other than abrasion on surface of the knee laterally. Several days later however pain began to intensify and now for the last several days hurts to walk or even to move out of a sitting position. Has been using some topical Rx and Advil but without much improvement. Otherwise ROS neg.

O: Mild distress, some discomfort and slight increased warmth to left knee compared to right. Healing nickel size abrasion lateral aspect left knee. Calf and hip appear benign.

A: Contusion left knee superimposed on preexisting DJD (last Tuomey x-ray in 1991).

P: Renew x-ray of left knee. Ansaed 100 mg once or twice daily. Activity as tolerated. FUNC.

6, 62 mg with report 1/10/12 20,

Clark

LAW FIRM, LLC

ATTORNEYS AT LAW

22 East Liberty Street

P.O. Drawer 880

Sumter, SC 29151

(P) 803.775.1234

(F) 803.775.8590

January 31, 2012

John D. Clark

Sharon Baker Clark

theclarklawfirm.com

EIN 57-1089772

Arland H. Compton, Jr., M.D.

ATTN: Medical Records Custodian

430 N. Main Street

Sumter, SC 29150

RE: Claimant: Everett Davis
 Employer: Southlake Transport Inc.
 SSN:
 DOB:
 DOA: 11-28-2011
 Our File: 12-010

Dear Medical Records Custodian:

Please be advised that I represent the above named individual in connection with an on-the-job injury he sustained on the above referenced date. My client advises me that Dr. Compton rendered medical treatment to him in connection with the above injury. I kindly request that you provide my office with a copy of Mr. Davis's medical records, to include patient's intake sheet, all doctors and nurses' notes, the course of treatment, and the medical prognosis.

I have enclosed an executed Authorization of 2011 use of Protected Health Information

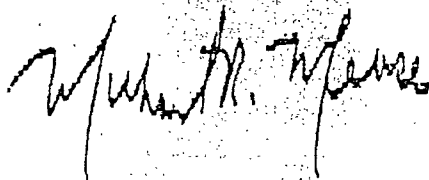
TUOMEY HEALTHCARE SYSTEM
129 NORTH WASHINGTON STREET
SUMTER, SC 29150
Phone: (803)774-9090
Fax: (803)774-9580

Name: EVERETTE DAVIS
Patient ID:
DOB:
Phone:
Acc#:
Second ID:

Exam Date: 12/27/2011
Exam: XR KNEE - LEFT 1951 | RAD.KL
Reason:
Referrer: ARLAND COMPTON JR
2nd Referrer:
3rd Referrer:

Results
Four views show mild to moderate medial femoral-tibial joint space narrowing with medial greater than lateral juxtaarticular osteophytes. Patella-femoral joint space narrowing and degeneration also noted with no obvious fracture or effusion. 16 mm calcification projects 10 cm above the joint space anteriorly-medially. I suspect this calcification is likely too superiorly located to reflect a loose body although not entirely excluded.

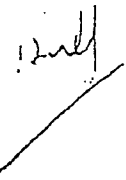
IMPRESSIONS: Degenerative changes with no obvious acute osseous abnormality.



Report Electronically Signed by: MICHAEL MEASE
Report Signed on: 12/27/2011 2:00 PM

Pt. Name: EVERETTE DAVIS
Patient ID:
Completed Date: 12/27/2011 1:00 PM
Transcribed By: Sandy Becker
Transcribed Date: 12/27/2011 1:45 PM

Exam: XR KNEE - LEFT 1951 | RAD.KL
Acc: 1006974
Interpreting Rad: MICHAEL MEASE
Dictated Date: 12/27/2011 1:03 PM
Finalized Date: 12/27/2011 2:00 PM



12/29/11
Told Arthritis
JP

STATE OF SOUTH CAROLINA
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1119380

EVERETT DAVIS, Employee,

CLAIMANT,

v.

SOUTHLAKE TRANSPORT INC.,

EMPLOYER,

and

LUMBERMENS UNDERWRITING
ALLIANCE,

CARRIER,

DEFENDANTS.

QUESTIONNAIRE OF
ARLAND H. COMPTON, MD

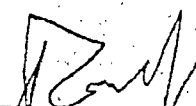
RE: EVERETT DAVIS

DOB: SSN:

The undersigned, Arland H. Compton, MD, having provided medical treatment for Claimant Everett Davis, offers the following opinion, stated to a reasonable degree of medical certainty:

1. Whether the injury to Claimant's left knee was caused by his truck accident of November 28, 2011?

☒ Yes☐ No


Arland H. Compton, MD
430 Main Street
Sumter, SC 29150

April 27, 2012

01/30/12

EVERETT DAVIS**43363**

DOB:

HISTORY:

This is a 49 year old left hand dominant male seen per the request of Dr. Compton for his left knee pain. The patient also feels an object moving around in his knee which moves to different spots. He has a constant ache/pain that is generalized anterior. He has positive crepitus, limited ROM with pain, difficulty with steps and stairs having to take one at the time while holding the hand rail, no night pain awakening, no giving away, positive theater sign, positive stiffness, no locking and no numbness or tingling. He has pain when walking up or down a slope, hills etc. His symptoms have been present for 1 month but no significant pain until MVA 1.5 months ago. He hit his knee on the bottom of the car dash board. His pain was mild at fist and didn't go to the ER, then gradually worsened and at times severe and very difficult to walk. He works driving a truck with a clutch. He had a left knee scope 20 years ago. He has occasional aches in his right knee medially now that he is more weight bearing on it since his MVA. Activities that make it better are taking Advil helps some. Activities that make it worse are sitting for a long period of time, walking and stairs. He was previously seen by Dr. Compton where he was given pain medication.

EMPLOYER: South Lake.

PCP: Dr. Compton.

ALLERGIES: NKDA.

LATEX ALLERGY: None.

PAST MEDICAL HISTORY: WNL.

PRESENT MEDICATIONS: None.

HABITS: Does not smoke or drink alcohol.

PAST SURGICAL HISTORY: Left knee scope.

PAST FRACTURE HISTORY: None.

EVERETT DAVIS

01/30/12

PG 2

Review of systems is negative for fevers, chills, unexplained weight loss or other constitutional symptoms.

PHYSICAL EXAM:

Std. height 5'11", 220 pounds.

Left knee – some tenderness MJL with palpable subcutaneous osteophyte, tight LRL but no pain with sage test, some LJL, has healed arthroscopic incisions, lacks 11° from full extension, minimal effusion, no AP or NL instability, varus anatomic access 3-4° varus, 5-/5 quad strength, flex 108°, on medial ACT had mild medial pain and crepitus, no AP or ML instability, questionable loose body supra patellar pouch.

Left hip – flex 100°, external rotation 25-30°, internal rotation 10-15°.

Right knee – positive MJL tenderness, AROM 3-125°, mild medial pain and crepitus with medial ACT.

Right hip – flex 100°, external rotation 23-30°, internal rotation 10-15°.

RADIOGRAPHS:

Left knee evaluation multiple views shows severe tri compartmental DJD changes, most advanced in the medial compartment where there is bone in bone deformity and obliteration of the joint space as well as subcondylar sclerosis and peri articular osteophytes. The peri articular osteophytes are tri compartmental involving all compartments and there also appears to be a loose body in the supra patella pouch with a boney ossification measuring 1.5X2cm oval shape with good demarcation of the margins, although calcification within the quadriceps tendon from previous trauma cannot be ruled out. The right knee incidentally seen on one view, (standing AP bilateral knee view) shows a marked decrease in the medial joint space but not quite bone on bone yet with 1-2mm of joint space remaining on this view with some small medial peri articular osteophytes.

IMPRESSION:

Left knee arthralgia with severe DJD, genu varum, and intra articular loose body.

PLAN:

EVERETT DAVIS

01/30/12

PG 3

The nature of this malady and its potential treatment spectrum was discussed with the patient in detail. This includes both operative and non operative treatment. The non operative treatment includes activity level modification, NSAIDS (as per PCP), PT for pain reducing modalities and rehab protocol and possible corticosteroid injection trial. Surgical treatment options discussed include possible knee scope with possible removal of loose body and possible menisectomy. It was explained to the patient that a knee scope would not cure his OA. The TKA was also discussed with the patient. The patient states he would like to elect TKA but would like to talk to his lawyer prior to making a decision. The patient is to RTO PRN.

MICHAEL K. DRAKEFORD, M.D. /srr

Dictated but not read.

STATE OF SOUTH CAROLINA
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1119380

EVERETT DAVIS, Employee,

CLAIMANT,

v.

SOUTHLAKE TRANSPORT INC.,

EMPLOYER,

and

LUMBERMENS UNDERWRITING
ALLIANCE,

CARRIER,

DEFENDANTS.

QUESTIONNAIRE OF
MICHAEL K. DRAKEFORD, MD
RE: EVERETT DAVIS

DOB:

SSN:

The undersigned, Michael K. Drakeford, MD, having provided medical treatment for Claimant Everett Davis, offers the following opinion, stated to a reasonable degree of medical certainty:

1. Whether injury to Claimant's left knee was caused by his truck accident of November 28, 2011?

☐ Yes

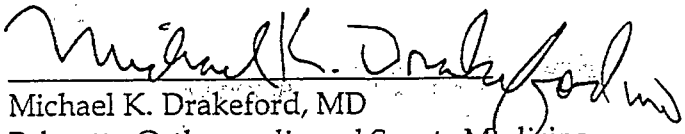
☒ No

2. Whether the recommended knee replacement was necessitated by the injury sustained in the truck accident of November 28, 2011?

☒ Yes

☐ No

QUESTIONNAIRE OF MICHAEL K. DRAKEFORD, MD
RE: EVERETT DAVIS
PAGE TWO


Michael K. Drakeford, MD
Palmetto Orthopaedic and Sports Medicine
595 W. Wesmark Blvd.
Sumter, SC 29150

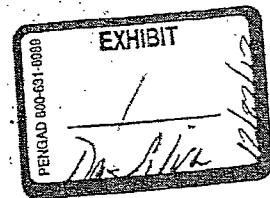
May 2 2012

MIDLANDS ORTHOPAEDICS, P.A. • 1910 Blanding Street, COLUMBIA SC 29201-3520

DAVIS, EVERETT (id # , dob:)
Encounter Summary

Patient

Name	DAVIS, EVERETT (49, M) ID#	Appt. Date/Time	05/31/2012 10:45AM
DOB		Service Dept.	Blanding Street
Provider	ROBERT DASILVA, MD		
Insurance	Med O: LUMBERMANS		
	Policy/Group #:		
	Employer Name: SOUTHLAKE		
	TRANSPORT INC		
	Case #:		
	Case Injury Date: 11/28/2011		
	Prescription: RHPHI - Member is eligible.		



Chief Complaint

Left Knee Pain, Lower Back Pain

DOI 12/28/11

Problems

Reviewed patient problem history (as of 05/31/2012) without changes

- Osteoarthritis, localized, not specified whether primary or secondary; lower leg (715.35)

Patient's Providers

Insurance Adjuster (Worker's Comp): CANDICE HOAGLAND: Ph (803) 794-0360, Fax (803) 368-2951

Medications

No medications reported

Allergies

Reviewed allergy history (no data recorded) without changes

NKDA

Past Medical History

Reviewed past medical history.

Surgical History

Reviewed patient surgical history (as of 05/31/2012) without changes

- Orthopaedic Surgery - It knee

Family History

Reviewed family history (as of 05/31/2012) without changes

Mother - High Blood Pressure

- Stroke

Social History

Reviewed Social History & made changes

Ortho

Alcohol intake: None

Number of children: 3

Marital status: Divorced

Diet: Regular

Chewing tobacco: none

Cigar/Pipe Use: N

Non-smoker

Smoking Status: Never smoker

Are you currently employed?: Y.

Hand Dominance: Right

Occupation: Truck Driver

Employer: Southlake

Vitals

BP: 142/83 sitting

BMI: 30.7

HT: 5 ft 11 in

WT: 220 lbs

209

MIDLANDS ORTHOPAEDICS, P.A. • 1910 Blanding Street, COLUMBIA SC 29201-3520

AVIS, EVERETT (id #

, dob:)

Lower Back

Reported by patient

Location: left also c/o I knee pain

Quality: throbbing, sharp, dull, constant

Severity: severe pain level 10/10 worst pain 10/10

Duration: 12/28/11

Timing: acute

Context: work injury, MVA

Alleviating Factors: standing

Aggravating Factors: standing; walking; lifting; bending/squatting; going from sit to stand; upstairs; downstairs

Associated Symptoms: no weakness; no numbness; no tingling; no swelling; no redness; no warmth; no ecchymosis; no catching/locking; no popping/clicking; no buckling; no grinding; no instability; no radiation down leg; no drainage; no fever; no chills; no weight loss; no change in bowel/bladder habits; pain

Previous Surgery: none

Prior Imaging: x ray

Previous Injections: none

Previous PT: none

Work Related: no

Working: regular duty

ROS

Patient reports back pain but reports no muscle aches, no muscle weakness, no arthralgias/joint pain, and no swelling in the extremities. He reports no fever, no night sweats, no significant weight gain, no significant weight loss, and no exercise intolerance. He reports no dry eyes, no irritation, and no vision change. He reports no difficulty hearing and no ear pain. He reports no frequent nosebleeds and no nose/sinus problems. He reports no sore throat, no bleeding gums, no snoring, no dry mouth, no mouth ulcers, no oral abnormalities, and no teeth problems. He reports no chest pain, no arm pain on exertion, no shortness of breath when walking, no shortness of breath when lying down, no palpitations, and no known heart murmur. He reports no cough, no wheezing, no shortness of breath, and no coughing up blood. He reports no abdominal pain, no vomiting, normal appetite, no diarrhea, and not vomiting blood. He reports no incontinence, no difficulty urinating, no hematuria, and no increased frequency. He reports no abnormal mole, no jaundice, and no rashes. He reports no loss of consciousness, no weakness, no numbness, no seizures, no dizziness, and no headaches. He reports no depression, no sleep disturbances, feeling safe in relationship, and no alcohol abuse. He reports no fatigue. He reports no swollen glands and no bruising. He reports no runny nose, no sinus pressure, no itching, no hives, and no frequent sneezing.

Physical Exam

None recorded.

Assessment / Plan

Independent medical examination: Patient with chronic pain in left knee. Recent accident patient has noticed increased pain in left knee. Patient had a knee arthroscopy about 20 years ago according to patient. Pain in left knee now. Worsening with time. Patient also complains about right knee pain since the accident secondary to putting weight on the right leg patient also noticed a loose body in the left knee

Left knee
Palpable loose body

The patient is alert and oriented x 3:

The patient has an antalgic gait using no assistive devices. Both lower extremities were examined. The affected extremity has a positive crepitation in the knee. Positive pain over the medial and lateral joint line of the knee. Good range of motion of the knee with pain upon flexion and extension. The unaffected knee has none of the above.

Both hips were examined and were stable. Straight leg raise was negative. Neurological status is normal. Sensation, pulses and strength were normal. Range of motion of the lumbar spine is full. Deep tendon reflexes are 2+. Bilateral foot and ankle examinations are normal. Skin is in good condition throughout.

Severe arthritis left knee pre-existing not related to injury

Loose body left knee secondary to arthritis

Would not recommend removal of loose body because main problem is arthritis. Recommend knee replacement. Again unrelated and pre-existing to injury

1. OSTEOARTHRITIS, LOCALIZED, NOT SPECIFIED WHETHER PRIMARY OR SECONDARY, LOWER LEG (715.36)

Return to Office

• as needed

08/07/2012 Thu 15:55

ID: #31822 Page 4 of 4

MIDLANDS ORTHOPAEDICS, P.A. • 1910 Blanding Street, COLUMBIA SC 29201-3520

DAVIS, EVERETT (id: , dob:)

Encounter Sign-Off

Encounter signed-off by Robert Dasilva, MD, 05/31/2012

Encounter performed and documented by Robert Dasilva, MD

Encounter reviewed & signed by Robert Dasilva, MD on 05/31/2012 at 12:08pm

ISLANDS ORTHOPAEDICS, P.A. • 1910 Blanding Street, COLUMBIA SC 29201-3520

S, EVERETT (id #, dob:)

~~Loose body left knee secondary to arthritis~~~~Would not recommend removal of loose body because main problem is arthritis. Recommend knee replacement. Arthritis related and pre-existing to injury.~~

1. OSTEOARTHRITIS, LOCALIZED, NOT SPECIFIED WHETHER PRIMARY OR SECONDARY; LOWER LEG (716.38)

Assessment / Plan

Severe left knee arthritis

Lumbar spondylosis

Left knee pain

Low back pain

1. LUMBAGO (724.2)

• X-RAY, LUMBAR SPINE

View: 3 View

Position: Standing

Possibility of Pregnancy: N

Discussion: In my opinion, the patient has arthritis affecting the lumbar spine and severe arthritis affecting the left knee. I agree with Dr. DaSilva in that both of these diagnoses are pre-existing and not related to his motor vehicle collision sustained December 2011. Therefore, the diagnoses of left knee pain and low back pain are not causally related to his accident.

My recommendation would be for conservative care of the lumbar spine in the form of anti-inflammatory medications as well as physical therapy. I do not see any surgical indication for his lumbar spine. The patient would greatly benefit from a total knee arthroplasty. I would not recommend any less invasive procedure.

The above analysis is based on the available information at this time, including the medical records and the imaging studies & results provided. It is assumed that the information provided to me is correct. If more information becomes available at a later date, an additional report may be requested. Such information may or may not change the opinions rendered in this document.

Opinions rendered in this document are based upon a reasonable degree of medical certainty and are impartial. Comments on the appropriateness of care are professional opinions based upon the specifics of this case and should not be generalized.

Thank you for allowing me to review this medical record. If you have any other further questions please do not hesitate to contact me.

Return to Office

• as needed

Encounter Sign-Off

Encounter signed-off by Ivan E. Lamotta, MD, 08/30/2012.

Encounter performed and documented by Ivan E. Lamotta, MD

Encounter reviewed & signed by Ivan E. Lamotta, MD on 08/30/2012 at 10:32am

MIDLANDS ORTHOPAEDICS, P.A. • 1910 Blanding Street, COLUMBIA SC 29201-3520

MS. EVERETT (49)

Encounter Summary

Patient

Name

DAVIS, EVERETT (49, M) ID#

App Date/Time

08/30/2012 08:30 AM

DOB

Service Dept.

Blanding Street

Provider

IVAN E. LAMOTTA, MD

Insurance

Med O: LUMBERMANS

Policy/Group #:

Employer Name: SOUTHLAKE

TRANSPORT INC

Case #:

Case Injury Date: 11/28/2011

Prescription: RHPHI - Member is eligible.

Chief Complaint

Lower Back Pain

Lower back pain IME doi ON 11/28/2011

Problems

Reviewed patient problem history & made changes

• Lumbago (724.2)

Patient's Providers

Insurance Adjuster (Worker's Comp): CANDICE HOAGLAND: Ph (866) 794-0380, Fax (866) 368-2951

Medications

Reviewed patient's medication history (as of 08/15/2012) without changes

Name

Date

HYDROCODONE-ACETAMINOPHEN 5 MG-500 MG TABLET 08/14/12 filled

PENICILLIN V POTASSIUM 500 MG TABLET

08/06/12 filled

Allergies

Reviewed allergy history (no data recorded) without changes

NKDA

Past Medical History

Reviewed past medical history.

Surgical History

Reviewed patient surgical history (as of 05/31/2012) without changes

• Orthopaedic Surgery - lt knee

Patient History - Other

Reviewed patient's history (no data recorded) without changes

Family History

Reviewed family history (as of 05/31/2012) without changes

Mother - High Blood Pressure

- Stroke

Social History

Reviewed Social History & made changes

Ortho

Alcohol Intake: None.

Number of children: 3.

Marital status: Divorced.

Diet: Regular.

Chewing tobacco: none.

Cigar/Pipe Use: N.

Non-smoker.

Smoking Status: Never smoker.

Are you currently employed? Y.

ISLANDS ORTHOPAEDICS, P.A. • 1910 Blanding Street, COLUMBIA SC 29201-3520

MS, EVERETT (id # 5, dob;

Occupation: Truck Driver.
Employer: Southlake.

Vitals

BP: 140/80
BMI: 30.7

Ht: 5 ft 11 in
Pulse: 67 bpm

Wt: 220 lbs

HPI

Lower Leg

Reported by patient.

Quality: aching; stabbing; sharp; dull; frequent
Severity: pain level 8/10; worst pain 8/10

Duration: 9 months

Timing: acute

Context: MVA

Alleviating Factors: lying down; twisting, coughing & sneezing

Aggravating Factors: sitting; standing; walking; bending/squatting; exercise

Associated Symptoms: weakness; numbness; tingling

Previous Surgery: none

Prior Imaging: none

Previous Injections: none

Previous PT: none

Work Related: yes

Working: no

Initial evaluation. The patient is here for an independent medical evaluation regarding his back pain. The patient was involved in a motor vehicle accident in mid December 2011. The patient is unsure the exact date of the accident. During the accident, he was not wearing his seat belt and he felt that he was thrust forward in his left knee hit the dashboard. After that the patient started complaining of increasing amounts of left knee pain. There is no documentation in the medical record provided to us of any complaints of low back pain after the accident. However, now the patient states that since the accident he started having mild back pain in the low back radiating bilaterally into the buttocks and has gotten worse during the past 2 months. He rates the back pain 8/10, left knee pain 8 out of 10.

Both the left knee and low back are giving him problems on a daily basis during his work and with activities of daily life. He denies any mechanical symptoms of the left knee.

The patient does have a history of of her knee arthroscopy approximately 20 years ago and a residual left knee complaints after that. He had been previously diagnosed with knee arthritis by his primary care doctor. The patient states that since the accident he has not been treated with any type of medicine, injection, or physical therapy.

ROS

Patient reports back pain but reports no muscle aches, no muscle weakness, no arthralgia/joint pain, and no swelling in the extremities. He reports no fever, no night sweats, no significant weight gain, no significant weight loss, and no exercise intolerance. He reports no dry eyes, no irritation, and no vision changes. He reports no difficulty hearing and no ear pain. He reports no frequent nosebleeds and no nose/sinus problems. He reports no sore throat, no bleeding gums, no snoring, no dry mouth, no mouth ulcers, no oral abnormalities, and no teeth problems. He reports no chest pain, no arm pain on exertion, no shortness of breath when walking, no shortness of breath when lying down, no palpitations, and no known heart murmur. He reports no cough, no wheezing, no shortness of breath, and no coughing up blood. He reports no abdominal pain, no vomiting, normal appetite, no diarrhea, and not vomiting blood. He reports no incontinence, no difficulty urinating, no hematuria, and no increased frequency. He reports no abnormal mole, no jaundice, and no rashes. He reports no loss of consciousness, no weakness, no numbness, no seizures, no dizziness, and no headaches. He reports no depression, no sleep disturbances, feeling safe in relationship, and no alcohol abuse. He reports no fatigue. He reports no swollen glands and no bruising. He reports no runny nose, no sinus pressure, no itching, no hives, and no frequent sneezing.

Physical Exam

Patient is a 48-year-old male.

Constitutional: General Appearance: healthy-appearing, NAD, normal body habitus, and overweight.

Psychiatric: Orientation: oriented to time, place, and person. Mood and Affect: normal mood and affect and active and alert.

Head and Neck: Appearance: embolizing with no assistive devices and limp; lateral thrust left knee noted.

Cardiovascular System: Arterial Pulses Right: dorsalis pedis normal, posterior tibialis normal, femoral normal, and popliteal normal. Arterial Pulses Left: dorsalis pedis normal, posterior tibialis normal, femoral normal, and popliteal normal. Edema Right: none. Edema Left: none. Varicosities Right: no varicosities and capillary refill test normal. Varicosities Left: no varicosities and capillary refill test normal.

Lymph Nodes: Inspection/Palpation Right: no inguinal LAD. Inspection/Palpation Left: no inguinal LAD.

MIDLANDS ORTHOPAEDICS, P.A. • 1910 Blanding Street, COLUMBIA SC 29201-3520

IS, EVERETT (id #), dob: 1

Skin: Lumbosacral Spine: normal skin.

Lumbar Spine: Inspection: no induration, ecchymosis, or swelling and normal alignment. Bony Palpation of the Lumbar Spine: no tenderness of the spinous process, the transverse process, the sacral promontory, the sacrum, or the coccyx. Bony Palpation of the Right Hip: no tenderness of the iliac crest, the ASIS, the PSIS, the pubic tubercle, the iliac tubercle, the acetabular notch, the ischial tuberosity, the SI joint, or the greater trochanter. Bony Palpation of the Left Hip: no tenderness of the iliac crest, the ASIS, the PSIS, the pubic tubercle, the iliac tubercle, the acetabular notch, the ischial tuberosity, the SI joint, or the greater trochanter. Soft Tissue Palpation on the Right: no tenderness of the supraspinous ligament, the paraspinal region, the lumbolumbar region, the gluteus maximus, the gluteus medius, the sciatic nerve, the anterior abdominal muscles, the inguinal ligament, or the piriformis. Soft Tissue Palpation on the Left: no tenderness of the supraspinous ligament, the paraspinal region, the lumbolumbar region, the gluteus maximus, the gluteus medius, the sciatic nerve, the anterior abdominal muscles, the inguinal ligament, or the piriformis. Active Range of Motion: rotation normal, lateral flexion normal, extension normal, flexion normal, and no pain with motion; mildly decreased. Passive Range of Motion: rotation normal, lateral flexion normal, extension normal, flexion normal, and no pain with motion.

Motor Strength: L1 Motor Strength on the Right: hip flexion iliopsoas 5/5. L1 Motor Strength on the Left: hip flexion iliopsoas 5/5. L2-L4 Motor Strength on the Right: knee extension quadriceps 5/5. L2-L4 Motor Strength on the Left: knee extension quadriceps 5/5. L5 Motor Strength on the Right: great toe extension extensor hallucis longus 5/5 and ankle dorsiflexion tibialis anterior 5/5. L5 Motor Strength on the Left: great toe extension extensor hallucis longus 5/5 and ankle dorsiflexion tibialis anterior 5/5. S1 Motor Strength on the Right: plantar flexion gastrocnemius 5/5. S1 Motor Strength on the Left: plantar flexion gastrocnemius 5/5.

Neurological System: Coordination: heel-to-shin normal. Babinski Reflex Right: plantar reflex absent. Babinski Reflex Left: plantar reflex absent. Special Tests: Valsalva's test negative. Ankle Reflex Right: normal (2). Ankle Reflex Left: normal (2). Knee Reflex Right: normal (2). Knee Reflex Left: normal (2). Sensation on the Right: S1 normal, L5 normal, T12 normal, normal distal extremities, L4 normal, L1 normal, L2 normal, S2 normal, and L3 normal. Sensation on the Left: S1 normal, L5 normal, T12 normal, normal distal extremities, L4 normal, L1 normal, L2 normal, S2 normal, and L3 normal. Special Tests on the Right: no clonus of the ankle/knee, compression test negative, Patrick-Fabere test negative, supine straight leg raising test negative, seated straight leg raising test negative, and femoral nerve traction test negative. Special Tests on the Left: no clonus of the ankle/knee, compression test negative, Patrick-Fabere test negative, supine straight leg raising test negative, seated straight leg raising test negative, and femoral nerve traction test negative.

left knee examination reveals a 5° flexion contraction, slight laxity with varus and valgus testing, significant crepitus with range of motion, palpable loose body along the suprapatellar lateral aspect of the knee but otherwise neurologically intact.

Results / Interpretations

X-RAY, LUMBAR SPINE

*View: S-View. Position: Standing. Possibility of Pregnancy: N

mild anterior lumbar spondylosis, slight L3-L4 anterolisthesis with slight left lateral listhesis L3 onto L4-

EXTERNAL RESULT

outside radiographs of the left knee reveal varus angulation, markedly severe medial knee and patellofemoral arthralgia, loose body noted.

Previous Assessment / Plan

Date of Service

05/31/2012

Independent medical examination. Patient with chronic pain in left knee. Recent accident patient has noticed increased pain in left knee. Patient had a knee arthroscopy about 20 years ago according to patient. Pain in left knee now. Worsening with time. Patient also complains about right knee pain since the accident secondary to putting weight on the right leg patient also noticed a loose body in the left knee

Left knee

Palpable loose body

The patient is alert and oriented x 3.

The patient has an analgic gait using no assistive devices. Both lower extremities were examined. The affected extremity has a positive crepitation in the knee. Positive pain over the medial and lateral joint line of the knee. Good range of motion of the knee with pain upon flexion and extension. The unaffected knee has none of the above.

Both hips were examined and were stable. Straight leg raise was negative. Neurological status is normal. Sensation, pulses and strength were normal. Range of motion of the lumbar spine is full. don reflexes are 2+. Bilateral foot and ankle examinations are normal. Skin is in good condition througho. 2 1 5

SOUTHEASTERN SPINE INSTITUTE

DAVIS, EVERETTE

Independent Medical Evaluation

Patient #

DOB:

October 1, 2012

This patient is a 49-year old from Sumter. He is referred by his attorney for an independent medical evaluation. He has complaints of low back pain particularly with pain radiating into the upper aspect of both buttocks. He states that he had low back pain about 2 weeks after being involved in an accident almost 8 months ago. Apparently he sustained an injury to his knee. He states he has been seen and told that a total knee replacement is needed although it is not scheduled yet. Because of this he has been unable to weight bear fully on the knee and feels that this has altered his gait. His back pain has increased steadily since about a week after the accident, particularly gotten bad 2-3 months ago. He states that he saw a back physician in Columbia who told him that he had "arthritis and recommended exercise". He has not had an MRI nor CT scan done. His pain ratio is 75% back, 25% in the upper legs. His back pain is typically 9/10 made better by sitting, worse by standing and walking. He has had no previous back or neck problems. He has no chronic medical illnesses otherwise.

He does not smoke nor drink. He works as a truck driver Southlake Transportation.

He is accompanied by imaging studies to include x-rays of his knee. I don't have any imaging studies in regards to his low back. He is accompanied by a letter of introduction from his attorney; date of injury is 1128/11. A note from Dr. Robert DeSilva is reviewed from 5/31/12. Diagnosis is osteoarthrosis of the left lower leg. The patient has had chronic pain and had a knee arthroscopy 20 years ago, a knee replacement was recommended.

Past medical records from Dr. Mike Drakeford are reviewed in regards to this patient's left knee. Notes from Dr. Arland Compton and Dr. Mike Drakeford are reviewed. I don't have any notes for evaluation of this patient's back.

PHYSICAL EXAMINATION: He is 5'11" 225 pounds. He is heavily muscled. He is pleasant. He is tender to palpation particularly in the midline. He is slightly tender in the sciatic notches. He has no neurologic deficits. On gait analysis he is definitely antalgic on the left. His range of motion with forward flexion/extension and lateral bending is limited. He has complaints of pain with facets and the 3-4, 4-5 and 5-1 interspaces.

IMPRESSION:

1. Low back pain secondary to gait alteration, secondary to arthritic knee with total knee replacement recommended per orthopedic surgeons.

RECOMMENDATIONS: This patient probably has an exacerbation of a pre-existing lumbar condition made worse by his gait alteration.

(continued)

SOUTHEASTERN SPINE INSTITUTE**DAVIS, EVERETTE**

Patient #

DOB:

October 1, 2012

Page two

He needs to have a lumbar MRI scan done. I suspect his treatment will be nonoperative. I would not place him at maximum medical improvement without the MRI being performed.

All opinions given above are most probable to a reasonable degree of medical certainty.

Donald R. Johnson II, M.D.

DRJ/dam

T- 10/03/12

Cc: John Clark, Esquire Fax # 803-775-8590



Richard C. Holgate, M.D.

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 389 Johnnie Dodds Blvd
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 Mount Pleasant, SC 29464
 843-266-0720

FINAL REPORT

Patient: **Everett Davis**Exam Date: **10/25/2012**

Patient
 Phone: -

Exam Name: **Lumbar**

SSN: -

Modality: **MRI**

Patient #: -

Referring Doctor: **Johnson, Donald**

Clinical **M/49 WITH LOW BACK AND BILATERAL LEG PAIN FOR SIX MONTHS. NO RECENT**
 Information: **TRAUMA. HT-5'11" WT-220 LBS.**

TECHNIQUE: The patient is examined on the High Field GE Horizon LX High Speed MR System. A phased array coil is used to obtain high resolution images of the lumbar spine. **SERIES:** 1) COR, T1, SE, 7 mm; 2) SAG, Proton, FSE, 3 mm; 3) AX, Oblique, Proton, T2, FSE, 3 mm; 4) AX, T1, SE, 5 mm. 5) AX, Proton, FSE, 4 mm.; **ADDITIONAL SEQUENCES:** 1) MR myelotomography. **3D REFORMATATIONS:** 1) COR-OBL, T2FSE/FS, 20mm MIPS. 2) SAG-OBL reformations both right and left.

OVERVIEW: Overview of the lumbar spine shows normal bony alignment and normal marrow signal apart from Modic changes with no evidence of a congenital anomaly of the spine. The visualized paraspinal soft tissues are unremarkable. Images of the hips, sacroiliac joints, piriformis muscles and proximal sciatic nerves reveal no abnormality.

THORACIC SPINE: Views of the distal thoracic spine show a normal spinal cord and conus medullaris, normal vertebrae and mild noncompressive spondylosis.

INTERVERTEBRAL DISCS:

L1-2, L2-3. Mild noncompressive spondylosis.

L3-4. Moderate facet arthropathy, signal loss and a diffuse protrusion of disc material. There is severe right and moderate to severe left lateral recess stenosis.

L4-5. Moderate facet arthropathy, signal loss and diffuse herniation of disc material with annular tear area at there is moderate to severe central stenosis and severe bilateral lateral recess stenosis.

L5-S1. Moderate facet arthropathy and a diffuse protrusion of disc material. There is severe bilateral lateral recess stenosis.

3D REFORMATATIONS AND MYELOTOMOGRAPHY: MR myelotomography is a 3D sequence which displays the distribution of cerebral spinal fluid within the lumbar subarachnoid space and simulates an x-ray myelogram without spinal injection. Multiple oblique projections were performed and confirm the findings set out above.

Opinion: MRI of the lumbar spine including 3D myelotomographic images and multiplanar reformations show severe spondylosis with a probable nerve root compression at L3-4, L4-5 and L5-S1.

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Melody James, Commissioner for the Appellate Panel

Appellate Case No. 2013-001763

Everett Davis, Employee, Claimant,

Appellant,

v.

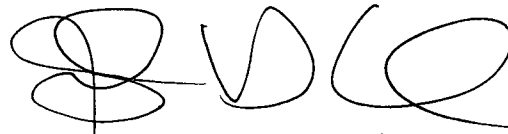
Southlake Transport, Inc., Employer, and Lumberman's Underwriting Alliance, Carrier,
Defendants,

Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

December 13, 2013



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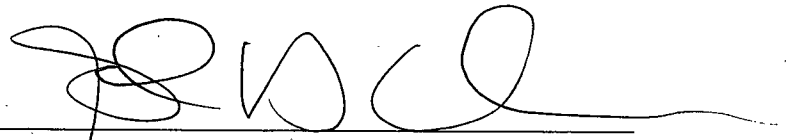
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Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal complies with the Supreme Court's Order dated August 13, 2007 regarding personal identifiers.

December 13, 2013



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