

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Honorable Edward W. Miller, Circuit Court Judge

Case No. 2013-001117

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SC Court of Appeals

Lisa Gilliard on behalf of
Marvin Gilliard, deceased,

Appellant,

v.

City of Greenville,
Employer, and Self-Insurer,
and Hewitt, Coleman &
Associates, Inc., TPA

Respondent.

RECORD ON APPEAL
VOLUME I

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IN THE STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Lisa Gilliard on behalf of Marvin Gilliard,
Deceased,

Claimant/Appellant,

v.

City of Greenville, Employer and Self-
Insured, and Hewitt, Coleman &
Associates, Inc., TPA,

Defendants/Respondents.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-23-1088
(W.C.C. FILE No.: 0627382)

ORDER

2013 APR 23 P 4:41
PAID B. WICKHAMER
GREENVILLE CO. S.C.
CLERK OF COURT

This case came before the Court for oral argument on March 4, 2013 pursuant to Notice of Appeal filed by Lisa Gilliard Claimant/Appellant, from the unanimous decision by the Appellate Panel of the South Carolina Workers' Compensation Commission. Attorneys for the respective parties submitted Briefs, which together with arguments made by counsel have been under consideration by the Court.

This is an appeal by the Claimant/Appellant from an Order by the Appellate Panel of the Full Commission which held that Marvin Gilliard did not sustain an occupational disease, nor an injury by accident arising out of and in the course of his employment with the City of Greenville.

In the Notice of Appeal, Claimant/Appellant failed to set forth the grounds of the appeal or the alleged errors of law as required by Section 42-17-60 of the South Carolina

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Workers Compensation Act. From a review of Claimant/Appellant's Memorandum in Support, it appears Claimant/Appellant contends that sufficient evidence was presented to support a finding that Marvin Gilliard did sustain an occupational disease arising out of and in the course of his employment with the City of Greenville.

ANALYSIS

The South Carolina Administrative Procedures Act, S.C. Code Ann. §1-23-310, et seq., establishes the "substantial evidence" rule as the standard for judicial review of a decision of an administrative agency. Corbin v. Kohler Co., 351 S.C. 613, 571 S.E.2d 92 (Ct. App. 2002); Gray v. Club Group, Ltd., 339 S.C. 173 528 S.E.2d 435 (Ct. App. 2000); Lake v. Reeder Constr. Co., 330 S.C. 242, 498 S.E.2d 650 (Ct. App. 1998). In an appeal from the Commission, the circuit court may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact. Hamilton v. Bob Bennett Ford, 336 S.C. 72, 518 S.E.2d 599 (Ct. App. 1999); Stephen v. Avins Constr. Co., 324 S.C. 334, 478 S.E.2d 74 (Ct. App. 1996); S.C. Code Ann. § 1-23-380(A)(6)(d) (Supp. 2008); see also Etheredge v. Monsanto Co., 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002) (stating court may reverse or modify Commission's decision if substantial rights of appellant have been prejudiced because administrative findings, inferences, conclusions or decisions are affected by other error of law). This court's review is limited to deciding whether the Commission's decision is unsupported by substantial evidence or is controlled by some error of law. See Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); Gibson v. Spartanburg Sch. Dist. No. 3, 338 S.C. 510, 526 S.E.2d 725 (Ct. App. 2000); see also Lyles v. Quantum Chem. Co. (Emery), 315 S.C. 440, 434 S.E.2d 292 (Ct. App. 1993)

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(in reviewing decision of Workers' Compensation Commission, Court of Appeals will not set aside its findings unless they are not supported by substantial evidence or they are controlled by error of law).

Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the Commission reached in order to justify its action. Etheredge, 349 S.C. at 456, 562 S.E.2d at 684-82; Broughton v. South of the Border, 336 S.C. 488, 520 S.E.2d 634 (Ct. App. 1999). The Commission is the ultimate fact finder in Workers' Compensation cases. Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999). The final determination of witness credibility and the weight to be accorded evidence is reserved to the Commission. Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000); Parsons v. Georgetown Steel, 318 S.C. 63, 456 S.E.2d 366 (1995); Gibson, 338 S.C. at 517, 526 S.E.2d at 729. The findings of a Commission are presumed correct and will be set aside only if unsupported by substantial evidence. Anderson v. Baptist Med. Ctr., 343 S.C. 487, 541 S.E.2d 526 (2001); Hicks v. Piedmont Cold Storage, Inc., 335 S.C. 46, 515 S.E.2d 532 (1999). It is not within the province of the circuit court to reverse findings of the Commission which are supported by substantial evidence. Broughton, 336 S.C. at 496, 520 S.E.2d at 634 (Ct. App. 1999).

The perceived exceptions raised by Claimant/Appellant in her Brief as well as in oral argument before the Court involve questions of fact which are to be decided by the Commission as the ultimate fact finders. This Court shall not substitute its judgment for that of the Workers' Compensation Commission with respect to the weight of the evidence

when deciding questions of fact.

This Court specifically finds there exists substantial evidence in the record to support the very specific and detailed thirty-four separate Findings of Fact of the South Carolina Workers' Compensation Commission. This Court further finds that the decision by the Appellate Panel of the Full Commission is not affected by any error of law and therefore should be affirmed in its entirety. In reaching this decision, this Court has considered the grounds for appeal set forth in Claimant/Appellant's Brief, as well as those arguments made by counsel for Claimant/Appellant during oral argument before this Court.

CONCLUSIONS OF LAW

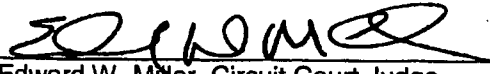
Based upon the foregoing, this Court makes the following Conclusions of Law:

1. This matter is properly on appeal to this Court and this Court has jurisdiction to determine the issues raised in the appeal.
2. The findings of fact and conclusions of law set forth in the unanimous decision of the Appellate Panel of the South Carolina Workers' Compensation Commission are supported by the reliable, probative and substantial evidence of the record, and are not affected by any error of law.
3. The findings of fact and conclusions of law set forth in the Appellate Panel Decision and Order filed January 13, 2012 are legally and sufficiently detailed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Appellate Panel Decision and Order of the South Carolina Workers' Compensation Commission filed January 13, 2012 be, and the same is, hereby affirmed in its entirety.

IT IS FURTHER ORDERED that the appeal by Claimant/Appellant is denied.

AND IT IS SO ORDERED.



Edward W. Miller, Circuit Court Judge
Thirteenth Judicial Circuit

Dated: 4/23/13

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2012CP2301088

Lisa Gilliard vs. Greenville City Of

2013 APR 23 PM 4:48
PAUL B. WICKENSHAW
CLERK OF COURT
GREENVILLE, SC 29601

CHECK ONE:

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

NOTICE

This is a notice to you that an Order on Appeal in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to dajones@greenvillecounty.org.
If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this .

Court Reporter: _____

PRESIDING JUDGE -

Joseph A. Mooneyham Mooneyham Berry & Pope,
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CPFORM4M
SCCA SCRPC Form 4 Revised 06/2008

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer · Greenville County Clerk Of Court
- Clerk of Court

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

W.C.C. FILE NO.: 0627382

**Lisa Gilliard on behalf of
Marvin Gilliard, deceased,**

Claimant/Respondent,

v.

**City of Greenville, Employer and
Self-Insurer, and Hewitt, Coleman
& Associates, Inc., TPA,**

Defendants/Appellants.

**Appellate Panel Review held in Columbia,
South Carolina, on November 24, 2011 per
notices timely and properly served
on all parties of interest.**

**Appellate Panel Decision and Order filed
1/13, 2012**

Appearances:

**Claimant/Respondent represented by
Mooneyham Berry & Karow by Kelly Pope Karow
and Joseph A. Mooneyham of Greenville, South Carolina**

**Defendants/Appellants represented by
Horton, Drawdy, Ward, Mullinax & Farry, P.A.,
by Michael A. Farry of Greenville, South Carolina**

STATEMENT OF THE CASE

The parties were heard by Commissioner Derrick L. Williams on April 25, 2011 in Greenville, South Carolina. On June 20, 2011, Commissioner Williams issued the following Order:

FINDINGS OF FACT

1. Claimant was employed as a police officer with the City of Greenville at the time of his injury. Claimant's average weekly wage was \$993.13 and his weekly compensation rate was \$616.48.

2. I find Claimant has met his burden of proving a compensable occupational disease, resulting in his death. Specifically, I find as a fact that Claimant, Marvin Gilliard, developed chronic hypersensitivity pneumonitis as a direct result of his exposure to toxic chemicals arising out of and in the course of his employment as a police officer employed by the City of Greenville. This finding is based on the evidence when taken as a whole, and specifically the evaluation, reports, treatment, and deposition of Dr. Huang.

3. Claimant had no pre-existing issues with his breathing or his lungs, in my review of the medical evidence. Outside of his diabetes, Claimant appears not to have had any physical difficulties or problems at all.

4. I find Dr. Huang is more than qualified to render his expert opinion in this case, and I find his sworn testimony and reports highly persuasive. Dr. Sahn is also highly respected for his expertise in the treatment of pleural diseases. However, given Dr. Huang's direct examination and treatment of Claimant, his expertise in environmental and occupational lung diseases, and from his direct treatment of patients exposed to the same chemicals as Claimant, his opinions carry more weight than Dr. Sahn's opinions in this case and I find Dr. Huang's causation statements quite credible.

5. I find that while Dr. Sahn is eminently qualified and highly respected in his field, his report contains factual inaccuracies and other failings, as more fully detailed above, which cause me to find his opinions less probative on the issue of causation than Dr. Huang's opinions.

6. Though Major McLaughlin testified to records showing the Claimant only allegedly entered the building and area in question once, I have a difficult time believing that a community police officer would always call in every visit in such an area, and I do not believe this officer only went into this building on one occasion. This flies in the face of common sense. Moreover, if this site was as benign as alleged, I find it interesting that an alternate site was used to finally build on. The contaminants as listed in APA #7 clearly show why an alternate site would need to be used. The greater weight of the evidence supports the Claimant's contentions that Claimant was in the abandoned building on numerous occasions for periods up to an hour on many of those occasions and that the contaminants listed in APA #7 were chemicals Claimant was exposed to while in the abandoned building.

7. Claimant's wife, Lisa Gilliard, is found to be very credible. Although her testimony does not add much in the way of causation, she did confirm the lack of pre-existing breathing or lung issues for the Claimant. I find she was very honest when answering questions posed to her by the attorneys and the undersigned Commissioner.

8. A good faith effort has been conducted to find any and all dependents of the Claimant. As outlined in APA #12, Claimant's wife, Lisa Gilliard, is his sole dependent.

9. Claimant's wife, Lisa Gilliard, is entitled to 500 weeks of death benefits and two-thousand and five hundred dollars (\$2500) reimbursement for funeral expenses.

10. Claimant, or his estate, is entitled to recover the cost of medical care provided him before his death to the extent that care was rendered in an effort to diagnose and treat his occupational disease.

11. To the extent subrogation interests or liens, statutory or otherwise, are asserted by health care insurance providers to recover benefits paid on account of Claimant's medical care, Claimant, or his estate, is entitled to equitable indemnification from Employer so that those interests or liens are to be satisfied by Employer and not from the proceeds of Claimant's wife's statutory benefits.

RULINGS OF LAW

1. Claimant's objection to APA #26 is overruled. Though the report was received by the parties late, it is within my discretion to rule on the admissibility of evidence. Claimant's counsel was aware that Dr. Sahn would be submitting a report, and I find no prejudice in the late submission, as Claimant did not seek to take Dr. Sahn's deposition prior to the hearing. Further, I rule it is relevant to the issues at hand, and therefore rule that it is admissible.

2. Employer's objections to hearsay in Claimant's deposition, specifically pages 52 and 73 are overruled. Testimony on page 52 is based on Claimant's own understanding, and page 73 deals with testimony after questioning by Employer that "opens the door" to the answer given by Claimant. Employer's objection to page 67 of Claimant's deposition is sustained as hearsay. Employer's objections to APA #7, AJ Whittenburg Proposed Site Review, are overruled. I rule that the document is highly probative on the issues before the Commission. I therefore rule that the report is admissible. Further, the report contains information of a type reasonably relied upon by experts such as Dr. Huang, as contemplated by S.C. *Rule Evidence* 703, and that rule specifically supports the use of the report by Dr. Huang, whether the report itself is admissible or not. Dr. Huang clearly relied on the information contained in the report in the formation of his expert opinions given by way of a deposition and affidavit. Pursuant to Regulations South Carolina Workers' Compensation Commission § 67-612, Dr. Huang's expert report (APA #8) was admitted into evidence without objection and specifically references the AJ Whittenburg Proposed Site Review (APA #7). Therefore, the admission of the report is at worst cumulative, and there was no objection to Dr. Huang's reliance on the report.

3. Employer objected to Lisa Gilliard's testimony on the grounds of the "Dead Man's Statute" in S.C. Code § 19-11-20, but my review of the statute indicates that the statute is intended to exclude testimony by a decedent that affects the disposition of the decedent's estate and that issue was not before the Commission and was not applicable. Lisa Gilliard offered no testimony from Claimant prior to his death that if admitted into evidence would have affected the disposition of the case. Employer's objection is overruled.

4. § 42-11-10, S.C. Code Ann. (1976, as amended) defines "occupational disease" and Claimant suffered a

compensable injury as defined in this section.

5. § 42-11-20, S.C. Code Ann. (1976, as amended) defines the meaning of "disablement" as it relates to an occupational disease injury and Claimant, as a matter of law, was disabled by his occupational disease.

6. § 42-11-40, S.C. Code Ann. (1976, as amended) directs that the disablement of death of an employee caused by an occupational disease contracted as direct result of employment, shall be treated as an injury by accident and, as a matter of law, Claimant's death was caused by an occupational disease that was an injury by accident as defined.

7. § 42-9-20, S.C. Code Ann. (1976, as amended) defines "total disability" and, as a matter of law, Claimant suffered a permanent and total disabling injury and there exists a causal connection between the disabling condition and his death.

8. § 42-9-290, S.C. Code Ann. (1976, as amended) directs that compensation be paid for the death of an employee due to an accident, and in this case, as a matter of law, Claimant's wife is entitled to five hundred (500) weeks of death benefits as well as two thousand and five hundred dollars (\$2500) for reimbursement of funeral expenses.

9. § 42-15-10, S.C. Code Ann. (1976, as amended) prescribes the method by which employees are to provide notice of accidental injuries to their employers, and as a matter of law, Claimant complied with the requirements of this section.

10. § 42-9-360, S.C. Code Ann. (1976) directs that compensation paid "shall be exempt from all claims of creditors and from taxes," as a matter of law, Claimant's award is exempt from creditor's claims and taxes.

11. § 42-15-60, S.C. Code Ann. (1976) prescribes the period in which injured employees are entitled to medical care, and as a matter of law, Claimant was entitled to such treatment.

Now, based on the foregoing,

IT IS ORDERED:

1. That the Claimant's wife, Lisa Gilliard, is awarded five hundred (500) weeks of death benefits and two-thousand and five

hundred dollars (\$2500) as reimbursement for funeral expenses.

2. That there exists a causal connection between Claimant's compensable injury and medical care rendered from June 2006 to the time of death on August 12, 2010. Therefore the carrier, Hewitt, Coleman and Associates, is responsible for all causally connected medical care obtained by Claimant from June 2006 to August 12, 2010.

3. That the carrier, Hewitt, Coleman and Associates, reimburse Claimant for any sums he expended for medical care as a result of his compensable injury, such reimbursement to be made on receipt of documentation from Claimant's wife of those expenditures.

4. That the carrier, Hewitt, Coleman and Associates, equitably indemnify the Claimant to the extent subrogation interests or liens, statutory or otherwise, are asserted by health care insurance providers to recover benefits paid on account of Claimant's causally related medical care, so that those interests or liens are satisfied by Employer and not from the proceeds of Claimant's wife's statutory benefits.

AND IT IS SO ORDERED.

Within the statutory period, counsel for Defendants filed a Request for Commission Review (Form 30) setting forth grounds for review, copies of which were furnished to all interested parties prior to oral argument scheduled before Appellate Panel A of the Full Commission on October 24, 2011. Prior to oral argument, the Commission received Briefs from all parties. All proffered testimony has been taken. Such, together with all the documented evidence has been delivered to individual members of the Appellate Panel of the Full Commission and has since been under study and consideration.

By appeal, Defendants/Appellants respectfully submit the following grounds for appeal:

1. The hearing commissioner erred as a matter of law in

Finding of Fact #2, the error being that the reliable, probative and substantial evidence in the record does not support the finding that the Claimant met his burden in proving a compensable occupational disease resulting in his death. Furthermore, the substantial evidence in the record does not support the finding that the Claimant developed chronic hypersensitivity pneumonitis as a direct result of his exposure to toxic chemicals rising out of and in the course of his employment.

2. The hearing commissioner erred as a matter of law in Finding of Fact #3, the error being that the reliable, probative and substantial evidence in the record does not support the finding that the Claimant had no preexisting issues with his breathing or lungs or the finding that he did not have any physical difficulties or problems outside of his diabetes.

3. The hearing commissioner erred as a matter of law in Finding of Fact #4, the error being that the reliable, probative and substantial evidence in the record does not support giving the opinion of Dr. Huang more weight than the opinion Dr. Sahn. Dr. Huang's opinions were based on incorrect assumptions and unsupported facts. Additionally, Dr. Huang's direct treatment of patients "exposed to the same chemical as the Claimant" is irrelevant in determining causation in the present case because there is no proper foundation for the determination of the chemicals to which the Claimant was exposed, if any.

4. The hearing commissioner erred as a matter of law in Finding of Fact #5, the error being that the reliable, probative and substantial evidence in the record does not support the finding that Dr. Sahn's report contained factual inaccuracies and other "failing." In fact, it is Dr. Huang's opinions that are subject to factual inaccuracies and other failings.

5. The hearing commissioner erred as a matter of law in Finding of Fact #6, the error being that the reliable, probative and substantial evidence in the record does not support the finding that the Claimant entered into the subject building more than one time. The only thing that "flies in the face of common sense" is a finding of a compensable occupational disease when the only evidence which even remotely supports exposure comes from the Claimant himself who is trying to obtain compensation and the Claimant's testimony is full of inconsistencies. Additionally, the hearing commissioner's finding that "if this site as benign as alleged, I find it interesting that an alternative site was used to finally build on. The contaminates, as listed in APA #7, clearly show why an alternative

site would need to be used." This finding is not supported by the evidence and is not even the position argued by the Defendants. The subject building is only a small portion of a larger tract of land which was being considered for use of a new school. There is no evidence in the record to support why an administrative decision was made not build on the site. The hearing commissioner's findings in this regard totally lack in foundation or evidentiary support. The hearing commissioner erred in finding that the contaminants listed in APA #7 were chemicals to which the Claimant was exposed in the abandoned building because there is no evidence, much less substantial evidence, in the record to support a finding that the contaminants listed in APA #7 were actually in the abandoned building. Additionally, the evidence does not support the finding that "the Claimant was in this building for periods up to an hour on many of the occasions."

6. The hearing commissioner erred as a matter of law in Finding of Fact #7, the error being that the reliable, probative and substantial evidence of record does not support a finding that the Claimant's wife is very credible in that it is the Claimant's wife whose entire testimony biased in that she is the one that receives any compensation awarded as set forth in Finding in Fact #8.

7. The hearing commissioner erred as a matter of law in Findings of Fact #9 and #10, the error being that the reliable, probative and substantial evidence of record does not support a finding that the Claimant's wife is entitled to 500 weeks of death benefits and reimbursement for funeral expenses or medical costs incurred before death. The Claimant failed to establish a compensable occupational disease.

8. The hearing commissioner erred as a matter of law in Ruling of Law #2 in that the hearing commissioner's rulings on the evidentiary objections of the Employer/Defendants are controlled by an error of law. The Claimant's deposition testimony on pages 52 and 53 is clearly hearsay and the Employer/Defendants did not "open the door" for admission. Additionally, the hearing commissioner's ruling that APA #7 is admissible because it is "highly probative on the issues before the commission." This is not the proper legal framework for determining admissibility. The Employer/Defendants objected on the grounds of lack of proper foundation. The Claimant did not provide any the foundation for the contention that APA #7 shows the contaminants in the subject building as opposed the contaminants contained within the entire A.J. Whittenburg site.

9. The hearing commissioner erred as a matter of law in ordering the Defendants to pay 500 weeks of death benefits and \$2,500.00 as reimbursement for funeral expenses as well as medical care from June 2006 until the date of the death. The Claimant failed to establish compensable occupational disease.

10. The hearing commissioner erred in viewing the evidence blindly from the Claimant's perspective. Even in the summary of the medical evidence and statement of the case, the hearing commissioner ignored any evidence even remotely favorable to the Employer/Defendants' position.

11. The hearing commissioner erred as a matter of law if awarding compensation based upon surmise, conjecture and speculation.

12. The Findings of Fact and Rulings of Law of the hearing commissioner are not supported by the reliable, probative and substantial evidence of record for the law of this State.

13. The Decision and Order of the hearing commissioner is contrary to the statutory laws and common laws of the State of South Carolina.

Pursuant to § 42-17-50, S.C. Code Ann. (1985), we, the Appellate Panel, have reviewed the award, weighed the evidence presented, and considered all issues raised on appeal. This Appellate Panel may make its own findings of fact and make its own conclusions of law.

Based upon a thorough review of the foregoing, the Appellate Panel hereby unanimously reverses the Order of the single commissioner filed on June 20, 2011 and enters the following Findings of Fact and Conclusions of Law.

EVIDENTIARY RULINGS

Claimant objected to Defendants' APA #26, alleging that the APA submission was untimely submitted. Claimant's objection is overruled.

Defendants objected to a portion of the deposition testimony of Marvin

Gilliard found at page 52, lines 2 – 17; page 67, lines 10 – 17; and page 73, lines 2-16 based upon hearsay. Defendants' objection to the testimony on pages 52 and 73 is overruled. Defendants' objection to the testimony of Claimant found at page 67 is sustained.

Defendants objected to any testimony from Claimant, Lisa Gilliard, based upon the fact that she was the surviving spouse of Marvin Gilliard with a vested interest in the outcome of the case, and as such, her testimony would be inadmissible and in violation of the "Dead Man's Statute" as found in § 19-11-20 S.C. Code Ann. Defendants' objection is overruled as the Dead Man's Statute is not applicable in this situation.

FINDINGS OF FACT

1. All parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with City of Greenville as Employer and Self-Insurer, and Hewitt, Coleman & Associates, Inc., TPA.

2. On June 1, 2006, Marvin Gilliard was employed by the City of Greenville at an average weekly wage of \$993.13, resulting in a compensation rate of \$616.48.

3. Claimant, Lisa Gilliard, is the surviving spouse of Marvin Gilliard (Dependency Investigation, APA #12, p.146-168).

4. Lisa Gilliard alleges that Marvin Gilliard sustained injury to his lungs over a two year period of time during which it is alleged that Marvin Gilliard was required to go into a contaminated building located at 104 S. Hudson Street while

working as a community patrol officer assigned to "Southern Side." Lisa Gilliard further alleges that such exposure resulted in the development of pulmonary fibrosis and the subsequent death of Marvin Gilliard.

5. The policy and procedure of the Police Department for the City of Greenville provides that a uniformed patrol officer or community patrol officer contacts dispatch by radio or telephone each and every time the uniformed patrol officer leaves the patrol vehicle (Testimony of Major Gary McLaughlin).

6. The reason for the policy and procedure for a uniformed patrol officer to contact dispatch by radio or telephone each and every time the uniformed patrol officer leaves the patrol vehicle is primarily for officer safety reasons (Testimony of Major Gary McLaughlin).

7. The City of Greenville maintains computer records which capture the movement or activity of officers when they call dispatch to advise they are outside of their patrol vehicle and these records are kept by the City by address or location, by date and time, and by the name of the officer involved (Testimony of Major Gary McLaughlin).

8. The City of Greenville has redundant systems which capture officers' movement or activity when they call dispatch to advise they are outside of their patrol vehicle in at least three separate databases within the computer systems of the City of Greenville Police Department (Testimony of Major Gary McLaughlin).

9. Marvin Gilliard testified that every time he went into the subject building at 104 S. Hudson Street he called dispatch to advise he was leaving his

patrol vehicle to enter the building (Gilliard Depo. Tr. pp. 56-57).

10. Marvin Gilliard admitted that he did not know what, if any, substances were in the subject building at 104 S. Hudson Street (Gilliard Depo. Tr., p.60).

11. Marvin Gilliard, while working as a police officer for the City of Greenville, did not enter the subject building located at 104 S. Hudson Street on a daily basis, contrary to the testimony of Marvin Gilliard set forth in his deposition. Marvin Gilliard's testimony as to the frequency and duration of the time he entered the subject building is not credible when compared to the redundant record keeping systems utilized by the City (Testimony of Major Gary McLaughlin and APAs #14, 15, 18, 19, 20, 21, and 22).

12. Based upon a review of all the evidence presented, Marvin Gilliard, during the time he worked as a community patrol officer in the area known as Southern Side, entered the subject building located at 104 S. Hudson Street one time for less than thirty minutes. The testimony of Major Gary McLaughlin, coupled with the redundant record keeping systems utilized by the City, is more credible than the testimony of the Claimant as to the frequency Claimant entered the subject building (Testimony of Major Gary McLaughlin and APAs #15, 16, 18, 19, 20, 21, and 22).

13. Marvin Gilliard began having breathing problems as early as 1996 (APA #23, pp. 214-218; APA #25, pp. 293, 294, 311, 322).

14. Marvin Gilliard was examined by Dr. Richard Laurens at Palmetto Pulmonary on November 30, 2006, and at that time, Marvin Gilliard told Dr.

Laurens that he had "no history of toxic, industrial, or environmental exposure" (APA #25, p. 294). This was confirmed again by Marvin Gilliard on January 18, 2007 (APA #25, p. 322).

15. Marvin Gilliard was referred by Dr. Laurens to Dr. Yuh-Chin T. Huang for evaluation of interstitial lung disease.

16. On April 16, 2007, Marvin Gilliard informed Dr. Huang that he went into the subject building "once or twice a week for about a year and a half" (APA

#2, p. 6)

17. Marvin Gilliard's representations as to the frequency and duration of his exposure to the subject building changed over time.

18. Insufficient evidence was presented by testimony or documentation as to what chemicals were located within the subject building at 104 S. Hudson Street.

19. No evidence was presented at the hearing by testimony or documentation as to the quantity of any particular chemicals allegedly located in the subject building at 104 S. Hudson Street.

20. No evidence was presented at the hearing by testimony or documentation as to what form any particular chemicals were in which were allegedly located in the subject building at 104 S. Hudson Street.

21. A document was introduced into evidence titled AJ Whittenburg Proposed Site consisting of 1 1/2 pages, a portion of which purported to contain information concerning certain chemicals found in the soil somewhere within the AJ Whittenburg proposed site (APA #7, pp. 48-49).

22. The AJ Whittenburg proposed site consists of a large tract of land encompassing several city blocks (See Defendants' Exhibit 1).

23. The footprint of the subject building located at 104 S. Hudson Street makes up less than 25% of the entire AJ Whittenburg proposed site (Defendants' Exhibit 1).

24. The subject building located at 104 S. Hudson Street was torn down in 2005 (Testimony of Major Gary McLaughlin).

25. APA #7, pp. 48-49, titled AJ Whittenburg proposed site does not identify where on the proposed AJ Whittenburg site any of the chemicals mentioned in the document are located.

26. Dr. Yuh-Chin T. Huang, in forming the opinions reached in his narrative reports and Affidavit found at APA #8, pp. 50-51, assumed that the chemicals listed in APA #7 were found in the subject building (Deposition of Dr. Huang, Tr. pp. 20-21).

27. Dr. Huang further admitted in his deposition testimony that he did not know that the AJ Whittenburg proposed site encompassed a tract of land much larger than the footprint of the building and further admitted that he did not know whether the chemicals identified in the APA #7 were actually found in the subject building (Deposition of Dr. Huang, Tr. pp. 21-22).

28. Dr. Huang further testified that the opinions he had reached in his narrative reports and Affidavit found at APA #8 were based on the assumption that Marvin Gilliard was in the subject building "two or three times per week, an hour or more each time" and that the chemicals listed in APA #7 were actually in

the building (Deposition of Dr. Huang, Tr. pp. 26-27).

29. Dr. Huang testified that if, in fact, Marvin Gilliard was only in the subject building one time for less than thirty minutes, then his interstitial lung condition would not have been caused by such an exposure (Deposition of Dr. Huang, Tr., p.27).

30. Dr. Steven Sahn from the Medical University of South Carolina reviewed the medical records of Marvin Gilliard as well as the opinions of Dr. Huang and concluded that Marvin Gilliard developed idiopathic nonspecific interstitial pneumonitis which was not caused by the "relatively brief exposure in the building" located at 104 S. Hudson Street (APA #26, pp. 335-337).

31. Claimant, Lisa Gilliard, has failed to meet the burden of proving that Marvin Gilliard suffered an occupational disease to his lungs while working for the City of Greenville which resulted in his death. This finding is based on the evidence when taken as a whole as specifically enumerated hereinabove.

32. Claimant, Lisa Gilliard, has failed to meet the burden of proving that Marvin Gilliard sustained any compensable injury by accident to his lungs while working for the City of Greenville which resulted in his death. This finding is based on the evidence when taken as a whole as specifically enumerated hereinabove.

33. It would be surmise, conjecture, and speculation to find that Marvin Gilliard was exposed to any specific chemicals while working as a community patrol officer assigned to Southern Side sufficient to cause the lung disease from which he died.

34. Defendants have conducted a full and complete dependency investigation to determine the proper recipient of any alleged death benefits due as a result of the alleged injury by accident and/or alleged occupational disease alleged to have been sustained by Marvin Gilliard.

CONCLUSIONS OF LAW

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

1. Under § 42-11-10, Marvin Gilliard did not sustain an occupational disease arising out of and in the course of his employment with the City of Greenville.

2. Under § 42-1-160, Marvin Gilliard did not sustain an injury by accident arising out of and in the course of his employment with the City of Greenville.

3. Having failed to establish that Marvin Gilliard sustained a compensable injury by accident and/or compensable occupational disease, Claimant, Lisa Gilliard, is not entitled to any compensation benefits or any medical benefits due as a result of the illness and death of Marvin Gilliard.

ORDER

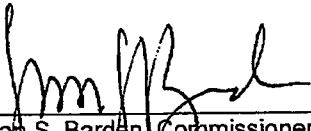
IT IS ORDERED that the Decision and Order by the single Commissioner filed June 20, 2011 is hereby unanimously reversed and the claim by Lisa Gilliard for any benefits due as a result of the illness and death of Marvin Gilliard is denied.

No hearing costs are assessed in this instance.

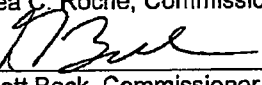
IT IS SO ORDERED.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

REVERSED



Susan S. Barden, Commissioner


Andrea C. Roche, Commissioner


T. Scott Beck, Commissioner

CERTIFICATE OF SERVICE

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

This 13 day of January 2012
By Valerie D. Butler

Administrative Assistant to the Commissioner

Michael A. Farry
Joe Mooneyham

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Marvin L. Gilliard,	)	W.C.C. File No. 0627382
Claimant,	)	
vs.	)	
City of Greenville,	)	
Employer,	)	DECISION AND ORDER
and	)	
Hewitt, Coleman and Associates,	)	
<u>Carrier.</u>	)	

HEARING:	April 25, 2011, in Greenville, South Carolina
APPEARANCES:	Kelly Pope Karow, of Mooneyham Berry & Karow, of Greenville, for the Claimant. Michael A. Farry, The Horton Law Firm, of Greenville, for the employer and carrier.
PURPOSE OF HEARING:	To determine the issues as set forth in Forms 50 and 52 as well as any other issues that may be timely before the Commission.
DECISION AND ORDER:	Derrick L. Williams, Commissioner.
FILED:	June 20, 2011

This matter came to be heard before me in Greenville, South Carolina, on April 25, 2011, at 10:00 a.m. Present at the hearing was the Claimant's wife, Lisa Gilliard, represented by her counsel, Kelly Pope Karow. The employer, City of Greenville,

insured by Hewitt, Coleman and Associates, was represented by Michael A. Farry. Major Gary McLaughlin appeared as a witness on behalf of the employer, City of Greenville and the carrier Hewitt, Coleman and Associates. The purpose of the hearing was to determine the issues as set forth in the Forms 50 and 52 as well as any other issues timely before me.

APA SUBMISSIONS

Prior to the hearing the parties submitted the following pursuant to S.C. Code, Ann., § 1-23-330, the South Carolina Administrative Procedures Act, and the provisions of the South Carolina Workers' Compensation Act which govern the submission of evidence prior to the hearing.

Exhibits by the Claimant:

Exhibit 1 – Medical Records of Stacy Bizzell, M.D. of the Woodward Medical Center

Exhibit 2 – Medical Records of Yuh-Chin T. Huang, M.D., Division of Pulmonary, Allergy and Critical Care Duke University Medical Center

Exhibit 3 – Medical Records of James P. Weaver, M.D., Durham Regional Hospital

Exhibit 4 – Asbestos Survey Report for 104 & 106 South Hudson Street, Greenville, SC

Exhibit 5 – Email correspondence between Marvin Gilliard and City of Greenville

Exhibit 6 – South Carolina Retirement System Member's Disability Report Form

Exhibit 7 – AJ Whittenburg Proposed Site Review

Exhibit 8 – Affidavit of Yuh-Chin Tony Huang, M.D.

Exhibit 9 – Affidavit of Catherine Chang, M.D.

Exhibit 10 – Deposition Transcript of Marvin Gilliard

Exhibit 11 – Death Certificate of Marvin Gilliard

Exhibits by Defendant:

Exhibit 12 – Dependency Investigation by James D. Lyles, SIU Services, Inc.

Exhibit 13 – Internet Mapping Framework – Portion of City of Greenville

Exhibit 14 – City of Greenville Computer Aided Dispatch Record for 104 S. Hudson Street

Exhibit 15 – Greenville County Records Management System Reports for 104 S. Hudson Street

Exhibit 16 – Personnel Order for Officer M.L. Gilliard

Exhibit 17 – Identify Results Coordinate Position

Exhibit 18 – Location Inquiry Form

Exhibit 19 – Incident Types

Exhibit 20 – Greenville Police Beat Status Inquiry Listing

Exhibit 21 – Greenville Police Incident Reports

Exhibit 22 – Greenville Police Incident Dispatch Detail Reports

Exhibit 23 – Medical Records of Dr. C. Ruffin Stephenson and Dr. Stacy Bizzell, Woodward Medical Center

Exhibit 24 – Medical Records of Dr. William M. Scott, Crossroads Family Practice

Exhibit 25 – Medical Records of Dr. Richard Laurens, Palmetto Pulmonary & Critical Care

Exhibit 26 – Medical Records of Dr. Steven A. Sahn, MUSC, Division of Pulmonary, Critical Care, Allergy and Sleep Medicine

The deposition of Yuh-Chin T. Huang, M.D. was taken after the deadline for APA Submissions had expired. Both Claimant and Employer proffered Dr. Huang's deposition an exhibit at the hearing.

At the hearing, Employer presented a partial map of the City of Greenville generated by the City of Greenville's MapIT! intranet mapping site. On the map, 104 S. Hudson Street boundaries were marked in red. The map was submitted with no objection.

STIPULATIONS

Prior to the hearing, the parties stipulated Claimant was, at the time of his injury, an employee of the employer, City of Greenville, insured by Hewitt, Coleman and Associates. They further stipulated that Claimant's average weekly wage was, at the time of injury, \$993.13, and that his weekly compensation rate was therefore \$616.48. They stipulated that the purpose of the hearing was to determine the issues set forth in Forms 50 and 52, and specifically, that the issue before the Commission was whether Claimant had suffered an occupational disease arising out of and in the course of his employment. They stipulated that notice of the hearing was proper and properly served on all parties. They stipulated that venue was proper in Greenville, and that any defect in venue was waived. They finally stipulated that this Commission has both personal and subject matter jurisdiction of this action.

CLAIMANT BIOGRAPHICAL INFORMATION

At the time of his death, Claimant was a 42 year old male. He was born in Anderson County, South Carolina and earned a BS degree in Inter-Disciplinary Studies from USC-Upstate. Claimant worked as a police officer for Employer from 1996 until his disability retirement on September 5, 2007.

STATEMENT OF THE CASE

Claimant contends that he suffered an occupational disease, arising out of and in the course of his employment during the time he was a community police officer for Employer. Specifically, that while Claimant was a community police officer patrolling an area of City of Greenville known as the "Southern Side", he would enter a building

located at 104 S. Hudson Street and while in the building, he was exposed to chemicals. He contends that this chemical exposure caused him to develop interstitial lung disease and chronic hypersensitivity pneumonitis. Claimant received medical treatment for his condition from 2006 until his death on August 12, 2010. Employer has denied that Claimant suffered a compensable occupational disease, and therefore denies that he is entitled to any benefits.

EVIDENCE

During the hearing, testimony was taken from the wife of Claimant, Lisa Gilliard, on behalf of Claimant. Employer objected to Lisa Gilliard's testimony on the grounds that the "Dead Man's Statue" in S.C. Code § 19-11-20, precluded her recounting statements by her husband, but my review of the statute indicates that the statute is intended to exclude testimony by a decedent that affects the disposition of the decedent's estate and that issue was not before the Commission. The statute therefore was not applicable, as Lisa Gilliard offered no testimony from Claimant prior to his death that if admitted into evidence would have affected the disposition of his estate, and therefore the applicability of the statute did not affect the disposition of the case. Therefore, Employer's objection was overruled. Major Gary McLaughlin testified on behalf of Employer. The deposition of Claimant was admitted into evidence. Employer objected to page 52 lines 2 – 17, page 67 lines 10-17, and page 73 lines 2- 16 on the grounds of hearsay. The objection to the testimony on page 52 was overruled as it involved testimony that was based on Claimant's own understanding. The testimony on page 73 was not hearsay because, since Employer solicited the testimony given by Claimant, by its questioning of Claimant, and since Employer did not object to the testimony given,

Employer therefore opened the door to the admission of the testimony. The hearsay objection to testimony on page 67 was sustained.

The deposition of Yuh-Chin T. Huang, M.D. was admitted without objection. Employer objected to Claimant's APA #7 not on authenticity, but on foundation. The objection was overruled. I find the document was highly probative on the issues before the commission and pursuant to South Carolina Rules of Evidence 702 was relied upon by Dr. Huang in formation of his expert testimony given by way of a deposition and affidavit. Pursuant to Regulations South Carolina Workers' Compensation §67-612, Dr. Huang's expert report (APA #8) was admitted into evidence without objection and specifically references the AJ Whittenburg Proposed Site Review (APA #7).

In addition, Claimant's objection to Employer's APA #26 (Dr. Sahn's expert report) for being untimely, was overruled as it was relevant to the issues. All other APA submissions, exhibits and depositions were entered into evidence without objection.

In his deposition, Claimant testified that he began working for Employer as a police officer in 1996 in traffic patrol until moving to community patrol in 1999. (APA #10). Claimant testified that the purpose of community patrol was to "become concentrated to a neighborhood." He testified that he first began community patrol in an area known as "Nicholtown." In approximately 2002 or 2003 he was transferred to community patrol in an area of the City of Greenville known as the "Southern Side" and stayed on community patrol in that area for approximately two years. Claimant testified that during his community patrol of the Southern Side area, he would have to walk through an old abandoned building located at 104 S. Hudson Street to remove any homeless people in the building. Claimant stated that the abandoned building had been

targeted for “extra patrol” because of vagrant issues. It was Claimant’s understanding that the abandoned building had once been used by a chemical company.

During his patrols of the building, Claimant testified that he would sometimes spend over an hour in the building running out homeless people and that he could be in the building several times a week. He testified that the floor of the building was dirty, and there were steel barrel drums throughout the building with oil or “something that looked like oil because the dirt looked oily.” He testified there was a rusted out water tank and there was white powder on the floor in areas of the building.

Claimant further testified that soon after being reassigned from the “Southern Side” community patrol to J.L. Mann High School as a resource officer, he started having problems with his breathing. He testified that he had a difficult time completing his PT tests for work and he failed to complete a PT test that was given towards the end of 2006. Claimant testified that he was placed on light duty from May 2007 until his disability retirement on September 5, 2007 due to interstitial pneumonitis. He further testified that the light duty was not really light duty and consisted of him dealing with inventory, cleaning, breaking down the supply room and shelving supplies. Claimant testified that he went to Dr. Bizzell, a family practitioner, and Dr. Laurens, a pulmonologist, for his breathing problems, but they could not diagnose and treat him effectively. Claimant testified that he located Dr. Huang, a pulmonologist with the Duke University Medical Center and began treating with him in April 2007.

Claimant testified that Dr. Huang diagnosed him with interstitial lung disease and that Dr. Huang thought that it was caused by chemical exposure. He testified that the 104 S. Hudson Street area had been considered by the Greenville County School District as a

possible site for a new school. Claimant obtained a report (APA #7) from the school district, which listed several chemicals that were found when the school district had done its testing of the area. Claimant testified that he provided the report to Dr. Huang.

At the hearing, Lisa Gilliard testified that she and Claimant had been married for almost 15 years at the time of his death. She testified that prior to 2006 Claimant had never had any breathing or lung issues. She testified Claimant was not a smoker and had been in good health until the breathing issues developed, with his only health problem being diabetes. Ms. Gilliard testified that her understanding of community patrol was that the officers were expected to have more of a presence in the community and Claimant would attend community meetings when he was patrolling the "Southern Side." She further testified that Claimant would also coach basketball and baseball teams for the youth of the community, even using Employer vans to transport the youth to and from the games.

Ms. Gilliard testified that she handled the laundry for the home and remembers Claimant's uniforms having a different and odd smell to them when he was patrolling the "Southern Side" area. She testified that she remembered having to use a lot of fabric softener to get the smell out and even making the comment that they should invest in a fabric softener company since she used so much to get the smell out of Claimant's uniforms. Ms. Gilliard stated that the smell would be on the uniforms several times a week.

Ms. Gilliard testified that prior to his breathing issues, Claimant had been very active and exercised on a regular basis. She testified that after he got sick, Claimant would be out of breath from walking to the mailbox, feeding the dog or vacuuming the

house. Ms. Gilliard testified that she attended all of Claimant's doctor visits with Dr. Huang and usually drove because Claimant physically could not do so because of the length of the trip. She testified that she was with Claimant when he gave a report to Dr. Huang that listed the chemicals found in tests conducted by the school district. (APA #7) Ms. Gilliard testified that following the diagnosis of interstitial lung disease that Claimant started having other health problems as well. She testified that Claimant could not be placed on a lung transplant list until he lost weight. She testified that he had constant fluid retention problems because of the steroids he had to take for his lung disease.

Ms. Gilliard testified that in July 2010, Claimant went to the hospital for a heart catheterization, but there was concern about Claimant's fluid retention and he was admitted to the hospital. She testified Claimant began having severe breathing issues while undergoing treatment to drain the excess fluid and spent 20 days in the intensive care unit. Physicians on the transplant team considered performing a lung transplant because Claimant's oxygen levels were so bad. Ms. Gilliard testified that it was determined that Claimant was too sick for the lung transplant and he was released from the hospital on August 11, 2010 and died at home on August 12, 2010. Ms. Gilliard was the sole live witness called on behalf of the Claimant.

At the hearing, the only live witness called by Employer was Major McLaughlin, who testified he had 40 years of police experience. McLaughlin testified that Claimant had been an officer for Employer and was on community patrol in the Southern Side area, which included 104 S. Hudson Street. He further testified that the purpose of community patrol was for the Greenville City Police Department to have more of presence within that specific community and to provide "enhanced services". McLaughlin identified and

discussed defendant APA submissions #14 – #22. He testified that APA # 14 was a dispatch record for “calls of service” to 104 S. Hudson Street from 2001 to 2003. He testified that if a service call on APA #14 resulted in a report being filed then that would be documented by Employer. McLaughlin identified APA #15 as a list of reports filed by officers as they related to service calls listed on APA #14. During his testimony, McLaughlin identified APA #16 as the Personnel Order where Claimant was promoted to Corporal. McLaughlin identified APA #17 as a record that identified the property owner of 104 S. Hudson Street as being D & L Properties, LLC. He testified that APA #18 referenced the same information that was identified in APA #15, but in more detail and that it was “redundant” for record keeping purposes. McLaughlin further testified Employer could not find the report that detailed the last incident on APA #18. On cross-examination, McLaughlin testified that when a report is missing it is best to go to the officer who responded to the call because the officer is the best source of information about what they did on their patrol. He identified APA #19 as an incident report list generated for any incidents along S. Hudson Street from April 1, 2004 to September 15, 2007. He testified APA #19 showed no incidents reported for 104 S. Hudson Street. McLaughlin testified that APA #20 showed “officer activity” for Claimant from January 1, 2001 to August 31, 2002. On cross-examination, McLaughlin testified that there were incident entries on APA #20 that did not have all information that could be listed to describe an incident and the missing information may not have been given to dispatch. He identified APA #21 as being a more detailed report of information previously identified on APA #14, which reflected calls specifically for 104 S. Hudson Street. McLaughlin testified that APA #22 was “redundant” information identified in previous

documents. McLaughlin further testified that the documents identified in APA #14 - #22 showed that Claimant only entered the abandoned building located at 104 S. Hudson Street one time.

McLaughlin testified that it is the policy of Employer that officers are to call into dispatch when they leave their patrol cars to take police action. On cross-examination, McLaughlin testified that as a community patrol officer, Claimant could be on foot patrol and out of his car without taking police action. On direct examination, McLaughlin testified that officers always followed protocol. On cross-examination he testified that it is possible for officers, like Claimant, to take police action while on foot patrol, such as entering an abandoned building, without calling into dispatch. McLaughlin testified that he never went along with Claimant on any of his community patrol shifts. McLaughlin further testified on cross-examination that Claimant was a good and honest officer. He also testified Claimant had a clean personnel record with no complaints or disciplinary actions.

McLaughlin identified a map submitted as an Employer exhibit, which showed a portion of the City of Greenville. McLaughlin testified that the map showed a portion of the Southern Side area, specifically 104 S. Hudson Street. McLaughlin identified the area that was considered by the school district for the A.J. Whittenburg project that included 104 S. Hudson Street. He further testified that the school district decided not to use the proposed area for the new school.

Both Claimant and Employer proffered the deposition of Dr. Huang. Dr. Huang testified that he is a physician with Duke Medical University and is board certified in Internal Medicine, Pulmonary and Critical Care Medicine. He also testified that he is

chairman of the Environmental, Occupational and Health Steering Committee on ACCP and also for a committee of the American Pathology Society. He further testified that he has done extensive work in the area of occupational and environmental lung diseases because he has a special interest in that area of practice and treats many patients with those conditions.

Dr. Huang testified that he began treating Claimant in April 2007. He testified that his initial diagnosis was interstitial lung disease. He testified that pathology could not “exclude chronic hypersensitivity pneumonitis” and that “when it mentions HP, we go on to try to find whatever possible exposure, because it has to do with the patient’s prognosis.” Dr. Huang testified that upon getting the pathology results, he questioned the claimant and learned that as a police officer he would patrol a building “a few times a week, and every time he stays he stayed there for an hour or two.” He testified that he instructed Claimant to get the “environmental information” on the building he patrolled. Dr. Huang identified the A.J. Whittenburg Proposed Site Review (APA # 7) as the document provided by “city government” to Claimant. He testified that the document lists contaminants that were found in the soil and what he assumed where chemicals that were in the building Claimant patrolled.

Dr. Huang testified he understood that the chemicals identified in the AJ Whittenburg Proposed Site Review were the chemicals in the building Claimant patrolled. He further testified that the types of chemicals found in the soil were “volatile solvents” and “when it’s in the soil, it’s in the air.” Dr. Huang testified to a reasonable degree of medical certainty Claimant’s condition was consistent with exposure to the chemicals listed in the AJ Whittenburg Proposed Site Review. When questioned about

exposure times, Dr. Huang testified that his conclusion would be the same had Claimant been in the building less than 15 times in a year and a half and no longer than 30 minutes per visit. He further testified that “clinically hypersensitivity pneumonitis needs sensitization” and the possibility of the lung disease being caused by chemical exposure increases with exposure time. Dr. Huang testified that had Claimant only been in the building 5 times, he still could not exclude the diagnosis that the chemical exposure caused Claimant’s lung disease.

Dr. Huang stated the following about Claimant during his deposition, “He’s one of the most loyal patients to my clinic. He comes, despite his medical condition. He comes on the right time, at the time when I ask him to come. So I know him very well. Probably better than all my other patients.” He testified further, “I’m just saying that I know his condition very well, because he comes every single time.” Dr. Huang testified that because he treated Claimant on a regular basis that he would be in a better position to state medical opinions related to causation than a physician who had not treated Claimant. He testified that a physician is not excluded from being able to offer an opinion about causation if the physician has never treated the patient, but that details would be missed because “a lot of the details comes from the fact that you interact with the patient.”

EVIDENCE—MEDICAL RECORDS

As reflected in the APA submissions, the medical records of several physicians were admitted without objection. The records reflect Claimant’s primary care practice was the Woodward Medical Center, where he was primarily treated by Stacy Bizzell,

M.D. (APA #1 and #23). The records reflect Claimant was a patient of the Woodward Medical Center from 1996 until his death on August 12, 2010.

The records reflect during a 1996 visit to the Woodward Medical Center, Claimant was a little overweight, had a family history of diabetes and had intermittent problems with high blood pressure. The record stated Claimant was not a smoker. The record shows that on July 21, 2006, Claimant complained that over the past couple of months he had experienced trouble breathing and that his wife noticed he seemed more congested with his breathing. The diagnosis was allergies or possibly asthma. There is no complaint of breathing issues prior to July 21, 2006.

The records reflect Claimant saw Dr. William Scott of Crossroad Family Practice on September 11, 2006. (APA #24). Claimant complained of shortness of breath and wheezing when walking steps or with exertion. Dr. Scott ordered numerous tests and his impression was possible congestive heart failure and ordered an echocardiogram, which was conducted on September 18, 2006 and which was reported as normal. Claimant returned on September 21, 2006 with continued complaints of fatigue, shortness of breath and chest discomfort. The record reflects a history of diabetes, high cholesterol and high blood pressure. He was diagnosed with cough, dyspnea and possibly asthma and was prescribed Avelox. Claimant returned to Dr. Scott on October 24, 2006 for pulmonary function testing, which revealed "moderate restriction" and he was diagnosed with asthma and prescribed Advair.

On October 25, 2006, Claimant visited Dr. Bizzell with the Woodward Medical Center. The records reflect Claimant was having problems breathing at work,

experiencing phlegm production in the mornings and had been diagnosed with asthma by Dr. Scott of Crossroads Family Practice.

Claimant returned to Dr. Scott on November 7, 2006 for repeat pulmonary function testing because he was still having problems breathing. The records reflect Claimant was "coughing clear mucus with occasional blood in the sputum" and Claimant had lost over 20 pounds over the past several months with little to no effort. The tests showed moderate restriction and Claimant was referred to Dr. Richard Laurens of Palmetto Pulmonary & Critical Care.

The records reflect Claimant was first seen by Dr. Laurens on November 30, 2006. (APA #25) Dr. Laurens noted the chief complaint as shortness of breath, which had begun in June 2006. He noted Claimant was not a smoker. He ordered several tests, including a chest CT, which showed "interstitial densities in lungs" and "pulmonary vascular congestion." Based on those findings, Dr. Laurens ordered Claimant to undergo a lung biopsy for confirmation of possible sarcoidosis. The lung biopsy was performed as an outpatient procedure on December 5, 2006.

Claimant followed-up with Dr. Laurens on December 22, 2006. The medical records show Claimant had been on prednisone since his first visit with Dr. Laurens. The lung biopsy was negative for sarcoidosis and revealed ground glass opacities in the lungs. A pulmonary function test was performed, which showed a decrease in lung capacity consistent with restrictive lung disease. The records reflect that Dr. Laurens put Claimant back on Advair, but held off on prescribing portable air. As a result of these findings, Dr. Laurens ordered Claimant to undergo a sleep study, which was performed on December 29, 2006 and was positive for sleep apnea. The records show a second sleep study was

performed on January 12, 2007 with Claimant using a CPAP and showed his sleep apnea as improved.

On January 18, 2007, Claimant returned to Dr. Laurens. The records reflect Claimant had "tapered off prednisone as instructed," but was still having shortness of breath and on occasion would cough up blood. Dr. Laurens made a note in the medical records that the asthma diagnosis was "questionable," but stable and ordered a CT to be done in 6 weeks.

Claimant followed up with his primary care physician, Dr. Bizzell, on February 15, 2007. The medical records reflect Claimant was under the care of Dr. Laurens for his pulmonary issues. The record also states Claimant's asthma was not getting better, he was experiencing heavy congestion, would have clear phlegm with coughing and sneezing, his condition was interfering with his job and he had been placed on light duty because he could not run.

On March 1, 2007, Claimant had another chest CT, which showed "continued stability of diffusely scattered ground-glass opacities in both upper and lower lobes as well as a few pulmonary parenchymal nodular densities and lymphadenopathy." On April 16, 2007, Claimant had his first visit with Dr. Huang, a pulmonologist with Duke Medical Center based on a referral for interstitial lung disease. (APA #2) The records reflect the claimant complained of shortness of breath that started in the summer of 2006. Claimant would also cough up blood and whitish sputum. The records indicated Claimant told Dr. Huang that as a police officer, he would go into an abandoned building at least two or three times a week to run out homeless people. The records show Dr. Huang noted a history of environmental exposure and was concerned about chronic hypersensitivity

pneumonitis. Dr. Huang ordered a lung biopsy and other tests to be conducted at Durham Regional Hospital. (APA #3).

Claimant returned to Dr. Huang on May 15, 2007. The records show a diagnosis of nonspecific interstitial pneumonitis and that Dr. Huang asked Claimant to get information from the "city government" about possible exposures in the building he would enter while working. On May 17, 2007, Claimant followed-up with his primary care physician, Dr. Bizzell. Her medical records show Claimant was seeing a pulmonologist at Duke and had been diagnosed with interstitial lung disease, had been placed on prednisone. His inhalers had been changed and his lung function had improved from 43 to 48. Dr. Bizzell put Claimant back on Lipitor and Diovan. An order was placed for another chest CT to be performed prior to Claimant's return to Duke so that he could take the results with him. Dr. Bizzell's records show that between June 2007 and August 2007, Claimant underwent diabetes counseling and was placed on insulin.

The medical records reflect Claimant returned to Dr. Huang on July 30, 2007 and was diagnosed with hypersensitivity pneumonitis. His pulmonary function had stabilized. Dr. Huang ordered Claimant to continue taking prednisone. Dr. Huang noted in the medical records that Claimant needed to be monitored closely in South Carolina for his diabetes because it was not controlled.

The medical records reflect Claimant returned to his primary care physician, Dr. Bizzell, on August 20, 2007. The records show a continued use of prednisone as prescribed by his pulmonologist. He complained of more congestion, continued shortness of breath and a pulmonary function of 52%, which was not likely to increase. Dr. Bizzell notes Claimant was depressed about having to go on disability. She also noted in the

medical record that Claimant's blood sugars needed to be controlled and were probably high because of the prednisone. Claimant saw Dr. Bizzell on November 27, 2007 for a routine visit. The medical records show Claimant was still being treated by the pulmonologist at Duke for his lung disease, was still on prednisone and was oxygen dependent at home.

The records reflect Claimant returned to Dr. Bizzell on February 29, 2008 and was oxygen and steroid dependent for interstitial pneumonitis with an increase demand level for oxygen. The records show Claimant was taking 50 units of insulin at night and would have to remain insulin dependent as long as he was taking prednisone. A May 30, 2008 visit to Dr. Bizzell shows Claimant was on a waiting list for a lung transplant. He was having continued problems with wheezing and remained oxygen dependent at home.

The medical records show Claimant saw Dr. Bizzell on August 28, 2008 following a recent hospitalization for tachycardia. The record indicates the tachycardia was most likely caused by Claimant's severe lung disease. The record reflects a heart catheterization at the hospital showed clear arteries and Claimant was placed on medicine for his heart. The record states Claimant was totally oxygen dependent, very short of breath with minimal walking and had to stop and catch his breath just to walk to the exam room at the physician's office. He was doing pulmonary rehabilitation and had been taken off the lung transplant list by Duke until he could lose 8% of his body weight. During his October 8, 2008 visit with Dr. Bizzell, the medical record shows Claimant experiencing an increase in shortness of breath and cough, with very little air movement and with increased Lasix at home. Dr. Bizzell noted she was concerned about his condition and sent him to the emergency room via ambulance.

The medical records reflect Claimant returned to Dr. Bizzell on December 1, 2008. The record shows Dr. Chang as Claimant's new local pulmonologist and that he is still going to Duke, where he would be reassessed soon for replacement on the lung transplant list. The records reflect that during a recent hospitalization he received lots of steroids and antibiotics and that caused changes in his blood sugar levels, which lead to an increase in his insulin intake. On March 5, 2009, Dr. Bizzell noted that Dr. Chang had increased Claimant's oxygen intake. The record also shows Claimant had been placed on the double lung transplant list at Duke, but still had to lose weight more weight before he could be a candidate for the transplant procedure.

During Claimant's June 16, 2009 visit with Dr. Bizzell, the medical record reflects Claimant was enjoying pulmonary rehabilitation and was still on the lung transplant list at Duke, but would need to get his blood sugar levels under control. Dr. Bizzell increased his insulin to 60 units nightly. On Claimant's September 15, 2009 visit with Dr. Bizzell, the record reflects Claimant was trying very hard to lose weight to get back on the lung transplant list. He returned to Dr. Bizzell on December 17, 2009. Medical records show his blood sugar levels were better, blood pressure was controlled, and he was still waiting to be a lung transplant candidate.

Claimant returned to Dr. Bizzell on March 22, 2010 following a recent visit to the emergency room for swelling. The medical records reflect his blood sugar levels were very high and he was still waiting to be eligible for a lung transplant, but needed to lose 20 to 30 pounds in order to be eligible. The record shows his oxygen had been increased to 8 liters, his blood pressure was down and he was taken off Diovan. The record reflects Claimant returned to Dr. Bizzell on June 28, 2010 with continued problems with

breathing and chronic cough. The record states Claimant would be having a heart catheterization soon. The record reflects Claimant was close to his goal weight of 250 pounds and hoped that when he returned to Duke in August, he would be eligible for a double lung transplant.

OTHER EVIDENCE

Other evidence that was reviewed and taken into consideration were the following:

1. APA #4 - Asbestos Survey Report for 104 & 106 South Hudson Street.
2. APA #5 - Email correspondence from Claimant to two different City of Greenville employees, Claudia Major and Debra Gammons, dated May 16, 2007 and May 22, 2007 respectively. In the emails, Claimant is requesting a list of chemicals found in the 104 South Hudson Street building when it was demolished in 2005.
3. APA # 6 – South Carolina Retirement Systems Member’s Disability Report from June 5, 2007 for Claimant.
4. APA # 9 - Affidavit of Catherine Chang, M.D., which states she is board certified in the specialty of pulmonology and practices in Greenville, South Carolina. The affidavit states she treated Claimant for his lung disease from November 17, 2008 until his death on August 12, 2010. She further stated based on the examinations and care she provided to Claimant for 21 months, it was her opinion to a reasonable degree of medical certainty that Claimant’s death was a result of his interstitial lung disease.

5. APA #11 is the death certificate of Claimant, Marvin Gilliard, showing his date of death as August 12, 2010.
6. APA #13 is a map showing a portion of the City of Greenville with 104 S. Hudson Street marked.
7. APA #26 submitted by Employer is an expert report and curriculum vitae of Dr. Steven A. Sahn of MUSC, Division of Pulmonary, Critical Care, Allergy and Sleep Medicine. Dr. Sahn's report states he reviewed the medical records of Dr. William Scott, Dr. Richard Laurens, Dr. C. Ruffin Stephenson, Dr. Stacy Bizzell and the records and opinion of Dr. Yuh-Chin Tony Huang from Duke University Medical Center.

In review of the report I note that Dr. Sahn listed Claimant's time of employment with Employer as being February 5, 1999 until September 2007. Claimant was employed by Employer from 1996 until his disability retirement on September 5, 2007. Dr. Sahn reported that the records he reviewed did not identify any specific chemicals that were in the building. He stated, "there was supposedly dye work in the mills before it was shut down."

Therefore, Dr. Sahn did not review the AJ Whittenburg Proposed Site Review, which lists the chemicals Claimant was exposed to when he would enter the abandoned building at 104 S. Hudson Street, that is, the building in question.

Dr. Sahn's report reflects records were reviewed that showed Claimant in the abandoned building in question approximately thirteen times in 2001 and approximately four times in 2002. The report also states records were reviewed showing Claimant did not spend more than 30 minutes at a time in

the building. The records made available by Employer, and testified to by Major McLaughlin, do not reflect exposures consistent with the information related in Dr. Sahn's report. Further, Dr. Sahn's report of exposures is inconsistent with the information contained in Claimant's deposition.

Dr. Sahn noted Claimant's physicians diagnosed him with non-specific interstitial pneumonitis (NSIP) from hypersensitivity pneumonitis also referred to as environmental exposures. In his report, Dr. Sahn addresses several causes of idiopathic interstitial pneumonias including connective tissue disease as the most common, and environmental exposures as the second most common cause. He also listed drug reactions and acute respiratory distress syndrome (ARDS) as potential causes for NSIP. Dr. Sahn's analysis of the records eliminates the most likely cause of NSIP, which he appears to identify as connective tissue disease. Dr. Sahn acknowledges that the second most likely cause of NSIP is environmental exposures, but discounts chemical exposures as the cause of Claimant's condition even though that was complaint of Claimant. Dr. Sahn fails to address any other potential cause for Claimant's NSIP. In addition, Dr. Sahn never offers a diagnosis or a cause for Claimant's condition.

FINDINGS OF FACT

Based on the foregoing, I make the following findings of fact:

1. Claimant was employed as a police officer with the City of Greenville at the time of his injury. Claimant's average weekly wage was \$993.13 and his weekly compensation rate was \$616.48.

2. I find Claimant has met his burden of proving a compensable occupational disease, resulting in his death. Specifically, I find as a fact that Claimant, Marvin Gilliard, developed chronic hypersensitivity pneumonitis as a direct result of his exposure to toxic chemicals arising out of and in the course of his employment as a police officer employed by the City of Greenville. This finding is based on the evidence when taken as a whole, and specifically the evaluation, reports, treatment, and deposition of Dr. Huang.

3. Claimant had no pre-existing issues with his breathing or his lungs, in my review of the medical evidence. Outside of his diabetes, Claimant appears not to have had any physical difficulties or problems at all.

4. I find Dr. Huang is more than qualified to render his expert opinion in this case, and I find his sworn testimony and reports highly persuasive. Dr. Sahn is also highly respected for his expertise in the treatment of pleural diseases. However, given Dr. Huang's direct examination and treatment of Claimant, his expertise in environmental and occupational lung diseases, and from his direct treatment of patients exposed to the same chemicals as Claimant, his opinions carry more weight than Dr. Sahn's opinions in this case and I find Dr. Huang's causation statements quite credible.

5. I find that while Dr. Sahn is eminently qualified and highly respected in his field, his report contains factual inaccuracies and other failings, as more fully detailed above, which cause me to find his opinions less probative on the issue of causation than Dr. Huang's opinions.

6. Though Major McLaughlin testified to records showing the Claimant only allegedly entered the building and area in question once, I have a difficult time believing that a community police officer would always call in every visit in such an area, and I do

not believe this officer only went into this building on one occasion. This flies in the face of common sense. Moreover, if this site was as benign as alleged, I find it interesting that an alternate site was used to finally build on. The contaminants as listed in APA #7 clearly show why an alternate site would need to be used. The greater weight of the evidence supports the Claimant's contentions that Claimant was in the abandoned building on numerous occasions for periods up to an hour on many of those occasions and that the contaminants listed in APA #7 were chemicals Claimant was exposed to while in the abandoned building.

7. Claimant's wife, Lisa Gilliard, is found to be very credible. Although her testimony does not add much in the way of causation, she did confirm the lack of pre-existing breathing or lung issues for the Claimant. I find she was very honest when answering questions posed to her by the attorneys and the undersigned Commissioner.

8. A good faith effort has been conducted to find any and all dependents of the Claimant. As outlined in APA # 12, Claimant's wife, Lisa Gilliard, is his sole dependent.

9. Claimant's wife, Lisa Gilliard, is entitled to 500 weeks of death benefits and two-thousand and five hundred dollars (\$2500) reimbursement for funeral expenses.

10. Claimant, or his estate, is entitled to recover the cost of medical care provided him before his death to the extent that care was rendered in an effort to diagnose and treat his occupational disease.

11. To the extent subrogation interests or liens, statutory or otherwise, are asserted by health care insurance providers to recover benefits paid on account of Claimant's medical care, Claimant, or his estate, is entitled to equitable indemnification

from Employer so that those interests or liens are to be satisfied by Employer and not from the proceeds of Claimant's wife's statutory benefits.

RULINGS OF LAW

1. Claimant's objection to APA #26 is overruled. Though the report was received by the parties late, it is within my discretion to rule on the admissibility of evidence. Claimant's counsel was aware that Dr. Sahn would be submitting a report, and I find no prejudice in the late submission, as Claimant did not seek to take Dr. Sahn's deposition prior to the hearing. Further, I rule it is relevant to the issues at hand, and therefore rule that it is admissible.

2. Employer's objections to hearsay in Claimant's deposition, specifically pages 52 and 73 are overruled. Testimony on page 52 is based on Claimant's own understanding, and page 73 deals with testimony after questioning by Employer that "opens the door" to the answer given by Claimant. Employer's objection to page 67 of Claimant's deposition is sustained as hearsay. Employer's objections to APA #7, AJ Whittenburg Proposed Site Review, are overruled. I rule that the document is highly probative on the issues before the Commission. I therefore rule that the report is admissible. Further, the report contains information of a type reasonably relied upon by experts such as Dr. Huang, as contemplated by *S.C. Rule Evidence 703*, and that rule specifically supports the use of the report by Dr. Huang, whether the report itself is admissible or not. Dr. Huang clearly relied on the information contained in the report in the formation of his expert opinions given by way of a deposition and affidavit. Pursuant to Regulations South Carolina Workers' Compensation §67-612, Dr. Huang's expert report (APA #8) was admitted into evidence without objection and specifically references the AJ Whittenburg Proposed Site

Review (APA #7). Therefore, the admission of the report is at worst cumulative, and there was no objection to Dr. Huang's reliance on the report.

3. Employer objected to Lisa Gilliard's testimony on the grounds of the "Dead Man's Statue" in S.C. Code § 19-11-20, but my review of the statue indicates that the statue is intended to exclude testimony by a decedent that affects the disposition of the decedent's estate and that issue was not before the Commission and was not applicable. Lisa Gilliard offered no testimony from Claimant prior to his death that if admitted into evidence would have affected the disposition of the case. Employer's objection is overruled.

4. §42-11-10, S.C. Code, Ann., (1976, as amended), defines "occupational disease" and Claimant suffered a compensable injury as defined in this section.

5. §42-11-20, S.C. Code, Ann., (1976, as amended) defines the meaning of "disablement" as it relates to an occupational disease injury and Claimant, as a matter of law, was disabled by his occupational disease.

6. §42-11-40, S.C. Code, Ann., (1976, as amended) directs that the disablement of death of an employee caused by an occupational disease contracted as direct result of employment, shall be treated as an injury by accident and, as a matter of law, Claimant's death was caused by an occupational disease that was an injury by accident as defined.

7. §42-9-20, S.C. Code Ann., (1976, as amended) defines "total disability" and, as a matter of law, Claimant suffered a permanent and total disabling injury and there exists a causal connection between the disabling condition and his death.

8. §42-9-290, S.C. Code, Ann., (1976, as amended) directs that compensation be paid for the death of an employee due to an accident, and in this case, as a matter of law, Claimant's wife is entitled to five hundred (500) weeks of death benefits as well as two thousand and five hundred dollars (\$2500) for reimbursement of funeral expenses .

9. §42-15-10, S.C. Code, Ann., (1976, as amended) prescribes the method by which employees are to provide notice of accidental injuries to their employers, and as a matter of law, Claimant complied with the requirements of this section.

10. §42-9-360, S.C. Code, Ann., (1976) directs that compensation paid "shall be exempt from all claims of creditors and from taxes", as a matter of law, Claimant's award is exempt from creditor's claims and taxes.

11. §42-15-60, S.C. Code, Ann., (1976) prescribes the period in which injured employees are entitled to medical care, and as a matter of law, Claimant was entitled to such treatment.

Now, based on the foregoing,

IT IS ORDERED:

1. That the Claimant's wife, Lisa Gilliard, is awarded five hundred (500) weeks of death benefits and two-thousand and five hundred dollars (\$2500) as reimbursement for funeral expenses.

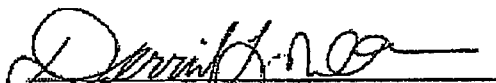
2. That there exists a causal connection between Claimant's compensable injury and medical care rendered from June 2006 to the time of death on August 12, 2010. Therefore the carrier, Hewitt, Coleman and Associates, is responsible for all

causally connected medical care obtained by Claimant from June 2006 to August 12, 2010.

3. That the carrier, Hewitt, Coleman and Associates, reimburse Claimant for any sums he expended for medical care as a result of his compensable injury, such reimbursement to be made on receipt of documentation from Claimant's wife of those expenditures.

4. That the carrier, Hewitt, Coleman and Associates, equitably indemnify the Claimant to the extent subrogation interests or liens, statutory or otherwise, are asserted by health care insurance providers to recover benefits paid on account of Claimant's causally related medical care, so that those interests or liens are satisfied by Employer and not from the proceeds of Claimant's wife's statutory benefits.

AND IT IS SO ORDERED.


Commissioner Derrick L. Williams

June 20, 2011
Columbia, South Carolina

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.
June 20, 2011

By: Renee Smith, Administrative Assistant to Commissioner Williams

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
County of Greenville	)	2012-CP-23-01088
	)	
Lisa Gilliard,	)	
	)	
Appellant,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
City of Greenville,	)	
	)	
Respondent.	)	
	)	

March 4th, 2013
Greenville, South Carolina

BEFORE:

THE HONORABLE EDWARD W. MILLER, JUDGE.

APPEARANCES:

KELLY POPE, ESQ.
Attorney for the Appellant

MICHAEL ALLEN FARRY, ESQ.
Attorney for the Respondent

AMINAH R. HARDY, RPR
Official Court Reporter

EXHIBITS

No.	Description	Page

(No exhibits were marked.)

P R O C E E D I N G S

1
2 MS. POPE: Thank you, Your Honor. Kelly Pope here
3 for the appellant and claimant, Lisa Gilliard, on behalf
4 of Marvin Gilliard, who is deceased. This is an appeal --
5 there was an original workers' comp hearing where the
6 claimant was successful. That was appealed. The full
7 commission heard that argument and then reversed the --
8 Commissioner Williams' decision. We have appealed the
9 full commission finding.

10 The injury actually occurred before -- I think the
11 cut-off date was July 2nd or July 1st, 2007, and the
12 injury occurred before that time period, so that's why we
13 have appealed to the circuit court instead of going
14 straight to the Court of Appeals. Just give you a little
15 background.

16 THE COURT: Okay.

17 MS. POPE: I'm going to give -- and try to keep it as
18 concise as possible. We have submitted a memorandum that
19 has a lengthy fact scenario in it with extensive
20 documentation. So today for the record I will try to keep
21 a factual background as short as possible, but I think it
22 is important to point out some important facts throughout
23 Marvin Gilliard's time on the patrol and following his
24 diagnosis, and then, of course, some important evidentiary
25 issues from the initial hearing and from the full

1 commission.

2 THE COURT: Okay.

3 MS. POPE: Marvin Gilliard became an officer for the
4 City of Greenville in 1996. 2002 -- between 2002 and
5 2003, he was assigned to an area of Greenville County
6 which is referred to as the southern side. That included
7 him monitoring an address, 104 South Hudson Street, which
8 was actually an abandoned building. He was instructed by
9 his lieutenant to check that building every day for
10 vagrants because the owner had reported having some
11 problems.

12 Marvin Gilliard testified during his deposition --
13 because at the time of the hearing, he had passed away, so
14 his deposition was admitted as evidence. During his
15 deposition, he testified it could take up to an hour for
16 him to walk through this building. He noted in his
17 deposition that the floors were dirty, oily. There would
18 be white powder in areas. There was a rusted-out water
19 tank. There were also drums that appeared to have oil in
20 them that were placed throughout the building.

21 His wife, Lisa Gilliard, who is here with us today
22 testified at the hearing that she was the one that did the
23 laundry at the house, and when Marvin Gilliard would go on
24 patrol, there were times she would have -- she would smell
25 a strong odor from his uniforms and she would have to wash

1 his uniforms repeatedly to get that strong odor out.

2 After he -- after Marvin Gilliard patrolled the
3 southern side for a while, he was relocated as a resource
4 officer to J. L. Mann. In 2006, while resource officer at
5 J.L. Mann -- of course they're required to take fitness
6 tests to be part of the patrol -- he failed his physical
7 fitness test. In September 5, 2007 he was placed on
8 disability retirement due to interstitial pneumonitis.
9 But he was placed on disability retirement and then
10 August 12 of 2012, unfortunately he lost that battle and
11 passed away -- after being released from the hospital and
12 passed away at home.

13 To give you a history of his medical treatment, and
14 you'll see throughout the argument and the memorandum
15 presented by the defense that they want you to believe
16 Marvin Gilliard had a history of breathing problems. He
17 actually -- in the medical records, it states he was not a
18 smoker. He was actually in good health until 2006. The
19 only history, medical issues he had in history was
20 diabetes. Now, he was diagnosed -- tested positive for TB
21 in 1996; however, in 1996 when he had a visit with his
22 family physician, his family physician noted his
23 respirations were normal and his chest was completely
24 clear.

25 The first time that you will ever see evidence of

1 breathing issues in his medical history is in 2006. And
2 in 2006 -- specifically July 21st, 2006 -- he goes to
3 his family physician because he has complaints of
4 breathing problems, wheezing, and he was diagnosed at that
5 time with having problems with allergies and possibly
6 asthma.

7 October 24, 2006, he's still having problems, so his
8 doctor ordered him to have a pulmonary test, which that
9 showed moderate restrictions. Late 2006, early 2007, he
10 starts seeing a local pulmonologist, Dr. Laurens. The
11 local pulmonologist did a lung biopsy and pulmonary lung
12 function test, which showed he had restrictive lung
13 disease. In April of 2007, he began seeing Dr. Huang, who
14 is a pulmonologist at Duke University, and who is an
15 expert in the area of treating patients with environmental
16 exposure. Dr. Huang treats Marvin Gilliard from April 16,
17 2007, until the time of his death in 2010.

18 During his visits with Dr. Huang, Mr. Marvin Gilliard
19 tells Dr. Huang about the building he had to check out,
20 specifically 104 South Hudson Street; that he was in that
21 building two to three times per week; the conditions of
22 the building, which I explained earlier: dirty, oily, the
23 white powder substance; the abandoned, empty water tank
24 that's been rusted-out; the barrels of oil, explains all
25 of that to Dr. Huang. Dr. Huang diagnoses Marvin Gilliard

1 with hypersensitivity pneumonitis due to environmental
2 exposure.

3 May 30th, 2008, Marvin Gilliard finally makes to the
4 lung transplant list. Unfortunately, by March 5, 2009,
5 he's been placed on the double lung transplant list, and
6 then August 12, 2010, he unfortunately became sick,
7 complications due to interstitial lung disease. He was
8 not able to recover or become strong enough to be able to
9 have the double lung transplant and he passed away. And
10 that is a very brief overview of the facts and the medical
11 treatment. There's a more extensive factual and medical
12 overview in the memorandum we submitted earlier.

13 The standard of review in a case such as this for
14 boards and commission is substantial evidence, and we have
15 within our memorandum -- when it comes to specifically --
16 the Administrative Procedures Act establishes the
17 substantial evidence rule as the standard for judicial
18 review of decisions of the boards and commissions coming
19 within its terms. The Court may reverse or modify the
20 commission's decision if substantial rights of the
21 appellant have been prejudiced because of administrative
22 findings, inferences, conclusions, or decisions are
23 affected by other error of the law. Therefore, the
24 Court's review is limited to deciding whether the
25 commission's decision is unsupported by substantial

1 evidence or is controlled by some other error of the law.

2 The full commission within their order stated they
3 found the policies and procedures of the Greenville City
4 Police Department only showed that Marvin Gilliard was in
5 the 104 South Hudson Street location once during the time
6 he patrolled the southern side. They also based their
7 finding of reversing Commissioner Williams' decision based
8 on documentation provided at the hearing, which is the
9 documentation from the Greenville City Police Department
10 showing calls, records from not only Marvin Gilliard but
11 other officers as well, but just show Marvin Gilliard in
12 that 104 South Hudson street one time.

13 They also based it on the testimony of Major
14 McLoughlin who was there to introduce that evidence, and
15 also testified as to the policies and procedures of the
16 officers when they were out on patrol, and how that
17 documentation actually is gathered and how it's kept by
18 the Greenville City Police Department. Major McLoughlin
19 finally admitted on cross-examination at the hearing in
20 front of Commissioner Williams that the documents
21 submitted that day as evidence alone couldn't show if an
22 officer was in a building every day.

23 He further testified finally on cross-examination
24 that if an officer is on foot patrol -- which Marvin
25 Gilliard testified he was on foot patrol, and Major

1 McLaughlin also testified that that particular patrolled
2 area was a foot patrol area -- that an officer on foot
3 patrol could have covered an area with no call in to the
4 dispatch. He also testified that it was possible that
5 Marvin Gilliard didn't call in his location at all times.
6 And Major McLoughlin also testified on cross-examination
7 that to determine an officer's activity, you look to the
8 office records or you look to the officer himself.

9 First I'll address the office records, which is what
10 the full commission relied on in finding that there was
11 evidence that Marvin Gilliard was actually only in the
12 building one time, and they believed those office records
13 basically over the testimony of Marvin Gilliard. The
14 office records that were presented were dispatch records
15 that -- where Marvin Gilliard or officers called in.
16 There were lots of redundant records basically showing the
17 same thing, and the Greenville City Police Department made
18 the argument that these redundant records are evidence
19 enough to show that Marvin Gilliard was only in the
20 building one time.

21 When reviewing those documents that were entered into
22 evidence that day, it shows -- there was one particular
23 officer, and I questioned -- on cross-examination,
24 questioned Major McLoughlin, which is in the hearing
25 testimony, which is an exhibit to our documents that we

1 supplied to the Court. There was an officer that showed
2 there was a discrepancy in the actual office records, and
3 there was -- they were incorrect. And Major McLaughlin's
4 explanation as to why there was a mess-up for that
5 particular officer or why there was a mistake or a
6 discrepancy in regards to that particular incident, he
7 stated that it could have been a dispatch error, or, I
8 quote, "The computer ate it." So those were the documents
9 the full commission relied upon in reversing Commissioner
10 Williams' findings from the original hearing.

11 Now, in regards to what Major McLoughlin said you
12 could also rely on, which is the officer himself, you have
13 Marvin Gilliard testifying in deposition that he was
14 ordered to go into the building by his lieutenant; that he
15 was in the building two to three times a week, sometimes
16 up to an hour, sometimes more than that each time he was
17 in it; he testified as to the surroundings that he saw.
18 Dr. Huang also testified that this was what Marvin
19 Gilliard told him when he came to see him at Duke
20 University to treat him as a pulmonologist. So this
21 repeated testimony from Marvin Gilliard, from his doctor,
22 that this is what he is being told about the number of
23 times he was in that building.

24 I would also point out that Commissioner Williams as
25 a finding in his order, he stated that the evidence

1 presented by the defendant through the records from the
2 Greenville City Police Department and the testimony of
3 Major McLoughlin, and I quote, "flies in the face of
4 common sense." And that was his finding in his original
5 order. And the full commission relied upon the records
6 and the testimony of Major McLoughlin in finding that
7 Marvin Gilliard was only in the building one time, so that
8 the disease he had could not have been an occupational
9 disease.

10 Dr. Huang, who treated Marvin Gilliard, he based his
11 diagnosis of Marvin Gilliard on treatment, not on history.
12 As I stated, he began seeing him in April of 2007, and
13 treated him until the time of his death in 2010.
14 Dr. Huang, who also has an extensive history in treating
15 patients with environmental disease, found that the
16 symptoms that Marvin Gilliard showed were developed --
17 developed a disease of interstitial pneumonitis, and that
18 could not have been developed but for him being exposed to
19 chemical exposures.

20 And there is defense expert testimony in regards to
21 Marvin Gilliard. The defense expert never treated Marvin
22 Gilliard. He relied on a history and not a treatment for
23 his diagnosis. And the defense report, which also been
24 supplied in our exhibits, actually states that in the
25 documents that he reviewed that were provided to him by

1 the defense, states that Marvin Gilliard was in the
2 building up to 14 times, which contradicts directly the
3 information that Major McLoughlin testified to and entered
4 in as evidence at the original hearing in front of
5 Commissioner Williams. So there's a discrepancy in the
6 evidence presented by the defense as to the number of
7 times Marvin Gilliard entered the building, whereas Marvin
8 Gilliard's testimony has remained the same, remained
9 consistent.

10 I would also point out that the defendant's expert
11 report lists that the second cause of the condition that
12 Marvin Gilliard had is chemical exposure, and gives no
13 other actual explanation as to why Marvin Gilliard had the
14 condition that he had that ultimately resulted in his
15 death.

16 One of the big issues within the case is a report
17 that deals with -- called the A. J. Whittenberg report.
18 This is a report that the school board had done because
19 they were going to use a certain section of the southern
20 side, which included 104 South Hudson Street, as a
21 proposed building site for the A. J. Whittenberg school.
22 Now, we all know that's not where it's built now, but that
23 was an area they were looking at. They did testing on
24 that area. And their testing, which is a report -- made
25 an exhibit to our lengthy documents we provided to you,

1 but that report has actually and I will -- the A. J.
2 Whittenberg report found in the soil -- because the
3 building at 104 South Hudson Street at the time that this
4 report was done, it was prior to Marvin Gilliard's death.
5 That building had been demolished, and they were looking
6 at that area. And defense would point out it's a large
7 tract of area, and it is. But it included 104 South
8 Hudson Street, and there was testing of the soils that
9 were done, including the area of 104 South Hudson Street
10 is in the area that was tested. They found in the soil
11 chemicals PCE, PAH, and hydrocarbon contamination, which
12 is fuel oil. So they found basically a cleaning solvent
13 chemical and fuel oil within the soil of the area that
14 included 104 South Hudson Street.

15 Now, Dr. Huang testified at his deposition when he
16 was referring to these chemicals that were found in the
17 soil, he said that those particular types of chemicals are
18 volatile solvents, and I quote, "When they are in the
19 soil, they are in the air," and that was his testimony at
20 his deposition.

21 The A. J. Whittenberg report was obtained by Marvin
22 Gilliard. There's -- within the hearing transcript and
23 the exhibits that we have included, there's e-mail
24 documentation between Marvin Gilliard to the City of
25 Greenville asking for the report that was done on the

1 A. J. Whittenberg proposed building site because his
2 doctor, which was Dr. Huang, was asking for that
3 information. His request to the City of Greenville went
4 unanswered. Went ignored basically, so he obtained the
5 report on his own. And that report was entered in as
6 evidence and accepted as evidence by Commissioner Williams
7 at the original hearing.

8 When the Court is reviewing and making its analysis
9 of the arguments that are presented today, the exhibits
10 that have been presented -- which I understand they're
11 lengthy, I know. But all of the exhibits have been
12 presented, the Court -- the law states must liberally
13 construe the Administrative Procedures Act in favor of the
14 claimant, which of course here is my client, Lisa
15 Gilliard, as for the deceased, Marvin Gilliard.

16 The findings of the appellate panel are presumed
17 correct and will be set aside only if unsupported by
18 substantial evidence. That's the case law in South
19 Carolina. There's no evidence to support the finding of
20 the full commission. The only evidence supports the
21 finding of Commissioner Williams. So the full
22 commission's ignoring of the substantial evidence that was
23 there before them is an error of law and prejudicial to my
24 client, and therefore we are asking that there be a
25 reversal and that this Court find there was a compensable

1 injury; that there was chemical exposure that led to
2 Mr. Gilliard's death, and that the finding of the full
3 commission was an error of law because there was no
4 substantial evidence to support their finding, and that
5 you reverse the decision.

6 THE COURT: All right. Thank you very much.

7 MR. FARRY: Thank you, Your Honor. May I approach?
8 The record on appeal was prepared by appellants, and in an
9 e-mail I received outlining what was to be included was
10 Exhibit 2 APA submissions. Didn't say claimant's APA
11 submissions. I incorrectly assumed that would be all APA
12 submissions, so I'd like to supplement the record on
13 appeal with defendant's APA submissions, as if you need
14 additional paper in the file.

15 THE COURT: Thank you so much.

16 MR. FARRY: Yes, sir.

17 MS. POPE: Yes, they should.

18 MR. FARRY: Also, I'll hand up one additional piece
19 of paper. The second piece of paper I handed up is
20 42-17-60, which requires the notice of appeal must state
21 the grounds of the appeal or the alleged errors of law. I
22 would submit that the appeal notice is defective in that
23 there are no stated grounds for appeal in claimant's
24 notice of appeal filed with this Court bringing this case
25 before you today.

1 Now, addressing the merits of the appeal without
2 waiving the claim that the appeal the defective, this
3 Court is well aware of the standard of review that this
4 Court does not sit to weigh the evidence; that the
5 standard is as long as reasonable minds could reach the
6 conclusion that the commission reached, that's sufficient
7 substantial evidence despite the fact this Court may look
8 at it differently and may have reached a different
9 conclusion. And I would submit that appellant is asking
10 this Court again to weigh the evidence.

11 They built this case on how many times claimant was
12 in the building. I would submit it doesn't matter if he
13 spent two years every day, all day in the building, or, as
14 the evidence shows, he was only in there one or two times
15 during the 2002/2003 period that he served as a community
16 patrol officer on the south side.

17 And I'll come back to that in a minute, but the
18 evidence as to how many times he was in the building,
19 Officer Gary McLoughlin testified that each time a patrol
20 officer gets out of that patrol car, he's required to call
21 dispatch and tell them where he's going to be. Standard
22 protocol, standard safety procedure. The City has
23 redundant systems that capture the movement and the
24 call-outs by the patrol officer when they call out. They
25 can index it by city and address location. They can index

1 it by the officer. They can index it by the type of call
2 it is. They can index it by whether or not someone was
3 arrested, whether or not a ticket was issued. The -- all
4 of this information is captured in the computer system of
5 the City of Greenville.

6 Officer McLoughlin testified at the time of the
7 hearing that an exhaustive search was done of the
8 records -- and this is found in the transcript from pages
9 39 to pages 59 of Officer McLoughlin's testimony about
10 APAs, and these are now numbers on the tabs I handed up to
11 you, the additional morass of paper that has been produced
12 in this case. APA Numbers 14, 15, 18, 19, 20, 21, and 27.
13 And what that is is Officer McLoughlin testifying as to
14 how these records are kept, how they're captured by the
15 computer system at the City, and what efforts were made to
16 find out how many times he was in the building.

17 The full commission had all that evidence in front of
18 them and said clearly he was only in the building a few
19 times during this time period. That's consistent with
20 Officer McLoughlin's -- excuse me, Officer Gilliard
21 testifying in his deposition that he called out every time
22 he went in that building. And if he called out every time
23 he went in the building, it was captured by the records
24 that the City maintains on three or four redundant system.

25 So I would submit the record is more than substantial

1 and complete for the determination that he was only in the
2 building a few times. And their expert, Dr. Hahn,
3 testified if he was only in the building a couple times,
4 then his problems weren't caused by any exposure to
5 whatever is in the building. And the reason I say
6 "whatever is in the building" takes me back to my comment
7 earlier that it doesn't matter how many times he was in
8 that building whether you believe testimony in deposition
9 or you believe the records that the City maintains.

10 And I would point out that initially the claimant
11 told his doctor he did not have any exposure to toxic or
12 industrial exposure, and this is his pulmonologist
13 Dr. Rick Laurens. Later, he tells Dr. Hahn he had trouble
14 while walking around the building. Still later, he tells
15 Dr. Hahn he went in the building once or twice a week for
16 about a year. Later he tells Dr. Hahn he was in the
17 building two or three times a week for one to two hours
18 each time. By the time I took his deposition he was in
19 the building every day, so that story evolved.

20 But here's the linchpin in this case. Here's where
21 the claimant falls short on the evidentiary side. The
22 A. J. Whittenberg proposed site is a footprint -- and you
23 don't have this map as a part of the record that was
24 submitted. A. J. Whittenberg is a -- proposed site is a
25 very large tract of land. 104 South Hudson Street, the

1 building the claimant said he was in initially once or
2 twice a week, and then once or twice a week several hours
3 a day, then every day, but the building we're talking
4 about is about 25 percent of the footprint of the A. J.
5 Whittenberg site. Now, the building was razed in 2005.
6 School district conducts a soil sample survey cursory for
7 the A. J. Whittenberg site, and that's APA Number 7 that
8 the claimant handed up. Not tab 7, but it's found in
9 Exhibit 2. That's tab 2 you have to get to, and then you
10 have to flip over to tab 7 under tab 2. Does that make
11 sense?

12 THE COURT: Uh-huh.

13 MR. FARRY: That's the A. J. Whittenberg site. So
14 what this document says that claimant is relying upon to
15 prove their entire case is somewhere on this site in the
16 soil there's this stuff. Doesn't say how much. Doesn't
17 say in what form. Says it's this stuff. Doesn't say this
18 stuff was found in the footprint where 104 South Hudson
19 Street was located before it was razed, the building that
20 claimant went in. And the full commission -- rightfully
21 so -- said in very specific findings of fact in their
22 order that's not sufficient evidence to establish
23 contamination in a building that claimant contends he went
24 in. Because no one has testified as to what chemicals
25 were in that building. No one has testified as to how

1 much, the quantity of chemicals in that building. No one
2 has testified -- and there is no evidence as to what
3 form -- liquid, vapor, powder, granular -- chemicals were
4 in that building. And the full commission recognized that
5 the only evidence as to any chemical exposure was
6 Exhibit 7, APA 7, the A. J. Whittenberg proposed site.
7 And that was not sufficient when APA Number 7 says
8 somewhere on this large tract of which 104 South Hudson
9 Street is a small footprint, there's some stuff in some
10 quantity when they did this survey.

11 And I would respectfully submit the evidence is more
12 than competent and substantial to establish that
13 Mr. Gilliard didn't go in that building but a few times.
14 But regardless of how many times he went in, there is a
15 lack of evidence of any capacity or quality to establish
16 what chemicals were in that building, in what quantity,
17 and in what form, and that full commission order should be
18 affirmed in its entirety. Thank you.

19 THE COURT: Okay. All right. You want to play
20 ping-pong?

21 MS. POPE: I really don't want to play ping-pong.
22 Just a brief response, Your Honor. I would like to point
23 out that Dr. Huang in his report and his testimony stated
24 that even if Marvin Gilliard had only been in the building
25 five times, that it would still the cause the symptoms

1 that led to his condition which caused his death. And I
2 would also like to point out that it was actually a
3 compounding of the evidence that Commissioner Williams was
4 given that led him to find that there had been a
5 compensable injury, there had been chemical exposure which
6 I've gone over extensively before. But with Marvin
7 Gilliard's testimony, the incredible testimony of Major
8 McLoughlin, which he noted in his order, the defense
9 ignoring Marvin Gilliard's request and him having to
10 obtain the report on his own.

11 I would also like to state when -- Marvin Gilliard's
12 statement he was in the building every day, it was his
13 shift, and he was not on shift every day. That was
14 something was pointed out during the hearing as well. And
15 I believe that that covers everything that there was
16 substantial evidence to show that he had this condition
17 and it was because of the chemical exposure, and it was a
18 error of law for the full commission to ignore the
19 substantial evidence that was there before Commissioner
20 Williams, and he was able to see firsthand and judge the
21 credibility of the witnesses himself. And the full
22 commission evidence unfortunately just ignored that all of
23 that, and by doing that, that was an error of law.

24 THE COURT: Okay. Thank you very much.

25 MS. POPE: Thank you, Judge.

(Whereupon, the proceedings were concluded.)

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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, Aminah R. Hardy, RPR, Official Court Reporter
for the 16th Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the hearing of
the captioned case, relative to appeal, in the Court of
Common Pleas for Greenville County, South Carolina, on the
4th day of March, 2013.

July 8th, 2013

Aminah R. Hardy

Aminah R. Hardy, RPR

STATE OF SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
FILE NO.: 0627382

MARVIN L. GILLIARD,	)	
CLAIMANT	)	HEARING BEFORE
vs.	)	
	)	COMMISSIONER WILLIAMS
CITY OF GREENVILLE,	)	
EMPLOYER	)	
	)	
CITY OF GREENVILLE,	)	
CARRIER	)	

COPY

WORKERS' COMPENSATION COMMISSION HEARING TAKEN
BEFORE NADINE A. GARRETT, A NOTARY PUBLIC IN AND FOR THE
STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF
10:14 AM ON APRIL 26, 2011, AT COUNTY SQUARE, 301
UNIVERSITY RIDGE, GREENVILLE, SOUTH CAROLINA.

Nadine A. Garrett

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Madina A. Bennett

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DEFENDANT EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Area Map	4	4

Nadine A. Garrett

1 (WHEREUPON, Defendants' Exhibit No. 1 was marked for
2 identification and received into evidence.)

3 THE COURT: Today's date April 26, 2011. This is the
4 Workers' Compensation case of Mr. Marvin Gilliard versus
5 City of Greenville. Self Insured. WCC file number
6 0627382. Attorney Kelly Karow here for the Claimant.
7 Attorney Mike Farry here for the Employer/Carrier.
8 Hearing is set on the Forms 52 and 53. Date of accident
9 alleged as June 1, 2006. Would be at the max comp rate
10 for '06, \$616,48.

11 I have a host of medical evidence, APA submissions
12 handed up and the deposition of Dr. Huang, H-U-A-N-G. I
13 also have Exhibit 6 is already handed up and we've marked
14 Defendants' No. 1, which is an area map, which will be
15 testified to as well.

16 We had an extensive prehearing conference. The
17 Claimant would object to Defendants' APA number 26, which
18 is the medical report of Dr. Sahn, S-A-H-N, as not being
19 timely. The Defendants would object to portions of the
20 Claimant's deposition testimony as being hearsay, pages
21 52, 67 and 73, as they've outlined in the letter dated to
22 me March 7 of this year.

23 Outside of those objections, any objections to
24 jurisdiction, venue or the APA submissions, other than
25 what I've stated? Ms. Karow?

Nadine A. Bennett

1 MS. KAROW: No objection.

2 THE COURT: Mr. Farry?

3 MR. FARRY: No, sir. The only other objection I
4 would note would be to testimony of the surviving spouse
5 under the Dead Man's Statute of Section 19-11-20, as she
6 is the sole beneficiary of the benefits sought today. And
7 as such, would not be qualified to testify under the Dead
8 Man's Statute.

9 THE COURT: Do you have a copy of that?

10 MR. FARRY: Yes, sir. And also I have a code section
11 out of --

12 THE COURT: Ms. Karow, what -- I can obviously see
13 testimony from a dependency standpoint, although I think
14 they concede that if it is a compensable claim, she's the
15 only person that'll take --

16 MR. FARRY: And we'll stipulate. That does not taint
17 her testimony.

18 THE COURT: Outside of that, what other testimony can
19 she provide -- obviously, I have the Claimant's
20 deposition. And a lot of this is driven by the medical
21 evidence. What would Ms. Gilliard testify to that would,
22 from a compensability standpoint, enhance the case at all,
23 even outside of the Dead Man Statute? Because I think he
24 might have a valid point on that. But are you going to
25 question her concerning the compensability issues?

Madison A. Garrett

1 Because I don't necessarily know that she can testify to a
2 lot of these issues.

3 MS. KAROW: One, on the Dead Man Statute: The
4 purpose of the Dead Man Statute was to protect
5 beneficiaries of an estate.

6 THE COURT: Right.

7 MS. KAROW: Most and of those issues are dealt with
8 land disputes or the sell of land for the purpose of the
9 estate and one beneficiary trying to dump on to the other
10 beneficiaries. So, most of the -- not all of the cases
11 dealing with the Dead Man Statute deal with property
12 issues and the estate issues. So, I would say that it not
13 applicable to the situation that we have here today.

14 As far as her testimony in regards to compensability,
15 his claim has been denied. I believe there's also going
16 to be testimony raised in regards to how often he may have
17 possibly been in this building in records to times that
18 have been noted by the city of Greenville as to when he's
19 reported he's been out in this particular area and in the
20 particular community. And there were events and times
21 that he was in uniform and attending events that
22 Ms. Gilliard attended with him that are not noted by the
23 City of Greenville, but they were on City of Greenville
24 time. There are also things that he did within the
25 community for the children where City of Greenville vans

Madison A. Gannett

1 were used to transport children that are not noted by the
2 City of Greenville in the information that has been
3 provided.

4 So, she has lots of information in regards to times
5 he was out in the community because she was there with him
6 that go towards it being a compensable --

7 THE COURT: She can kind of testify to her personal
8 knowledge if she was there concerning these events. I
9 don't have a problem with that.

10 However, if there's going to be some testimony,
11 obviously, that she has to speculate on, I think you
12 should raise an objection at that time.

13 MR. FARRY: Yes, sir.

14 THE COURT: Let me not rule on the Dead Man Statute
15 just yet because I want to look up a couple of other
16 things about it. But I just want to, for a relevant
17 standpoint, some of her testimony -- I mean, a lot of this
18 is -- obviously, I have his testimony. But a lot of this
19 is medical driven and obviously this is involving certain
20 chemicals and all. So, I don't know that anyone's
21 testimony is necessarily going to swing me either way,
22 other than the evidence I have. So, that's certainly
23 noted. I'll just note for the record that you have
24 objected to her testimony based on the Dead Man's statute
25 section 19-11-20.

Madame J. Gervett

1 However, as with APA number 26, your objections to
2 the deposition as well as the Dead Man Statute, when I
3 issue my notes, I'll rule on those issues then. Just
4 because I haven't had a chance to really digest all this
5 information at this time.

6 MR. FARRY: Certainly.

7 THE COURT: That being stated, the Commission file is
8 part of the record as well with the exception of any
9 self-serving declarations or any unstipulated medical
10 reports.

11 Denied claim to the lungs. Claimant would allege
12 that he was injured on June 1, 2006 and suffered an injury
13 to his lungs, which eventually led to his death. They
14 would argue -- and I think the parties would stipulate if
15 it is compensable, the wife was the sole dependent in this
16 case, so there's really not any issue with that. She
17 would seek the max benefits under the Act.

18 The Employer/Carrier denies the claim in full. They
19 do not believe the Claimant can bear his burden of proving
20 a compensable injury by accident or an occupational
21 disease by accident under the statute. And obviously both
22 parties objections to the relevant evidence have been
23 stated. But the Employer/Carrier would argue that all
24 benefits should be denied in this case. And they would
25 rely on the testimony and the medical evidence, as would

Madison A. Corbett

1 the Claimant in this case.

2 With that being stated, though, just to make sure
3 I've got everything covered, anything else the parties
4 want to state for the record? Ms. Karow?

5 MS. KAROW: No, sir?

6 THE COURT: Mr. Farry.

7 MR. FARRY: Yes, sir. Your Honor, in addition, the
8 Defendants object to the contention by Claimant that
9 Claimant's APA number 7, and it's a document that will be
10 referred to throughout this proceeding as the A.J.
11 Whittenberg proposed site. That's in Claimant's APA
12 number 7. And, obviously, this may go more to the weight
13 of the evidence as to your ultimate determination, but we
14 object to the contention that that document sets forth
15 allegedly what chemicals are in the building of 104 South
16 Hudson Street that Claimant allegedly went into to
17 allegedly cause the exposure to his lungs that resulted in
18 his death.

19 And we will have this through testimony. But the
20 A.J. Whittenberg proposed site encompasses an area that is
21 much larger than the site where 104 South Hudson Street
22 is. It's about one eighth or less of the site. And this
23 A.J. Whittenberg document is a document generated that
24 allegedly sets forth some soil contamination somewhere on
25 the proposed A.J. Whittenberg site, a portion of which is

Nadine A. Garrett

1 where the building sat. This building was raised in 2005
2 and we'll present testimony to a effect.

3 So, I just want to be heard on the record that
4 Defendants object to the contention that APA number 7 is a
5 list of chemicals allegedly found in that building.

6 THE COURT: That's noted.

7 MR. FARRY: And I think the rest will be borne out
8 through testimony. Thank you, Commissioner.

9 THE COURT: Is Ms. Gilliard your first witness?

10 MS. KAROW: Yes.

11 THE COURT: Swear her in, please.

12 LISA GILLIARD,

13 after being duly sworn, testified as follows:

14 THE COURT: Ms. Karow.

15 DIRECT EXAMINATION

16 BY MS. KAROW:

17 Q If you would, state your name and address for the
18 record.

19 A Lisa Gilliard. 410 Woodfield Drive in Piedmont,
20 South Carolina.

21 Q And how long have you lived at that address?

22 A Fourteen years.

23 Q And did you live at that address with Marvin
24 Gilliard?

25 A Yes.

Madison A. Gannett

1 Q Do you work, Ms. Gilliard?

2 A Yes.

3 Q Where do you work?

4 A I work for the school district. I'm a teacher at
5 Grove Elementary.

6 Q And how long have you taught at Grove Elementary?

7 A Five years.

8 Q Did you work before teaching at Grove Elementary?

9 A I did.

10 Q Where did you work?

11 A Well, prior to going to Grove Elementary, I worked at
12 another elementary school for a year and a half. And
13 prior to working as a teacher, I worked for the Federal
14 Bureau of Investigation here in Greenville.

15 Q When did you and Marvin get married?

16 A August 26, 1995.

17 Q And during the marriage, did he work?

18 A Yes.

19 Q When you first got married, where was he working?

20 A He was a meat cutter at Harris Teeter and he worked
21 at the Greenville County Detention Center.

22 Q How long did he work for the Greenville County
23 Detention Center?

24 A About a year and a half maybe.

25 Q Where did he go to work after that?

Madison A. Gannett

1 A The City Police Department.

2 Q And what was he doing for the police department.

3 A When he first went in, he was a -- he worked in
4 traffic where he was making stops, people speeding and
5 breaking traffic rules and stuff. So, he was --

6 Q Writing tickets?

7 A Writing tickets. That's what he was doing, writing
8 tickets.

9 Q Did he stay in the position very long?

10 A Couple of years, maybe two and a half, three years or
11 so. And then he took a test I believe or something to
12 become a corporal and he wanted to do that because he
13 wanted to go into community patrol. And once he passed
14 that, then he started doing community patrol.

15 Q When he first started working for the City of
16 Greenville as a police officer, what was his health like?

17 A It was pretty good.

18 Q Was he on any medications?

19 A He was, meds for his diabetes.

20 Q Was he on medications for anything else?

21 A (No verbal answer.)

22 Q Was he healthy? Did he work out?

23 A He did. He was fairly healthy. He exercised on a
24 regular basis, daily basically. Ran a lot. Used the gym
25 there at the police department a lot. And he worked out

Madison A. Garrett

1 at home a lot.

2 Q -- When he became officer, doing community patrol, where
3 did he start off? What community was he in?

4 A Nickletown Community.

5 Q Do you remember how long he patrolled in Nickletown?

6 A That may have been about three years, three in a
7 half. I'm not real sure.

8 Q Where did he go to next?

9 A Southern Side right after that.

10 Q Do you recall how long he worked in the Southern Side
11 area community patrol.

12 A Around about the same time, maybe three years, three
13 and a half.

14 Q While he was working for -- in the Nickletown area,
15 what was his health like?

16 A It was still pretty good. The same way it was when
17 he went in.

18 Q When did you start seeing a change in Marvin?

19 A Probably early 2006. And prior to that, maybe '05
20 around '05, '06, somewhere in there.

21 Q What kind of changes did you start seeing in him,
22 health wise?

23 A Health wise he was having difficulty breathing and
24 just minor tasks around the house were becoming major
25 tasks for him. Walking short distances were becoming a

Nedine A. Gernett

1 major task. He wasn't able to complete his physical
2 fitness test with the police department in a timely manor
3 that he had been doing it before, running however amount
4 -- I don't know, the distance that they have to run or
5 whatever they do for an amount of time, he wasn't able to
6 do that. He had to walk it. And just simple tasks of
7 laundry, doing, you know, the dishes, things like that as
8 his illness progressed became more and more of a task for
9 him.

10 Q When you first started having -- when you first
11 started seeing problems with him and I think you said with
12 problems with tasks at home --

13 A Uh-huh.

14 Q -- was he still working?

15 A He was.

16 Q And where was he working when you first started
17 noticing the difference in him?

18 A He had -- he was -- I believe he was still in
19 Southern Side.

20 Q You mentioned earlier that he became a corporal so
21 that he could be on community patrol. What's your
22 understanding of what the community patrol was?

23 MR. FARRY: I'm going to object to hearsay about her
24 understanding based upon community patrol is clearly what
25 someone told her.

Madison A. Gannett

1 THE COURT: Can you rephrase your question?

2 MS. KAROW: I can.

3 BY MS. KAROW:

4 Q Did you ever go to the Southern Side and attend event
5 with Marvin Gilliard?

6 A I did.

7 Q Tell us about to events that you attended.

8 A I would accompany him with community meetings. They
9 had the neighborhood community watch, I believe is what
10 they called it. And they would meet maybe twice a month
11 or so just to go over -- Marvin would present to them
12 statistics of like how many -- whatever the crime was
13 going on. Like if there had been some break-ins and
14 things of that nature, like what to be on the look out
15 for. I went to those, maybe three or four of those. And
16 he would go to them about twice a month or so. I attended
17 a national night out meeting with him for an event with
18 him one year as well. And that was a really good event.

19 All the people in the community came out to unite,
20 you know, against crime in the neighborhood stuff. It was
21 really good. It was just a good feel for the community.
22 And it showed -- if I'm not mistaken, the chief of police
23 was there. And it showed a commitment representation of
24 the commitment of community and the police there and how
25 they could work together as one and make the community a

Madison A. Gannett

1 better place to live. So, it was really good.

2 Q When you went to these events with Marvin, was he
3 wearing his uniform?

4 A Yes.

5 Q Did you go to any other event particularly with the
6 youth in the community with Marvin?

7 A Yes.

8 Q What were those events?

9 A Softball games and basketball games. When he was in
10 Nickletown, he had the softball team that he participated
11 with over the summer months. And they would play their
12 games at Cleveland Park against other communities where
13 other community patrol officers were patrolling, they
14 would bring their teams in. And it was really fun. They
15 would come in and they would have their softball games
16 during the summer. And we'd take them out to eat and do
17 other -- like go to the movies with them one Saturday a
18 month or something like that to do something fun with
19 them. Then he did the same thing once he moved to
20 Southern Side. Only with the kids at Southern Side, he
21 had a basketball team. And actually they used our church
22 gym to practice their games and stuff there. And he was
23 able to get a man from Parks and Recreation I believe or
24 somewhere to go and pick them up and stuff and take them
25 to practices and take them to the games and things of that

Media 3 Court

1 nature. Then again we'd take them out the eat after their
2 games and stuff and then take them back home and things
3 like that. And then have movie days or go bowling with
4 them and stuff like that. They would do things together.

5 Q So at the times that you were with Marvin when the
6 kids were transported, were they transported in your
7 personal vehicles?

8 A No.

9 Q They were transported by a van?

10 A A van.

11 Q Was Marvin driving the van?

12 A Yes.

13 Q Was the van City of Greenville van?

14 A As far as I know, it was.

15 Q When Marvin started developing some of his health
16 problems, who was the physician treating him?

17 A Dr. Stacy Bizzell.

18 Q Would you attend doctor's visits with him?

19 A Initially no, I didn't. And that was only because
20 his appointments were usually scheduled -- he would
21 schedule them when he was on his way to work or sometimes
22 he would stop by the doctor's office. And then go from
23 there straight to work. So, I didn't accompany him on
24 those. But as his illnesses progressed, then, yes, I was
25 at every one of his appointments.

Madison A. Gannett

1 Q Who did you go see -- who did Marvin start seeing
2 after Dr. Bizzell?

3 A Dr. Richard Laurens.

4 Q Did you attend those appointments as well?

5 A I did.

6 Q And how long did Marvin see Dr. Laurens?

7 A I don't know. Maybe a year, a little over a year and
8 the half. Somewhere between a year, year and a half. I'm
9 not sure how long.

10 Q We know eventually he went to see Dr. Huang.

11 A Uh-huh.

12 Q And where is Dr. Huang?

13 A Dr. Huang is at the Duke Allergy and Airway Center,
14 which is part of Duke University in Durham, North
15 Carolina.

16 Q Would you attend those meetings -- or those doctor's
17 appointments?

18 A Yes, I did.

19 Q Who would drive on those appointments?

20 A Marvin started out he would drive. And again, as his
21 illness progressed, I drove there and back, the whole way.

22 Q I'm going to show you what we have marked as APA
23 submission number 7. Do you recognize this document?

24 A Yes.

25 Q What is this document? Can you see it okay?

Nedine A. Gannett

1 A It says it's the A.J. Whittenberg proposed site.

2 Q When did you see this document first or when was the
3 first time you saw it that you remember?

4 A Maybe about three years ago.

5 Q And when was it? What were you doing?

6 A That was, we went to the doctor's appointment with
7 Dr. Haung at Duke. And he had asked Marvin if he had been
8 exposed to any chemicals. And Marvin said yeah.

9 MR. FARRY: Commissioner, I'm going to object. She
10 didn't see it until three years ago. Whatever testimony
11 she's getting ready to present is based upon what Claimant
12 allegedly said to the doctor in the doctor's appointment.
13 Clearly hearsay.

14 And I would also note the same objections that
15 Defendant had to the contention that this document, which
16 is a soil sample survey of a huge site of which the
17 footprint of this building makes up, in some way sets
18 forth alleged chemical that were in a building six years
19 earlier when Claimant allegedly was inspecting the
20 building.

21 THE COURT: Ms. Karow.

22 MS. KAROW: My response is of course she cannot
23 testify as to anything that Marvin said. And I'll
24 instruct her. But in regards to the document itself and
25 Marvin's testimony and in Dr. Huang's, Dr. Huang testified

Nadine B. Garrett

1 I asked him to get a list of chemicals he was exposed to.
2 Mavin's testimony is, "I was asked to get the list. I got
3 it. And this is what I got."

4 THE COURT: The documents obviously and the weight I
5 give to it from either party, I haven't --

6 MS. KAROW: Right. And I understand the objection as
7 far as the hearsay as she's repeating what Marvin said.

8 THE COURT: Yeah. She can't testify to --

9 MS. KAROW: Exactly.

10 THE COURT: Sustained as to the hearsay. The
11 document itself -- that's noted for the record. You don't
12 have to keep raising that.

13 MR. FARRY: Yes, sir.

14 THE COURT: But clearly, only tell me, Ms. Gilliard,
15 what your firsthand knowledge is about this document. And
16 you can tell me any conversation you had with Dr. Huang.
17 You just can't tell me what Dr. Huang said or your husband
18 might have told him or asked him, okay?

19 THE WITNESS: Okay.

20 BY MS. KAROW:

21 Q You were saying -- you were telling us about the
22 first time that you saw the document, what you remember
23 about the first time you saw the document.

24 A Yes.

25 Q If you would, just please continue telling us about

Nadine A. Gannett

1 that time.

2 A The document was presented back to Dr. Huang with the
3 list of chemicals on it.

4 Q And who presented the document to Dr. Huang?

5 A Marvin.

6 Q How long did Marvin see Dr. Huang?

7 A From April 07 to he passed -- when he passed away.

8 Q I know this is going to be difficult and I apologize.
9 But we've got to talk about that time. Tell me a little
10 bit about the events that lead up to Marvin passing away.
11 He went into the hospital?

12 MR. FARRY: Commissioner, I'll stipulate. And the
13 only reason I do this is try to make it easier for
14 Ms. Gilliard to where we don't have to plow that ground.
15 But I'll stipulate that his death was occasioned by
16 interstitial lung disease as set forth on the death
17 certificate that's a part of the APA submissions. I'm not
18 trying to short circuit Claimant's case. But as far as
19 the circumstances leading up to his death, I'll stipulate
20 that that's what caused the interstitial lung disease was.
21 the reason for his death.

22 MS. KAROW: That's fine. But, Your Honor, this is
23 the only time she gets to speak. And she's been waiting
24 for a long time to do that.

25 MR. FARRY: I'm not trying to cut her off. I

Madeline B. Carnott

1 understand.

2 THE COURT: Ms. Gilliard, as long as you're fine
3 talking about it. I mean the death certificate -- if you
4 found it difficult, I see what he died from. Everything
5 listed that there. But as long as you're fine, I'll let
6 you testify to it.

7 MR. FARRY: And I want to be heard, I'm not trying to
8 cut her off or keep her from having her day in court. I
9 thought I would try to make it easier, but obviously,
10 whatever her desire is in that regard, I'll certainly
11 refer to.

12 THE COURT: Go ahead.

13 THE WITNESS: I'm fine. Marvin was in the hospital
14 for 26 days prior to the day he passed away. Those 26
15 days were spent at Greenville Memorial. He was in ICU for
16 twenty of those days and six days in a private room.
17 Marvin came home on the 11 of August. And he passed away
18 that early morning of August 12.

19 BY MS. KAROW:

20 Q Was Marvin ever on the transplant list?

21 A (No verbal response.)

22 THE COURT: Was that a no?

23 THE WITNESS: No.

24 BY MS. KAROW:

25 Q What was the reason why he was never on the lung

Madison A. Garrett

1 transplant list?

2 A He was too sick.

3 MS. KAROW: May I have just a moment Commissioner?

4 THE COURT: Sure.

5 MS. KAROW: See if I covered everything.

6 BY MS. KAROW:

7 Q Ms. Gilliard I apologize I just have a couple other
8 questions. When you and Marvin were living together, who
9 took care of the laundry in the house?

10 A I did.

11 Q Were you the one that would wash his uniforms, make
12 sure they were read when he had to go to work?

13 A Yes.

14 Q During the time that he was covering the Southern
15 Side, was there anything different about his uniforms?

16 A Yes. It had an odd smell on it, odd smell other than
17 just body odor, odd smell. And that would be anywhere
18 from like two to three times a week it was on his clothes.
19 And the smell was hard to get out because I even -- I told
20 Marvin that I would have to invest in a fabric softener
21 stock or something because it took lots of fabric softener
22 to try to get the smell out.

23 Q Had you noticed that smell in his uniforms before?

24 A No.

25 Q After he -- he went to work at the jail as the

Nadine A. Cornett

1 resource offer after Southern Side; is that right?

2 A Yes.

3 Q What about -- did you notice the smell then on his on
4 forms?

5 A No.

6 Q Would the smell be every week?

7 A Yes. It was maybe two to three times a week.

8 MS. KAROW: No further questions question.

9 THE COURT: Mr. Farry.

10 MR. FARRY: Thank you.

11 CROSS-EXAMINATION

12 BY MR. FARRY:

13 Q Now, Ms. Gilliard you've testified about when Marvin
14 came to work for the City in or about February of '96 I
15 believe roughly and that initially he was a uniform
16 officer, traffic officer for the period of time and then
17 took a test or qualified or gained additional rank to
18 become a community patrol officer, uniform patrol officer.

19 Would it sound about right that in early 1997 Marvin
20 Gilliard was assigned to the gamma patrol, that's the
21 Nickletown area, does that sound about right, right, 1997,
22 about a year after he had been there?

23 A I have no idea.

24 Q So, if the records of the city police department show
25 that, you didn't have any reason the doubt that, is that

Madison A. Garrett

1 fair?

2 A Correct. Yes, sir.

3 Q And then if the records show that Marvin Gilliard did
4 the community patrol in Nickletown, initially it was a
5 uniform patrol officer and then he went to community patrol
6 in Nickletown area up until about 2002. Does that sound
7 about right?

8 A Yes.

9 Q And if the records of the city police department show
10 that, you don't have any reason the doubt that; is that
11 correct?

12 A Correct.

13 Q And so, that puts us in approximately 2002 that
14 Mr. Gilliard would have from the community patrol and
15 Nickletown to the Southern Side community patrol; is that
16 your understanding?

17 A Yes.

18 Q And then he did that for the period of time that he
19 started some time in 2002. And some time later he became
20 a resource officer at the JL Mann High School, is that
21 right?

22 A Correct.

23 Q And the resource officer at JL Mann High School as I
24 understand it is a position where the patrol officer or
25 the police officer actually goes to work every day at the

Medina A. Gennett

1 high school and stays in the high school. Is that your
2 understanding?

3 A Yes.

4 Q And if the records show that approximately 2004 is
5 when Mr. Gilliard would have gone to be a resource officer
6 would have been with JL Mann in approximately 2004, would
7 that sound right?

8 A Yes.

9 Q So, if the record show that at the city police
10 department, you didn't have any reason to doubt that; is
11 that right?

12 A Yes.

13 Q And so, it looks like then we have narrowed the time
14 period that Mr. Gilliard would have worked Southern Side
15 patrol from approximately some time in 2002 to some time
16 in early 2004, that approximate two year window; does that
17 sound right?

18 A Yes.

19 Q Now, you never went out on patrol with Mr. Gilliard
20 regularly when he was on Southern Side patrol, I mean
21 that's just something that didn't happen, correct?

22 A At Southern Side patrol?

23 Q Yes, ma'am. When he was on Southern Side patrol and
24 would go out on patrol every day on Southern Side, you
25 wouldn't ride with him, would you?

Madina A. Cannott

1 A No. But I did attend the meetings that were at
2 Southern Side.

3 Q Right. Well, there were functions -- right. When he
4 was at Southern Side, there were special functions that
5 either he conducted or attended that you would have
6 attended?

7 A Right. Just wanted to clarify, patrol or attending a
8 meeting meet.

9 Q And as I understand those functions, a community
10 watch meeting or a basketball or the youth program or a
11 national night out or a special program that Mr. Gilliard
12 would either have been directing or heavily participated
13 in.

14 A Uh-huh. Yes.

15 Q And those are the type events that you would have
16 attended. And I believe you said it was three, four,
17 five. Is that fair? While he was on Southern Side, those
18 type events?

19 A Yes.

20 Q Three or four or five?

21 A Yes.

22 Q Now, you're not familiar with what records the City
23 of Greenville would keep as far as when an officer is on
24 patrol and he calls out for different reasons or contacts
25 the base or dispatcher. You don't know what records are

Medina A. Gannett

1 kept by the city, do you?

2 A No, not -- I can only imagine, but I don't know for a
3 fact.

4 Q Right. You would assume that keep some kind of
5 records.

6 A Exactly.

7 Q But you don't know if it's one system, two system,
8 three systems, if it's redundant, if there's several ways
9 to capture that information, you don't have any reason the
10 know that.

11 A Correct.

12 Q And the building that has been alleged housing some
13 alleged chemicals that allegedly caused Mr. Gilliard's
14 lung problems, do you know the address of that building?

15 A I don't know the exact --

16 Q Is it your understanding, though, that that building
17 --

18 MS. KAROW: She wasn't --

19 MR. FARRY: I'm sorry. I didn't mean to cut you off.

20 THE WITNESS: I just said I'm not sure of the exact
21 address, the location you're talking about.

22 BY MR. FARRY:

23 Q Is it your understanding it's of Hudson Street?

24 A Yes.

25 Q And if I were to tell you 104 South Hudson, does

Nedine A. Gennett

1 that sound right, maybe or do you know?

2 A I don't know.

3 Q Fair enough. Do you know if that building is still
4 there or not?

5 A I don't know.

6 Q And if the building is not there, having been torn
7 down, you wouldn't know when it was torn down?

8 A No.

9 Q You never went inside that building yourself?

10 A No.

11 Q Now, you've testified that Mr. Gilliard began
12 experiencing breathing problems and at that time was being
13 treated by Dr. Bizzell?

14 A Yes.

15 Q And shortly after these breathing problems developed,
16 Dr. Bizzell enlisted or referred Mr. Gilliard to Dr.
17 Richard Laurens?

18 A Yes --

19 Q And so if Dr. Laurens began treating in November 30,
20 2006, it would have been within a few months prior to that
21 that the breathing problems starts, is that fair, because
22 he got medical treatment real soon after they started.

23 A He had been having breathing problems earlier in that
24 year. That was the purpose or Dr. Bizzell --

25 Q The referral.

Medina A. Gannett

1 A Yeah.

2 Q And I'm looking at some medical reports by
3 Dr. Bizzell and it looks like on July 21, 2006 there's a
4 notation trouble breathing. So, it looks like that's
5 maybe when it started with Dr. Bizzell, which would have
6 been several months before saw Dr. Laurens; is that right,
7 sound right?

8 A No. I would think the breathing problems started
9 back earlier than that even. I don't know what you have
10 there, but I'm pretty sure they were earlier in that year.

11 Q But we would defer to the medical records as to when
12 at least medically he got treatment for breathing
13 problems.

14 A Yes.

15 Q But based upon your testimony, as I understand it,
16 these breathing problems would have started some time in
17 2006 that they started?

18 A More '05, '06, mid 2005.

19 Q But we do know he became a resource officer in early
20 2004 at JL Mann, is that right? We went through that
21 earlier.

22 A If that's what's on the records, yes.

23 Q Now, the medical bills that were incurred through
24 Dr. Bizzell, those were paid and processed under Mr.
25 Gilliard's health insurance with the city at the time?

Medina v. Corbett

1 A Yes.

2 Q So, there would have been some copays and
3 deductibles, but those bills got paid?

4 A Yes.

5 Q And the same would be true of Dr. Huang's bills that
6 were incurred. Those bills were processed through his
7 health insurance with the city with some copay and
8 deductibles being paid; is that right?

9 A Yes.

10 MR. FARRY: I don't have any further questions.

11 Thank you, man.

12 THE COURT: Any redirect?

13 MS. KAROW: No, Your Honor.

14 EXAMINATION

15 BY THE COURT:

16 Q Ms. Gilliard let me ask you this: Prior to the, I
17 think you said about mid '05 when you started noticing
18 some of his breathing problems, did he ever have any
19 asthma, use an inhaler, anything like that?

20 A No. However Dr. Bizzell did prescribe him an inhaler
21 because she suspected that it may be asthma, but --

22 Q Sorry. Prior to this claim, though, prior to '05,
23 any breathing problems?

24 A No.

25 Q How long were you with him? I know you all got

Medina A. Gannett

1 married in 95. Did you all date --

2 A Five years prior to that.

3 Q So, about 20 years together. Any problems breathing
4 you were noticing at all?

5 A No.

6 Q He went to Woodward Medical Center. Was that his
7 family?

8 A Woodward Medical, yes.

9 Q It looks like over all just pretty routine stuff,
10 some colds and then his diabetes issues obviously showed
11 up. But outside of that, he had a ganglion cyst, it looks
12 like. But typical check ups?

13 A Yes.

14 Q You don't -- when he would come home and his clothes
15 would have this odor to it, you don't know what the smell
16 was like or what the chemical was --

17 MR. FARRY: Object, Commissioner, because no one said
18 there was any chemicals on there.

19 THE COURT: Let me finish my question, Mr. Farry.

20 BY THE COURT:

21 Q You don't know what the smell was like, what the
22 chemical was or whether there was any chemical on his
23 clothes?

24 A No. It was -- the smell was just more than the
25 typical body odor smell that would be on his clothes.

Medina A. Garrett

1 Q And you never went on patrol and -- what are you all
2 calling this area?

3 MR. FARRY: Southern Side.

4 MS. KAROW: Southern Side.

5 BY THE COURT:

6 Q -- on the Southern Side, never went on patrol there?

7 A No.

8 Q And Mr. Gilliard had a will in this case?

9 A Yes.

10 Q And it looks like you all didn't have any children
11 together?

12 A No.

13 MR. FARRY: We stipulate to that. I just need to
14 bring in --

15 THE COURT: Just going through a couple of these
16 things just in --

17 MR. FARRY: Yes, sir.

18 BY THE COURT:

19 Q Stephanie, was that one of his sisters?

20 A Yes.

21 Q No one else has come forward since his passing
22 claiming that he was married to them or that he had any
23 other children or anything?

24 A No.

25 THE COURT: Thank you. Any questions from my

Nadine A. Gannett

1 questions?

2 MS. KAROW: No, sir.

3 THE COURT: Mr. Farry?

4 MR. FARRY: No, sir.

5 THE COURT: Any other witnesses for the Claimant?

6 MS. KAROW: The Claimant has no further witnesses.

7 We would just at this time like to admit our APA
8 submissions 1 through 11 into evidence.

9 THE COURT: Mr. Farry?

10 MR. FARRY: Yes, sir. We would call Major Gary
11 McLaughlin.

12 GARY MCLAUGHLIN,
13 after being duly sworn, testified as follows:

14 THE COURT: Mr. Farry.

15 MR. FARRY: Thank you.

16 DIRECT EXAMINATION

17 BY MR. FARRY:

18 Q Major, where do you work?

19 A City or Greenville Police Department.

20 Q I see you're wearing the police uniform. How long
21 have you been with the City of Greenville Police
22 Department?

23 A I've been with the City of Greenville since August of
24 1979.

25 Q Tell me what your duties and responsibilities are now

Nedra A. Garrett

1 as a major with the City of Greenville Police Department.

2 A At present I'm in charge of our operations division,
3 which is almost everybody in uniform. Patrol would be
4 about half the police department sworn.

5 Q You're familiar was police officers that are assigned
6 to work uniform patrol in certain areas of the city.

7 A Yes.

8 Q And certain areas of the city are divided up and are
9 called certain names. I believe gamma patrol is
10 Nickletown?

11 A Yes, sir gamma beat would be a geographical area that
12 would include Nickletown.

13 Q And then there's another geographical area or patrol
14 called Southern Side?

15 A Yes, sir.

16 Q And Southern Side I believe encompasses Hudson
17 Street?

18 A It does. It's part of echo beat. Again, the
19 Southern Side neighborhood is within that. It does
20 include that strip.

21 Q You're aware that Marvin Gilliard was a uniform
22 patrol officer?

23 A Yes, sir.

24 Q And you knew Marvin Gilliard?

25 A I did.

Medina A. Gennett

1 Q Marvin Gilliard the entire tour of duty he had with
2 the City of Greenville from February of '96 until he
3 retired, you were employed with the City of Greenville?
4 A I was.
5 Q And are you aware of the different job assignment Mr.
6 Gilliard had throughout his tour with the city, for the
7 lack of better description?
8 A Yes, sir, I am.
9 Q So, he was initially hired I believe in February of
10 '96; is that right?
11 A Yes, sir.
12 Q And then later that year I believe he was sent to the
13 academy because there was either other subscription or
14 they needed him to stay back. Are you aware of that?
15 A No, sir. Generally you're sent to the academy by
16 state law within the first year of your assignment.
17 Q And so, that happened with Marvin Gilliard?
18 A Yes, sir.
19 Q And then in late '96, he was put on uniform office
20 patrol?
21 A Yes, sir.
22 Q And is that what ignorant lay people like me call
23 traffic police?
24 A Honestly, I do not. We have a separate traffic
25 division. However uniform officer would normally do

1 traffic functions also in addition to handing calls.

2 Q And then in early '97 he obtained some rank or passed
3 some tests and was assigned to uniform patrol, gamma
4 patrol in Nickletown?

5 A Yes, sir. Again, we have boards, promotional boards
6 that he would have passed and been eligible for and
7 promoted to corporal.

8 Q And then at some point he was further promoted or put
9 on community patrol in Nickletown?

10 A Yes, sir. Corporals were eligible for community
11 patrol officer position. He was and then was assigned to
12 Nickletown community.

13 Q And that looked like that happened in early '99,
14 according to the records.

15 A Yes, sir.

16 Q And then he stayed on that patrol for about three
17 years and approximately 2002, early to mid to mid 2002,
18 his assignment changed and that's when he went to Southern
19 Side patrol?

20 A Yes, sir.

21 Q Now, when he changed to Southern side patrol, is he
22 doing basically the same functions as a community patrol
23 officer that he would have been doing at Nickletown, just
24 in the different geographical area?

25 A Yes, sir.

Nedine A. Gannett

1 A Yes, sir.

2 Q And as I understand a resource officer, then you
3 don't have regular patrol assignments, your beat is that
4 high school, so to speak?

5 A Yes, sir.

6 Q And it looks like then after the early 2004, that
7 Mr. Gilliard took disability retirement in May of '07 and
8 was last on the payroll in September of '07. Does that
9 sound about right?

10 A Yes, sir.

11 Q So, basically we've narrowed the Southern Side patrol
12 time period to approximately 2002 to say mid to late 2004.
13 Is that a fair assessment of when Marvin Gilliard would
14 have been on Southern Side patrol?

15 A Yes, sir.

16 Q Describe for me policy, procedure, protocol, conduct,
17 safety requirements generally speaking with a patrol
18 officer that is assigned a patrol car that is on patrol
19 and has to leave that patrol car for some purpose
20 performing his job.

21 A A police officer would call in service. He would
22 then be in his assigned area. If he saw a --

23 Q I'm going to interrupt you throughout this process.
24 Call in service. What does that mean?

25 A You either by telephone or generally speaking on your

Madina A. Garrett

1 radio call 10-8, which is our in-service code, which at
2 that time you'd be put in the computer as in-service.

3 Q That means you're going to work?

4 A Yes.

5 Q Go ahead. I'm sorry. I keep interrupting.

6 A If he saw a suspicious person or a traffic violation
7 or was getting out to check a building, he would then call
8 out to dispatch again over the radio or telephone, but
9 again generally over the radio, that he was doing a
10 specific task at a specific location. He would request
11 back up if necessary or any other information that he
12 might need or provide any information that they might
13 need.

14 Q If a uniform patrol officer on community patrol has
15 to leave a patrol vehicle for some purpose, either a
16 traffic stop, check suspicious person, pursue a
17 perpetrator, check a building, disabled vehicle, whatever,
18 does the policy and procedure and protocol of the City of
19 Greenville require that they contact dispatch and tell
20 them what they're doing?

21 A Yes, sir.

22 Q Why is that?

23 A The biggest reason is officer safety. Again, any
24 time we're performing any police task, there is an
25 inherent risk. And again, in this particular case, an

Media 3. Court

1 officer would let them know that he's out on a traffic
2 stop or that he's out for this suspicious person or that
3 he's at a community meeting. Again, it's a way so if the
4 officer had to call for help and if all he could say is
5 his unit number and help, then dispatch knows where he's
6 at can have the appropriate units respond.

7 Q I'm going to ask you to look at some documents that
8 we have previously marked in evidence. And I'm going to
9 put a set in front of you to make this move a little
10 quicker. And I'm going to direct your attention now to
11 APA number 13, tab 13. And that looks like a copy of a
12 portion of Defendants' Exhibit 1, which is a map or
13 overview or what appears to be Hudson Street; is that
14 right?

15 A Yes, sir. With 104 Hudson Street marked.

16 Q And 104 Hudson Street, as I understand the record, is
17 the building that has been alleged how certain alleged
18 chemicals that allegedly Mr. Gilliard was exposed to to
19 cause his death. So, I want you to you assume that's the
20 area that we're talking about, okay?

21 A Yes, sir.

22 Q Tell me what tab 14 is, please, sir.

23 A Tab 14 is a record from the computer-aided dispatch
24 center, which was put into this particular format by me or
25 directed by me to list all of the dispatched accidents.

Nedine A. Gannett

1 In other words, these are times when an officer has either
2 called out at, been dispatched to or in general ended up
3 at 104 South Hudson Street and then took some type of
4 police action.

5 Q So, the recordkeeping the city has, is it fair to say
6 that officers dispatched or called out or that call in,
7 those records can be captured by address or location?

8 A Yes, sir.

9 Q Are there other ways to capture officers movement or
10 activity other than address or location?

11 A The date and time, the officer himself. In other
12 words, is officer activity. Again, anything that goes
13 over the police radio is entered into the police computer,
14 is a record and a document that can later be researched
15 and looked at to see what happened at the particular
16 location, what officers were involved or what action was
17 taken.

18 Q At my request, did you coordinate a record search of
19 the records of the City of Greenville concerning
20 Mr. Gilliard and his call-out, so to peak, either by
21 address, by name, by time or by officer number?

22 A Yes, sir, he did.

23 Q And we have identified the time period that we're
24 looking for as between 2002 and 2004. Did you use those
25 dates for your parameter of your search or did you did

Nedra A. Gannett

1 expand out on either side?

2 A We looked at either said of it.

3 Q For how long?

4 A Again, this starts back in back in 7/4/2001. And

5 again, this one ends in 2003 because that's the last call

6 for service at that particular location. However, in

7 looking at the actual computer-aided dispatch for officer

8 activity, we did go beyond that also by at least a year,

9 if not two.

10 Q A year or two on either side of the window that he

11 would have worked Southern Side patrol?

12 A Yes, sir.

13 Q Now, as far as tab 14 that we're looking at, does it

14 show any activity by Marvin Gilliard on a call out or

15 contacting dispatch that he's in that building?

16 A Yes, sir, there is one. The second one down on

17 2/7/2002. The offense would a burglary. And he along

18 with four other officers responded and handled that

19 particular call.

20 Q So, we know on February 7, 2002, Mr. Gilliard was in

21 that building for some period of time or at that location

22 for some period of time?

23 A Yes, sir.

24 Q Do you know if he was in the building by this

25 document alone?

Nedine A. Garrett

1 A By this document alone, no, sir.

2 Q I'm going so ask you to look at tab 15 for me. Tell
3 the commissioner what tab 15 is, please, sir.

4 A This particular record's management system captures
5 any time we do a report. As I said on the previous tab,
6 those are dispatch calls for service. They don't
7 necessarily generate a report unless an officer takes an
8 official police action. In this particular case at 104
9 South Hudson Street, there were three incidents that lead
10 to a report being done. One of which the first one listed
11 is the incident involving Corporal Gilliard.

12 Q Now, that first entry there, February 7, 2002,
13 unlawful occupancy, is that the same entry as found on tab
14 14, the second line that you described for me?

15 A Yes, sir, it is. And it has the same incident
16 number.

17 Q So, that's part of the redundant system, when you
18 pull it by address, there's more than one way to capture
19 the officer's movement?

20 A Yes, sir.

21 Q So, on tab 15 we've got the same incident February 7,
22 2002, Mr. Gilliard was at the building, but we don't know
23 if he was in the building. Is that fair?

24 A I'm sorry. Repeat that.

25 Q On February 7, 2002 under tab 15, it's the same

Medina A. Garnett

1 incident that we had under tab 14, February 7, 2002, we
2 know that he was at the location, but we do not now if he
3 was in the building?

4 A Not based upon this record right here, no, sir.

5 Q Turn the page for me on tab 16. That appears to be
6 just a personnel change when he went to Nickletown; is
7 that fair?

8 A He was promoted to corporal and was assigned to
9 community service in Nickletown community.

10 Q Look at tab Number 17 for me and tell me what that
11 is, please, sir.

12 A This in particular, if I'm not mistaken, is the
13 record of who owned, I'd guess it'd be like a record of
14 the previous owner at 104 South Hudson Street.

15 Q But that doesn't tell us anything about officer
16 movements or activity for the building?

17 A No, sir. Not at all.

18 Q Look at tab 18 for me, please, sir. Tell me what
19 that information is?

20 A Previously when we looked at tab 15, the records
21 management, the three reports that were made, this is
22 another computerized, if I'm not mistaken, this one comes
23 out of the E911 system showing that particular location
24 and the three ones that ended up, the top three end up as
25 reported incidents. The last one is on there, however

Madison A. Garrett

1 there is no report that anyone could find.

2 Q So, if I understand your testimony and you correct me
3 if I'm wrong, understood tab 18, that first entry there of
4 February 7, 2002, unlawful occupancy is the same entry
5 found on tab 15 as is found on tab 14?

6 A Correct.

7 Q So, once again we still have Mr. Gilliard one time at
8 104 South Hudson location, don't know or certain that he
9 went in the building, correct?

10 A Not based on this particular record, no, sir.

11 Q And then this is another example of the redundancy
12 and the recordkeeping that is captured at least three
13 different ways so far?

14 A Yes, sir.

15 Q Tab 19, sir. Explain to me what that is.

16 A Tab 19 -- and, again, we started in May of 2004
17 trying to determine if there were any further calls. And
18 again this is part of our process going beyond several
19 years to make sure this is where we looked at, 104 South
20 Hudson Street. And it did not appear at any time between
21 May of '04 and September of '07.

22 Q And when you say nothing appeared, there are no call
23 outs for 104 South Hudson Street?

24 A Correct.

25 Q If an officer pulls up to 104 South Hudson Street,

Nedra A. Gossatt

1 follows protocol, radios dispatch, "I'm getting out at 104
2 South Hudson Street to go inside and check the building,"
3 is that data going to be captured under tab 19?

4 A Yes, sir. It should be.

5 Q And tab 19 found where there is no documentation of a
6 call out for 104 south Hudson street?

7 A After this particular report was after 5/5/2004.

8 Q Look for me at tab 20. Generally speaking tell me
9 what tab 20 shows us or tells us.

10 A At this particular case we actually pulled in the
11 officer activity for Officer Gilliard.

12 Q What's that mean?

13 A Officer activity: Again if an officer calls out, if
14 an officer's dispatched to a call, his activity in other
15 words by his unit number. We have those some records
16 where we have a call for service or we have a report being
17 done, it all ties back into the officer's activity itself.

18 Q So, if I understand your testimony, tab 20 are
19 records captured by using the name, Marvin Gilliard, his
20 officer number rather than the address location?

21 A Yes, sir.

22 Q So, what does tab 20 show us?

23 A In this particular case I asked for his officer
24 activity. They told me it would run to probably
25 several -- a lot more pages. So, I asked from any officer

Madina A. Gannett

1 activity that even mentioned the word Hudson Street, any
2 calls for service or any time he called out anywhere on
3 Hudson Street to determine that we had all the records in
4 particular regarding officer Gilliard and Hudson Street.

5 Q So, if I understand the parameters of your search, it
6 wasn't just 104 South Hudson Street under the name Marvin
7 Gilliard, it was anything on Hudson Street under the name
8 Marvin Gilliard?

9 A Correct.

10 Q Let's walk through, if we may, starting on page 178,
11 that last entry there, what's that tell us?

12 A In that particular case, that was probably one of the
13 community meetings, 62 CM. Most of the 60,61,62 codes.
14 If you'll notice in the middle of it right before the
15 address it says 62 CM. I would guarantee that's probably
16 a community meeting based the time, it's a 5:30 and it was
17 at Hampton and Hudson, which is not at 104, but it's
18 further up the street on Hudson Street.

19 Q But that's how that entry got captured in this search
20 because it said Hudson?

21 A Correct.

22 Q And it's under the name of Marvin Gilliard?

23 A Correct.

24 Q We'll turn the page over to page 179. About two
25 thirds of the way down there appears to be another Hudson

Nadine A. Cornett

1 entry. What is that?

2 A In this particular case it's the intersection of

3 Hudson and Oscar. And it's a traffic stop.

4 Q How do you know it's a traffic stop?

5 A It says "T stop" in the status line.

6 Q As I understand, everything that's shown under tab 20

7 involves the movement or conduct of Marvin Gilliard?

8 A Correct.

9 Q And the ones that were highlighted here that you're

10 talking about capture the name Hudson or Hudson Street

11 somehow?

12 A Correct.

13 Q Let's turn the page, please, to page 180. The second

14 to the last appears to say "Hudson Hamp". What is that?

15 A Hudson and Hampton. And this is another traffic

16 stop.

17 Q And it says "T stop" and that's how you know that?

18 A Correct.

19 Q Turn the page, please, to page 181. And there's

20 about two thirds of the way down a highlight there. What

21 is that?

22 A In this particular case he showed as busy for

23 approximately three minutes at -- he was 10-6, which means

24 he was there at 109 South Hudson Street. However, it has

25 no other information to indicate what he was doing at 109.

Madison A. Corbett

1 Q And 109 South Hudson Street is listed there.
2 Whatever he was doing, that's where he was?
3 A Correct. That would be across the street.
4 Q That's across from the 104 South Hudson?
5 A Correct.
6 Q And down the street a little bit?
7 A Correct.
8 Q And we don't know if he actual went in a building
9 there. We just know that he was near 109 South Hudson
10 when he made that call out.
11 A Correct.
12 Q And the one at the bottom, tell me what that is, sir.
13 A Almost exactly is same thing. He was busy at 109
14 South Hudson Street.
15 Q It looks like it was the next day, though?
16 A Yes, sir.
17 Q Turn the page for me to page 182, still under tab 20.
18 And about two thirds of the way down there's another
19 mention of Hudson Cagle. What is that, sir?
20 A That was a suspicion vehicle that he got out with at
21 an intersection of Hudson and Cagle. However, I really
22 don't believe Hudson and Cagle meet. But, again, that was
23 one of the ones on Hudson Street.
24 Q And you know that to be a suspicious vehicle because
25 it says S-U-S-P and then V-E-H?

Madison A. Garrett

1 A Correct and 10-88.

2 Q And that's what that code is?

3 A Correct.

4 Q Turn the page for me, please, to 183, about a third
5 of the way done. And tell me what Hudson Oscar is going
6 on at that entry.

7 A At this particular case it says he was busy at a
8 vacant residence. And again this is the 60 codes again
9 where community patrol tasks. And that was at Hudson an
10 Oscar.

11 Q Turn the page, please, to page 184. Down toward the
12 bottom there's a South Hudson Street entry there. What is
13 that?

14 A Again busy 10-6 meaning he was there at 301 South
15 Hudson Street and, again, there's no further information
16 at that particular time to describe what he had done.

17 Q And that's across the road, the next block?

18 A Two blocks down and across, yes, sir.

19 Q Again, if you'll bear with me page 185, about half
20 way or a little more down, what is that entry, sir?

21 A He got out with a suspicious person at Hudson and
22 Hampton.

23 Q All right, sir. It looks like on page 186, about two
24 thirds of the way down we've got a Sycamore/Hudson entry.
25 What is that?

Nedice A. Garrett

1 A In this particular case 19 is usually meet somebody
2 at Sycamore and Hudson.

3 Q Page 187 it looks like two entries near the top
4 Hudson Birnie.

5 A Yes, sir. And I would say those are both the same
6 since they're like one tenth of a second apart. It just
7 show he's at an accidents with no injuries Hudson and
8 Birnie Street, which is probably three blocks away.

9 Q Page 188 says 360 S. Hudson. What is that?

10 A Again I'm not going to -- the garage itself I believe
11 is 306 South Hudson. They may be the typo. He may have
12 been business at the garage or the possibility at public
13 works, who has their office. And it's a possibility their
14 address is 360, again, two blocks up the street.

15 Q Turn over to page 189. About a third of the way down
16 we've got the 104 South Hudson Street entry. That is the
17 address of the building that is the subject of the
18 discussions on Hudson Street I believe. Is that your
19 understanding?

20 A That is correct.

21 Q Tell me what's going on there, please, sir.

22 A That particular incident is the incidents that were
23 described I believe in tab 15, 15, ones that described
24 where a report was done and where a call for service that
25 he was associated with, that's that particular call on his

Madison A. Cornett

1 officer activity.

2 Q Tell me, if you can look at page 189, the length of
3 time outside parameters he would have been involved at 104
4 South Hudson Street.

5 A He shows again at 7:11:22 he shows busy at 104 South
6 Hudson Street. Again, at 7:11:22 it's dispatched, which
7 would indicate to me that he called out. He was the one
8 who was there, he called out. And, again, the next number
9 down 7:11:22, again he's on scene, any burglary in process
10 I would say that it's because he saw it, he was checking,
11 he saw it and then proceeded to handle the call, probably
12 call for assistance, as one of the previous records show
13 four other officers responded. And, again, that's what
14 this particular record shows and that he then called, that
15 he was, again, en route to the law enforcement center,
16 detention with an arrest at 7:35:34 and then he became
17 available for calls again at 8:16:08.

18 Q If I read this correctly, then it looks to me that
19 7:11 he calls out burglary. And at 7:35 he's en route to
20 the LEC, law enforcement center. So, at most 24 minutes
21 between the time he called out and the time he's got
22 everybody packaged up en route?

23 A Correct.

24 Q We don't know if he went in the building at that
25 time, but we now approximately 24 minutes of his time was

Nadine A. Corbett

1 spent at that location?

2 A Correct.

3 Q And that's the same information that's captured in
4 tab 16, 15 -- I'm sorry, tab 14 and tab 15?

5 A Correct.

6 Q Look at tab 21 for me, please, sir. And tell me
7 generally speaking what are we looking at at tab 21?

8 A This is another record from the -- this is -- excuse
9 me, I'll have to look.

10 Q Go ahead.

11 A This is the record that came out that is reflected in
12 the chart in tab 14. This is the computerized format as I
13 stated previously. I had it put into a little chart to
14 make it easier do read.

15 Q So, this is another area where the same information
16 concerning the activity at February 7, 2002 that
17 Mr. Gilliard had at the building is captured yet in
18 another redundant location?

19 A Yes, sir. Essentially. This just has the calls for
20 service 104 South Hudson Street.

21 Q And this 104 South Hudson Street call for service,
22 the second injury, that February 7, 2002, is that the
23 incident where we have record of Mr. Gilliard being
24 involved?

25 A Correct.

Madison A. Gannett

1 Q Any other involvement or any other entry on tab 21 by
2 Mr. Gilliard?

3 A No, sir.

4 Q What is under tab 22?

5 A Tab 22 has the information on each specific call if
6 I'm not mistaken. And the one in particular -- and,
7 again, this is the information on each individual call.

8 This is each individual call as broken down by time,
9 officers involved. And, again, going back to 21 --

10 Q Tab 20?

11 A Hold on tab 21. Let me verify this. Unfortunately,
12 yes, in tab 20 also because they're all going to be tied
13 in. This is a more detailed report of that particular
14 location of each call.

15 Q And this too is information that is kept by the City
16 of Greenville. And we mentioned several redundant
17 systems. But this is another way to capture the same
18 information?

19 A Yes, sir.

20 Q After having ordered this search of the record and
21 obtained the documents that appear in APA submissions
22 concerning the activity of Marvin Gilliard at either 104
23 South Hudson or at Hudson Street by street name only, how
24 many times did his call outs show that he went either to
25 that building or in that building for police purposes?

Madison A. Gannett

1 A Based upon the records it showed one time.

2 Q Now, is it possible that is patrol officer on
3 community patrol can check a building within the community
4 by driving by and not getting out of his vehicle?

5 A Absolutely.

6 Q How does that work?

7 A Again, if a particular location had been flagged
8 let's say as an extra patrol, an officer, especially one
9 who knew his community well, who has worked in the
10 particular area, would know the actual building itself.
11 This particular building site is bordered on three sides
12 by roadways. Again, as I recall from my personal
13 recollection, the side facing away from the roadway I
14 believe was almost inaccessible. It was -- if I'm not
15 mistaken, it was all brick. The part that fronted on
16 Oscar Street I believe had windows that were all barred.
17 So, in other words, you'd be able to tell if there was an
18 open door, open window merely by driving by.

19 Q So, if an officer on community patrol on Southern
20 Side patrol was given a daily sheet or a weekly sheet that
21 says, "We want some extra patrol at this location," say
22 104 South Hudson Street, that can be accomplished without
23 getting out of your vehicle absent some suspicion
24 circumstance that observe?

25 A Yes, sir.

Madison A. Cannata

1 Q Now, if Marvin Gilliard went by that building every
2 day, three times a day, one time a day, three times a week
3 or whatever, stayed in his vehicle driving around to check
4 the building, would there be any record here that he was
5 in his vehicle driving, checking the building?

6 A No, sir. Not unless he called in.

7 Q And he calls in when he has to get out of his patrol
8 car?

9 A And take police action.

10 Q Now, what has been previously marked as Defendants'
11 Exhibit 1 has in red and hatch marked or grid, for lack of
12 a better description, an area. Is that 104 South Hudson
13 Street?

14 A Yes, sir it is.

15 Q Now, there have been some references to Claimant's
16 APA number seven. We're going to call it A.J. Whittenberg
17 site document. The A.J. Whittenberg proposed site as I
18 understand it, and you correct me if I'm wrong, was a
19 proposed site for a downtown school location at one time?

20 A Yes, sir.

21 Q Now, the actual footprint of the A.J. Whittenberg
22 site, is it larger than 104 South Hudson Street?

23 A Yes, sir.

24 Q I'm going to borrow the Commissioner's yellow marker
25 and I'm going to ask you to, as best you can, and I know

Madison A. Gannett

1 you're not a map person, whatever we call those, but as
2 far as you understand, would you outline the area
3 recognizing that I understand this area to be that
4 substation that could not be moved right here.

5 A Right.

6 Q So, the rough outline of the site of the proposed
7 school.

8 A To the best of my knowledge and to the information
9 that have been -- I have been privy to prior to this, it
10 went by the Bordans (phonetic) and then down like this.

11 Q And I'm going to ask you to do that again with that
12 blue pen so we can kind of see that. So, what you've
13 marked in blue and yellow here is an area that is
14 obviously much larger than the 104 South Hudson Street?

15 A Correct.

16 Q Now, do you know where on the proposed A.J.
17 Whittenberg site this Claimant's APA 7 refers to certain
18 soil contamination, do you know where the soil
19 contamination was on this entire site?

20 A No, sir, I do not.

21 Q Now, the 104 South Hudson Street building was torn
22 down I believe in 2005; is that right?

23 A To the best of my knowledge, yes, sir.

24 Q You've been with the city how long?

25 A I've been with the City of Greenville since 1979.

Nedra A. Garrett

1 Q And how long have you been a police officer?

2 A Seven and a half years prior with the City of Miami.

3 So, next February will be 40 years.

4 Q And is it generally accepted, common practice, policy
5 and procedure that when a police officer leaves the patrol
6 vehicle to conduct police business he calls out to
7 dispatch to alert them of his activity?

8 A Yes, sir. That is correct.

9 MR. FARRY: Thank you, sir. I don't have any further
10 questions. Counsel may have some or the Commissioner.

11 THE COURT: Ms. Karow.

12 MS. KAROW: Thank you.

13 CROSS-EXAMINATION

14 BY MS. KAROW:

15 Q Thank you for being here. And I have some questions.
16 I'll try not to jump all over the place, but I might, so I
17 -- because there's a lot of information that you just went
18 over. But I'll try to keep it as organized as I possibly
19 can.

20 In the community patrol, weren't the officers
21 required to do some foot patrol as well?

22 A Yes, ma'am.

23 Q And the foot patrol would be walking within the
24 community. Same thing as a car, you're just walking
25 around, making sure everything's okay and good to go?

Madison B. Gannett

1 A Yes, ma'am.

2 Q This area that you have outlined her on --

3 MS. KAROW: What are we called this?

4 MR. FARRY: Exhibit 1. Defendants' Exhibit 1.

5 MS. KAROW: Thanks.

6 BY MS. KAROW:

7 Q -- Defendants' Exhibit 1 here that you've marked with
8 blue pen, that's in the Southern Side area?

9 A Yes, ma'am, it is.

10 Q So, if Marvin Gilliard were on foot patrol, he would
11 be covering all of this area, correct?

12 A It would be possible, yes, ma'am. I mean it is
13 within his area.

14 Q Right. So, if he's supposed to be doing foot patrol
15 or car patrol, it would be within the area too that you
16 have marked on Exhibit 1?

17 A Yes, ma'am.

18 Q And I know that it's policy and procedure that
19 they're supposed to call in every time they get out of the
20 car. But when they're doing foot patrol, if they are
21 checking out something in a building, are they supposed
22 call in?

23 A Yes, ma'am.

24 Q Do they always?

25 A Any police officer who has experience and doesn't

Madison A. Garrett

1 want to get harmed and get hurt is going to call in. We
2 even had a code for foot patrol.

3 Q But do they always call in?

4 A I can't swear to that, no, ma'am.

5 Q Were you ever out on patrol with Marvin Gilliard?

6 A No, ma'am, I was not.

7 Q So, if he was going in to check out a building or
8 going to see if there was a homeless person laying on an
9 empty lot and he didn't call in, you wouldn't know about
10 it, right?

11 A No, ma'am.

12 Q Unless he said so, unless he testified to it?

13 A If he called in on dispatch and told them what he was
14 doing as per policy, then yes, that's correct.

15 Q But if he didn't call in per policy and he said later
16 on that he had done that, do you have any reason to doubt
17 Marvin Gilliard?

18 A I personally have no reason, no, ma'am.

19 Q He had a clean record, no complaints with the City of
20 Greenville?

21 A I can't answer that. I don't have the internal
22 affairs records. I know of no specific major complaints
23 that anyone ever had with Marvin.

24 Q Did you know of any disciplinary actions ever taken
25 against Marvin Gilliard while he was City of Greenville as

Madison A. Garrett

1 a police officer?

2 A To the best of my recollection, probably minor.

3 Q Is that yes, there was something?

4 A Yes. I would say yes.

5 Q Did you know Marvin the entire time he was a police
6 officer?

7 A I would say yes.

8 Q See him on a daily basis?

9 A From 2000 I was a captain in -- I was essentially my
10 same position except as a captain. He worked from me
11 then. Prior to that, I would have been upstairs, but I
12 knew who he was. I've known him from years.

13 Q Would you consider him a responsible person?

14 A I would.

15 Q Honest person?

16 A I would.

17 Q Good officer?

18 A Yes.

19 Q Did his job in the community patrol like he should
20 have?

21 A I would say so. Yes, ma'am.

22 Q When they're doing the foot patrol -- and I may have
23 asked you this the moment ago, but I just want to clarify.
24 If they're doing the foot patrol, which is part of the
25 community patrol, correct?

Madison A. Garrett

1 A Yes, ma'am.

2 Q If they go from one block to another block or if they
3 stop to talk to someone that maybe has a complaint, is
4 that called in?

5 A Again, I'll use your particular scenario. If he was
6 out 10-60 -- and I don't remember if that's the exact one,
7 but it would have been 60, 61, 62 would have been foot
8 patrol in the Washington and Hudson Street area, yes,
9 ma'am, he very easily could have talked to almost anybody.

10 Q And he could have traveled a couple of blocks, two or
11 three blocks without calling in?

12 A That's very possible, yes, ma'am.

13 Q Let's look at 21 if you would. Let me ask you this:
14 Have you read Marvin Gilliard's deposition.

15 A Yes, ma'am. However it's been almost -- a long time.
16 It's been like four years.

17 Q Because you weren't present for his deposition?

18 A No, ma'am.

19 MR. FARRY: Were you is there?

20 MS. KAROW: No. But I read it.

21 BY MS. KAROW:

22 Q Let's look down I'd say probably about three fourths
23 of the way on the left-hand side it has 2-70075. I'm not
24 sure if that's -- that's the incident number, okay.

25 A Yes, ma'am.

Madison J. Gannett

1 Q Out there it say says 19 report to David Minks?
2 A At back of this location reference running vagrants
3 out of this vacant building.
4 Q David Minks was the owner of the property at this
5 particular time.
6 A Yes, ma'am.
7 Q According to -- and I'm not sure exactly what --
8 A It was one of the --
9 Q Seventeen?
10 A Correct.
11 Q Yes. Is this saying that the owner of the building's
12 there wanting someone to come run the vagrants out?
13 A Correct.
14 Q And that says it's the back of the building?
15 A He said report to him at the back of the building.
16 Q Could the back of the building be seen from the road?
17 A Yes, ma'am.
18 Q So, there were problems with vagrants in that
19 building?
20 A Yes, ma'am.
21 Q Are you aware of David Minks making a request to the
22 City of Greenville to patrol his building, give it some
23 extra attention to make sure that the vagrants stayed out?
24 A I can't say it was David --
25 MR. FARRY: I object. There's no evidence that's

Madina A. Garrett

1 happened. David Minks hasn't testified. There's no
2 testimony to that effect.

3 MS. KAROW: Marvin Gilliard testified to that in his
4 deposition, that they were doing extra patrol at the
5 request of the property owner.

6 THE COURT: If he can answer that, I'll let him
7 answer.

8 MS. KAROW: That's why I said, if he could --

9 THE WITNESS: Not to my personal knowledge.

10 BY MS. KAROW:

11 Q Mr. McLaughlin, I'm going to put you on the -- and
12 what is your appropriate title? I'm sorry.

13 A Major.

14 Q Major McLaughlin, I do not want to put you too much
15 on the spot, but you've been an officer from 40 years.
16 How much of that time was spent out on patrol?

17 A Well define patrol? My first seven and a half with
18 the City of Miami.

19 Q Right.

20 A I started my first two years I was probably like in a
21 felony squad, which would have been patrol in a high crime
22 area. I became a tactical officer where we did decoy work
23 for maybe a year. I was a burglary investigator, a
24 robbery investigator and then the homicide investigator.
25 I went back to patrol for the last two years in my stint

1 in Miami. I came to the City of Greenville in 1979, spent
2 probably the first four to five years in patrol. I became
3 a detective for almost two years. I went back to patrol
4 and I made sergeant, spent two years as a sergeant in
5 patrol. I made lieutenant, went back to patrol so to
6 speak because I -- sorry. The last year of my sergeant I
7 was in charge of a specialized unit. But, again, it was
8 more like tactical patrol. I made lieutenant, went back
9 as a patrol lieutenant. I then spent I think it's
10 approximately 8 years as the administrative assistant to
11 the chief of police. I made captain in 2000, went back to
12 patrol, managed patrol until 2007. I made major, which
13 transferred to our support division, which we had done a
14 reorganize. So, essentially I took over investigations
15 and some other obvious things until 2010 and I went back
16 to patrol.

17 Q Isn't it possible that officers don't always follow
18 policy and procedures?

19 A It is quite possible.

20 Q And doesn't it happen more than we know about?

21 A I'll have to say yes.

22 Q So, it's possible that Marvin Gilliard wasn't always
23 radioing in every time he was on foot patrol or every time
24 he just checked out the building or every time he just
25 kind of glanced into a vacant lot?

Madison A. Garrett

1 A And, again, I would have to say that's possible.

2 Q You referred to community patrol as being enhanced
3 services. Those were the words that you used.

4 A Correct.

5 Q Because -- these weren't your words. These are going
6 to be mine. Were those considered in those particular
7 areas high crime areas?

8 A Generally speaking.

9 Q So, they needed a little extra attention?

10 A Yes, ma'am.

11 Q And the purpose for the City of Greenville was to
12 make sure that these officers were having a presence in
13 the community?

14 A Yes, ma'am.

15 Q Protecting the property owners?

16 A Again, community policing is more of a
17 problem-solving approach to standard police work. Again,
18 it wasn't just to have another officer presence or another
19 officer's visibility. It was to actually address
20 particular problems, a vacant building, an un-boarded
21 building, an unsecured location. It was also their job to
22 make that information available to the people who owned
23 it. Our own building and codes people to make certain
24 that, again, substandard housing or things that lead to
25 crime, sort of like the broken windows theory, things that

Medina A. Gannett

1 lead to crime are fixed and taken away.

2 Q If a property owner wanted his building that no one
3 was in or supposed to be in, but wanted his building to
4 get a little extra look at, then as a community patrol
5 officer, that would be one of the things they would be
6 required to do?

7 A They would be required to look at it, yes, ma'am.

8 Q And that would be whether on foot patrol or whether
9 he was patrolling in his car?

10 A Correct.

11 Q And that could be also including walking through the
12 building?

13 A If the building was unsecured, yes, ma'am.

14 Q And is it possible that every time an officer was on
15 foot patrol and just walked through the building, that it
16 wasn't called in?

17 A Highly doubtful.

18 Q But is it possible?

19 A Yes, ma'am.

20 Q And if Marvin Gilliard testified to that in his
21 deposition, do you have any reason the doubt that he did
22 that.

23 A Honestly, yes.

24 Q And why is that?

25 A As a, again, police officer with the amount of

Nadine A. Cornett

1 experience that I have and knowing police officers as long
2 as I have since my father was one, my father-in-law was
3 one and my son is one, again, most officers or never going
4 to, to the extent that you're saying, go in an unoccupied
5 or possibly occupied by a criminal building by themselves
6 without telling anybody else because common sense would
7 tell them that's the fastest way of getting hurt.

8 Q And I'm taking about Marvin Gilliard.

9 A Yes.

10 Q You testified earlier that you thought he was honest.

11 A Yes.

12 Q So, when he testifies in his deposition that he would
13 walk through this particular building and wasn't always
14 calling in, you doubt that testimony?

15 A Yes, ma'am.

16 Q The city officers now, don't their equipment come
17 with GPS systems?

18 A What do you mean they're equipment?

19 Q You can track them now. They don't necessarily -- if
20 they're not calling in there particular --

21 A No, ma'am.

22 Q You can't track them at all without them calling in?

23 A We don't have that technology. I mean, it does
24 exist, there's a lot of agencies that have it. But,
25 again, it's certainly costly and so far we've not gotten

Nedra A. Cornett

1 that.

2 Q None of your city officers have that. So, if they
3 don't call in, you don't know where they are?

4 A Technically, yeah.

5 Q The documentation that you were referring to earlier
6 on tab 18. And I want to make sure I understood this
7 correctly. The last incident that's listed there.

8 A Yes, ma'am.

9 Q Is that the one you said you all couldn't find the
10 report for?

11 A There is no report that has ever been done. We spoke
12 to the actual officer who is listed on that particular
13 incident and he says he didn't do a report. So, again how
14 that particular thing came up in the county system, I
15 can't explain.

16 Q In the county or the city?

17 A It's the county system. Again unfortunately when we
18 went to the joint law enforcement center in 1976, the
19 county runs the records system. So, we're dependant upon
20 them for some of our record. Again E911 is also a county
21 system. We do, however, have our own CAD system, which a
22 lot of the information that we're looking at it from.
23 This particular thing is a county one.

24 Q I believe it's going to be behind 20. On page 179,
25 about three fourths of the way down, I see a time 17:06:31

Media 3 - Connatt

1 it says "T stop". That means traffic stop?

2 A Correct.

3 Q And then there's no other information provided. Is
4 there other information that should have been provided?

5 A Not that I am aware of. Again, I can't honestly say.

6 Q Well, according to the policies and procedures of the
7 City of Greenville's Police Department, is there other
8 information that should have been provided on that
9 particular entry?

10 A And this is, again, a synopsis of a call. In that
11 particular one there probably and, again, there would have
12 been this kind of information available on the particular
13 call in 2007 when I pulled it. However, I didn't look at
14 anything other than things that were at 104 South Hudson
15 Street.

16 Q I understand. And I apologize if I didn't make
17 myself clear. On this particular sheet --

18 A Correct, this particular sheet.

19 Q -- is there anything else that should have been
20 listed on that particular call on this particular sheet?
21 Because all the others have a bunch of information, but
22 that one doesn't have hardly anything.

23 A And I can't even begin to tell you why.

24 Q But according to the policies and procedures of the
25 City of Greenville, should more information been obtained.

Madison A. Garrett

- 1 A This is a computer printout. I don't know why the
2 computer either spit it out with les or if less was
3 actually entered by dispatch. The officer doesn't enter
4 this information.
- 5 Q Correct.
- 6 A A dispatcher key strokes it.
- 7 Q The dispatcher key strokes it. Where does the
8 dispatcher get the information from?
- 9 A The officer.
- 10 Q So, the dispatcher's entering the information that
11 the officer provides?
- 12 A Correct.
- 13 Q So, if the information, therefore, is not provided on
14 this particular entry, then that means it wasn't put in by
15 the dispatch?
- 16 A It's a possibility?
- 17 Q And therefor it wasn't provided by the officer if
18 it's not put in by dispatch.
- 19 A Or the computer ate it.
- 20 Q Well, the computer didn't seem to have eating
21 anything else on this page, so?
- 22 A And I can't answer that question.
- 23 Q On the an next page -- I don't have anything marked
24 on that one. 181 little passed half way down you had made
25 reference to a particular -- let's see, stop at the 109

Madison A. Carrott

1 South Hudson?

2 A Yes.

3 Q And you testified that that entry was incomplete
4 previously.

5 A That it was incomplete?

6 Q You made the comment that it was incomplete and I --
7 what is incomplete?

8 A Again, busy at. And, again, it doesn't have all of
9 this information because I didn't ask for or pull this
10 information on those particular things. I can't say. I'm
11 reading in line from a computer. It says he was busy at,
12 109 South Hudson Street. Now, again, if he told dispatch
13 I'm busy at 109 South Hudson Street, then all the
14 information is there. However, I would say that he called
15 out there and I didn't have any more information on this
16 particular sheet that I can share with you.

17 Q Would the policy and procedures require him to say
18 what he was doing, what he has busy doing?

19 A Generally. However, if he said, "Headquarters, I'll
20 be out at 109 South Hudson Street. I'll advise," then
21 that's all the information --

22 Q So, right here we had it was busy. We don't know
23 doing what.

24 A Correct.

25 Q And so, according to the policies and procedures,

Nedine A. Cannott

1 it's not fully complete because he's not telling what he
2 was doing.

3 MR. FARRY: Object that's not what this witness has
4 testified to, Commissioner.

5 THE COURT: Sustained.

6 MS. KAROW: I'm asking a question.

7 THE COURT: Can you rephrase your question?

8 BY MS. KAROW:

9 Q An officer should tell dispatch what he's busy doing?

10 A Generally speaking.

11 Q And in this particular case, dispatch didn't enter
12 anything as to what the officer was doing?

13 A I can't say yes or no.

14 Q Well, we don't see that on this particular entry.

15 A We do not.

16 Q On down, the very last entry, same thing.

17 A And I would have to, again, say the same answer.

18 Q On these particular entries on this particular page,
19 on page 181, not referring to any other page, the
20 information on these particular calls is not complete
21 pursuant to the policies and procedures of the City of
22 Greenville.

23 A Again, the policies and procedures of the City of
24 Greenville states that the officer will call out. I
25 wasn't here or present for that particular call out. I

Madison A. Garrett

1 wasn't in dispatch to see or know what they actually put
2 in. That may be the complete record. I was testifying
3 that I, reading this, could only give you the amount of
4 information that I had available in front of me.

5 Q So, if you -- is incomplete on unfair
6 characterization of this entry?

7 A And that's a good possibility.

8 Q Because I just want to be fair.

9 A My word may have been incorrect. Based upon what I
10 was reading, I gave you all the information I had.

11 MS. KAROW: I have no further questions.

12 THE COURT: Any redirect?

13 MR. FARRY: Yes, sir.

14 REDIRECT EXAMINATION

15 BY MR. FARRY:

16 Q Just briefly following up Counsel's questions, we'll
17 look at page 179 under tab 20. And you were being
18 questioned about a traffic stop at 17:06, six minutes
19 after 5:00 it looks like, on Hudson Oscar Street and a
20 series of questions about it being incomplete or volitive
21 policy or procedure. Is it true that if you want to know
22 what's happening at this stop designated 17:06 T stop
23 Hudson Oscar, then you go to the system and pull the typed
24 information that's found at tab 22?

25 A Yes, sir.

Madison A. Gannett

1 Q And when you go to tab 22, that's where you're going
2 to find all the information as to what the officer was
3 doing at that location?

4 A You would find more information, yes, sir.

5 Q So, it didn't necessarily mean it's a violation of
6 policy and procedure, just means when the computer
7 captured that redundant information at this particular
8 place, everything wasn't printed out?

9 A Yes, sir.

10 Q For whatever reason. It may not have been entered,
11 may not have been reported. May not have been key stroked
12 or the computer just burped?

13 A Yes, sir.

14 Q And that's the same thing at page 171 where we saw it
15 was busy at and then it doesn't have any code there,
16 correct?

17 A Yes, sir.

18 Q Again, there would be the correspond document similar
19 to the type found tab 22, correct?

20 A Yes, sir.

21 Q Now, you were asked questions about extra patrol, as
22 if a owner of a property in a certain location on Southern
23 Side patrol requested extra patrol such the chain of
24 command says, "Mr. Patrol Officer, Mr. Gilliard, Officer
25 Gilliard, we want some extra patrol at 104 South Hudson

Madison A. Gannett

1 Street on a daily basis," that can accomplished by driving
2 around the building.

3 A Yes, sir.

4 Q And you were asked to speculate or is it possible
5 that Mr. Gilliard two to three times a week or possibly
6 every day of the week went into 104 South Hudson Street
7 20, 30, 40 minutes or more at a time on a two, three times
8 a week every day a week basis and forget to call out,
9 didn't call out, is that going to happen with a patrol
10 officer that we have on the street two to three times or
11 possibly every day a week being unaccounted for for 20,
12 30, 40 minutes a day?

13 A I would have to say no.

14 Q And if that happens, is that going to show up in our
15 morning call out such that the chain of command's going to
16 say, "What's going on here? We don't know where you are."

17 A If we had an officer whose activity had any problems,
18 then, yes, we do look at that?

19 MR. FARRY: I have no further questions.

20 MS. KAROW: I have a few.

21 THE COURT: Go ahead.

22 RECROSS-EXAMINATION

23 BY MS. KAROW:

24 Q You were just asked about a Monday meeting and this
25 is a problem, "We don't know where you are." With

1 officers not calling in, you don't know -- you have no way
2 to know whether they are going through the building or
3 not, correct?

4 A Correct. If an officer's activity wasn't showing
5 anything, they weren't calling out on anything, then, yes,
6 we would wonder why.

7 Q But he was calling in on certain stops and certain
8 events that he was handing. We saw that. If he had what
9 you consider police action.

10 A Yes, ma'am.

11 Q So, you wouldn't know if he was walking through a
12 building on his patrol for 30 minutes because you have no
13 way to track him unless he calls in, right?

14 A No, ma'am.

15 Q And when we talked about the missing incident report
16 earlier, you all saw a computer print out for a report,
17 but couldn't find the actual report?

18 A No, ma'am.

19 Q So, you went to the officer to find out about the
20 report?

21 A Yes, ma'am.

22 Q So, the officer's the best source of knowledge as to
23 what he's doing on his patrol?

24 A I'd have to say yes.

25 MS. KAROW: Thank you. I have no further questions.

Madina A. Gannett

1 THE COURT: Mr. Farry?

2 REDIRECT EXAMINATION

3 BY MR. FARRY:

4 Q The incident where you couldn't find the report in
5 the redundant systems maintained by the county, used by
6 the city, still captured that officer's activity. It just
7 didn't capture it in every redundant system. Meaning
8 there's an entry where the officer say going, but there
9 wasn't an actual report then rated?

10 A Yes. In that particular case it would appear that
11 the records management system showed a report. There
12 would have been a call for service that would have been
13 officer activity on that particular incident. And my best
14 guess is somebody hit a five instead of a three.

15 Q And then therefor didn't generate a report?

16 A Correct.

17 MR. FARRY: Thank you. I have no further questions.

18 THE COURT: Thank you.

19 EXAMINATION

20 BY THE COURT:

21 Q Major, let me ask you this: On the map that we
22 have, the highlighted area that you put the blue pen
23 around, would this have been the area Mr. Gilliard would
24 have been patrolling?

25 A He would have been patrolling the entire map that

Madison A. Corbett

1 you're looking about and including -- this is probably
2 only I'm going to say a quarter of his area, which has
3 been encompassed in an area of Echo Beat where this is
4 maybe -- and, again, I'm guessing -- his particular
5 neighborhood may have been a tent of Echo Beat. And this
6 particular little section, it maybe a quarter of what he
7 normally would be concerned with.

8 Q That area that the school was going to be built on,
9 do you know why that didn't build the school on that site?

10 A Honestly, and, again, I wasn't at all the
11 high-profile meetings. The school is actually right
12 there. That is the actual school. That is the Kroc
13 Center. It was a gigantic deal where the Kroc Center,
14 which is named after the guy who started McDonald's, it's
15 going to be a gigantic -- in other words, it's taken up
16 all the way over to here now. And it became a much larger
17 project. This particular site did have some issues with
18 the -- it is in the floodplain partially. The river runs
19 right through here. This particular utility site was not
20 going to be moved. Duke Power had no intentions of
21 moving. It's a fairly large yard with a lot of the high
22 tension wires and stuff. So, this particular site, I
23 think they found that this particular site -- and, again,
24 I'm surmising that was a better fit for what the project
25 finely became.

Madina A. Carratt

1 Q On APA pages -- number 14 and 15, this may not be a
2 big issue, but when these reports were run, does it matter
3 for the spellings? The only reason I ask that is
4 Gilliard, his name is misspelled on page 170 and 171. It
5 should be G-I-L-L-I-A-R-D. Is that the correct spelling?

6 MR. FARRY: Correct.

7 MS. KAROW: That's correct.

8 BY THE COURT:

9 Q And it may not matter because it looks like -- was
10 his badge number 272?

11 A That's -- I'm guessing at this point, but that's
12 probably officer number.

13 Q When it's run though, does the correct spelling need
14 to be in there?

15 A No. It's done both by badge number -- or excuse me,
16 the -- I'm trying to think what that actual number is
17 called. Mine's 0183. It's just the officer number and
18 the officer's name. And it's still going to show up.

19 Q To you knowledge, though, good officer, honest, never
20 had any problems, any issues?

21 A Minor at best. And, again, I'm sorry. I didn't --
22 nobody asked me for that particular information. I'm just
23 basing it on my remembrance.

24 THE COURT: Any other questions for him?

25 REDIRECT EXAMINATION

1 BY MR. FARRY:

2 Q Based on questions that the Commissioner asked,
3 generally specking Defendants' Exhibit 1 makes up
4 approximately one forth of the area that Mr. Gilliard
5 would have been responsible in community patrol for or,
6 stated a different way, his area was four times bigger
7 than Exhibit 1, correct?

8 A Roughly. And that's the guess, but, yes.

9 MS. KAROW: I just have one quick question.

10 THE COURT: Yeah.

11 RE CROSS-EXAMINATION

12 BY MS. KAROW:

13 Q Are you aware of how much -- you talked about the
14 meetings and the calls for the project and it needing to
15 be bigger, the school. Are you aware of how much it was
16 going to cost to clean up that property if they were going
17 to use it for a school site?

18 A I have no idea.

19 MS. KAROW: No more questions.

20 THE COURT: Any other witnesses?

21 MR. FARRY: No, sir. Defendants' case, Commissioner.

22 THE COURT: Anything else from the Claimant?

23 MS. KAROW: No, sir.

24 THE COURT: That'll conclude this hearing.

25 (THESE PROCEEDINGS CONCLUDED AT 12:01 PM.)

Nadine A. Cannott

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

MARVIN GILLIARD, EMPLOYEE,

Claimant,

WCC File No.:
0627382

-vs-

CITY OF GREENVILLE, EMPLOYER
AND SELF-INSURED, AND HEWITT,
COLEMAN & ASSOCIATES, INC., TPA,

Defendants.

~~~~~

DEPOSITION OF  
YUH-CHIN T. HUANG, M.D.

March 3, 2011

11:42 a.m.

Duke University Medical Center  
330 Trent Drive, Hanes House  
Durham, North Carolina

Lisa A. DeGroat, RPR



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EXHIBIT

## DESCRIPTION

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AJ Whittenburg proposed site statement,  
2 pgs.

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CLAIMANT'S  
EXHIBIT

## DESCRIPTION

## PAGE

(NONE MARKED.)

(Original exhibits have been attached to the  
original transcript.)**ESQUIRE**  
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## STIPULATIONS

Before testimony was taken, it was stipulated by and between counsel representing the respective parties as follows:

1. That any defect in the notice of the taking of this deposition, either as to time or place, or otherwise as required by statute is expressly waived, and this deposition shall have the same effect as if formal notice in all respects as required by statute had been given and served upon the counsel in the manner prescribed by law.

2. That this deposition shall be taken for the purpose of discovery or for use as evidence in the above-entitled action, or for both purposes.

3. That this deposition is deemed opened and all formalities and requirements with respect to the opening of the same, expressly including notice of the opening of this deposition, are hereby waived, and this deposition shall have the same effect as if all formalities in respect to the opening of the same had been complied with in detail.

4. That the undersigned, Lisa A. DeGroat, Registered Professional Reporter and Notary Public, is duly qualified and constituted to take this deposition.

5. Objections to questions, except as to the form thereof, and motions to strike answers need not be made during the taking of this deposition, but before any judge or any court of competent jurisdiction for the purpose of ruling thereon, or at any other hearing or trial of said case at which said deposition might be used, except that an objection as to the form of a question must be made at the time such a question is asked or objection is waived as to the form of the question.

6. That the signature of the witness to the deposition is hereby reserved.

7. That the South Carolina Rules of Civil Procedure shall control concerning the use of the deposition in court.



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DEPOSITION OF DR. YUH-CHIN T. HUANG

March 3, 2011

YUH-CHIN T. HUANG, M.D.,  
having been first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. FARRY:

Q. Tell me your full name, please, sir.

A. Yuh-Chin Huang. H-u-a-n-g, is the last  
name. Yuh-Chin, Y-u-h, C-h-i-n. My middle name  
is Tony.

Q. You are a licensed medical doctor?

A. Yes.

Q. Licensed in the state of North Carolina?

A. Yes.

Q. Licensed anywhere else?

A. No.

Q. Has your license ever been suspended or  
revoked?

A. No.

Q. Are you board certified in any field of  
specialty?

A. Internal medicine, pulmonary and  
critical care medicine.

Q. And how long have you practiced with



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1 Duke Medical University?

2 A. Since 1998.

3 Q. In that capacity I believe you had occasion  
4 to see Marvin Gilliard?

5 A. Uh-huh.

6 Q. You don't have your chart in front of you.  
7 So we're at a little bit of a disadvantage, but I'm  
8 going to ask you some questions about your  
9 treatment.

10 The first time you saw him was April 16th,  
11 2007?

12 A. Uh-huh.

13 Q. You need to say yes or no, sir.

14 A. Yes.

15 Let me ask my secretary to print all of  
16 the clinic notes.

17 Q. That would be a good idea.

18 A. We can get that.

19 (DISCUSSION HELD OFF THE RECORD.)

20 BY MR. FARRY:

21 Q. Thank you, Doctor.

22 A. Yes. That was the first time.

23 Q. Okay. And he was referred to you by  
24 another physician, I believe, out of Greenville,  
25 South Carolina; is that right?



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1 A. Yes.

2 Q. And his clinical presentation at that time  
3 was what?

4 A. So he came to me. He told me that he  
5 had been short of breath for a few years, and --  
6 and other symptoms, like fevers, some other  
7 nonpulmonary symptoms. I believe that was the  
8 summer before -- well, the year before he came  
9 to see me.

10 And he -- he went to see a doctor over  
11 there, and they did bronchoscopy. They did a  
12 lot of things and decided that, you know, need  
13 to send him over here for further evaluation.

14 Q. I believe your initial diagnosis was  
15 interstitial lung disease?

16 A. Uh-huh.

17 Q. Etiology unclear?

18 A. Unclear. Right.

19 Q. So he had some type of disease, but you  
20 couldn't tell what it was from?

21 A. No. Interstitial lung disease is a  
22 group of many, many lung diseases.

23 Q. Right.

24 A. It's just a general category of --

25 Q. Interstitial lung disease, but the



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1 etiology --

2 A. Right. No.

3 Q. -- the cause of it was not known?

4 A. Not known at that time.

5 Q. Now, in your report you reference, quote,  
6 "The patient recalls that he was sent to patrol an  
7 abandoned mill to check for the homeless people" --

8 A. Uh-huh.

9 Q. -- "about three and a half years ago."  
10 That came from Marvin Gilliard?

11 A. Yes.

12 Q. You don't know anything at this time of  
13 this report about the building that he's checking,  
14 do you?

15 A. In April you mean?

16 Q. Yes, sir.

17 A. No. I do not know.

18 Q. You don't -- and whatever information you  
19 have about the building Marvin Gilliard would have  
20 supplied to you?

21 A. Not in April. It came later.

22 Q. Okay. But whatever information you have  
23 about what he did was told to you by Marvin  
24 Gilliard?

25 A. Right.



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1 Q. Whatever history you have about this  
2 patient comes from Marvin Gilliard and no one else?

3 A. Right.

4 Q. Okay.

5 A. That's right.

6 Q. You don't know how many times he would have  
7 been in that building on a given week, do you?

8 A. As I said, he told me that. So I have  
9 no other information or verification that --

10 Q. But you don't make reference to it in your  
11 first report?

12 A. No.

13 Q. So --

14 A. Not in April. I did not know that in  
15 April.

16 Q. And you don't know the duration of each  
17 visit that he's in that building, do you?

18 A. Not in April.

19 Q. You don't know over when he would have been  
20 in that building one year, two years, three years,  
21 five years ago?

22 A. No, I didn't.

23 Q. You just know that sometime before he saw  
24 you --

25 A. Uh-huh.



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1 Q. -- at some period he had patrolled a  
2 building that he went into sometimes?

3 A. In April -- let me clarify this. In  
4 April all I knew was that he was a police  
5 officer.

6 Q. Okay.

7 A. That's all.

8 Q. Now, you did not diagnose chronic  
9 hypersensitivity pneumonitis on your first visit,  
10 did you?

11 A. No.

12 Q. Okay. So when it states in your affidavit,  
13 "Based on my initial physical exam and review of  
14 Mr. Gilliard's history and previous diagnostic  
15 studies, I arrived at a diagnosis of chronic  
16 hypersensitivity pneumonitis," that didn't happen  
17 the first visit?

18 A. Not in --

19 MS. KAROW: I'm going to give him a copy of  
20 his affidavit, so he can have that in front of him.

21 THE WITNESS: Not in April.

22 BY MR. FARRY:

23 Q. Okay.

24 A. It's an initial diagnosis, but not a  
25 definitive diagnosis.



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1 Q. Well, it's not even an initial diagnosis,  
2 chronic hypersensitivity pneumonitis. You said  
3 etiology unknown at that time --

4 A. Uh-huh.

5 Q. -- correct?

6 A. Yeah.

7 Q. So that statement isn't correct?

8 It's not based upon your initial physical  
9 exam that you made the diagnosis of chronic  
10 hypersensitivity pneumonitis, is it?

11 A. Well, that statement is not right.

12 Q. Okay.

13 A. Uh-huh. Not the initial visit.

14 Q. Thank you.

15 Now, this affidavit -- now that we've  
16 started talking about that -- is dated June 24,  
17 2010?

18 A. Uh-huh.

19 Q. Was this typed by your staff, or was this  
20 affidavit presented to you by the attorney or  
21 someone from his office?

22 A. It's from outside.

23 Q. "Outside," meaning -- what; the lawyer?

24 A. Not from my office.

25 Q. Okay. So do you recollect that the lawyer



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1 or someone in their office sent this to you to sign?  
2 A. I believe it was a lawyer.  
3 Q. Okay.  
4 A. That was -- I think it was a lawyer.  
5 Q. It wasn't anybody on your clinical staff or  
6 the staff of medical -- the university here at Duke  
7 that prepared --  
8 A. No.  
9 Q. -- this affidavit?  
10 A. No.  
11 Q. Did you get a letter with this to sign?  
12 A. I'm trying to remember. I think it  
13 was -- no. I think this is the only one. I  
14 think it was -- there was a short letter, just  
15 saying that --  
16 Q. Here it is, sign it?  
17 A. The affidavit -- right.  
18 Q. But you didn't make any changes; you just  
19 signed it?  
20 A. I read it.  
21 Q. Well, I'm sure you read it.  
22 A. Right.  
23 Q. But you didn't make any changes; you signed  
24 it?  
25 A. Right. I signed it. But it was not



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1 stating what the purpose was -- was for.

2 Q. Okay. Now, that letter would be in this  
3 file that's in a box somewhere?

4 A. This letter was there.

5 Q. What I mean is --

6 A. Should be there.

7 Q. -- the letter and the affidavit and the  
8 reports, they'd be in this file --

9 A. It should be.

10 Q. -- in this box?

11 A. It should be.

12 Q. Now, as we sit here today where is that box  
13 in relation to where we are?

14 A. The box?

15 Q. Yes, sir.

16 A. It's probably in my office somewhere.

17 Q. So if we need to, we could take a break and  
18 try to actually find the physical file?

19 A. It should be there. Yeah, uh-huh.

20 MR. FARRY: Can we do that?

21 THE WITNESS: There are 20 of them.

22 MS. KAROW: If it helps you, it was e-mail  
23 correspondence.

24 THE WITNESS: What are you looking for?

25 MR. FARRY: I just want to see whatever has



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1 been sent. I don't know what I'm looking for until  
2 I see it.

3 THE WITNESS: Uh-huh.

4 MR. FARRY: Can we take a break and then  
5 let you go look? I'd be happy to go through the  
6 boxes. I'm not trying to peruse other people's  
7 records, but I'll be happy to physically do whatever  
8 is necessary, so that we can find that file.

9 THE WITNESS: I can ask my secretary to  
10 look. There are about 15 of them.

11 MR. FARRY: All right. Would you ask her  
12 to do that? We'll continue the deposition, so we --

13 THE WITNESS: Okay.

14 MR. FARRY: -- don't delay the process any  
15 longer.

16 THE WITNESS: Okay.

17 MR. FARRY: Thank you.

18 (RECESS FROM 11:50 A.M. TO 11:00 A.M.)

19 MR. FARRY: We'll go back on the record.

20 THE WITNESS: All right. She's looking.

21 BY MR. FARRY:

22 Q. Your knowledge as to Marvin Gilliard being  
23 a police officer and patrolling this building, do  
24 you know over what duration of time his duties  
25 required him to patrol this building?



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1 A. You mean now or in April?

2 Q. As we sit here today.

3 A. Yes, according to what he told me.

4 Q. What did he tell you?

5 A. So my note says -- it's what's in my  
6 notes. Hang on a second. Later on one of  
7 the -- there's an occupation addendum once we  
8 had the pathological diagnosis.

9 Let's see. He told me -- because I went  
10 back and asked him when I knew about the  
11 pathology, what he actually did. So he told me  
12 that he had been doing that for a couple of  
13 years.

14 He goes -- he goes -- he went over there  
15 a few times a week to check and stayed there an  
16 hour or two, just to check on the homeless.

17 Q. So tell me specifically what your  
18 understanding is as to when in time Marvin Gilliard  
19 would have been patrolling this building?

20 And I'm talking in the year 2001, 2002,  
21 2003, 2004, and then we're going to hone in a little  
22 further, once you tell me when in time we're talking  
23 about this.

24 A. I'm trying to find that -- that thing  
25 that he told me. He told me a few years before



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1 he had the symptoms. So his symptoms started  
2 actually the year before. So that would be  
3 2010, I think. This is 2011; right? No. It's  
4 2009.

5 Q. Well, the first time he saw you was April  
6 2007.

7 A. No, sir. That would be 2006. So the  
8 symptoms started then. So he told me a few  
9 years before that he started patrolling the  
10 building. So I assume that would be 2003. And  
11 he said he -- he did that for a year and a half,  
12 I think.

13 Q. Is it fair to say you're not exactly sure  
14 when this year and a half period was?

15 A. I don't -- I cannot tell you what month.

16 Q. Okay. And you can't tell me really what  
17 year, other than maybe '03, '04?

18 A. Uh-huh.

19 Q. That's as close as we can get?

20 A. Yes.

21 Q. Okay. Now, as far as your understanding of  
22 the frequency of the time he was in that building --

23 A. Uh-huh.

24 Q. -- what is that?

25 A. What he told me was a few times a week,



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1 and every time he stays he stayed there for an  
2 hour or two.

3 Q. Okay. What's a few times a week?

4 A. Two to three, is my understanding.

5 Q. So your understanding of the frequency in  
6 the building is two to three times a week?

7 A. Uh-huh.

8 Q. Okay. And each visit, how long do you  
9 understand --

10 A. One to two hours.

11 Q. Okay. So each visit would have been one to  
12 two hours?

13 A. Uh-huh.

14 Q. Yes?

15 A. Yes.

16 Q. One to two hours two to three times a week?

17 A. Uh-huh.

18 Q. Over one and a half years; is that what I  
19 understood you to say?

20 A. One and a half years is fine. Yes.

21 Q. Okay. And that would have been sometime  
22 in, you believe, roughly '03, '04?

23 A. Uh-huh.

24 Q. That one and a half year window?

25 A. Right.



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1 Q. Okay. You don't know anything about the  
2 building he was in, do you?

3 A. Well, I know something about the  
4 building, because I got some information that he  
5 told me later. That it was -- that mill or that  
6 area was condemned.

7 Q. Okay. What do you know about the building?

8 A. I know nothing about a building. I know  
9 it was in a building.

10 Q. Okay. Tell me what you know was in the  
11 building?

12 A. So I was told that it was a mill that  
13 had something to do with fabrics or textile.  
14 All right. And that's all I knew about the  
15 building.

16 Q. So the only thing you know about the  
17 building is what Marvin Gilliard told you?

18 A. Uh-huh.

19 Q. You need to say yes or no.

20 A. Yes.

21 Q. And he told you it was a textile mill and  
22 had something to do with fabrics?

23 A. Yes.

24 Q. You don't know anything about the size of  
25 the building?



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1 A. No.

2 Q. You don't know anything about what was in  
3 the building, other than what Marvin Gilliard told  
4 you?

5 A. No.

6 Q. You don't know anything about the quantity  
7 of any of the chemicals that were in the building,  
8 do you?

9 A. I don't know the quantity, but I know  
10 what's in there.

11 Q. How do you know what's in there?

12 A. Based on that report.

13 Q. And the report that you speak of now --

14 A. Is what you showed me just then.

15 Q. -- is this piece of paper here?

16 A. Right, uh-huh.

17 MR. FARRY: Mark that as an exhibit,  
18 please.

19 (DEFENDANTS' EXHIBIT 1 WAS MARKED FOR  
20 IDENTIFICATION.)

21 BY MR. FARRY:

22 Q. What we've now marked as an exhibit is  
23 titled, "AJ Whittenburg Proposed Site;" do you see  
24 that?

25 A. Uh-huh.



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1 Q. You need to say yes or no.

2 A. Yes.

3 Q. And what's your understanding of what that  
4 is -- that document tells us?

5 A. So the documents -- actually, I asked  
6 for it. What I understand is when I look at  
7 these things, it says that it has contaminated  
8 soil. Contaminants were found, or these  
9 chemicals, including PCE, PAHs, fuel oil and  
10 those things. So that's the contaminant in the  
11 soil.

12 Q. Do you know if those contaminants that you  
13 referred to were in the building that he spoke of  
14 that he patrolled?

15 A. I assume -- I assume this is the one,  
16 because I asked for this -- this document from  
17 the city government.

18 Q. So you're assuming the document you're  
19 looking at tells you what chemicals were in the  
20 building?

21 A. On that site.

22 Q. Is that -- is that a yes or a no?

23 A. A contaminant--

24 Q. Can you answer my question?

25 A. Say that again?



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1 Q. You're assuming that Exhibit 1, the  
2 document that you hold in your hand --

3 A. Uh-huh, yes.

4 Q. -- is identifying what chemicals were in  
5 the building that Marvin Gilliard patrolled?

6 A. Yes.

7 Q. Okay. And that's based upon what Marvin  
8 Gilliard told you when you asked to get information  
9 about the building?

10 A. Yes. He did not give me this by  
11 himself. I asked for it. I asked, you go to  
12 city government. I want information --

13 Q. Yeah, but he was the one that presented it  
14 to you?

15 A. Exactly. About that site where the  
16 abandoned mill was. I want information about  
17 the environmental information. So I asked for  
18 it.

19 Q. Do you know if this AJ Whittenburg proposed  
20 site covers an area much longer -- much larger than  
21 the actual building that Marvin Gilliard was in?

22 A. I don't.

23 Q. So you don't know if the contaminants  
24 identified or the agents or solvents or compounds  
25 identified in Exhibit 1 were actually in the



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1 building that Marvin Gilliard inspected?

2 A. I don't.

3 Q. Okay. And you don't know if any of the  
4 contaminants, chemicals, compounds, agents, solvents  
5 identified in Exhibit 1 were ever at the site where  
6 the building was located that Marvin Gilliard  
7 inspected?

8 A. I don't.

9 Q. The only information you have about what  
10 may have been in this building is based upon what  
11 Marvin Gilliard told you and what your assumptions  
12 are as to Exhibit 1?

13 A. Yes.

14 Q. And you don't know anything about the  
15 ventilation or -- and what forms these chemicals,  
16 agents, solvents, compounds of whatever type were in  
17 the building existed, you don't know in what form?

18 A. You mean the chemicals or the building?

19 Q. Yeah, the -- the chemicals.

20 A. Here it was a solvent. It was in the  
21 soil based on this.

22 Q. Right, but he wasn't inspecting soil. He  
23 was going in the building. So you don't know what  
24 was in the building?

25 A. Oh, I don't know what's in the building.



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1 Q. Okay.

2 A. Don't know anything about the building.

3 Q. And whatever is in the building, you don't  
4 know in what form, be it in liquid form, powder  
5 form, exposed, poured on the ground, stored,  
6 whatever, you don't know?

7 A. I don't know that, but these -- these  
8 are volatile solvents. So when it's in the  
9 soil, it's in the air.

10 Q. But you don't know if it's in the soil  
11 before the building is torn down or not, do you?

12 A. I have no idea.

13 Q. Okay. And you don't know if it's in the  
14 soil underneath the building or somewhere else on  
15 this Whittenburg site, do you?

16 A. No. I don't know whether this is the  
17 site. Uh-uh, no.

18 Q. Now, I believe your diagnosis was  
19 nonspecific interstitial pneumonitis, NSIP?

20 A. Pathology diagnosis is nonspecific  
21 interstitial pneumonitis.

22 Q. Okay.

23 A. But there was also -- they're not sure.  
24 There's also chronic hypersensitivity  
25 pneumonitis that they cannot exclude. The



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1 pathology -- in the pathology you cannot  
2 differentiate the two. So they require clinical  
3 correlation.

4 Q. But it's your opinion that he developed  
5 nonspecific interstitial pneumonitis from  
6 hypersensitivity pneumonitis?

7 A. Now, these two are two different things.

8 Q. Two different things?

9 A. Right.

10 Q. Okay. But he does have nonspecific  
11 interstitial pneumonitis?

12 A. In the pathology they cannot tell. When  
13 it's chronic, you cannot tell it's chronic  
14 hypersensitivity pneumonitis or it's NSIP.  
15 That's why they say that's the case, and they  
16 say clinical correlation is needed. That's why  
17 the clinical diagnosis is there, chronic HP.

18 Q. The nonspecific interstitial pneumonitis,  
19 the second most common cause of that is idiopathic,  
20 isn't it?

21 A. Well, right now I think NSIP is probably  
22 the most common or as common as the UIP or  
23 pulmonary fibrosis. It's a new diagnosis.

24 Q. But when it's idiopathic, we don't know  
25 what causes it?



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1           A.    Idiopathic pulmonary fibrosis is  
2 different in pathology.

3           Q.    NSIP can be caused by a drug reaction?

4           A.    No.   Usually NSIP is caused by systemic  
5 disease, like connective tissue disease.   Not  
6 usually drugs.   The most common is  
7 interstitial -- is connective tissue disease,  
8 SLE, rheumatoid arthritis.   That's the most  
9 common.

10          Q.    Did Marvin Gilliard have a negative  
11 hypersensitivity pneumonitis panel?

12          A.    I think I checked.   I think it was  
13 negative.

14          Q.    And that suggests no link to any specific  
15 antigen, did it?

16          A.    No.   Our hypersensitivity pneumonia  
17 panel only tests three common modes.   No.   They  
18 don't -- we don't test chemicals.

19          Q.    Your affidavit that you signed, you've told  
20 me that this third paragraph down is not correct,  
21 because in the initial physical exam there was not a  
22 diagnosis of chronic hypersensitivity pneumonitis;  
23 correct?

24          A.    Uh-huh, uh-huh, that's correct.

25          Q.    By history he reported intermittent



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1 exposure. What is intermittent exposure? Define  
2 the frequency of that for me, sir?

3 A. So intermittent exposure is just like  
4 what he told me, that a few times a week, two or  
5 three times a week for a few years.

6 Q. That's intermittent?

7 A. Right.

8 Q. And in reaching the conclusions, whatever  
9 they may be, in this affidavit, you're relying on  
10 the assumption that he's in the building two or  
11 three times a week, an hour or more each time --

12 A. Uh-huh.

13 Q. -- and that the chemicals as shown on  
14 Exhibit 1 are at the location that he's in?

15 A. Yes.

16 Q. If any of those assumptions aren't correct,  
17 it's going to change your conclusion?

18 A. It won't change the conclusion that he  
19 has chronic HP.

20 Q. Right.

21 A. The exposure may be in doubt.

22 Q. Now, on the second page of your affidavit  
23 you mention that on the information provided  
24 regarding the chemicals -- that's the Exhibit 1  
25 we're talking about?



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1 A. That's -- yes.

2 Q. And, again, you're assuming they're in the  
3 building that he's in?

4 A. Yes.

5 Q. And the history talked -- you're talking  
6 about the frequency of the visits to the building?

7 A. Yes.

8 Q. And the duration of each visit?

9 A. Yes.

10 Q. If, in fact, he was only in that building  
11 less than 15 times in a year and a half, and no more  
12 than 30 minutes on any one visit, that would change  
13 your conclusion, would it not?

14 A. No.

15 Q. If he was in that building only one time in  
16 the year and a half, no more than 30 minutes, that  
17 would change your conclusion, wouldn't it?

18 A. Yes.

19 Q. You could not deduct that his visit of one  
20 time, over a 30 minute period, in a year and a half  
21 some three or four years before you saw him would  
22 have been the cause of his interstitial lung  
23 disease?

24 A. Not one time.

25 Q. If he was in there five times over a year



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1 and a half, less than 30 minutes, that would not be  
2 sufficient exposure to cause you to conclude that he  
3 was exposed to something in that building that  
4 caused his lung disease?

5 A. Five times is less likely, but in --  
6 clinically hypersensitivity pneumonitis needs  
7 sensitization. So one time is not going to do  
8 it. When it's multiple times, more than two,  
9 I'm saying, then the possibility increases with  
10 increasing exposure time. So if you ask me  
11 five, would I exclude the diagnosis, would  
12 exclude exposure as causing this? No, I will  
13 not.

14 Q. You won't exclude it, but you couldn't say  
15 most probably that was the reason?

16 A. The probability would decrease.

17 Q. It wouldn't rise to the level of most  
18 probable --

19 A. Right.

20 Q. -- if it's five or less?

21 A. Right.

22 Q. And if it's one --

23 A. No.

24 Q. -- it's not at all?

25 A. No.



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1 Q. Meaning there is no correlation between  
2 exposure to whatever is in that building and his  
3 interstitial lung disease?

4 A. Yes, with one time. Uh-huh.

5 Q. Do you know who Dr. Steven Sahn is at the  
6 Medical University of South Carolina?

7 A. Yes.

8 Q. Who is Dr. Steven Sahn?

9 A. Steven Sahn is a good friend of mine.  
10 He does pleural disease. He's a pulmonary  
11 physician from South Carolina.

12 Q. Is he recognized as an expert?

13 A. He's an expert in pulmonary disease.

14 Q. Is he a friend of yours, I believe you  
15 said?

16 A. Uh-huh.

17 Q. You need to say yes or no.

18 A. Yes.

19 Q. And he's a physician you trust as to his  
20 opinions?

21 A. Yes.

22 MR. FARRY: Thank you, sir. I don't have  
23 any further questions.

24 MS. KAROW: Dr. Huang, I just have a few  
25 questions.



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CROSS-EXAMINATION

BY MS. KAROW:

Q. If I understand correctly, the first time that you saw Mr. Gilliard you weren't sure of the causation for his condition?

A. I am not sure.

Q. Okay. Did the pathological diagnosis assist you in determining the cause of Marvin's condition?

A. Yes. The pathology -- pathological report actually triggered this -- this witch hunt, if you would call it.

Q. Uh-huh.

A. Because of that statement that pathology cannot exclude chronic hypersensitivity pneumonitis. If it's a pathology, it's simply NSIP. Everything stops there. But when it mentions HP, we go on to try to find whatever possible exposure, because it has to do with the patient's prognosis.

(WHEREUPON, THERE WAS AN INTERRUPTION IN THE PROCEEDINGS.)

(DISCUSSION HELD OFF THE RECORD.)

BY MS. KAROW:

Q. You've treated, not only Marvin, but you've



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1 treated other patients that have been exposed to  
2 chemicals?

3 A. Yes.

4 Q. Okay. Was Marvin's condition consistent  
5 with exposure to the chemicals that are listed in  
6 Exhibit 1?

7 A. Yes.

8 Q. Is that to a reasonable degree of medical  
9 certainty, that opinion?

10 A. Yes.

11 Q. If you would -- I know that Mr. Farry went  
12 through the affidavit with you.

13 A. Uh-huh.

14 Q. Besides the one sentence that's in  
15 paragraph three, if you would, take a moment to go  
16 through that affidavit. Is there anything else in  
17 that affidavit that is incorrect or needs to be  
18 corrected?

19 A. No. That is all correct.

20 Q. Okay. Prior to Marvin's death you treated  
21 him for some time for his condition?

22 A. Yes.

23 Q. If a physician is going render an opinion  
24 about conditions that Marvin Gilliard had, wouldn't  
25 it be important for him to treat that physician --



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1 or I mean treat that patient?

2 A. Yes. I wanted to say something about  
3 Marvin. He lives in South Carolina. He's one  
4 of the most loyal patients to my clinic. He  
5 comes, despite his medical condition. He comes  
6 on the right time, at the time when I ask him to  
7 come. So I know him very well. Probably better  
8 than all my other patients.

9 And, you know, that certainly doesn't  
10 change the way I usually treat everybody, but  
11 he's the one who -- that -- for this condition,  
12 if it happened to another patient, I would do  
13 the same thing, you know, for -- I'm just saying  
14 that I know his condition very well, because he  
15 comes every single time. It's a four and a half  
16 hour drive, I think -- no. Three and a half.

17 Q. So you would be in a better position --

18 A. Yes.

19 Q. -- to render an opinion about his  
20 cause of --

21 MR. FARRY: Object to the form of the  
22 question.

23 BY MS. KAROW:

24 Q. You can answer -- let me finish my  
25 question.



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1           Being his physician, who saw him on a  
2 regular basis, is it not correct that you would be  
3 in a position to render an opinion medically about  
4 the causation of his condition than a physician who  
5 has not treated him, never seen him?

6           A.    Yes.

7           Q.    The affidavit, how you got it and looked at  
8 it, I'm just going to try to help clear up the  
9 confusion. Do you recall whether or not you got  
10 that through e-mail or not?

11          A.    No. This is not from e-mail.

12          Q.    Okay. Do you recall getting a draft and  
13 making changes to the affidavit before signing it?

14          A.    There was -- yes. I -- I got a draft.

15          Q.    Okay.

16          A.    Right.

17          Q.    And you made changes to the draft?

18          A.    I made changes primarily -- I believe  
19 it's the last -- the third --

20          Q.    Okay.

21          A.    -- second paragraph on the second page.

22          Q.    That deals with the medical diagnosis?

23          A.    The medical diagnosis. Right.

24          Q.    Because you, being a doctor, would be a lot  
25 more qualified to render an opinion -- or write the



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1 section dealing with medical diagnosis than anyone  
2 else; correct?

3 A. Yes.

4 MS. KAROW: Okay. Let me make sure.  
5 That's all I have.

6 REDIRECT EXAMINATION

7 BY MR. FARRY:

8 Q. Doctor, you were asked questions about this  
9 affidavit and asked if anything was incorrect, and  
10 you reviewed the affidavit and pointed out the third  
11 paragraph that we discussed earlier is not correct,  
12 and then said everything else was correct?

13 A. Uh-huh.

14 Q. That statement assumes that Exhibit 1 is a  
15 document that talks about what chemicals were in the  
16 building where Marvin Gilliard would have been  
17 inspecting.

18 A. Yes. It's a -- so it is correct to the  
19 point that I think that's the case.

20 Q. Okay.

21 A. I have no reason to doubt that.

22 Q. But if that is not the case, if Exhibit 1  
23 does not reflect the chemicals that were in the  
24 building --

25 A. Uh-huh.



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1 Q. -- then your affidavit would not be  
2 correct?

3 A. Would not be correct if it says that  
4 this is not -- this is unrelated to -- to that  
5 building that he was patrolling.

6 Q. Correct. Then that would make your  
7 affidavit incorrect?

8 A. Right, because it didn't say that. So  
9 that's my assumption.

10 Q. You don't know the address of the building  
11 that he --

12 A. I don't.

13 Q. You don't know what it has in relation to  
14 AJ Whittenburg proposed site, do you?

15 A. I don't.

16 Q. Okay. Now, Doctor, correct me if I'm  
17 wrong, but you don't challenge a physician's ability  
18 to review diagnostic laboratory results and render  
19 an opinion, do you, even though they may not have  
20 seen the patient?

21 A. I don't.

22 Q. So you don't challenge Dr. Sahn's ability  
23 and expertise to review pulmonary function studies,  
24 narrative reports and render an opinion?

25 A. No, I don't.



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1 Q. And by the fact that Dr. Sahn may not have  
2 actually physically seen or examined Marvin  
3 Gilliard, that doesn't call into question his  
4 ability to examine the pulmonary function tests, the  
5 narrative reports, the diagnostic studies and render  
6 an opinion, does it?

7 A. In this case, no, because this is  
8 related to the diagnosis.

9 MR. FARRY: Sure. Thank you, Doctor. I  
10 have no further questions.

11 MS. KAROW: I just have one follow-up  
12 question in regard to Dr. Sahn.

13 RECROSS-EXAMINATION

14 BY MS. KAROW:

15 Q. Wouldn't it be important for Dr. Sahn or  
16 any physician that is going to render an opinion  
17 about a medical condition of the patient that they  
18 have not seen -- or a person that they have not seen  
19 and have not treated to have the full picture on  
20 that particular person's condition, meaning correct  
21 information, as far as narratives, as far as medical  
22 records and exposure times, in this particular case?

23 A. I think they will miss the details. You  
24 know, certain details, things that they will  
25 probably miss, because the notes doesn't usually



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1 say, you know, up to the seconds or days or  
2 something.

3 Because the notes are really there to  
4 help us understand how to diagnose the disease,  
5 how to manage the patients. So the note  
6 itself -- I mean they go by the notes. And I've  
7 done that before, you know, as a physician, who  
8 had not seen the patient before. So all you  
9 have is the notes and the objective data. A lot  
10 of the details comes from the fact that you  
11 interact with the patient.

12 But in the case of diagnosis, you know,  
13 that is probably not as important. But still  
14 some of the details, like symptoms and  
15 something, that may or may not be recorded in  
16 here in detail, just because the notes really  
17 not documented for the legal purpose.

18 But we know about it, and that's why as  
19 a treating physician it's important, because you  
20 talk to the patients, and you don't record every  
21 little detail, but you know about this patient.

22 So, yes, it's -- it will be affected,  
23 but probably not to a big, you know, extensive  
24 degree, if this is related to the treatment  
25 course, for example.



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1 Q. Uh-huh. And the diagnosis and the  
2 treatment, but it is important in regards to the  
3 causation?

4 A. The causation part is where the problem  
5 here -- yeah, I think is really the key point  
6 here. So we have to say that -- that I've done  
7 occupational and environmental lung diseases for  
8 a long time. Steve Sahn has not. I know him  
9 well. So I pay particular attention to that,  
10 know the literature on that. That's why I go --  
11 go for it.

12 I'm also the chairman of the  
13 Environmental, Occupational and Health Steering  
14 Committee on ACCP. I'm also on a committee on  
15 the American Pathology Society. So that's where  
16 my interest is, and I see a lot of those  
17 patients.

18 So -- so am I more qualified for this?  
19 I probably should be more qualified. You know,  
20 I think Dr. Steve Sahn is very good in pleural  
21 diseases. Much better than I, in terms of  
22 pleural diseases. That's what he --

23 So I'm not saying that he's not  
24 qualified to review this case. I think he does,  
25 but I've seen quite a few of those cases, more



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1 than, you know, any of my colleagues here. So  
2 I --

3 And it's unfortunate probably that one  
4 of my interests is this. And every patient with  
5 hypersensitivity pneumonitis diagnosis we will  
6 look for potential causes. We will. It's not  
7 just this case.

8 MS. KAROW: Thank you.

9 MR. FARRY: I have no further questions.  
10 Thank you, Doctor...

11 THE WITNESS: Thank you.

12 MS. KAROW: Thank you. I appreciate it.

13 THE WITNESS: Sure.

14 (SIGNATURE RESERVED.)

15 (DEPOSITION CONCLUDED AT 12:18 P.M.)  
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DEPOSITION ERRATA SHEET

Assignment No.: 213840

Case Caption: Gilliard

vs. City of Greenville

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

DR. YUH-CHIN T. HUANG



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1 STATE OF NORTH CAROLINA

2 COUNTY OF PERSON

3  
4 CERTIFICATE OF TRANSCRIPT

5  
6 I, Lisa A. DeGroat, a Court Reporter and  
7 Notary Public in and for the aforesaid county and  
8 state, do hereby certify that the foregoing  
9 deposition of DR. YUH-CHIN T. HUANG, was taken by me  
10 and reduced to typewriting under my direction; and  
11 the transcript is a true record of the testimony  
12 given by the witness.

13 I further certify that I am neither attorney  
14 or counsel for, nor related to or employed by any  
15 attorney or counsel employed by the parties hereto  
16 or financially interested in the action.

17 This the 3rd day of March, 2011.  
18  
19  
20  
21

22 LISA A. DeGROAT  
23 Registered Professional Reporter  
24 Notary Public #19952760001  
25 Expiration Date: December 8, 2015



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|------------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA            | ) |                              |
|                                    | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF GREENVILLE               | ) | C.A. No.: 2012-CP-23-01088   |
|                                    | ) | W.C.C. File No.: 0627382     |
| Lisa Gilliard, on behalf of Marvin | ) |                              |
| Gilliard, deceased,                | ) |                              |
|                                    | ) | <b>MEMORANDUM IN SUPPORT</b> |
| Claimant/Appellant,                | ) |                              |
| v.                                 | ) |                              |
|                                    | ) |                              |
| City of Greenville, Employer and   | ) |                              |
| Self-Insurer, and Hewitt, Coleman  | ) |                              |
| & Associates, Inc., TPA,           | ) |                              |
|                                    | ) |                              |
| Defendants/Respondents.            | ) |                              |

---

Lisa Gilliard, Claimant, on behalf of Marvin Gilliard, deceased, hereby appeals the Decision and Order of the Full Commission. A hearing before Commissioner Derrick Williams was held April 26, 2011, and a Decision and Order was filed June 20, 2011, finding that Marvin Gilliard suffered a compensable injury under South Carolina Workers' Compensation law. Within the statutory period, counsel for the defendants filed a Request for Commission Review (Form 30). The Appellate Review Panel met November 24, 2011. This Order was filed January 13, 2012, and an appeal was subsequently filed January 17, 2012. The Full Commission incorrectly held that Marvin Gilliard did not sustain an occupational disease or injury arising out of and in the course of his employment with the City of Greenville as a police officer. Because the Commission determined that Marvin Gilliard did not sustain a compensable injury, his wife, Lisa Gilliard, was not entitled to any compensation benefits or any medical benefits due as a result of Marvin Gilliard's illness and death. These findings are not supported by the evidence in the record. The Appellate Panel Decision and Order filed April 1, 2010 must be reversed.

### FACTS

Marvin Gilliard began working for the city of Greenville as a police officer in 1996. (Gilliard Dep. 17:8-10 Feb. 22, 2008) As an officer, he mainly worked by himself. (*Id.* at 28:7-17) Around 2002-2003, he was assigned to an area known as Southern Side. (*Id.* at 51:8-10) As part of patrolling the Southern Side area, he was assigned to monitor a building at 104 S. Hudson Street. (*Id.* at 50:14-17) He was supposed to keep homeless people from staying in that building. (*Id.*) While assigned to this area, part of his job was to check this building daily—in fact, Lieutenant Randy Evitt called Mr. Gilliard’s lieutenant and “told him to make sure that [he] check[ed] that building every day.” (*Id.* at 53:10-12; 54:1-3) When Mr. Gilliard inspected the building, it could take an hour, or longer if vagrants were discovered in the building. (*Id.* at 57:23—58:21) When asked to describe the building, Mr. Gilliard stated that it was very dirty, that the floors looked oily, and that he noticed a white powder in some areas. (*Id.* at 60:1-11) There were also steel drums that contained oil or “something that looked like oil.” (APA p. 112). A rusted out water tank was also present. (APA p. 112) Lisa Gilliard, Marvin Gilliard’s wife, also recalled a strange odor on his police uniforms while she did laundry on the days that he patrolled the abandoned building. (Hr’g Tr. 24:7)

Major Gary McLaughlin testified as to the Greenville City Police Department’s policies and procedures at the hearing before Commissioner Derrick Williams on April 26, 2011. The City of Greenville maintains computer records which capture the movement or activity of officers when they call dispatch. (Appellate Order, January 13, 2012, ¶ 7) Greenville City police officers were typically required to call in to dispatch when leaving a patrol car. (Hr’g Tr. 39:21, April 26, 2011). The City of Greenville has redundant systems which capture officers’



movement or activity when they call dispatch to advise they are outside their patrol vehicle in at least three separate databases. (Appellate Order ¶ 8) To determine an officer's activity, one could look to office records or the officer himself. (Hr'g Tr. at 42:5-11) Calls were not always required as well—Mr. Gilliard stated in his deposition that because he was assigned to the area that covered 104 S. Hudson Street, that he “did not have to get a call. It was part of [his] job to check it every day.” (APA p. 105) He also would not call dispatch if he stopped to assist another patrol car that was already present at the building. (APA p. 118) Major McLaughlin did testify that one would not know by a document alone whether an officer was in a building or not. (Hr'g Tr. at 43:20—44:1) Further, a report is not necessarily generated by an officer unless official police action was taken. (Id. at 44:6-8) Additionally, if an officer was on foot patrol, he could easily walk a couple of blocks without calling in as to his exact location. (Id. at 63:2-12) Major McLaughlin stated that it was possible that Mr. Gilliard did not radio in his exact location at all times. (Id. at 66:17-25)

When an officer did radio in his location, it was dispatch that would enter the call information. (Id. at 72:4-19) Information about an officer's location and activity could be logged in both county and city systems. (Id. at 70:17-23) If information was missing from a report, it could be dispatch error, or that “the computer ate it.” (Id.) For these reasons, Major McLaughlin stated that the officer is the best source of what he's doing on patrol. (Id. at 78:22-24) In fact, at the hearing, Major McLaughlin demonstrated during his testimony how information was missing from an officer's call. (Id. at 71:1-25).

After his time patrolling the Southern Side ended, Mr. Gilliard was assigned to be a resource officer at J.L. Mann High School, which is when he began to have breathing problems. (APA p. 79) Toward the end of 2006, he failed a physical fitness test required by the Greenville

City Police Department. (APA p. 90-91) He was placed on light duty in May 2007, and continued light duty until his disability retirement on September 5, 2007 due to interstitial pneumonitis. (APA p. 80-81)

Mr. Gilliard was not a smoker and was in good health until his breathing issues developed. (Hr'g Tr. 12:71-21) His only health problem was diabetes. Id. He exercised on a regular basis. Id. Although he had a prior history of a positive PPD (tuberculosis) test in the past, during a later 1996 visit to the Woodward Medical center his physical examination showed "respirations are normal" and "chest [is] completely clear." (APA p. 124) The first complaint of breathing problems in the record is during a July 21, 2006 visit to the Woodward Center, at which Mr. Gilliard complained of troubled breathing and a bit of congestion. (APA p. 243) The diagnosis was allergies or possibly asthma. (APA p. 243) A few months later, on September 11, 2006, Mr. Gilliard saw Dr. William Scott of Crossroad Family Practice. (APA p. 269) He complained of shortness of breath and wheezing when walking steps or with exertion. (APA p. 269) He was diagnosed with cough, dyspnea and possibly asthma and was prescribed Avelox. (APA pp. 277-278) A pulmonary test on October 24, 2006 showed "moderate restriction." (APA pp. 279-280) At this time, Mr. Gilliard was prescribed Advair and was diagnosed with asthma. (APA pp. 279-280) On November 7, 2006, Mr. Gilliard returned to Dr. Scott for a cough with clear mucus with occasional blood in the sputum; further, Mr. Gilliard had lost over 20 pounds in the previous months with little to no effort. (APA pp. 281-282) Again, pulmonary tests showed moderate restriction, and at this time, Mr. Gilliard was referred to Dr. Richard Laurens of Palmetto Pulmonary and Critical Care. (APA p. 282). Dr. Laurens ordered a lung biopsy, which was performed December 5, 2006. (APA p. 306) The lung biopsy was negative for sarcoidosis, but revealed ground glass opacities in his lungs. (APA p. 309) A pulmonary

function test was again given to Mr. Gilliard, which showed a decrease in lung capacity consistent with restrictive lung disease. (APA p. 310) At a January 18, 2007 visit to Dr. Laurens, Mr. Gilliard was still experiencing shortness of breath and would occasionally cough up blood. (APA p. 321)

On April 16, 2007, Mr. Gilliard began seeing Dr. Huang, a pulmonologist with Duke Medical Center for interstitial lung disease. (APA p. 5) Mr. Gilliard was still coughing up blood and whitish sputum at this point. (APA p. 5) Mr. Gilliard told Dr. Huang that he would go into an abandoned building two or three times a week as part of his patrol. (APA p. 6) Dr. Huang noted a history of environmental exposure and was concerned about chronic hypersensitivity pneumonitis. (APA p. 6) Mr. Gilliard was diagnosed with nonspecific interstitial pneumonitis during a return visit on May 15, 2007. (APA p. 22) On July 30, 2007, Dr. Huang diagnosed Mr. Gilliard with hypersensitivity pneumonitis. (APA pp. 25-26) By August 20, 2007, Mr. Gilliard had a pulmonary function of 52%, which was not likely to increase. (APA p. 254) Mr. Gilliard was depressed about being on disability at this point. (APA p. 254) By May 30, 2008, Mr. Gilliard was on a waiting list for a lung transplant. (APA p. 257) He was still wheezing and oxygen dependent at home. (APA p. 257)

Mr. Gilliard was hospitalized for tachycardia and followed up with Dr. Bizzell, his primary care physician, on August 28, 2008. (APA p. 258). The tachycardia was most likely caused by Mr. Gilliard's severe lung disease. (APA p. 258) Mr. Gilliard had clear arteries, but was totally oxygen dependent and would become very short of breath with minimal walking. (APA p. 258). During an October 8, 2008 visit to Dr. Bizzell, she was so concerned about his condition that she sent him to the emergency room via ambulance. (APA p. 259)

Mr. Gilliard began seeing Dr. Catherine Chang as his local pulmonologist around December of 2008. (APA p. 262) His oxygen intake was increased by March 5, 2009. (APA p. 263) At this point, he was on the double lung transplant list at Duke, but he was required to lose more weight to be a candidate. (APA p. 263) He would also need to get his blood sugar levels under control. (APA p. 264)

Mr. Gilliard's condition continued to decline, and he passed away at his home on August 12, 2010. (APA p. 145) Dr. Chang stated that she "was of the opinion, to a reasonable degree of medical certainty, that Marvin Gilliard's death was the result of his interstitial lung disease." (APA p. 52)

The 104 S. Hudson Street area had been considered by the Greenville County School District as a possible site for a new school. (APA p. 113) A document called the AJ Whittenburg Proposed Site was cited at the hearing before the Commission. Its goal was to "provide a school environment supportive of learning." (APA p. 48) However, the soil there was contaminated, including chemicals such as perchloroethene (PCE) (a cleaning solvent), polycyclic aromatic hydrocarbons (PAHs), elevated hydrocarbon contamination (fuel oil), and contaminated groundwater. (APA p. 48) An action plan, if a school were to be built at this site, would have to include "removal of above ground fuel oil tanks, removal or containment of contaminated soil, removal of potentially hazardous materials...and a contingency plan for unforeseen sources of contaminated soils." (APA p. 48) Dr. Huang understood that these chemicals were in the building that Mr. Gilliard patrolled. (Huang Dep. 20:18-21, March 3, 2011) These types of chemicals are volatile solvents and "when [they] are in the soil, [they] are in the air." (Huang Dep. 23:7-9) This was the only document that Mr. Gilliard was able to find

that listed any sort of chemicals present at the site; his emails to the City of Greenville went unanswered. (APA p. 42-43)

At the hearing before the Commission, the appellant hired Dr. Steven Sahn, Division of Pulmonary, Critical Care, Allergy and Sleep Medicine to review the medical records of Mr. Gilliard and Greenville City records to form an expert opinion about Mr. Gilliard's condition and his claim. (APA p. 335-36). Dr. Sahn did not review the AJ Whittenburg Proposed Site Document. Although Dr. Sahn's report stated that Mr. Gilliard was in the building thirteen times in 2001 and four times in 2002, spending approximately thirty minutes in the building each visit, this was inconsistent with the record and even with the testimony of the City of Greenville's witness, Major McLaughlin, who testified he was only in there one time. (APA pp. 169-213; Hr'g Tr. 55-56) Further, Dr. Sahn stated that there were several causes of idiopathic interstitial pneumonitis, but that environmental exposures were the second most common cause. (APA pp. 335-337).

#### **STANDARD OF REVIEW**

The Administrative Procedures Act purports to provide uniform procedures before State Boards and Commissions as well as judicial review after the exhaustion of administrative remedies. Lark v. Bi-Lo, 276 S.C. 130, 132 (S.C. 1981). This Act establishes the "substantial evidence" rule as the standard for judicial review of decisions of the Boards and Commissions coming within its terms. Id. at 133. In an appeal from the Commission, the court may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. Frame v. Resort Services Inc., 357 S.C. 520, 527 (S.C. Ct. App. 2004). The court may reverse or modify the Commission's decision if substantial rights of the appellant have been prejudiced because

administrative findings, inferences, conclusions or decisions are affected by other error or law.

Id. Therefore, the court's review is limited to deciding whether the Commission's decision is unsupported by substantial evidence or is controlled by some other error of law. Id. "As a general rule, [the] court must affirm the findings of fact made by the Commission if they are supported by substantial evidence." Burnette v. City of Greenville, Op. No. 5059 (S.C. Ct. App. 2012). Further, a finding of fact of the Commission should "not be based on surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it." Id.

South Carolina Workers' Compensation Law provides that the Administrative Procedures Act should be given a liberal construction in furtherance of the purposes for which it was designed. Alewine v. Tobin Quarries, Inc., 206 S.C. 103 (S.C. 1945). Further, "it is the established law of this State that any reasonable doubt as to the construction of a workmen's compensation law must be resolved in favor of the claimants, its purposes effectuated and its presumptions and penalties directed toward the end of providing coverage rather than noncoverage. Cokeley v. Robert Lee, Inc. 197 S.C. 157 (S.C. 1941).

Substantial evidence is defined as "not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action." Etheredge v. Monstanto Co., 349 S.C. 451, 456 (S.C. Ct. App. 2002). The final determination of witness credibility and the weight to be accorded to evidence is reserved to the Appellate Panel, and will be set aside only if unsupported by substantial evidence. Frame at 528.

In its analysis, the court must first liberally construe the Administrative Procedures Act in favor of the claimant. Hutson v. S.C. State Ports Authority and State Accident Fund, No. 27171 (Sept. 19, 2012). Next, an award must be founded on evidence of sufficient substance to afford a reasonable basis for it. Id., citing Wynn v. People's Natural Gas Co. of S.C. 238 S.C. 1, 12 (S.C. 1961). The findings of the appellate panel are presumed correct and will be set aside only if unsupported by substantial evidence. Houston v. DeLoach, 378 S.C. 543, 551 (S.C. Ct. App. 2008). The Court has reversed the Appellate Panel's decision when it has relied solely on the testimony of a physician who did not treat the claimant, and also when the employer failed to present any expert testimony from a physician who actually evaluated the claimant, when the claimant had presented "overwhelming medical testimony and evidence" at the hearing. Carolinas Recycling Group v. S.C. Second Injury Fund, 398 S.C. 480, 485 (Ct. App. 2012). The Court has also remanded factual issues to the Commission when there is a lack of evidence in the record for the Commissioner's opinion on the claimant's medical condition, thus implying that "it is the medical opinion of the single commissioner." Burnette.

### **LEGAL ARGUMENT**

The respondents argue that the appellant's injury was not compensable. "An injury arises out of employment if a causal relationship between the conditions under which the work is to be performed and the resulting injury is apparent to the rational mind, upon consideration of all the circumstances." McCuen v. BMW Mfg. Corp., 383 S.C. 19, 25 (Ct. App. S.C. 2009). Occupational disease is defined as "a disease arising out of and in the course of employment that is due to hazards in excess of those ordinarily incident to employment and is peculiar to the occupation in which the employee is engaged." S.C. Code Ann. § 42-11-10(A).

Mr. Gilliard's claim was fully supported by credible and probative testimony and evidence at the hearing before the Commission. Medical evidence, as well as live and deposition testimony, were presented. South Carolina has upheld awards even where *no* medical evidence was presented at a hearing before the Commissioner. Arnold v. Benjamin Booth Co., 257 S.C. 337, 342 (S.C. 1971). Mr. Gilliard was assigned to patrol the Southern Side area of the City of Greenville. Part of this patrol included inspecting a building at 104 S. Hudson street for vagrants. Mr. Gilliard and Major McLaughlin testified that an officer may not radio in to dispatch every single time he left a patrol car or changed locations, especially if the officer were on foot patrol. Dispatch and computer errors were also cited as reasons for holes in city reports. Major McLaughlin stated that the best source of information about where an officer has been is to talk to the officer himself. One must look to Mr. Gilliard's deposition testimony, in which he stated he entered in the building several times a week to inspect it. He was familiar with the layout of the building and could describe its contents. He was able to do so even though the building had been torn down a significant amount of time before his deposition. It is not coincidental that Mr. Gilliard did not have any breathing or lung problems before he started patrolling the Southern Side area of Greenville. He never smoked, and his lungs were clear. It was not until he began to patrol the building at 104 S. Hudson that symptoms of nonspecific interstitial pneumonitis began to manifest. The respondent's expert admitted that environmental exposure is the second most common cause of this disease, and offered no other explanation as to how Mr. Gilliard could have become ill. The South Carolina Court of Appeals has reversed the circuit court when it found there was conflicting evidence on whether the claimant suffered an injury. Pack v. State Dept. of Transp., 381 S.C. 526, 535 (S.C. Ct. App. 2009). In that case, there was a dispute as to whether the claimant sustained a brain injury. The Court remanded so



that the Commission could make additional findings of fact as to the brain injury. Id. at 533. In the present case, the respondents have only argued that Mr. Gilliard did *not* sustain a compensable work injury. They have offered no additional findings of fact as to what may have caused Mr. Gilliard's nonspecific interstitial pneumonitis. They have simply argued that his illness was not a result of his job as a police officer, while failing to set forth a single defense in their favor. As in Carolinas Recycling Group, the Appellate Panel should be reversed because the respondents have presented no expert testimony of their own by a physician who treated Mr. Gilliard. The Appellate Panel's decision clearly is unsupported by substantial evidence.

The respondents argue that Mr. Gilliard failed to meet his burden of proof in demonstrating that he suffered a compensable injury. However, the sufficiency of evidence and whether a claimant has met its burden proof are legal arguments. The Supreme Court of South Carolina has held that a claimant did not meet the burden of proof for demonstrating that his injury was work related when the employer introduced significant evidence of outside stressors unrelated to that employment likely contributed to the injury. Shealy v. Aiken County, 535 S.E.2d 438, 459 (S.C. 2000). In that case, a police officer suffered from multiple psychological disorders that he stated were due to the stress of his job. However, outside of his employment, he suffered from alcoholism, was experiencing marital problems, and had filed bankruptcy, which the employer stated were the true cause of his psychological conditions. The Court upheld the Full Commission's findings that these outside stressors likely caused the officer's psychological disorders.

Whereas in Shealy the employer introduced significant evidence that the claimant's illnesses were not work related, in this case, the respondents have introduced no evidence that could offer an alternate explanation for Mr. Gilliard's illness and subsequent death. The

appellants have introduced significant evidence that Mr. Gilliard's work conditions were the cause of his interstitial pneumonitis, including the testimony of physicians who treated him and who have substantial knowledge in environmental exposure diseases and the testimony of his wife, who witnessed his decline and the correlation between his illness and his working at the 104 S. Hudson site. As stated above, the respondents have offered no other explanation besides Mr. Gilliard's assignment to 104 S. Hudson as to what caused his interstitial pneumonitis. They have simply argued that the appellant has failed to meet its burden of proof, without offering any defenses in its favor.

Not only did Mr. Gilliard establish that his illness arose out of and was in the scope of his employment, but also that it was an occupational disease. Patrolling an abandoned building on a site where chemicals contaminated the soil would be a risk in excess to the patrol of other buildings in the City of Greenville. This particular site posed excessive risk because of the chemicals present, which, as stated by Dr. Huang, were likely present in the air surrounding the building (and inside the building) as well. This patrol was also peculiar to the occupation in which Mr. Gilliard was engaged—this was his assigned location for approximately two years during his service to the City of Greenville as a police officer. Mr. Gilliard was required to remove vagrants from this building, which, clearly, required him to enter the building on a regular basis to ensure that no persons lingered inside. Surely simply driving by the building would not provide the in depth inspection that the City of Greenville required.

Commissioner Williams correctly found that Mr. Gilliard suffered a compensable occupational disease. Commissioner Williams examined all of the evidence presented when issuing his order, specifically the evaluation, reports, treatment, and deposition of Dr. Huang. The respondents argue that Mr. Gilliard was not in the building as many times as he claimed.

Dr. Huang stated that, even if Mr. Gilliard had been in the building only five times, he could not exclude the diagnosis that the chemical exposure caused Claimant's lung disease. The possibility of Mr. Gilliard's diagnosis increased with each exposure to the chemicals present in or around the building. The Commissioner correctly emphasized the testimony of Dr. Huang, because, since Dr. Huang had treated Mr. Gilliard for three years, on a regular basis, he would be in a better position to state medical opinions related to causation than would a physician who had not treated Mr. Gilliard. Although Commissioner Williams admitted that Dr. Sahn was eminently qualified and highly respected in his field, his report contained factual inaccuracies and other failings that led Commissioner Williams to assign more weight to Dr. Huang's testimony. Although respondents argue that Mr. Gilliard could not show what chemicals were actually inside the building, they should not be rewarded for never responding to Mr. Gilliard's emails inquiring about the same.

### **CONCLUSION**

The decision by Commissioner Williams is fully supported by the credible and probative evidence presented on behalf of Marvin Gilliard. The AJ Whittenburg report clearly shows chemicals present at the area that included 104 S. Hudson Street, and Mr. Gilliard testified that he frequented this location to remove vagrants from the abandoned building. Dr. Huang further testified that these chemicals were in the soil as well as the air, and that only a few exposures could have caused Mr. Gilliard's illness, and ultimately, his death. The Decision by the Full Commission must be reversed or remanded for further factual findings as to the cause of Mr. Gilliard's illness.

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February 17, 2013

Greenville, South Carolina

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IN THE STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Lisa Gilliard on behalf of Marvin Gilliard,  
Deceased,

Claimant/Appellant,

v.

City of Greenville, Employer, and Self-  
Insured, and Hewitt, Coleman & Associates,  
Inc., TPA,

Defendants/Respondents.

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-23-1088  
(W.C.C. FILE No.: 0627382)

**BRIEF OF  
DEFENDANTS/RESPONDENTS**

This is an appeal by Lisa Gilliard (Claimant) from the Decision and Order of the Full Commission filed January 13, 2012. In this Decision and Order, the Commission held that Marvin Gilliard did not sustain an occupational disease or injury by accident arising out of and in the course of his employment with the City of Greenville. The Commission determined that having failed to establish that Marvin Gilliard sustained a compensable injury by accident and/or compensable occupational disease, that Lisa Gilliard was not entitled to any compensation benefits or any medical benefits due as a result of the illness and death of Marvin Gilliard. Because these Findings and Conclusions are supported by the reliable, probative and substantial evidence in the record, the unanimous Appellate Panel Decision and Order filed April 1, 2010 must be affirmed in its entirety.

**STANDARD OF REVIEW**

The substantial evidence rule of the Administrative Procedures Act governs the standard of review in a Workers' Compensation decision. Corbin v. Kohler Co., 351 S.C. 613, 571 S.E.2d 92

(Ct. App. 2002); Gray v. Club Group, Ltd., 339 S.C. 173 528 S.E.2d 435 (Ct. App. 2000); Lake v. Reeder Constr. Co., 330 S.C. 242, 498 S.E.2d 650 (Ct. App. 1998). In an appeal from the Commission, the circuit court may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact. Hamilton v. Bob Bennett Ford, 336 S.C. 72, 518 S.E.2d 599 (Ct. App. 1999); Stephen v. Avins Constr. Co., 324 S.C. 334, 478 S.E.2d 74 (Ct. App. 1996); S.C. Code Ann. § 1-23-380(A)(6)(d) (Supp. 2001); see also Etheredge v. Monsanto Co., 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002) (stating court may reverse or modify Commission's decision if substantial rights of appellant have been prejudiced because administrative findings, inferences, conclusions or decisions are affected by other error of law). This court's review is limited to deciding whether the Commission's decision is unsupported by substantial evidence or is controlled by some error of law. See Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); Gibson v. Spartanburg Sch. Dist. No. 3, 338 S.C. 510, 526 S.E.2d 725 (Ct. App. 2000); see also Lyles v. Quantum Chem. Co. (Emery), 315 S.C. 440, 434 S.E.2d 292 (Ct. App. 1993) (in reviewing decision of Workers' Compensation Commission, Court of Appeals will not set aside its findings unless they are not supported by substantial evidence or they are controlled by error of law).

Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the Commission reached in order to justify its action. Etheredge, 349 S.C. at 456, 562 S.E.2d at 684-82; Broughton v. South of the Border, 336 S.C. 488, 520 S.E.2d 634 (Ct. App. 1999). The Commission is the ultimate fact finder in Workers' Compensation cases. Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999). The final determination of witness credibility and the weight to be accorded evidence is reserved to the

Commission. Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000); Parsons v. Georgetown Steel, 318 S.C. 63, 456 S.E.2d 366 (1995); Gibson, 338 S.C. at 517, 526 S.E.2d at 729. The findings of a Commission are presumed correct and will be set aside only if unsupported by substantial evidence. Anderson v. Baptist Med. Ctr., 343 S.C. 487, 541 S.E.2d 526 (2001); Hicks v. Piedmont Cold Storage, Inc., 335 S.C. 46, 515 S.E.2d 532 (1999). It is not within the province of the circuit court to reverse findings of the Commission which are supported by substantial evidence. Broughton, 336 S.C. at 496, 520 S.E.2d at 637.

#### **FACTUAL BACKGROUND**

Marvin Gilliard ("Claimant") was a police officer for the City of Greenville from 1996 until September 5, 2007 when he retired. (Claimant's Depo. Tr.p.16-17). He started out in uniform patrol and was promoted to community patrol in 1999. (Claimant's Depo. Tr. p.21-24). He was assigned to an area known as Nicholtown for a few years before being moved to area he referred to as "Southern Side." (Claimant's Depo. Tr. p.25-26). The Claimant worked the "Southern Side" community for a little less than two years before becoming a resource officer at J.L. Mann High School. (Claimant's Depo. Tr. p.26-27,51).

The Claimant was a community patrol officer for "Southern Side" during the 2002 and 2003 time period. (Claimant's Depo. Tr. p.26, 51). According to the Claimant, as part of his job on community patrol, he was given instructions to remove the "homeless people" from a building located at 104 South Hudson Street (hereinafter referred to as the "Building"). (Claimant's Depo. Tr. p.50). He testified that he went into the Building "daily" because it was designated as "extra patrol." (Claimant's Depo. Tr. p.53-54). According to the Claimant, the City of Greenville created paperwork to confirm that he was supposed to perform "extra patrol" of the Building on a daily

basis. (Claimant's Depo. Tr. p.54-56).

The Claimant further testified that *every time* he went into the Building, he called dispatch to tell them he was leaving his patrol car to enter the Building on foot. (Claimant's Depo. Tr. p.56-57). He claimed that he searched the Building every day for an hour – "maybe a little longer." (Claimant's Depo. Tr. p.57-58).

The Claimant indicated that if he found somebody in the Building he would either "run them off", "arrest them for trespassing" or "write a ticket". (Claimant's Depo. Tr. p.58-59). If he made an arrest or wrote a ticket, he would call dispatch again so "there would be some paper generated." (Claimant's Depo. Tr. p.59).

The Claimant admitted that he did not know what, if any, substances were in the Building. (Claimant's Depo. Tr. p.60).

The Claimant began having breathing problems as early as 1996. (APA p.214-281). He had tuberculosis in 1996. (APA p.293, 294, 311, 322) ("Positive PPD" indicates tuberculosis). These problems increased in 2006 to the point where the Claimant sought further evaluation and treatment. (APA p.1-4, 269-282, 293-318).

Despite his history, Claimant told Dr. Bizzell that the "trouble with his breathing" started in June of 2006. (APA p.243). He also was examined by Dr. William Scott who referred the Claimant to Dr. Richard Laurens at Palmetto Pulmonary and Critical Care Associates. (APA p.769-780).

On November 30, 2006, the Claimant told Dr. Laurens that he had "no history of toxic industrial or an environmental exposure." (APA p.294). This was confirmed again on January 18, 2007. (APA p. 322). Because the etiology of the Claimant's symptoms was unclear, Dr. Laurens referred the Claimant to Dr. Yuh-Chin T. Huang for evaluation of interstitial lung disease.



On April 16, 2007 the Claimant informed Dr. Huang that he went into the Building "once or twice a week for about a year and a half and his last checkup of that building was about two years ago." (APA p. 6). This was the first mention of the Building in any medical records. The Claimant also told Dr. Huang that the fire department had later "prohibited anyone to walk into the building without respiratory protection." (APA p. 6).

Although acknowledging that the "exact etiology of the interstitial lung disease is unclear", Dr. Huang jumped to the conclusion after the first appointment the Claimant may have chronic hypersensitivity pneumonitis based upon the Claimant's "environmental exposure history." (APA p. 6).

After much testing, Dr. Huang diagnosed the Claimant as having nonspecific interstitial pneumonitis. (APA p. 72). He told the Claimant "to go and find exposure information from his city government about the building in which he had been patrolling for a few years before it was shut down." (APA p. 22).

Instead of obtaining exposure information about the Building, the Claimant obtained information about a huge tract of land (A.J. Whittenburg Proposed Site) of which the Building only comprised a small portion. (Huang Depo. Tr. p. 19 & Ex.1; APA p. 48-59; Defendant's Trial Ex. 1).

At the Claimant's next appointment, Dr. Huang diagnosed the Claimant as having hypersensitivity pneumonitis. (APA p.25).

During his deposition, Dr. Huang testified that, it was only after the Claimant found the report of soil contamination at the "AJ Whittenburg Proposed Site" that the Claimant informed him that "he went over there a few times per week to check and stayed there an hour or two, just to check on the homeless." (Huang Depo. Tr. p 15-17). Dr. Huang assumed these activities started in 2003

and continued for one and a half years. (Huang Depo. Tr. p. 16-17).

All Dr. Huang knew about the Building was the information provided to him by the Claimant. (Huang Depo. P. 8, 18). The Claimant told Dr. Huang that the building was an old "textile mill that had something to do with fabrics." (Huang Dep. Tr. p.18). The Claimant provided Dr. Huang with the document entitled "AJ Whittenburg Proposed Site", which was submitted as APA #7.

Dr. Huang assumed that the chemicals listed in APA #7 were chemicals found *in the Building*. (Huang Depo. Tr. p. 20-21). Dr. Huang admitted that he did not know that AJ Whittenburg Proposed Site was much larger than the Building or whether the chemicals were actually found in the Building. (Huang Depo. Tr. p. 21, 22). Dr. Huang just made these assumptions based on what the Claimant said.

Dr. Huang could not state whether the Claimant had non-specific interstitial pneumonitis or chronic hypersensitivity pneumonitis. (Huang Dep. Tr. p. 23-24). Nevertheless, he opined by affidavit that Claimant's condition was "most probably caused by his intermittent repeated exposure to the chemicals found at the site of the abandoned building he patrolled as a police officer." (APA p. 50-51).

Dr. Huang confirmed that his opinion was based on the assumption that Claimant was in the Building "two or three times per week, an hour or more each time" and that the chemicals listed in APA #7 were actually in the Building itself. (Huang Depo. Tr. p. 26-27).

Dr. Hung opined, however, that if Claimant was only in the Building one time for less than thirty minutes then his condition would **not** have been caused by that exposure. (Huang Depo. Tr. p. 27). He further opined that if the Claimant had only been in the Building five times or less, he could

not state that the Claimant's condition was "most probably" causally related to the exposure. (Huang Depo. Tr. p. 28).

Dr. Steven Sahn from the Medical University of South Carolina also reviewed the Claimant's medical records as well as the opinions of Dr. Huang. Dr. Sahn concluded that the Claimant developed idiopathic non-specific interstitial pneumonitis which was not caused by "the relatively brief exposure in the building." (APA p.336, 337). Dr. Sahn based his opinion on the Claimant being exposed approximately seventeen times, less than thirty minutes each, over a two year time period. (APA p. 335,336).

In reality, the Claimant's "exposure" was even less than assumed by Dr. Sahn. Claimant testified that every time he left his car to go into the building he called dispatch. (Claimant's Depo. Tr. p. 56). The Claimant testified that it took "about an hour" to go through the Building. (Claimant's Depo. Tr. p. 57). He even testified that he went into the Building "daily." (Claimant's Depo. Tr. p. 53).

Based upon the Claimant's testimony, the City of Greenville performed an exhaustive search of its records. Major Gary McLaughlin confirmed that the Claimant was supposed to call in to dispatch every time he got out of his patrol car to go into the Building. (Hearing Tr. p. 39-40). Every time an officer calls in, the calls are recorded in multiple databases. (Hearing Tr. p. 44). Based upon the records within the redundant system, the Claimant was only at the address of the Building one time during the relevant time period and that was for only twenty-four minutes. (Hearing Tr. p. 52-56). This one incident was captured on several databases as expected. (APA #14, 15, 19, 20, 21, 22).

Major McLaughlin also confirmed that the footprint of the Building is only a small portion of

the larger tract of land referred to as the "AJ Whittenburg Proposed Site." (Hearing Tr. p. 41, 57; Defendant's Trial Ex. 1).

### **ARGUMENT**

**I. MUST A CLAIM FOR INJURY DUE TO OCCUPATIONAL DISEASE BE DENIED WHEN THE SUBSTANTIAL EVIDENCE REVEALS THAT CLAIMANT HAD LIMITED IF ANY DOCUMENTED EXPOSURES TO CHEMICALS AND ALL OF THE EXPERTS AGREE THAT SUCH EXPOSURE WAS INSUFFICIENT TO CAUSE THE CLAIMANT'S DISEASE WHICH LED TO HIS DEATH?**

The Full Commission found that Claimant had failed to establish that Marvin Gilliard sustained a compensable injury by accident and/or compensable occupation disease. This Decision is supported by the reliable probative and substantial evidence in the record and must be affirmed as a matter of law.

Claimant has appealed the Decision of the Full Commission alleging that Marvin Gilliard sustained injury to his lungs over a two year period of time during which it is alleged that Marvin Gilliard was required to go into a contaminated building located at 104 S. Hudson Street while working as a community patrol officer assigned to "Southern Side". Claimant further alleges that such exposure resulted in the development of pulmonary fibrosis and the subsequent death of Marvin Gilliard.

The Full Commission specifically found that the policy and procedure for the Police Department for the City of Greenville provides that a uniformed patrol officer or community patrol officer contacts dispatch by radio or telephone each and every time the uniformed patrol officer leaves the patrol vehicle. This policy and procedure is primarily for officers' safety as testified to by

Major Gary McLaughlin. The Full Commission specifically found that the City of Greenville maintains computer records which capture the movements or activity of officers when they call Dispatch to advise they are outside of their patrol vehicle and these records are kept by the City by address or location, by date and time, and by the name of the officer involved. The City of Greenville has redundant systems in place when an officer calls Dispatch and this information is captured in at least three separate data bases within the computer systems of the City of Greenville.

Marvin Gilliard testified in his deposition that every time he went to the subject building at 104 S. Hudson Street he called Dispatch to advise he was leaving his patrol vehicle. Marvin Gilliard further admitted he did not know what if any substances were in the subject building at 104 S. Hudson Street.

The Full Commission in weighing the evidence and determining credibility specifically found that Marvin Gilliard while working as a Police Officer for the City of Greenville did not enter the subject building located at 104 S. Hudson Street on a daily basis contrary to his testimony. The Full Commission further determined that Marvin Gilliard's testimony is not credible when compared to the redundant record keeping systems utilized by the City of Greenville as testified to by Major Gary McLaughlin. In weighing the evidence, the Commission further determined that upon review of all the evidence presented, the testimony of Major Gary McLaughlin coupled with the redundant record keeping systems utilized by the City of Greenville was more credible than the testimony of the Claimant as to the frequency which Claimant entered the subject Building. The Full Commission also noted that Marvin Gilliard's representation as to the frequency and duration of his exposure to the subject Building changed over time.

The subject Building located at 104 S. Hudson Street was torn down in 2005. The footprint

of the Building located at 104 S. Hudson Street makes up less than twenty-five percent of tract of land referred to as "AJ Whittenburg Proposed Site" (Defendant's Ex. 1). The Full Commission noted that a document entitled AJ Whittenburg Proposed Site consisting of one and a half pages was introduced, a portion of which purported to contain information concerning certain chemicals found in the soil somewhere within the AJ Whittenburg Proposed Site. The Claimant's expert in forming the opinions reached assumed that the chemicals listed in the AJ Whittenburg Proposed Site document were found in the subject Building. In fact, the Full Commission noted that "no evidence was presented at the hearing, by testimony or documentation, as to the quantity of any particular chemicals allegedly located in the subject Building at 104 S. Hudson Street. Further, "no evidence was presented at the hearing by testimony or documentation as to what form any particular chemicals were in which were allegedly located in the subject building at 104 S. Hudson Street".

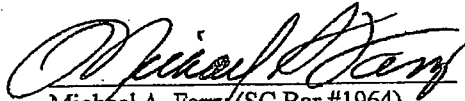
Claimant's expert Dr. Huang in forming the opinions reached in his Report and Affidavit assumed that the chemicals listed in the AJ Whittenburg Proposed Site Document were found in the subject building. Dr. Huang further testified that the opinions he had reached in his Reports and Affidavit were based on the assumption that Marvin Gilliard was in the subject building two or three times per week an hour or more each time and that the chemicals listed in the AJ Whittenburg Site were actually in the building. Even Dr. Huang acknowledged that if Marvin Gilliard was only in the subject building one time for less than thirty minutes, then his interstitial lung condition would not have been caused by any such exposure.

As recognized by the Full Commission, it would be surmise, conjecture and speculation to find that Marvin Gilliard was exposed to any specific chemicals while working as a Community Patrol Officer assigned to Southern Side sufficient to cause the lung disease from which he died.

### CONCLUSION

The unanimous Decision by the Full Commission is supported by the reliable, probative and substantial evidence in the record. No evidence was presented at the hearing by testimony or documentation as to what chemicals were located within the subject building, nor was any evidence presented as to the quantity or form of any particular chemicals allegedly located in the subject building. The evidence presented establishes that Claimant did not have sufficient exposure to anything while working for the City of Greenville that would cause his disease. While Claimant's death is tragic, it is not compensable, and the Findings and Conclusions of Law should be affirmed in their entirety.

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November 30, 2012

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

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GREENVILLE CO. S.C.  
PAUL B. WICKENSIMLER

IN THE COURT OF COMMON PLEAS  
C.A. No.: 2012-CP-23-1088  
(WCC File No.: 0627382)

2012 NOV 30 P 2:55

Lisa Gilliard on behalf of Marvin  
Gilliard, Deceased,

Claimant/Appellant,

v.

City of Greenville, Employer and  
Self-Insured, and Hewitt, Coleman  
& Associates, Inc., TPA,

Defendants/Respondents.

CERTIFICATE OF SERVICE

I, Lynn Chandler, with the firm of Horton, Drawdy, Ward, Mullinax & Farry, P.A., do hereby certify that on the 30<sup>th</sup> day of November, 2012, I served Brief of Defendants/Respondents in the above-captioned action on the following person(s) by causing same to be deposited in the U.S. Mail, postage prepaid, certified mail, return receipt requested, addressed as follows:

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BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Marvin L. Gilliard,

Claimant,

vs.

City of Greenville,

Employer,

and

Hewitt, Coleman and Associates,

Carrier.

W.C.C. File No. 0627382

**BRIEF OF RESPONDENT**

The City of Greenville (hereinafter Appellant) has appealed the Decision and Order of Commissioner Derrick L. Williams that was filed on June 20, 2011. In his Decision and Order, Commissioner Williams found that based on the reliable, probative and substantial evidence presented by Marvin Gilliard (hereinafter Claimant) that he did sustain a terminal occupational disease from chemical exposure during his employment with the Appellant.

**I. Claimant has the burden of proving by a preponderance of the evidence that he suffered an occupational disease.**

- A. Claimant proved, by a preponderance of the evidence, that he sustained a compensable occupational disease as outlined in S.C. Code § 42-11-10 during the scope of his employment that resulted in his death.**

The burden of establishing causation by a preponderance of the evidence is that on the Claimant. South Carolina Second Injury Fund v. Liberty Mut. Ins. Co., 353 S.C. 117, 576 S.E. 2d 199 (S.C. App. 2003); *citing* Lorick v. SCE&G, 245 S.C. 513, 518, 141 S.E. 2d 662, 664 (1965). “An injury arises out of employment if a causal relationship between the conditions under which the work is to be performed and the resulting injury is apparent to the rational mind, upon consideration of all the circumstances.” McCuen v. BMW Mfg. Corp., 383 S.C. 19, 677 S.E.2d 28 (S.C. App. 2009); *citing* Rodney v. Michelin Tire Corp., 320 S.C. 515, 518, 466 S.E.2d 357, 358 (1996).

S.C. Code § 42-11-10 (A) states that an “Occupational disease means a disease arising out of and in the course of employment that is due to hazards in excess of those ordinarily incident to employment and is peculiar to the occupation in which the employee is engaged.” Claimant established that he suffered a compensable occupational disease during the course of his employment by presenting credible and probative testimony and evidence at the hearing.

#### Testimony

**Marvin Gilliard testified that while an employee of Appellant, he was exposed to chemicals during numerous patrols of an abandoned building, which caused him to develop chronic hypersensitivity pneumonitis.**

Marvin Gilliard testified that he began working for Appellant as a police officer in 1996 in traffic patrol until moving to community patrol in 1999. (APA p. 73-76). Claimant testified that the purpose of community patrol was to “become concentrated to a neighborhood.” (APA p. 76). He testified that he first began community patrol in an area known as “Nicholtown.” (APA p. 75). In 2002 or 2003 he was transferred to community patrol in an area of the City of Greenville known as the “Southern Side” and stayed on community patrol in that area for approximately two years. (APA p. 78). Claimant testified that during his community patrol of the

Southern Side area, he would have to walk through an old abandoned building located at 104 S. Hudson Street to remove any homeless people in the building. (APA p. 102). Claimant stated that the abandoned building had been targeted for "extra patrol" because of vagrant issues. (APA p. 105-106). When questioned whether he received a specific call to check on the building, Claimant testified, "Well, I was assigned to it, so I didn't have to get a call. It was part of my job to check it every day." (APA p. 105). Claimant testified that he understood the abandoned building had once been used by a chemical company. (APA p. 104).

During his patrols of the building, Claimant testified that he would sometimes spend over an hour in the building running out homeless people and that he could be in the building several times a week, which would be days that he was on duty. (APA p. 109, 116). Claimant also testified that there would be times that he would "gas up" for duty and to do so he would go by the building. (APA p. 118). If there happened to be a patrol car out front, Claimant testified that he would stop and assist, but that when he did this he would not always call into dispatch. (APA p. 118). He testified that the floor of the building was dirty, and there were steel barrel drums throughout the building with oil or "something that looked like oil because the dirt looked oily." (APA p. 112). He also testified there was a rusted out water tank and there was white powder on the floor in areas of the building. (APA p. 112).

Claimant further testified that soon after being reassigned from the "Southern Side" community patrol to J.L. Mann High School as a resource officer, he started having problems with his breathing. (APA p. 79). He testified that he had a difficult time completing his PT tests for work and he failed to complete a PT test that was given toward the end of 2006. (APA p. 90-91). Claimant testified that he was placed on light duty from May 2007 until his disability retirement on September 5, 2007 due to interstitial pneumonitis. (APA p. 80-81). He further

testified that the light duty was not really light duty and consisted of his dealing with inventory, cleaning, breaking down the supply room and shelving supplies. (APA 80-81). Claimant testified that he went to Dr. Bizzell, a family practitioner, and Dr. Laurens, a pulmonologist, for his breathing problems, but they could not diagnose and treat him effectively. Claimant testified that he located Dr. Yuh-Chin T. Huang, a pulmonologist with the Duke University Medical Center and began treating with him in April 2007. (APA p. 120). Claimant testified that Dr. Huang diagnosed him with interstitial lung disease. (APA 82).

Claimant testified that the 104 S. Hudson Street area had been considered by the Greenville County School District as a possible site for a new school. (APA p. 113). After requesting information from Appellant about the chemicals stored in the building at 104 S Hudson Street, Claimant was given a report from the school district, which listed several chemicals that were found when the school district had done its testing of the area. (APA p. 42-43 and 48-49). Claimant testified that he provided the report to Dr. Huang. (APA p. 119).

**Lisa Gilliard, wife of Marvin Gilliard, testified Marvin Gilliard had never had any major health issues, especially with breathing, prior to 2006 and that while on patrol in the "Southern Side" his uniforms would have an odd smell. Commissioner Williams found Lisa Gilliard to be very honest and her testimony to be very credible.**

Lisa Gilliard testified that she and Claimant had been married for almost 15 years at the time of his death. (Hearing Tr. p. 11). She testified that prior to 2006 Claimant had never had any breathing or lung issues. (Hearing Tr. p. 30-32). She testified Claimant was not a smoker and had been in good health until the breathing issues developed, with his only health problem being diabetes. (Hearing Tr. p. 12). Ms. Gilliard testified that her understanding of community patrol was that the officers were expected to have more of a presence in the community and Claimant would attend community meetings when he was patrolling the "Southern Side." (Hearing Tr. p.

15). She further testified that Claimant would also coach basketball and baseball teams for the youth of the community, even using Employer vans to transport the youth to and from the games. (Hearing Tr. p. 16).

Ms. Gilliard testified that she handled the laundry for the home and remembers Claimant's uniforms having a different and odd smell to them when he was patrolling the "Southern Side" area. (Hearing Tr. p. 23-24). She testified that she remembered having to use a lot of fabric softener to get the smell out and even making the comment that they should invest in a fabric softener company since she used so much to get the smell out of Claimant's uniforms. (Hearing Tr. p. 23). Ms. Gilliard stated that the smell would be on the uniforms several times a week. (Hearing Tr. p. 24).

Ms. Gilliard testified that prior to his breathing issues, Claimant had been very active and exercised on a regular basis. (Hearing Tr. p. 12). She testified that after he got sick, Claimant would have difficulty with completing his physical fitness tests at work and as the illness progressed he had problems with household tasks. (Hearing Tr. p. 14). Ms. Gilliard testified that she attended all of Claimant's doctor visits with Dr. Huang and usually drove because Claimant physically could not do so because of the length of the trip. (Hearing Tr. p. 18). She testified that she was with Claimant when he gave a report to Dr. Huang that listed the chemicals found in tests conducted by the school district. (Hearing Tr. p. 18, 21).

Ms. Gilliard testified that in July 2010, Claimant went to the hospital and spent 20 days in the intensive care unit. (Hearing Tr. p. 22). She testified that Claimant was not on the lung transplant list at that time because he was too sick. (Hearing Tr. p. 22, 23). Ms. Gilliard further testified that Claimant he was released from the hospital on August 11, 2010 and died at home on August 12, 2010. (Hearing Tr. p. 22).

### Expert Testimony

**Dr. Yuh-Chin T. Huang, as Marvin Gilliard's treating physician, testified he was of the opinion that Marvin Gilliard suffered from chronic hypersensitivity pneumonitis caused by environmental exposures. Commissioner Williams found Dr. Huang's testimony credible and probative. Commissioner Williams further found Dr. Huang more qualified than Appellant's expert to offer an expert opinion in this case because of his direct examination of Marvin Gilliard, his expertise in environmental and occupational lung disease, and from his direct examination of patients exposed to the same chemicals as Marvin Gilliard.**

Dr. Yuh-Chin T. Huang testified that he is a physician with Duke Medical University and is board certified in Internal Medicine, Pulmonary and Critical Care Medicine. (Huang Dep. p. 5-6). He also testified that he is chairman of the Environmental, Occupational and Health Steering Committee on ACCP and also for a committee of the American Pathology Society. (Huang Dep. p. 38). He further testified that he has done extensive work in the area of occupational and environmental lung diseases because he has a special interest in that area of practice and treats many patients with those conditions. (Huang Dep. p. 38-39).

Dr. Huang testified that he began treating Claimant in April 2007. He testified that his initial diagnosis was interstitial lung disease. (Huang Dep. p. 7) He testified the pathology tests could not "exclude chronic hypersensitivity pneumonitis" and that "when it mentions HP, we go on to try to find whatever possible exposure, because it has to do with the patient's prognosis." (Huang Dep. p. 23, 30). Dr. Huang testified that upon getting the pathology results, he questioned Claimant and learned that as a police officer he would patrol a building "a few times a week, and every time he stays he stayed there for an hour or two." (Huang Dep. p. 15-17). He testified that he instructed Claimant to get the "environmental information" on the building he patrolled. (Huang Dep. p. 21). Dr. Huang identified the A.J. Whittenburg Proposed Site Review (APA # 7) as the document provided by "city government" to Claimant. (Huang Dep. p. 20). He

testified that the document lists contaminants that were found in the soil and what he assumed where chemicals that were in the building Claimant patrolled. (Huang Dep. p. 20).

Dr. Huang testified he understood that the chemicals identified in the AJ Whittenburg Proposed Site Review were the chemicals in the building Claimant patrolled. (Huang Dep. p. 19). He further testified that the types of chemicals found in the soil were "volatile solvents" and "when it's in the soil, it's in the air." (Huang Dep. p. 23). Dr. Huang testified to a reasonable degree of medical certainty that Claimant's condition was consistent with exposure to the chemicals listed in the AJ Whittenburg Proposed Site Review. (Huang Dep. p. 31). When questioned about exposure times, Dr. Huang testified that his conclusion would be the same had Claimant been in the building less than 15 times in a year and a half and no longer than 30 minutes per visit. (Huang Dep. p. 27). He further testified that "clinically hypersensitivity pneumonitis needs sensitization" and the possibility of the lung disease being caused by chemical exposure increases with exposure time. (Huang Dep. p. 28). Dr. Huang testified that had Claimant only been in the building 5 times, he still could not exclude the diagnosis that the chemical exposure caused Claimant's lung disease. (Huang Dep. p. 28). Huang explained that the probability of the diagnosis with Claimant increased with each exposure. (Huang Dep. p. 28).

Dr. Huang stated the following about Claimant during his deposition, "He's one of the most loyal patients to my clinic. He comes, despite his medical condition. He comes on the right time, at the time when I ask him to come. So I know him very well. Probably better than all my other patients." (Huang Dep. p. 32). He testified further, "I'm just saying that I know his condition very well, because he comes every single time." (Huang Dep. p. 32). Dr. Huang testified that because he treated Claimant on a regular basis that he would be in a better position to state medical opinions related to causation than a physician who had not treated Claimant.

(Huang Dep. p. 33). He testified that a physician is not excluded from being able to offer an opinion about causation if the physician has never treated the patient, but that details would be missed because "a lot of the details comes from the fact that you interact with the patient." (Huang Dep. p. 35-37). When questioned about his qualifications in comparison to those of Appellant's expert, Dr. Steven A. Sahn, Huang testified, "I've done occupational disease and environmental lung disease for a long time. Steven Sahn has not." (Huang Dep. p. 38). Huang also testified that he knows the literature on the subject and "...I've seen quite a few of those cases, more than you know, any of my colleagues here." (Huang Dep. 38-39).

#### **Other Medical Evidence**

**Although a thorough and extensive medical history for Marvin Gilliard was submitted, there is no medical evidence of other potential causes for Marvin Gilliard's chronic hypersensitivity pneumonitis.**

The evidence showed Claimant's primary care practice was the Woodward Medical Center, where he was primarily treated by Stacy Bizzell, M.D. (APA p. 214-268). The records reflect Claimant was a patient of the Woodward Medical Center from 1996 until his death on August 12, 2010. (APA p. 214-268).

The records reflect during a 1996 visit to the Woodward Medical Center, Claimant was a little overweight, had a family history of diabetes and had intermittent problems with high blood pressure. (APA p. 214-216). The record stated Claimant was not a smoker and a nondrinker. (APA p. 214-268). The record also notes at this visit Claimant had a history of a positive and negative PPD test and his physical examination showed "respirations are normal" and "chest completely clear". (APA p. 214). During Claimant's continued care with Woodward Medical



Center, he continued to have physical examinations that showed no problems with breathing until 2006. (APA p. 214-243). The record shows that on July 21, 2006, Claimant complained that over the past couple of months he had experienced trouble breathing and that his wife noticed he seemed more congested with his breathing. (APA p. 243). The diagnosis was allergies or possibly asthma. (APA p. 243). There is no complaint of breathing issues prior to July 21, 2006. (APA p. 214-242).

The records reflect Claimant saw Dr. William Scott of Crossroad Family Practice on September 11, 2006. (APA p. 269). Claimant complained of shortness of breath and wheezing when walking steps or with exertion. (APA p. 269). Dr. Scott ordered numerous tests and his impression was possible congestive heart failure. He ordered an echocardiogram, which was performed on September 18, 2006 and which was reported as normal. (APA p. 269-276). Claimant returned on September 21, 2006 with continued complaints of fatigue, shortness of breath and chest discomfort. (APA p. 277). The record reflects a history of diabetes, high cholesterol and high blood pressure. (APA p. 277). He was diagnosed with cough, dyspnea and possibly asthma and was prescribed Avelox. (APA p. 277-278). Claimant returned to Dr. Scott on October 24, 2006 for pulmonary function testing; which revealed "moderate restriction" and he was diagnosed with asthma and prescribed Advair. (APA p. 279-280).

On October 25, 2006, Claimant visited Dr. Bizzell with the Woodward Medical Center. (APA p. 244). The records reflect Claimant was having problems breathing at work, experiencing phlegm production in the mornings and had been diagnosed with asthma by Dr. Scott of Crossroads Family Practice. (APA p. 244).

Claimant returned to Dr. Scott on November 7, 2006 for repeat pulmonary function testing because he was still having problems breathing. (APA p. 281). The records reflect

Claimant was "coughing clear mucus with occasional blood in the sputum" and Claimant had lost over 20 pounds over the past several months with little to no effort. (APA p. 281-282). The tests showed moderate restriction and Claimant was referred to Dr. Richard Laurens of Palmetto Pulmonary & Critical Care. (APA p. 282).

The records reflect Claimant was first seen by Dr. Laurens on November 30, 2006. (APA p. 293). Dr. Laurens noted the chief complaint as shortness of breath, which had begun in June 2006. (APA p. 293). He noted Claimant was not a smoker. (APA p. 293). He ordered several tests, including a chest CT, which showed "interstitial densities in lungs" and "pulmonary vascular congestion." (APA p. 296). Based on those findings, Dr. Laurens ordered a lung biopsy for confirmation of possible sarcoidosis. (APA p. 306, 308). The lung biopsy was performed as an outpatient procedure on December 5, 2006. (APA p. 306).

Claimant followed-up with Dr. Laurens on December 22, 2006. (APA p. 310). The medical records show Claimant had been on prednisone since his first visit with Dr. Laurens. (APA p. 310). The lung biopsy was negative for sarcoidosis and revealed ground glass opacities in the lungs. (APA p. 309). A pulmonary function test was performed, which showed a decrease in lung capacity consistent with restrictive lung disease. (APA p. 310). The records reflect that Dr. Laurens put Claimant back on Advair, but held off on prescribing portable air. (APA p. 312).

On January 18, 2007, Claimant returned to Dr. Laurens. (APA p. 321). The records reflect Claimant had "tapered off prednisone as instructed," but was still having shortness of breath and on occasion would cough up blood. (APA p. 321). Dr. Laurens made a note in the medical records that the asthma diagnosis was "questionable," but stable and ordered a CT to be done in 6 weeks. (APA p. 321).

Claimant followed up with his primary care physician, Dr. Bizzell, on February 15, 2007. (APA p. 246). The medical records reflect Claimant was under the care of Dr. Laurens for his pulmonary issues. (APA p. 246). The record also states Claimant's asthma was not getting better, he was experiencing heavy congestion, he would have clear phlegm with coughing and sneezing, his condition was interfering with his job and he had been placed on light duty because he could not run. (APA p. 246).

On April 16, 2007, Claimant had his first visit with Dr. Huang, a pulmonologist with Duke Medical Center based on a referral for interstitial lung disease. (APA p. 5). The records reflect Claimant complained of shortness of breath that started in the summer of 2006. (APA p. 5). Claimant would also cough up blood and whitish sputum. (APA p. 5). The records indicate Claimant told Dr. Huang that as a police officer, he would go into an abandoned building at least two or three times a week to run out homeless people. (APA p. 6). The records show Dr. Huang noted a history of environmental exposure and was concerned about chronic hypersensitivity pneumonitis. Dr. Huang ordered a lung biopsy and other tests to be conducted at Durham Regional Hospital. (APA p. 6).

Claimant returned to Dr. Huang on May 15, 2007. (APA p. 22). The records show a diagnosis of nonspecific interstitial pneumonitis and that Dr. Huang asked Claimant to get information from the "city government" about possible exposures in the building he would enter while working. (APA p. 22). On May 17, 2007, Claimant followed-up with his primary care physician, Dr. Bizzell. Her medical records show Claimant was seeing a pulmonologist at Duke and had been diagnosed with interstitial lung disease and had been placed on prednisone. (APA p. 247). His inhalers had been changed and his lung function had improved from 43 to 48. (APA p. 247). Dr. Bizzell put Claimant back on Lipitor and Diovan. (APA. P. 247). Another chest CT

was ordered to be performed prior to Claimant's return to Duke so that he could take the results with him. (APA p. 247). Dr. Bizzell's records show that between June 2007 and August 2007, Claimant underwent diabetes counseling and was placed on insulin. (APA p. 247-253).

The medical records reflect Claimant returned to Dr. Huang on July 30, 2007 and was diagnosed with hypersensitivity pneumonitis. (APA p. 25-26). His pulmonary function had stabilized. Dr. Huang ordered Claimant to continue taking prednisone. (APA p. 25-26). Dr. Huang noted in the medical records that Claimant needed to be monitored closely in South Carolina for his diabetes because it was not controlled. (APA p. 25-26).

The medical records reflect Claimant returned to his primary care physician, Dr. Bizzell, on August 20, 2007. (APA p. 254). The records show a continued use of prednisone as prescribed by his pulmonologist. (APA p. 254). He complained of more congestion, continued shortness of breath and a pulmonary function of 52%, which was not likely to increase. (APA p. 254). Dr. Bizzell noted in the medical record Claimant was depressed about having to go on disability. (APA p. 254). She also noted that Claimant's blood sugars needed to be controlled and were probably high because of the prednisone. (APA p. 254). Claimant saw Dr. Bizzell on November 27, 2007 for a routine visit. (APA p. 255). The medical records show Claimant was still being treated by the pulmonologist at Duke for his lung disease, was still on prednisone and was oxygen dependent at home. (APA p. 255).

The records reflect Claimant returned to Dr. Bizzell on February 29, 2008 and was oxygen and steroid dependent for interstitial pneumonitis with an increase demand level for oxygen. (APA p. 256). The records show Claimant was taking 50 units of insulin at night and would have to remain insulin dependent as long as he was taking prednisone. (APA p. 256). A May 30, 2008 visit to Dr. Bizzell shows Claimant was on a waiting list for a lung transplant.

(APA p. 257). He was having continued problems with wheezing and remained oxygen dependent at home. (APA p. 257).

The medical records show Claimant saw Dr. Bizzell on August 28, 2008 following a recent hospitalization for tachycardia. (APA p. 258). The record indicates the tachycardia was most likely caused by Claimant's severe lung disease. (APA p. 258). The record reflects a heart catheterization at the hospital showed clear arteries and Claimant was placed on medicine for his heart. (APA p. 258). The record states Claimant was totally oxygen dependent, was very short of breath with minimal walking and had to stop and catch his breath just to walk to the exam room at the physician's office. (APA p. 258). He was doing pulmonary rehabilitation and had been taken off the lung transplant list by Duke until he could lose 8% of his body weight. (APA p. 259). During his October 8, 2008 visit with Dr. Bizzell, the medical record shows Claimant experiencing an increase in shortness of breath and cough, with very little air movement and with increased Lasix at home. Dr. Bizzell noted she was concerned about his condition and sent him to the emergency room via ambulance. (APA p. 259).

The medical records reflect Claimant returned to Dr. Bizzell on December 1, 2008. (APA. 262). The record shows Dr. Catherine Chang as Claimant's new local pulmonologist and that he is still going to Duke, where he would be reassessed soon for replacement on the lung transplant list. (APA p. 262). The records reflect that during a recent hospitalization he received lots of steroids and antibiotics and that caused changes in his blood sugar levels, which lead to an increase in his insulin intake.(APA p. 262). On March 5, 2009, Dr. Bizzell noted that Dr. Chang had increased Claimant's oxygen intake. (APA p. 263). The record also shows Claimant had been placed on the double lung transplant list at Duke, but still had to lose weight more weight before he could be a candidate for the transplant procedure. (APA p. 263).

During Claimant's June 16, 2009 visit with Dr. Bizzell, the medical record reflects Claimant was enjoying pulmonary rehabilitation and was still on the lung transplant list at Duke, but would need to get his blood sugar levels under control. (APA p. 264). On Claimant's September 15, 2009 visit with Dr. Bizzell, the record reflects Claimant was trying very hard to lose weight to get back on the lung transplant list. (APA p. 265). He returned to Dr. Bizzell on December 17, 2009. Medical records show his blood sugar levels were better, blood pressure was controlled, and he was still waiting to be a lung transplant candidate. (APA p. 266).

Claimant returned to Dr. Bizzell on March 22, 2010 following a recent visit to the emergency room for swelling. (APA p. 267). The medical records reflect his blood sugar levels were very high and he was still waiting to be eligible for a lung transplant, but needed to lose 20 to 30 pounds in order to be eligible. (APA p. 267). The record shows his oxygen had been increased to 8 liters, his blood pressure was down and he was taken off Diovan. (APA p. 267). The record reflects Claimant returned to Dr. Bizzell on June 28, 2010 with continued problems with breathing and chronic cough. (APA p. 268). The record states Claimant would be having a heart catheterization soon. (APA p. 268). The record reflects Claimant was close to his goal weight of 250 pounds and hoped that when he returned to Duke in August, he would be eligible for a double lung transplant. (APA p. 268).

On August 12, 2010, Claimant passed away at his home. (APA p. 145). The cause of death was chronic hypoxic respiratory failure, endstage lung disease and hypersensitivity pneumonitis. (APA p. 145). At the time of his death, Claimant's local pulmonologist was Dr. Catherine Chang. (APA p. 52). In her affidavit, submitted into evidence by Claimant, Dr. Chang stated, "I am of the opinion, to a reasonable degree of medical certainty, that Marvin Gilliard's death was the result of his interstitial lung disease." (APA p. 52).

- B. **Appellant presented no credible and probative evidence to infer Claimant did not suffer a compensable occupational disease.**

**Major McLaughlin's testimony was filled with inconsistencies and based on documentation that directly conflicted with the testimony of Appellant's own expert, Dr. Steven Sahn. Commissioner Williams found Major McLaughlin's testimony fled in the face of common sense.**

At the hearing, Major Gary McLaughlin was called as a witness for the Appellant. He testified that he had 40 years of police experience. (Hearing Tr. p. 59). McLaughlin testified that Claimant had been an officer for Employer and was on community patrol in the Southern Side area, which included 104 S. Hudson Street. (Hearing Tr. 35, 37). McLaughlin testified that there were problems with vagrants at 104 S. Hudson Street. (Hearing Tr. 64). He further testified that the purpose of community patrol was for the Greenville City Police Department to have more of a presence in that specific community and to provide "enhanced services". (Hearing Tr. p. 67). During his testimony, McLaughlin agreed that if a property owner wanted his building to receive extra patrol, then as a community patrol officer, that officer would be required to do so. (Hearing Tr. 68).

McLaughlin identified and discussed several documents produced by the Appellant that supposedly showed all police activity for 104 S. Hudson Street including, but not limited to Claimant's police activity. (Hearing Tr. p. 41, 44-55). The documents ranged from dispatch calls to the location to incident reports for calls to 104 S. Hudson Street and nearby areas. (Hearing Tr. p. 41, 44-55) McLaughlin testified that many of the documents produced showed "redundant" information. (Hearing Tr. p. 41, 44-55). Some of the records were incomplete. McLaughlin testified that APA #18 listed incident reports, but that no report existed for the last incident listed. (Hearing Tr. p. 78). He also stated that APA #19 referenced incident reports for S. Hudson Street for the time period April 1, 2004 to September 15, 2007. (Hearing Tr. 46). These dates

include a time period after Claimant was no longer working the "Southern Side". McLaughlin further testified that incident entries listed on APA #20 did not have all of the information that should be listed to describe an incident and the missing information may not have been provided to dispatch. (Hearing Tr. p. 71, 73-74).

McLaughlin testified several times one way to "capture" information about an officer's movements is from the officer himself and that the best source of information about what an officer did on his patrol was the officer. (Hearing Tr. p. 42, 78).

McLaughlin testified that it is the policy of Employer that officers are supposed to call into dispatch when they leave their patrol cars to take police action, which could be responding to a traffic stop, checking a suspicious person, checking a building or pursuing a perpetrator. (Hearing Tr. p. 40). McLaughlin testified that as a community patrol officer, Claimant could be on foot patrol and out of his car without taking police action. (Hearing Tr. p. 59). He further testified that it is possible for officers, like Claimant, to take police action while on foot patrol, such as entering an abandoned building, without calling into dispatch. (Hearing Tr. p. 61). McLaughlin testified that he never went along with Claimant on any of his community patrol shifts. (Hearing Tr. p. 61). McLaughlin stated that Claimant was a good and honest officer with a personnel record containing no major complaints or disciplinary actions. (Hearing Tr. p. 61-62). McLaughlin testified that Claimant had done his job as a community officer as he should have. (Hearing Tr. p. 62). He also testified that it was possible that Claimant did not radio in every time he was on foot patrol or checked out a building. (Hearing Tr. p. 66).

McLaughlin identified a map submitted as an Employer exhibit, which showed a portion of the City of Greenville. (Hearing Tr. 41, Defense Exhibit 1). McLaughlin testified that the map showed a portion of the Southern Side area, specifically 104 S. Hudson Street. (Hearing Tr. 41,



Defense Exhibit 1). McLaughlin identified the area that was considered by the school district for the A.J. Whittenburg project that included 104 S. Hudson Street. (Hearing Tr. p. 57). He further testified that the school district decided not to use the proposed area for the new school. (Hearing Tr. p. 80).

Major McLaughlin's testimony highlights the inability of Appellant to maintain accurate documentation as to the activities of its police officers. Several records submitted as evidence by Appellant at the hearing had missing information. McLaughlin offered no meaningful explanation why the data was incomplete. During the beginning of the cross-examination, McLaughlin testified he believed Claimant was an honest man and a good officer. However, at the end of his testimony and after many discrepancies in his testimony, McLaughlin testified under oath that that he doubted Claimant's testimony regarding the number or times he entered the abandoned building in question. When it became self-serving to his employer, Appellant, McLaughlin provided inconsistent testimony and accused Claimant, now deceased, of lying.

**Dr. Steven Sahn's report contained factual inaccuracies and directly contradicted testimony of Major McLaughlin. Commissioner Williams found Dr. Sahn's report full of failings and less probative on the issue of causation than Marvin Gilliard's treating pulmonologist, Dr. Huang.**

Appellant hired Dr. Steven Sahn of MUSC, Division of Pulmonary, Critical Care, Allergy and Sleep Medicine to review medical records of Claimant and Greenville City records in order to form an expert opinion about Claimant's condition and its cause. (APA p. 335-336). Dr. Sahn listed Claimant's time of employment with Appellant from February 5, 1999 to September 2007. However, Claimant became an employee of Appellant in 1996. (APA p. 73-76). Dr. Sahn did not review the AJ Whittenburg Proposed Site document (APA p. 48-49), which was provided to Claimant after requests were made to Appellant for documentation regarding the chemicals that were in 104 S. Hudson Street. (APA p. 42-43, 62, 113).

Dr. Sahn's report reflects records were reviewed that showed Claimant in the abandoned building in question approximately thirteen times in 2001 and another four times in 2002 and that each time Claimant spent approximately 30 minutes in the building. (APA p. 335-336). This information is highly inconsistent with other evidence presented at the hearing by way of documents and the testimony of Major McLaughlin, who testified Claimant was only in the building once during the entire time he patrolled the "Southern Side". (APA p. p. 169 -- 213 and Hearing Tr. p. 55-56).

Dr. Sahn noted Claimant's physicians diagnosed him with non-specific interstitial pneumonitis (NSIP) from hypersensitivity pneumonitis also referred to as environmental exposures. (APA p. 335-337). In his report, Dr. Sahn addresses several causes of idiopathic interstitial pneumonias including connective tissue disease as the most common, and environmental exposures as the second most common cause. (APA p. 335-337). Dr. Sahn acknowledges that the second most likely cause of NSIP is environmental exposures, but discounts chemical exposures as the cause of Claimant's condition even though that was the complaint of Claimant. (APA p. 335-337). In addition, Dr. Sahn never offers a diagnosis or a cause for Claimant's condition. (APA p. 335-337).

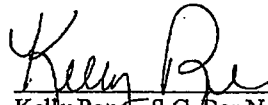
#### CONCLUSION

"The general policy in South Carolina is to construe the Worker's Compensation Act in favor of coverage, and any reasonable doubts as to construction should be resolved in favor of the claimant." Hall v. Desert Aire, Inc., 376 S.C. 338, 656 S.E.2d 753 (S.C.App. 2007); *citing* Davis v. S.C. Dep't of Corr., 289 S.C. 123, 125, 345 S.E.2d 245, 246 (1986). "The Workmen's Compensation Act was adopted for the benefit of the employees and their dependents..." and "should be given a liberal construction in furtherance of the purposes for which it was designed."

Price v. B.F. Shaw Co., 224 S.C. 89, 77 S.E.2d 491 (1953); Alewine v. Tobin Quarries, Inc., 206 S.C. 103, 33 S.E.2d 81 (1945); Simpkins v. Lumbermens Mut. Casualty Co., 200 S.C. 228, 20 S.E.2d 733 (1942); Marchbanks v. Duke Power Co., 190 S.C. 336, 2 S.E.2d 825 (1939); Layton v. Hammond-Brown-Jennings, 190 S.C. 425, 3 S.E.2d 492 (1939); Rudd v. Fairforest Finishing Co., 189 S.C. 188, 200 S.E. 727 (1939).

In reviewing the credible and probative evidence presented by Marvin Gilliard, with an inference in favor of compensability, he has met his burden of proving by a preponderance of the evidence that he suffered an occupational disease during the course of his employment.

Respectfully submitted,

  
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October 11, 2011  
Greenville, South Carolina

BEFORE THE SOUTH CAROLINA WORKER'S COMPENSATION COMMISSION  
STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

WCC FILE NO. 0627382

Lisa Gilliard on behalf of Marvin Gilliard,  
deceased

Claimant/ Respondent,

v.

City of Greenville, Employer, and Self-  
insured, and Hewitt, Coleman & Associates,  
Inc., TPA,

Defendants/ Appellants.

**BRIEF OF APPELLANTS**

This is on appeal by the City of Greenville from the Decision and Order of the hearing commissioner filed June 20, 2011. In his Decision and Order, the hearing commissioner held that Marvin Gilliard (hereinafter referred to as "Claimant") proved an occupational disease from exposure to chemicals while working for the City. Because the findings of fact and conclusions of law made by the hearing commissioner are not supported by the reliable, probative and substantial evidence in the record, the Decision and Order must be reversed and the claim for benefits denied.

**FACTUAL BACKGROUND**

Marvin Gilliard ("Claimant") was a police officer for the City of Greenville from 1996 until September 5, 2007 when he retired. (Claimant's Depo. Tr. p.16-17). He started out in uniform patrol and was promoted to community patrol in 1999. (Claimant's Depo. Tr. p.21-24). He was assigned to an area known as Nicholstown for a few years before being moved to area he referred to as "Southern Side." (Claimant's Depo. Tr. p.25-26). The Claimant worked the

"Southern Side" community for a little less than two years before becoming a resource officer at J.L. Mann High School. (Claimant's Depo. Tr. p.26-27, 51).

The Claimant was a community patrol officer for "Southern Side" during 2002 and 2003 time period. (Claimant's Depo. Tr. p.26, 51). According to the Claimant, as part of his job on community patrol, he was given instructions to remove the "homeless people" from a building located at 104 South Hudson Street. (hereinafter referred to as the "Building") (Claimant's Depo. Tr. p.50). He testified that he went into the Building "daily" because it was designated as "extra patrol." (Claimant's Depo. Tr. p.53-54). According the Claimant, the City of Greenville created paperwork to confirm that he was supposed to perform "extra patrol" of the Building on a daily basis. (Claimant's Depo. Tr. p.54-56).

The Claimant further testified that *every time* he went into the Building, he called dispatch to tell them he was leaving his patrol car to enter the Building on foot. (Claimant's Depo. Tr. p.56-57). He claimed that he searched the Building every day for an hour - "maybe a little longer." (Claimant's Depo. Tr. p.57-58).

The Claimant indicated that if he found somebody in the Building he would either "run them off", "arrest them for trespassing" or "write a ticket." (Claimant's Depo. Tr. p.58-59). If he made an arrest or wrote a ticket, he would call dispatch again so "there would be some paper generated." (Claimant's Depo. Tr. p.59).

The Claimant admitted that he did not know what, if any, substances were in the Building. (Claimant's Depo. Tr. p.60).

The Claimant began having breathing problems as early as 1996. (APA p.214-218). He had tuberculosis in 1996. (APA p.293, 294, 311, 322) ("Positive PPD" indicates tuberculosis).

These problems increased in 2006 to the point where the Claimant sought further evaluation and treatment. (APA p.1-4, 269-282, 293-318).

Despite his history Claimant told Dr. Bizzell that the "trouble with his breathing" started in June of 2006. (APA p.243). He also was examined by Dr. William Scott who referred the Claimant to Dr. Richard Laurens at Palmetto Pulmonary and Critical Care Associates. (APA p. 769-780).

On November 30, 2006, the Claimant told Dr. Laurens that he had "no history of toxic industrial or an environmental exposure." (APA p. 294). This was confirmed again on January 18, 2007. (APA p. 322). Because the etiology of the Claimant's symptoms was unclear, Dr. Laurens referred the Claimant to Dr. Yuh-Chin T. Huang for evaluation of interstitial lung disease.

On April 16, 2007 the Claimant informed Dr. Huang that he went into the Building "once or twice a week for about a year and a half and his last checkup of that building was about two years ago." (APA p. 6). This was the first mention of the Building in any medical records. The Claimant also told Dr. Huang that the fire department had later "prohibited anyone to walk into the building without respiratory protection." (APA p. 6).

Although acknowledging that the "exact etiology of the interstitial lung disease is unclear", Dr. Huang jumped to the conclusion after the first appointment the Claimant may have chronic hypersensitivity pneumonitis based upon the Claimant's "environmental exposure history." (APA p. 6).

After much testing, Dr. Huang diagnosed the Claimant as having nonspecific interstitial pneumonitis. (APA p. 72). He told the Claimant "to go and find exposure information from his

city government about the building in which he had been patrolling for a few years before it was shut down.” (APA p. 22).

Instead of obtaining exposure information about the Building, the Claimant obtained information about a huge tract of land of which the Building only comprised a small portion. (Huang Depo. Tr. p. 19 & Ex.1; APA p. 48-49; Defendant’s Trial Ex. 1).

At the Claimant’s next appointment, Dr. Huang diagnosed the Claimant as having hypersensitivity pneumonitis. (APA p.25).

During his deposition, Dr. Huang testified that, it was only after the Claimant found the report of soil contamination at the “AJ Whittenburg Proposed Site” that the Claimant informed him that “he went over there a few times per week to check and stayed there an hour or two, just to check on the homeless.” (Huang Depo. Tr. p. 15-17). Dr. Huang assumed these activities started in 2003 and continued for one and a half years. (Huang Depo. Tr. p. 16-17).

All Dr. Huang knew about the Building was the information provided to him by the Claimant. (Huang depo. p. 8, 18). The Claimant told Dr. Huang that the building was an old “textile mill that had something to do with fabrics.” (Huang Depo. Tr. p.18). The Claimant provided Dr. Huang with the document entitled “AJ Whittenburg Proposed Site”, which was submitted as a APA #7.

Dr. Huang assumed that the chemicals listed in APA #7 were chemicals found *in the Building*. (Huang Depo. Tr. p. 20-21). Dr. Huang admitted that he did not know that AJ Whittenburg Proposed Site was much larger than the Building or whether the chemicals were actually found in the Building. (Huang Depo. Tr. p. 21, 22). Dr. Huang just made these assumptions based on what the Claimant said.

Dr. Huang could not state whether the Claimant had non-specific interstitial pneumonitis or chronic hypersensitivity pneumonitis. (Huang Depo. Tr. p. 23-24). Nevertheless, he opined by affidavit the Claimant's condition was "most probably caused by his intermittent repeated exposure to the chemicals found at the site of the abandoned building he patrolled as a police officer." (APA p. 50-51).

Dr. Huang confirmed that his opinion was based on the assumption that Claimant was in the Building "two or three times per week, an hour or more each time" and that the chemicals listed in APA no. 7 were actually in the Building itself. (Huang Depo. Tr. p. 26-27).

Dr. Huang opined, however, that if Claimant was only in the Building one time for less than thirty minutes then his condition would not have been caused by that exposure. (Huang Depo. Tr. p. 27). He further opined that if the Claimant had only been in the Building five times or less, he could not state that the Claimant's condition was "most probably" causally related to the exposure." (Huang Depo. Tr. p. 28).

Dr. Steven Sahn from the Medical University of South Carolina also reviewed the Claimant's medical records as well as the opinions of Dr. Huang. Dr. Sahn concluded that the Claimant developed idiopathic non-specific interstitial pneumonitis which was not caused by "the relatively brief exposure in the building." (APA p. 336,337). Dr. Sahn based his opinion on the Claimant being exposed approximately seventeen times, less than thirty minutes each, over a two year time period. (APA p. 335,336).

In reality, the Claimant's "exposure" was even less than assumed than by Dr. Sahn. Claimant testified that every time he left his car to go into the building he called dispatch. (Claimant's Depo. Tr. p. 56). The Claimant testified that it took "about an hour" to go through



the Building. (Claimant's Depo. Tr. p. 57?). He even testified that he went into the Building "daily." (Claimant's Depo. Tr. p. 53).

Based upon the Claimant's testimony, the City of Greenville performed an exhaustive search of its records. Major Gary McLaughlin confirmed that the Claimant was supposed to call in to dispatch every time he got out of his patrol car to go into the Building. (Hearing Tr. p. 39-40). Every time an officer calls in, the calls are recorded in multiple databases. (Hearing Tr. p. 44). Based upon the records within the redundant system, the Claimant was only at the address of the Building one time during the relevant time period and that was for only twenty-four minutes. (Hearing Tr. p. 52-56). This one incident was captured on several databases as expected. (APA no. 14, 15, 19, 20, 21, 22).

Major McLaughlin also confirmed that the footprint of the Building is only a small portion of the larger tract of land referred to as the "AJ Whittenburg Proposed Site." (Hearing Tr. p. 41, 57; Defendant's Trial Ex 1).

#### ARGUMENT

**I. IS AN AWARD FOR OCCUPATIONAL DISEASE SUPPORTED BY THE EVIDENCE WHICH REVEALS THAT THE CLAIMANT HAD LIMITED, IF ANY, DOCUMENTED EXPOSURE TO CHEMICALS AND ALL OF THE EXPERTS AGREE THAT SUCH EXPOSURE WAS INSUFFICIENT TO CAUSE THE CLAIMANT'S DISEASE?**

The hearing commissioner found that the Claimant proved a compensable occupational disease as "direct result of his exposure to toxic chemicals." In making this finding, hearing commissioner viewed the evidence blindly from the Claimant's perspective, substituted conjecture for facts, ignored all the expert testimony and disregarded the credibility of witnesses. Because the reliable, probative and substantial evidence in the record does not support the

finding of compensability, the Decision and Order of the hearing commissioner must be reversed.

As agreed by Drs. Huang and Sahn, a single exposure to chemicals or isolated exposure will not support a finding of causation. Dr. Huang clearly stated that one exposure would not cause the Claimant's condition. (Huang Depo. Tr. p. 27). He also confirmed that five or less exposures would not warrant a finding of causation. (Huang Depo. Tr. p. 28). Dr. Sahn confirmed that even seventeen exposures, less than thirty minutes each, over a two year period would not cause the Claimant's condition. (APA p. 335-337).

The experts agree - a single or isolated exposure would not cause pneumonitis. In opining a causal connection, Dr. Huang was relying on erroneous assumptions. He assumed the Claimant was entering the Building two or three times per week for one to two hours at a time over a one and a half year period. (Huang Depo. Tr. p.16-17). The facts simply do not support these assumptions.

Viewing the evidence blindly from the Claimant's perspective, the hearing commissioner found he did not believe the Claimant only went into the Building once because that "flies in the face of common sense." Quite to the contrary, what "flies in the face of common sense," is ignoring both the testimony of the Claimant, Major McLaughlin and the redundant system created by the City of Greenville to keep track of the activities of its officers.

The Claimant testified that he called in *every time* he got out of his patrol car to go in the Building. (Claimant's Depo. Tr. p. 56-57) (emphasis added). Major McLaughlin confirmed that Claimant was supposed to call in every time he got out of his patrol car. Both the Claimant and Major McLaughlin testified that paper work is generated every time an officer leaves his patrol car. (Claimant's Depo. Tr. p. 54-59, Hearing Tr. p. 40). The exhaustive computer records from

the City of Greenville confirm that every call in from an officer is recorded in not one but up to four or five separate databases. All the evidence confirms that the only documented time the Claimant left his patrol car to go on the real estate upon which the Building is situated was on February 7, 2002 for less than thirty minutes. (Hearing Tr. p. 55-56).

At trial, counsel for the Claimant tried to elicit testimony from Major McLaughlin that there is a possibility that the Claimant did not call every time he got out of his patrol car. (Hearing Tr. p. 61). The problem with this entire line of questioning is the fact that the Claimant testified himself that he actually did call in every time he left his patrol car. (Claimant's Depo. Tr. p. 56).

For the hearing commissioner to find the Claimant entered the building more than once, the hearing commissioner had to ignore the testimony of the Claimant himself, the testimony of Major McLaughlin and the computer system created by the city of Greenville to track its officers. There is no evidence supporting the hearing commissioner's decision to ignore all the evidence in the record.

Furthermore, in determining how many times the Claimant entered the Building, the credibility of the various witnesses is important. The only people who benefit from the determination of the Claimant was in the building frequently were the Claimant and his wife. In determining credibility, it is important to note how the Claimant's version of his exposure increased as he was trying to create an award of compensation.

Initially, the Claimant told his doctors that he had "no history of toxic industrial or environmental exposure." (APA p. 294,311). Later he told Dr. Huang that he was having trouble breathing while "walking *around* the building during a regular checkup." (APA p.5)(emphasis added). Then he told Dr. Huang that he "went into the Building once or twice a week for about a

year and a half.” (APA p.6). After Dr. Huang asked him to find “exposure information from his city government”, the Claimant’s version of his exposure increased to “two to three times per week, one to two hours each time.” (Huang Depo. Tr. p. 16-17-26).

By the time the Claimant’s deposition was taken, the Claimant’s version of his exposure had elevated to “daily.” (Claimant’s Depo. Tr. p. 53).

It “flies in the face of common sense” to ignore the fact that the Claimant was trying to create a case after the fact. He developed a disease of unknown etiology. His doctors were having trouble classifying his disease and treating it. Pneumonitis can be caused by exposure to toxic substances or it can be viral or it can be truly idiopathic. (APA p. 335-337). When asked about exposures, the Claimant remembered an old abandoned textile building that he knew had been torn down. He did a little research and came to the conclusion that the Building was toxic. Accordingly, he began exaggerating his exposure to that Building.

It also truly defies logic to believe the Claimant went into the Building every day for one and a half to two years for an hour or two each time. All he was doing was checking to see if there were “homeless people” in the building. Major McLaughlin confirmed that this could be done by driving around the Building. (Hearing Tr. p. 56). Even if the Claimant got out of his patrol car, it is illogical to believe it would take one to two hours to accomplish this task.

Furthermore, if the Claimant did actually spend more than an hour inspecting the Building daily over a two year period, he would have had a better understanding of the layout of the Building. He testified:

There was (*sic*)several different levels in this building. I *think* one was up and one was down. (Claimant’s depo. P. 60)(emphasis added).

The Claimant would not have to speculate about the number of levels in the Building if he had really spent several hundred hours inspecting it.

The documentary evidence, of which the Claimant referenced himself, reveals that the Claimant entered the Building only a few times at best. Both experts agree that such exposure would not be sufficient to cause the Claimant's pulmonary disease.

To make a finding for compensability, the hearing commissioner made another leap from conjecture to fact. The hearing commissioner found as fact that "the contaminants listed in APA no. 7 were chemicals Claimant was exposed to while in the abandoned building." This finding is pure surmise, conjecture and speculation.

All APA no. 7 shows is that contaminants were found in the *soil* on the large tract of real estate known as the "A.J. Whittenburg Proposed Site. (APA p. 48). There is no other evidence regarding the level of contaminants or that such contaminants were airborne. Further, there is no evidence these chemicals were *in the Building*. The site of the Building is just a small portion of the "A.J. Whittenburg Proposed Site". The report does not even state where on the "A.J. Whittenburg Proposed Site" the soil was found to be contaminated. To make the finding that the contaminants listed on APA no. 7 were located in the Building in such levels to be harmful to the Claimant is pure speculation.

Highlighting the hearing commissioner's efforts to view the evidence blindly from the Claimant's perspective is the hearing commissioner's interpretation of the evidence on the evidence surrounding APA no. 7:

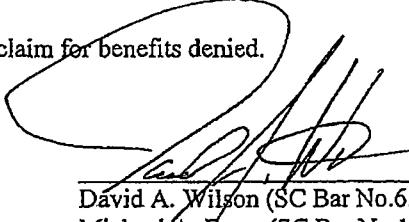
Moreover, if this site was as benign as alleged, I find it interesting that alternate site was used to find the build on. The contaminants as listed in APA no. 7 clearly show why an alternate site would need to be used. (Decision & Order p. 24).

This finding of "fact" is not supported by the evidence at all. It reveals that the hearing commissioner fabricated reasons to find the case compensable because the true evidence did not support an award.

### CONCLUSION

The worker's compensation laws are to be liberally construed in favor of injured employees. Facts, however, are not to be liberally construed. The hearing commissioner liberally construed inferences and possibilities in a contorted, one-sided view of the evidence in this case. The facts do not support a finding that the Claimant had sufficient exposure to anything while working for the City of Greenville that would cause his disease. The Claimant's death is tragic. Tragedy does not automatically result in compensability.

Accordingly, the Decision and Order of the hearing commissioner filed June 20, 2011 must be reversed and the Claimant's claim for benefits denied.



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Michael A. Farry (SC Bar No.1964)  
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Attorneys for Defendant/Appellant

Greenville, South Carolina  
August 25, 2011

BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

WCC FILE NO.: 0627382

Lisa Gilliard on behalf of Marvin  
Gilliard, deceased, )

Claimant/Respondent, )

v. )

CERTIFICATE OF SERVICE

City of Greenville, Employer and  
Self-Insured, and Hewitt, Coleman &  
Associates, Inc., TPA, )

Defendants/Appellants. )

I, Lynn Chandler, an employee with the firm of Horton, Drawdy, Ward, Mullinax & Farry, P.A., do hereby certify that on August 25, 2011 I served Brief of Respondents on the following person(s) by causing same to be placed in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows:

Kelly Pope Karow  
Mooneyham Berry & Karow, LLC  
P.O. Box 8359  
Greenville, SC 29604

  
Lynn Chandler

BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
WCC FILE NO.: 0627382

Marvin L. Gilliard,

Claimant,

vs.

City of Greenville,

Employer.

APA SUBMISSION

TO: SOUTH CAROLINA WORKERS' COMPENESATION COMMISSION, MICHAEL A. FARRY, ATTORNEY FOR THE DEFENDANT:

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

APA MEDICAL SUBMISSIONS

| <u>Name of Physician</u>                                                                                          | <u>Date of Report</u>                     | <u>Bates Stamp No.</u> |
|-------------------------------------------------------------------------------------------------------------------|-------------------------------------------|------------------------|
| 1. Stacy Bizzell, M.D.<br>Woodward Medical Center<br>21 Aberdeen Drive<br>Greenville, SC 29605                    | 07/21/06, 10/25/06, 02/15/07,<br>05/17/07 | 001 - 004              |
| 2. Yuh-Chin T. Huang, M.D.<br>Division of Pulmonary,<br>Allergy and Critical Care<br>DUMC 2733<br>Durham NC 27710 | 04/16/07, 05/15/07, 07/30/07              | 005 - 026              |
| 3. James P. Weaver, M.D.<br>Durham Regional Hospital<br>3643 North Roxboro Street                                 | 04/20/07                                  | 027 - 030              |



|                  |  |  |
|------------------|--|--|
| Durham, NC 27704 |  |  |
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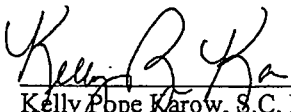
APA EXHIBIT SUBMISSIONS

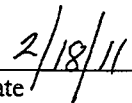
| <u>Exhibit</u>                                                              | <u>Dated</u>       | <u>Bates Stamp No.</u> |
|-----------------------------------------------------------------------------|--------------------|------------------------|
| 4. Asbestos Survey Report for 104 & 106 South Hudson Street, Greenville, SC | 01/26/05           | 031 - 041              |
| 5. Email correspondence between Marvin Gilliard and Employer                | 05/16/07, 05/22/07 | 042 - 043              |
| 6. South Carolina Retirement Systems – Member's Disability Report form      | 05/23/07           | 044 - 047              |
| 7. AJ Whittenburg Proposed Site Review                                      | 08/23/07           | 048 – 049              |
| 8. Affidavit of Yuh-Chin Tony Hung, M.D.                                    | 06/24/10           | 050 – 051              |
| 9. Affidavit of Catherine Chang, M.D.                                       | 02/17/11           | 052                    |
| 10. Deposition Transcript of Marvin Gilliard                                | 02/22/08           | 053 – 144              |
| 11. Death Certification of Marvin Gilliard                                  | 08/12/10           | 145                    |

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

YOU ARE FURTHER NOTIFIED that pursuant to South Carolina Workers' Compensation Commission Form 58, medical records are not being forwarded to the South Carolina Workers' Compensation Commission, but will be submitted as evidence at the hearing on March 7, 2011. Copies of said medical records identified by Plaintiff on the APA Submission have been forwarded to opposing counsel.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the claimant: See Pre-Hearing Brief.

  
\_\_\_\_\_  
Kelly Pope Karow, S.C. Bar No.: 69569  
Joe Mooneyham, S.C. Bar No.: 004041  
Mooneyham Berry & Karow, L.L.C  
1225 South Church Street  
Greenville, South Carolina 29605

  
\_\_\_\_\_  
Date

Attorneys for the Claimant

**1**

WOODWARD MEDICAL CENTER  
21 ABERDEEN DRIVE  
P.O. BOX 9078  
GREENVILLE, SOUTH CAROLINA 29605  
PHONE: (864) 370-8363 FAX: (864) 370-8357

GILLIARD, MARVIN  
CHART #: 44481  
07-21-06

S: Mr. Gilliard is a 36 year-old black male with a Hx of diabetes mellitus, hyperlipidemia, and HTN who presents today for a recheck. He had a complete physical examination through the city including a pulmonary function, stress test, etc. a few months ago. He did great on this but in the past month he has had trouble with his breathing. It is worse when he is outside when he is working in the yard at night. His wife has noticed that he seems to be a little bit more congested with his breathing. He recently was diagnosed with sleep apnea and had a tonsillectomy and his breathing had gotten much better but now it seems to be getting worse in the past month. He has been coughing up some clearish white phlegm that is not discolored. He does not feel sick. He feels good when he wakes up in the morning and, in fact, right now he is not wheezing. He has had to cut back on his treadmill and his weight loss program just because he is having so much trouble with his breathing. He feels good right now and his blood sugars have been fine when he checks them.

PAST MEDICAL HISTORY: Listed on the chart.

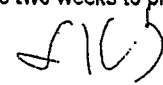
MEDICATIONS: Listed on the chart.

ALLERGIES: Listed on the chart.

O: PHYSICAL EXAMINATION: WT: 219.2 lbs. which is down seven pounds. BP: 130/90. In general, this is a pleasant black male in no apparent distress. Lungs are clear. No rales, rhonchi, or wheezes. Heart: Normal S1 and S2 without murmurs, gallops, or rubs. Digital pulses are 2+. No evidence of cyanosis, clubbing, or edema on exam. Review of blood work from last week shows that he had good liver function and his cholesterol was good at 202 with an LDL of 139. His hemoglobin A1C was good for him at 6.5.

A: 1. Diabetes mellitus.  
2. Hyperlipidemia.  
3. HTN.  
4. Shortness of breath. Possible allergic asthma.

P: I told him that he may just be having a reaction to the weather. His symptoms are very out of context and may be an allergy type of asthma. I do not think that he needs an inhaler at present but we will try him on some Singulair 10 mg qhs #30 with two refills. We will recheck his blood work one week prior to his next visit in three months. He is doing well with the Diovan. We will keep this the same dose and once he loses more weight and gets back on the treadmill then hopefully his blood pressure will come down. We will recheck all of this with blood work in three months. I told him that if his breathing does not get better in the next one to two weeks to please give me a call and I would be glad to repeat PFTs at some point.

  
Stacy Bizzell, M.D. /csw

MBK 001

WOODWARD MEDICAL CENTER  
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P.O. BOX 9078  
GREENVILLE, SOUTH CAROLINA 29605  
PHONE: (864) 370-8363 FAX: (864) 370-8357

GILLIARD, MARVIN  
CHART #: 4448-1  
10-25-06

S: Mr. Gilliard is a 36 year-old black male with a Hx of hypertension, diabetes mellitus, and hyperlipidemia who presents today for a recheck. He recently had some trouble breathing at his job. He went to see Dr. Scott. It sounds like \_\_\_\_\_. He has decided that he has asthma. He put him on Advair Diskus. He just started it last night. He has a lot of phlegm production in the morning but not for the rest of the day. No real shortness of breath or wheezing today. No other complaints. He has been very careful with his diet. He checks his blood sugars and they tend to run under 140. Other than that, he feels good.

PAST MEDICAL HISTORY: Listed on the chart.

MEDICATIONS: Listed on the chart.

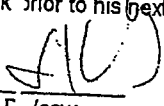
ALLERGIES: None.

O: PHYSICAL EXAMINATION: WT: 2\_\_\_\_4 lbs. BP: 112/74.

In general, this is a pleasant black male in no apparent distress. Lungs are clear. No rales, rhc rchi, or wheezes. Heart: Normal S1 and S2 without murmurs, gallops, or rubs. Distal pulses are 2+. No evidence of cyanosis, clubbing, or edema on exam. His blood work from one week ago was good at 6.4 with a great cholesterol of 178 and normal liver and renal function.

- A:
1. Hypertension. Well controlled.
  2. Hyperlipidemia. Well controlled.
  3. Diabetes mellitus. Stable.
  4. Asthma.

P: He will continue with his Advair Diskus and continue with his other medications. He will be careful with his diet over the holidays and follow up with me on all of this in three months with fasting blood work one week prior to his next visit. No changes today.

  
Stacy Bizzell, M.C. /csw

MBK 002

WOODWARD MEDICAL CENTER  
21 ABERDEEN DRIVE  
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GILLIARD, MARVIN  
CHART #: 44481  
02-15-2007

S: Mr. Gilliard is a 37 year-old black male with a Hx of diabetes mellitus, hyperlipidemia, hypertension and asthma who presents today for a recheck. He has been seeing Dr. Laurens for his asthma but it is just not getting better. He wonders if he could have walking pneumonia. He has been congested for several weeks, maybe even months. He has shortness of breath with exertion. Now his head is killing him and his nose feels congested. He has lots of post-nasal drainage with coughing, sneezing, and it is just a dry cough with some occasional clear phlegm coming up. No fever or chills. It is interfering with his job. He is doing light duty because he just cannot run because of the asthma. He is even using his inhalers. He admits that he has been eating lots of soup and lots and lots of bread. He did not realize that this would affect his blood sugars so much. He has not checked them regularly.

PAST MEDICAL HISTORY: Listed on the chart.

MEDICATIONS: Listed on the chart.

ALLERGIES: Listed on the chart.

O: PHYSICAL EXAMINATION: WT: 279 pounds up two pounds. BP: 120/82.  
In general, this is a pleasant black male with obvious congestion in his head but in no acute distress. HEENT exam shows Sinuses: No pain to palpation. Oropharynx is clear. Nares just appear inflamed. Tympanic membranes are clear bilaterally. NECK: No JVD, no lymphadenopathy, and no thyroid nodules. Lungs are clear. He has decreased breath sounds at both bases. No rales, rhonchi, or wheezes. Heart: Normal S1 and S2 without murmurs, gallops, or rubs. Distal pulses are 2+. No evidence of cyanosis, clubbing, or edema on exam. Review of blood work shows that his cholesterol is 221 with an LDL of 152, which is fairly stable for him. He has a normal liver and renal function and a Hemoglobin A1c up to 8.1. He brought blood work from his physical exam recently. His TSH, CBC, et cetera, were all normal.

A: 1. Diabetes mellitus. Poorly controlled.  
2. Hypertension. Stable.  
3. Asthma. Not stable.  
4. Possible allergic rhinitis.

P: His blood pressure is good. His cholesterol is fine. His weight is up from eating too much bread. His blood sugar is up as well. We will keep his Glucophage at three per day and he will try to cut out on the breads. We will see how his blood work results are doing in a couple of months. He will continue with the Advair Diskus and albuterol for his asthma. I suggested that he start on Singulair but he tried this in the past and it did not help. We will add Allegra 180 mg per day #30 with five refills. We will start him on Nasacort AQ two sprays to each nostril once per day. Of note, he is also on a C-Pap machine with his sleep apnea recently diagnosed. He is not getting much relief from that and this could be why he is having problems as well. I told him to discuss this all with Dr. Laurens until he gets his asthma stable. He will follow up with me on all of this in three months.

Stacy Bizzell, M.C. /csw

MBK 003

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21 ABERDEEN DRIVE  
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GREENVILLE, SOUTH CAROLINA 29605  
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GILLIARD, MARVIN  
CHART #: 44481  
05-17-2007

S: Marvin is a <sup>37</sup> year-old black male with a Hx of diabetes mellitus, hypertension, hyperlipidemia and who presents today for a recheck. Back in January, he was having trouble breathing and eventually got to Dr. Laurins office, pulmonologist, but he could not tell what was wrong with him and he got worse so on his own he went down to Duke and saw a specialist there. We have a copy of his name. They ended up admitting him to the hospital and doing a lung biopsy. He turned out to have nonspecific interstitial pneumonitis. They put him on prednisone and changed around his inhalers. His last lung function improved from 43 to 48 percent. His breathing is better. He is doing light duty at work. He is going back there in July and he needs a follow-up CT. He feels better. His blood sugars are running a little bit high at the end of the day in the 160s but he usually wakes up with them in the low 100s. He is on prednisone 60 mg per day and needs refills. He has not been on his Lipitor for about one week but he has been taking his other medications. Overall, he feels much better and he is just pleased to finally know what is wrong with him.

PAST MEDICAL HISTORY: Listed on the chart.

MEDICATIONS: Listed on the chart.

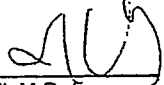
ALLERGIES: None.

SOCH: He is a non-smoker.

O: PHYSICAL EXAMINATION: WT: 264.4 pounds, which is down fifteen pounds. BP: 118/78. In general, this is a pleasant black male in no acute distress. Lungs are clear. No rales, rhonchi, or wheezes. Heart: Normal S1 and S2 without murmurs, gallops, or rubs. Distal pulses are 2+. No evidence of cyanosis, clubbing, or edema on exam. Review of blood work from last week shows that his Hemoglobin A1c was actually improved down to 7.9. It was 8.2 in January. He had good liver and renal function. His cholesterol was up to 260 with an LDL of 156 off of the Lipitor for two weeks.

A: 1. Diabetes mellitus.  
2. Hyperlipidemia.  
3. Hypertension.  
4. Interstitial pneumonitis.

P: We discussed his recent pneumonitis and what he has had going on. We discussed the side effects of the prednisone. He knows to watch his blood sugars closely and to call me if they get elevated and we could always add medicine or increase what he is on. Right now we will keep everything at the same dose. I put him back on the Lipitor and Diovan and gave him refills on that. We will schedule the chest CT to follow up on the interstitial pneumonitis in the first of July and he will take it with him up to Duke. He is not going to see the pulmonologist locally. He wants to follow up with this guy at Duke and the pulmonologist said that once he gets him maintained, that I could probably follow him up. I am fine with that. He will try to get me notes from this doctor the next time that he goes to Duke. He will follow up with me on all of this in three months with fasting blood work one week prior to his next visit.

  
Stacy Bizzell, M.D. /csw

MBK 004

**2**



Patient: GILLIARD, MARVIN FP7763

Dictated Rpt: Final 04/16/2007 00:00

Pulm. New Patient Evaluation

FP7763

GILLIARD, MARVIN

4/16/2007

DOB: 12/3/1969 Age: 37

Pulm. New Patient Evaluation

Yuh-Chin T. Huang, MD

Duke Case Number 125855

**History of Present Illness:** This is a 37-year-old black male patient who was referred to the Pulmonary Clinic by Dr. Richard Laurens for the evaluation of CT scan abnormalities and dyspnea on exertion in consultation. The patient has been doing well until the summer of 2006 when he developed dyspnea on exertion while walking around the building doing a regular checkup. The patient is a police officer. He later developed cough with whitish sputum productions and more recently about five months ago started to have occasional hemoptysis, especially in the morning. He also has had occasional wheezes and felt malaise since last summer. He went to see his doctor and multiple imaging studies were performed. These include chest x-ray and CT scans, which showed the presence of peripheral ground-glass opacities consistent with interstitial lung disease. A bronchoscopy was also done in December 2006. I do not have the bronchoscopy report, but according to the patient, everything was negative. He was apparently tried on a month of steroids with the dose as high as 40 mg prednisone probably. The patient stated that he did not notice any difference in symptoms while he was on steroids. A most recent CT scan of the chest in March 2007 shows persistence of this ground-glass opacity and the patient was thus referred to the Pulmonary Clinic for further evaluation. On further questioning, the patient admitted night sweat, but no fever. He also had noticed clubbing fingers since December 2006. He has no orthopnea or PND.

**Past Medical History:** Significant for,

1. Diabetes.
2. Allergy.
3. Obstructive sleep apnea for which the patient is taking nasal CPAP.

**Current Medications:** Include,

1. Metformin 1500 mg per day.
2. Lipitor 10 mg per day.
3. Diovan 80 mg per day.
4. Nasacort nasal spray.
5. Advair 250/50 one b.i.d. for two months.
6. Allegra one per day for two months.
7. ProAir p.r.n. The patient stated that the ProAir helped him acutely.

**Allergies:** The patient denied any allergy to medication, but he is allergic to shellfish with swelling and itching.

**Past Surgical History:** Previous operations include,

1. Cyst on the wrists.
2. LASIK surgery.

**Family History:** Positive for high blood pressure and diabetes.

<https://clinapp4.duhs.duke.edu:8081/ClinApp/PrintResult.asp?sServiceKey=P00002803802...> 8/3/2007 MBK 005

**Social and Environmental History:** The patient has been married for 10-1/2 years. They have no children. He has one dog outside and four houseplants. He lives in a single house for 10 years. He has been a police officer for 13 years. The patient recalls that he was sent to patrol an abandoned mill to check for the homeless people about 3 and a half years ago. He went into the building once or twice a week for about a year and half and his last checkup of that building was about two years ago. Apparently sometime after he stopped going there, the fire department had to close off that area and had prohibited anyone to walk into the building without any respiratory protection. The reason for the respiratory protection is unclear to him. What the mill made before it closed down was also unclear, but he was told that the mill was doing some "dyeing work" before the mill was shut down. He is a nonsmoker and he used alcohol socially and he is not following any particular diet or used any herbal additions.

**Review of Systems:** Positive for a 38-pound weight loss between November 2006 and February 2007. The patient has now gained some back. Other positive findings include palpitation, heart murmur, high blood pressure, acid reflux, diarrhea, and muscle weakness.

**Physical Exam:**

**Constitutional:** Revealed a patient who is in no respiratory distress. Blood pressure is 124/80, pulse is 74, respirations 18, temperature 97.3, weight is 268 pounds, height is 70 inches, and room air saturation is 95%.

**HEENT:** Normal eardrum, normal sinuses. Pharynx is not congested. Conjunctivae are not injected. Sclerae are not jaundiced. Nasal mucosa is normal. There is no tonsillar enlargement.

**Neck:** Supple. No lymph node or JVD.

**Lungs:** Bilateral crackles diffusely. There are no wheezes or rhonchi.

**Heart:** S1 and S2. There is no murmur or gallop.

**Abdomen:** Benign. There is no organomegaly. Bowel sounds are present. Nontender.

**Musculoskeletal:** No joint swelling or deformity.

**Skin:** No rash except some dark discolorations on the palmar aspect of his fingers.

**Extremities:** No peripheral edema, but there is clubbing on his fingernails.

**Neurological:** The patient is alert and oriented x3. DTRs are 2+ bilaterally.

**Cranial nerves** are intact. Sensory is intact and muscle power is 5/5 bilaterally.

**Laboratory Data/Test Results:** I have reviewed the patient's CT scan and chest x-ray, which he brought from South Carolina in a CD. It shows presence of ground-glass opacities throughout the lung with possible upper lobes more than the lower lobe. There is no lymphadenopathy. There is no pulmonary embolism. I reviewed this myself. His pulmonary function test today showed a FVC of 2.26 L or 43% of predicted, FEV1 of 2.06 L or 48% of predicted, FEV1/FVC ratio is 91%, TLC is 3.03 L or 44% of predicted, RV is 0.72 L or 41% of predicted, diffusion capacity is 8.4 or 27% of predicted. I do not have his PFT from before and thus I cannot make any comparison.

**Assessment and Plan:** This is a 38-year-old black male patient who was referred to the Pulmonary Clinic for the evaluation of interstitial lung disease. The exact etiology of the interstitial lung disease is unclear at this time. With his environmental exposure history, I worried about chronic hypersensitivity pneumonitis. Other differential diagnoses will include NSIP, UIP and sarcoidosis. I have setup the patient to see Dr. Weaver, the thoracic surgeon, at 02:00 p.m. on 04/17/2007. He is planning on doing VATS on 04/18/2007. Patient is instructed to go back to South Carolina after the VATS and wait for the pathology report. I will check the pathology and call the patient regarding further management plan. In the meantime, I will also send ANA, CBC with diff, hypersensitivity pneumonia panel, IgG, IgE, IgM, and IgA rheumatoid factor, PT, PTT, sed rate, and basic metabolic panel. His return appointment will be determined after the VATS lung biopsy.

YUH-CHIN TONY HUANG  
Division of Pulmonary and Critical Care Medicine  
ELECTRONICALLY SIGNED ON  
April 20, 2007 AT 7:44:02 AM

YH/dai  
Dictated on: 4/18/2007  
Transcribed on: 4/19/2007

RICHARD G JR LAURENS, MD  
317 ST FRANCIS DR STE 230  
GREENVILLE SC 29601-3996

Patient: GILLIARD, MARVIN FP7763

Pulmonary Labs: Final 04/16/2007 13:22 T. Huang, MD

## PULMONARY FUNCTION TEST

|           |             | PRE   |       |       | POST |       |      |
|-----------|-------------|-------|-------|-------|------|-------|------|
|           |             | Ref   | Best  | %Pred | Best | %Pred | %Chg |
| FVC       | Liters      | 5.24  | 2.26  | 43    |      |       |      |
| FEV1      | Liters      | 4.28  | 2.06  | 48    |      |       |      |
| FEV1/FVC  | %           | 82    | 91    |       |      |       |      |
| FEF25-75% | L/sec       | 4.36  | 3.75  | 86    |      |       |      |
| PEF       | L/sec       |       | 7.48  |       |      |       |      |
| MVV       | L/min       |       | 89    |       |      |       |      |
| Vtg       | Liters      |       | 2.12  |       |      |       |      |
| VC        | Liters      | 5.24  | 2.32  | 44    |      |       |      |
| TLC       | Liters      | 6.94  | 3.03  | 44    |      |       |      |
| RV        | Liters      | 1.77  | 0.72  | 41    |      |       |      |
| RV/TLC    | %           | 25    | 24    |       |      |       |      |
| FRC PL    | Liters      | 3.44  | 1.70  | 49    |      |       |      |
| ERV       | Liters      | 1.73  | 0.98  | 57    |      |       |      |
| IC        | Liters      | 3.46  | 1.19  | 34    |      |       |      |
| DLCO      | mL/mmHg/min | 30.9  | 8.4   | 27    |      |       |      |
| VA        | Liters      |       | 2.84  |       |      |       |      |
| IVC       | Liters      |       | 2.17  |       |      |       |      |
| BHT       | Sec         |       | 10.51 |       |      |       |      |
| Raw       | cmH2O/L/sec | 1.32  | 1.17  | 89    |      |       |      |
| Gaw       | L/sec/cmH2O | 0.827 | 0.853 | 103   |      |       |      |
| sRaw      | cmH2O/L/s/L | 4.53  | 2.48  | 55    |      |       |      |
| sGaw      | L/s/cmH2O/L | 0.214 | 0.403 | 189   |      |       |      |

## Spiro Tech Comment:

Patient effort and cooperation good.

## Spiro Interp:

Spirometry demonstrates no airway obstruction. Lung volumes are consistent with moderate restrictive lung disease. The diffusing capacity for carbon monoxide is substantially reduced. This interpretation of diffusing capacity does not take into account the patient's hemoglobin (unavailable at the time of testing).

Interpreted by T. Huang, MD

Patient: GILLIARD, MARVIN FP7763

GENLAB Chemistry: Final 04/16/2007 14:38 Acc# 000710607447 Acct# 125855

## BASIC METABOLIC PANEL

|                |      |        | Reference  |
|----------------|------|--------|------------|
| SODIUM         | 142  | mmol/L | [135-145]  |
| POTASSIUM      | 4.7  | mmol/L | {3.2-4.8}  |
| CHLORIDE       | 102  | mmol/L | [98-108]   |
| CARBON DIOXIDE | 28   | mmol/L | [21-30]    |
| UREA NITROGEN  | 10   | mg/dL  | [7-21]     |
| CREATININE     | 0.9  | mg/dL  | [0.7-1.4]  |
| CALCIUM        | 10.2 | mg/dL  | [8.7-10.2] |
| GLUCOSE        | 80   | mg/dL  | [70-140]   |

Please note that the above listed reference range  
is for NONFASTING GLUCOSE levels only. FASTING GLUCOSE  
reference ranges are shown below:

## FASTING GLUCOSE REFERENCE RANGE

NORMAL: 70 - 99 mg/dL  
 PREDIABETES: 100 - 125 mg/dL  
 DIABETES: > 125 mg/dL

## GFR (MDRD)

GFR: >60 mL/min/1.73 sq m if Non African-American  
 GFR: >60 mL/min/1.73 sq m if African-American

## Interpretive Ranges for Patients with Chronic Kidney Disease:

GFR 59-30: Moderate decrease (CKD Stage 3)  
 GFR 29-15: Severe decrease (CKD Stage 4)  
 GFR <15: Kidney Failure (CKD Stage 5)

Note: These GFR calculations do not apply in acute situations  
 when GFR is changing rapidly or in patients on dialysis.

ATTENDING MD:  
 HUANG, YUH-CHIN TONY

ORDERING MD:  
 DR. TONY HUANG

PERFORMED BY:  
 DUHS FRANKLIN LAB 4425 BEN FRANKLIN BLVD DURHAM, NC 27704

Patient: GILLIARD, MARVIN FP7763

GENLAB COAG: Final 04/16/2007 14:38 Acc# 000710607400 Acct# 125855

PROTHROMBIN TIME

|                      |      | sec | Reference   |
|----------------------|------|-----|-------------|
| PROTHROMBIN- PATIENT | 12.3 |     | [11.1-13.0] |
| PROTHROMBIN- RATIO   | 1.0  |     | [0.9-1.1]   |
| PROTHROMBIN- INR     | 1.1  |     | [0.9-1.1]   |

Reference Ranges:

DVT/PE/PVD = INR 2.0 - 3.0  
 Mechanical Heart Valve = INR 2.5 - 3.5

NOTE: The INR is not a PT Ratio and is valid only for Coumadin patients

ATTENDING MD:

HUANG, YUH-CHIN TONY

ORDERING MD:

DR. TONY HUANG

PERFORMED BY:

COAG CLIN LAB RM 128 CARL BLDG DUMC DURHAM, NC 27710

Patient: GILLIARD, MARVIN FP7763

GENLAB COAG: Final 04/16/2007 14:38 Acc# 000710607400 Acct# 125855

ACT PARTIAL THROMBOPLASTIN TIM

|                                |      |     |             |
|--------------------------------|------|-----|-------------|
| ACT PARTIAL THROMBOPLASTIN TIM | 30.5 | sec | Reference   |
|                                |      |     | [23.1-31.5] |

Therapeutic Range (Heparin) = 63-109 seconds

Note: The therapeutic range for Heparin has been determined using ex-vivo whole blood samples and therapeutic Heparin level of 0.25-0.45 anti-factor Xa units.

ATTENDING MD:

HUANG, YUH-CHIN TONY

ORDERING MD:

DR. TONY HUANG

PERFORMED BY:

COAG CLIN LAB RM 128 CARL BLDG DUMC DURHAM, NC 27710

Patient: GILLIARD, MARVIN FP7763

GENLAB Immunology: Final 04/16/2007 14:38 Acc# 000710607400 Acct# 125855

IMMUNOGLOBULIN E

|                  |    |       |                      |
|------------------|----|-------|----------------------|
| IMMUNOGLOBULIN E | 72 | IU/mL | Reference<br>[4-269] |
|------------------|----|-------|----------------------|

ATTENDING MD:  
HUANG, YUH-CHIN TONY

ORDERING MD:  
DR. TONY HUANG

PERFORMED BY:  
PED IMMUN RM109 RES PARK BLDG III DUMC DURHAM NC 27710



Patient: GILLIARD, MARVIN FP7763

GENLAB Immunology: Final 04/16/2007 14:38 Acc# 000710607400 Acct# 125855

IMMUNOGLOBULINS (IGG, IGM, IGA)

|                                                                                                                                                 |       | mg/dL | Reference  |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-------|-------|------------|
| IMMUNOGLOBULIN G                                                                                                                                | *1670 |       | [588-1573] |
| NOTE: African-American reference ranges differ slightly from those listed. Please call the Immunology Lab at 684-6939 for race specific ranges. |       |       |            |
| IMMUNOGLOBULIN A                                                                                                                                | 251   | mg/dL | [46-287]   |
| IMMUNOGLOBULIN M                                                                                                                                | *44   | mg/dL | [57-237]   |

ATTENDING MD:  
HUANG, YUH-CHIN TONY

ORDERING MD:  
DR. TONY HUANG

PERFORMED BY:  
PED IMMUN RM109 RES PARK BLDG III DUMC DURHAM NC 27710

Patient: GILLIARD, MARVIN FP7763

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GENLAB Immunology: Final 04/16/2007 14:38 Acc# 000710607400 Acct# 125855

RHEUMATOID FACTOR

|                   |     |       | Reference |
|-------------------|-----|-------|-----------|
| RHEUMATOID FACTOR | <20 | IU/mL | [<20]     |

ATTENDING MD:  
HUANG, YUH-CHIN TONY

ORDERING MD:  
DR. TONY HUANG

PERFORMED BY:  
CLIN IMMUN RM108 RES PARK BLDG III DUMC DURHAM NC 27710

Patient: GILLIARD, MARVIN FP7763

GENLAB Hematology: Final 04/16/2007 14:38 Acc# 000710607399 Acct# 125855

SEDIMENTATION RATE-AUTOMATED

|                              |     |        |                     |
|------------------------------|-----|--------|---------------------|
| SEDIMENTATION RATE-AUTOMATED | *20 | MM@1HR | Reference<br>[0-15] |
|------------------------------|-----|--------|---------------------|

ATTENDING MD:  
HUANG, YUH-CHIN TONY

ORDERING MD:  
DR. TONY HUANG

PERFORMED BY:  
DUHS FRANKLIN LAB 4425 BEN FRANKLIN BLVD DURHAM, NC 27704

Patient: GILLIARD, MARVIN FP7763

Lab Report: Final 04/16/2007 14:38 Acc# 000710607370 Acct# 125855

## HYPERSENSITIV PNEOMONITIS SERO

|                      |      |      | Reference |
|----------------------|------|------|-----------|
| HYPERSENS.T.VULGARIS | 17.2 | mg/L | [<=23.9]  |

This test was developed and its performance characteristics determined by Laboratory Medicine and Pathology, Mayo Clinic, Rochester MN. It has not been cleared or approved by the U.S. Food and Drug Administration.

Test Performed by:  
Mayo Clinic Dpt of Lab Med and Pathology  
200 First Street SW, Rochester, MN 55905  
Laboratory Director: Franklin R. Cockerill, III, M.D.

|                   |      |      |          |
|-------------------|------|------|----------|
| HYPERSENS.M.FAENI | 6.68 | mg/L | [<=13.2] |
|-------------------|------|------|----------|

This test was developed and its performance characteristics determined by Laboratory Medicine and Pathology, Mayo Clinic, Rochester MN. It has not been cleared or approved by the U.S. Food and Drug Administration.

|                       |      |      |          |
|-----------------------|------|------|----------|
| HYPERSENS.A.FUMIGATUS | 53.5 | mg/L | [<=80.1] |
|-----------------------|------|------|----------|

ATTENDING MD:  
HUANG, YUH-CHIN TONY

ORDERING MD:  
DR. TONY HUANG

PERFORMED BY:  
MAYO MEDICAL LABORATORIES ROCHESTER, MINNESOTA

Patient: GILLIARD, MARVIN FP7763

GENLAB Immunology: Final 04/16/2007 14:38 Acc# 000710607338 Acct# 125855

ANTI-NUCLEAR ANTIBODY TITER

ANTI-NUCLEAR ANTIBODY TITER #1 \*1:160 Reference  
[NEGATIVE]

Reference Ranges for ANA Titers

\*\*\*\*\*

- 1:40 - Weakly positive, usually not clinically significant.
- 1:160 - Low titer positive, result may be clinically significant.
- 1:640 - Moderately high titer positive, result may be clinically significant.
- 1:2560 - High titer positive, result may be clinically significant.

ANA PATTERN #1 Speckled

ATTENDING MD:  
HUANG, YUH-CHIN TONY

ORDERING MD: DR., TONY

PERFORMED BY:  
CLIN IMMUN RM108 RES PARK BLDG III DUMC DURHAM NC 27710

Patient: GILLIARD, MARVIN FP7763

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GENLAB Immunology: Final 04/16/2007 14:38 Acc# 000710607338 Acct# 125855

ANTI-NUCLEAR ANTIBODY SCREEN

ANTI-NUCLEAR ANTIBODY SCREEN      \*POSITIVE  
CYTOPLASMIC SPECKLING PRESENT

Reference  
[NEGATIVE]

ATTENDING MD:  
HUANG, YUH-CHIN TONY

ORDERING MD:  
DR. TONY HUANG

PERFORMED BY:  
CLIN IMMUN RM108 RES PARK BLDG III DUMC DURHAM NC 27710

Patient: GILLIARD, MARVIN FP7763

GENLAB Hematology: Final 04/16/2007 14:38 Acc# 000710607338 Acct# 125855

## AUTO BLOOD CT WITH AUTO DIFF

|                        |       |                   | Reference   |
|------------------------|-------|-------------------|-------------|
| HEMOGLOBIN             | 13.7  | g/dL              | [13.7-17.3] |
| HEMATOCRIT             | 0.44  | L/L               | [0.39-0.49] |
| RED BLOOD CELL COUNT   | 5.46  | X10 <sup>12</sup> | [4.37-5.74] |
| MCH                    | *25.1 | pg                | [26.5-34.0] |
| MCHC                   | *31.3 | %                 | [31.5-36.3] |
| RDW-CV                 | 14.3  | %                 | [11.5-14.5] |
| MCV                    | 80    | fL                | [80-98]     |
| NUCLEATED RBC %        | 0.0   | /100WC            |             |
| NUCLEATED RBC COUNT    | 0.00  | X10 <sup>9</sup>  | [0.00-0.00] |
| PLATELET COUNT /L      | 402   | X10 <sup>9</sup>  | [150-450]   |
| WHITE BLOOD CELL COUNT | 7.1   | X10 <sup>9</sup>  | [3.2-9.8]   |
| NEUTROPHIL %           | 57.6  | %                 | [37.0-80.0] |
| LYMPHOCYTE %           | 30.0  | %                 | [10.0-50.0] |
| MONOCYTE %             | 8.5   | %                 | [0.0-12.0]  |
| EOSINOPHIL %           | 3.1   | %                 | [0.0-7.0]   |
| BASOPHIL%              | 0.8   | %                 | [0.0-2.0]   |
| NEUTROPHIL COUNT       | 4.1   | X10 <sup>9</sup>  | [2.0-8.6]   |
| LYMPHOCYTE COUNT       | 2.1   | X10 <sup>9</sup>  | [0.6-4.2]   |
| MONOCYTE COUNT         | 0.6   | X10 <sup>9</sup>  | [0.0-0.9]   |
| EOSINOPHIL COUNT       | 0.22  | X10 <sup>9</sup>  | [0.00-0.70] |
| BASOPHIL COUNT         | 0.06  | X10 <sup>9</sup>  | [0.00-0.20] |

ATTENDING MD:  
HUANG, YUH-CHIN TONY

ORDERING MD:  
DR. TONY HUANG

PERFORMED BY:  
DUHS FRANKLIN LAB 4425 BEN FRANKLIN BLVD DURHAM, NC 27704

Patient: GILLIARD, MARVIN FP7763

AP Surgical Pathology: Final 04/23/2007 Acc# 00SO07012889 SPORN, THOMAS A. MD

Surg Path

CLINICAL HISTORY:

S/P right lung biopsies

GROSS EXAMINATION:

DRH case A: "DS-07-3894"  
Date of surgery: 04-18-07  
Number of slides: 8

Received from: Dr. Kenneth Ellington  
Durham Regional Hospital Pathology Division  
Tel: 470-5252 Fax: 470-7373

Accompanying letter addressed to Dr. Thomas A. Sporn

DRH path report received? Gross only

Material to be returned? Yes

MICROSCOPIC EXAMINATION:

Microscopic examination is performed.

DIAGNOSIS:

A. "RIGHT LUNG BIOPSY; RIGHT LUNG MIDDLE LOBE" REFERRED CONSULT, DS-07-3894,  
DURHAM REGIONAL HOSPITAL. DATE OF PROCEDURE 04-18-07:

1. "RIGHT LUNG BIOPSY":

PULMONARY TISSUE WITH DIFFUSE AND CHRONIC FIBROSING INTERSTITIAL  
PNEUMONITIS.

2. "RIGHT LUNG MIDDLE LOBE BIOPSY":

PULMONARY TISSUE WITH DIFFUSE AND CHRONIC FIBROSING INTERSTITIAL  
PNEUMONIA. SEE COMMENT.

COMMENT: Histologic features in the biopsy specimens are generally that of a uniform pattern of fibrosing interstitial pneumonitis with histologic features most in keeping with the cellular and fibrosing variants of nonspecific interstitial pneumonia (NSIP). The spectrum of histopathologic findings are requisite for a diagnosis of hypersensitivity pneumonia (HP, extensive allergic alveolitis) are not identified but a chronic form of HP is also in the differential diagnosis and requires clinical correlation. Additional diagnostic considerations include later stages of acute interstitial pneumonia (AIP), but the typical histologic features of diffuse acute and severe alveolar injury are not present.

I certify that I personally conducted the diagnostic evaluation of the above specimen(s) and have rendered the above diagnosis(es).

Thomas A. Sporn, M.D. Pager # 970-1868

Electronically signed: 04/25/07

Performed by: SURGICAL PATHOLOGY BOX 3712 DUMC DURHAM, NC 27710



Patient: GILLIARD, MARVIN FP7763

---

Dictated Rpt: Final 04/25/2007 00:00

Pulmonary Telephone Note

FP7763

GILLIARD, MARVIN

4/25/2007

DOB: 12/3/1969 Age: 37

Pulmonary Telephone Note

Yuh-Chin T. Huang, MD

Telephone conversation note

This patient is a 37-year-old black male patient who was referred to Durham Regional Hospital for admission for VATS biopsy. I saw the patient on April 16, 2007 for interstitial lung disease. The patient was discharged from Durham Regional Hospital on April 21. Surgical pathology, which I reviewed with the pathologist, showed diffuse and chronic fibrosing interstitial pneumonia, which could be the variant of non-specific interstitial pneumonia or NSIP. I called the patient and started the patient on 60 mg of prednisone. I have explained to the patient about this pathology and the need to try prednisone. I have scheduled the patient to come back to see me in one month from today with repeat pulmonary function test.

YUH-CHIN TONY HUANG

Division of Pulmonary and Critical Care Medicine

ELECTRONICALLY SIGNED ON

May 01, 2007 AT 9:21:28 PM

YH/dai

Dictated on: 4/29/2007

Transcribed on: 4/30/2007

Patient: GILLIARD, MARVIN FP7763

Dictated Rpt: Final 05/15/2007 00:00

Pulmonary Return Visit

FP7763

GILLIARD, MARVIN  
5/15/2007  
DOB: 12/3/1969 Age: 37  
Pulmonary Return Visit  
Yuh-Chin T. Huang, MD  
Duke Case Number 356194

**History of Present Illness:** This is a 37-year-old black male patient who returns to clinic for regular followup. I last saw the patient in April 2007. At that time, I refer the patient to Durham Regional Hospital for open lung biopsy for interstitial lung disease. The pathology report indicated nonspecific interstitial pneumonitis or NSIP. He was started with 60 mg per day of prednisone about three weeks ago. The patient returned to the clinic today stating that his dyspnea has had some improvement. He was able to do more activity without dyspnea. His body weight remains at 268 pounds, unchanged. Other than that he has had no other complaints. He denies fevers, night sweats or joint pain.

**Physical Exam:**

**Constitutional:** Revealed a patient who is in no respiratory distress. Blood pressure 146/94, pulse 77, respirations 16, temperature 96.7, weight 268 pounds, and room air saturation is 95%.

**HEENT:** Unremarkable.

**Neck:** Supple. No lymph node, no JVD.

**Lungs:** Clear. No wheezes, rhonchi or rales.

**Heart:** S1 and S2. There is no murmur or gallop.

**Abdomen:** Benign. There is no organomegaly.

**Extremities:** No peripheral edema, cyanosis or clubbing.

**Skin:** No rashes.

**Musculoskeletal:** No joint swelling or deformity.

**Neurological:** The patient is alert and oriented x3 and there is no focal sign.

**Laboratory Data/Test Results:** Pulmonary function tests today showed an FVC of 2.52 L or 48% of predicted, FEV1 of 2.06 L or 48% of predicted, the FVC was somewhat better than the last time.

**Assessment and Plan:** This is a 37-year-old black male patient with nonspecific interstitial pneumonitis. He is currently on prednisone therapy. He appears to have some symptomatic improvement. I will continue the prednisone at 60 mg per day. The patient is schedule to return to the clinic in July. I will repeat the spirometry as well as CT scan of the chest at the next clinic visit. The CT scan of the chest will be done in South Carolina before the next clinic visit. I have also asked the patient to go and find exposure informations from his city government about the building in which he had been patrolling for a few years before it was shut down. His next return appointment is set in July. I have explained to the patient about these approaches and he fully understands.

YUH-CHIN TONY HUANG

<https://clinapp4.duhs.duke.edu:8081/ClinApp/PrintResult.asp?sServiceKey=E00003199635...> 8/3/2007 MBK 022

Division of Pulmonary and Critical Care Medicine  
ELECTRONICALLY SIGNED ON  
May 19, 2007 AT 9:57:00 AM

YTH/dai

Dictated on: 5/17/2007

Transcribed on: 5/18/2007

Patient: GILLIARD, MARVIN FP7763

Pulmonary Labs: Final 05/15/2007 15:03 T. Huang, MD

## PULMONARY FUNCTION TEST

|           |        | Ref  | PRE<br>Best | %Pred | POST<br>Best | %Pred | %Chg |
|-----------|--------|------|-------------|-------|--------------|-------|------|
| FVC       | Liters | 5.24 | 2.52        | 48    |              |       |      |
| FEV1      | Liters | 4.28 | 2.06        | 48    |              |       |      |
| FEV1/FVC  | %      | 82   | 82          |       |              |       |      |
| FEF25-75% | L/sec  | 4.36 | 2.46        | 56    |              |       |      |
| PEF       | L/sec  |      | 9.85        |       |              |       |      |

## Spiro Tech Comment:

Understanding, willingness to cooperate and ability to perform were satisfactory.

## Spiro Interp:

Spirometry demonstrates no airway obstruction. Formal lung volume measurements not available. The reduced spirometric vital capacity may reflect lung restriction or reduced effort.

Interpreted by T. Huang, MD

Patient: GILLIARD, MARVIN FP7763

Dictated Rpt: Final 07/30/2007 00:00

Pulmonary Return Visit

FP7763

GILLIARD, MARVIN  
7/30/2007  
DOB: 12/3/1969 Age: 37  
Pulmonary Return Visit  
Yuh-Chin T. Huang, MD  
Duke Case Number 0111J3

**History of Present Illness:** This is a 37-year-old black male patient, who has a diagnosis of hypersensitivity pneumonitis. He returns to the clinic today for regular followup. I saw the patient in May 2007. He was treated with prednisone 60 mg per day. During the course of the treatment, the patient also developed diabetes for which he had been treated by his primary care physician in South Carolina. From the pulmonary standpoint, the patient's respiratory status has improved. He is able to walk on level ground for long distance. He also is able to do housework including vacuuming. His functional status is in New York Heart Association Functional Class II. As for his diabetes, the patient's sugar has not been under good control and he is still escalating the dose of Lantus. Currently, he is on 24 units per day plus metformin 1000 mg b.i.d. His sugars are usually running between 300-400. He continues to have frequent urination. His prednisone is down to 30 mg per day.

**Physical Exam:**

**Constitutional:** Reveals a patient who is in no respiratory distress. Blood pressure is 128/80, pulse 92, respirations 18, temperature 97.4, weight 249 pounds, height 70 inches, and room air saturation is 92%.

**HEENT:** Unremarkable.

**Neck:** Supple. No lymph node or JVD.

**Lungs:** Clear. No rales, wheezes, or rhonchi.

**Heart:** S1 and S2. There is no murmur or gallop.

**Abdomen:** Benign. There is no organomegaly. Bowel sounds are present. Nontender.

**Extremities:** Show no peripheral edema, cyanosis, or clubbing.

**Skin:** No rashes.

**Musculoskeletal:** Show no joint swelling or deformity.

**Neurological:** The patient is alert and oriented x3 and there is no focal sign.

**Laboratory Data/Test Results:** I reviewed the patient's pulmonary function, which was done in South Carolina recently. The FVC and FEV1 are about the same as those in May 2007. The patient also had a CT of the chest done in South Carolina, but I do not have the film today for review. The report indicated the presence of multiple nodular infiltrates.

**Assessment and Plan:** This is a 37-year-old black male patient with hypersensitivity pneumonitis. The patient's pulmonary function has stabilized. The patient has improvement in his respiratory status. I will continue to taper prednisone by 10 mg per month. I will probably keep him at 10 mg of prednisone for a long time. As for his diabetes his insulin dose will need to be adjusted. I talked to an endocrinologist at Duke over the phone describing the situation. He had recommended increasing Lantus to 48 units per day and add regular insulin 12 units t.i.d. before meal. Patient is to continue to monitor the blood sugar by fingerstick four

<https://clinapp4.duhs.duke.edu:8081/ClinApp/PrintResult.asp?sServiceKey=j00000053674...> 8/3/2007 MBK 025

times a day. We will continue metformin 1000 mg b.i.d. at this time. The patient will need to be followed by either his primary care or an endocrinologist more closely in South Carolina. I have explained all these to the patient and he understands. His next appointment is set at three months.

YUH-CHIN TONY HUANG  
Division of Pulmonary and Critical Care Medicine  
ELECTRONICALLY SIGNED ON  
August 01, 2007 AT 1:43:26 PM

YTH/dai  
Dictated on: 7/31/2007  
Transcribed on: 8/1/2007

**3**

206

63729.9



Patient GILLIARD, MARVIN  
Attending

Birth Date 12/03/1969 Sex M  
MR # 249313305

Adm Date

DISCHARGE SUMMARY (Up to 999 latest results)

Table 1 of 1

|                      |                         |
|----------------------|-------------------------|
|                      | 2007<br>21 Apr<br>15:15 |
| DISCHARGE<br>SUMMARY | (1)                     |

Page created: Monday, June 25, 2007 10:28 AM For: 6DMDMR

Linked Report

(1) DISCHARGE SUMMARY

Apr 21, 2007 15:15

DURHAM REGIONAL HOSPITAL  
Durham, North Carolina  
Medical Record Department

Name: Gilliard, Marvin

Unit Number: 249-31-3305

Date Dictated: 04/20/2007

Date Transcribed: 04/21/2007

Billing Number: 05534384



DISCHARGE SUMMARY

Signed

ESA James P. Weaver, MD 04/27/2007 21:40

DATE OF ADMISSION: 04/18/2007

DATE OF DISCHARGE: 04/20/2007

ATTENDING PHYSICIAN: ESA James P. Weaver, MD

PRINCIPAL ADMISSION DIAGNOSIS: Chronic hypoxemic respiratory failure of unclear etiology.

PROCEDURES PERFORMED DURING THIS ADMISSION: Right-sided video-assisted thoracoscopic wedge resection x2 performed on 4/18/07 by Dr. Weaver.

HISTORY OF PRESENT ILLNESS: This is a 37-year-old gentleman who was referred to the pulmonary clinic for evaluation of a CT scan abnormality and dyspnea on exertion. The patient had been doing well until the summer of 2006 when he developed dyspnea on exertion while walking around the building during a regular checkup. The patient is a police officer. He later developed a cough with whitish sputum production and in the last five months started having occasional hemoptysis, especially upon awakening. The patient also has had occasional wheezing and has felt malaise since last summer. He went to see his primary care physician and had multiple imaging studies. These included a chest x-ray and CT scan which showed the presence of peripheral ground glass opacities consistent with interstitial lung disease. A bronchoscopy was also performed in 12/06. According to

Facility Durham Regional Hospital  
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Page 1 of 4

0045886060

MBK 027





Patient GILLIARD, MARVIN  
Attending

Birth Date 12/03/1969 Sex M  
MR # 249313305

Adm Date

the patient, everything from this was negative. He apparently tried a month of steroids with doses as high as 40 mg of prednisone. The patient did not notice any difference in symptoms while he was on steroids. A more recent CT scan performed in 3/07 showed persistence of his ground glass opacities, and the patient was referred to the pulmonary clinic for evaluation. The patient admits night sweats but no fevers. He also has noticed clubbing of his fingers since 12/06. Denies orthopnea or paroxysmal dyspnea. The patient was seen in the pulmonary clinic on 4/16/07. They felt that he had fairly significant interstitial lung disease; however, the etiology of this interstitial lung disease was not clear. With his environmental exposure history, the concern was for chronic hypersensitivity pneumonitis. They also considered diagnoses of sarcoidosis. The patient was referred to see Dr. Weaver for thoracoscopic biopsy. Thus, the patient presented to Dr. Weaver's clinic and a thoracoscopic biopsy was arranged.

PAST MEDICAL HISTORY:

1. Diabetes.
2. Allergies.
3. Obstructive sleep apnea for which the patient takes nasal CPAP.

PAST SURGICAL HISTORY:

1. LASIK surgery.
2. Removal of a cyst on his wrist.

ALLERGIES: The patient denied any medication allergies but does endorse a shellfish allergy.

SOCIAL/ENVIRONMENTAL HISTORY: The patient has been a police officer for 13 years. He was sent on patrol to an abandoned mill in the past, approximately 3-1/2 years ago. He went into the building once or twice a week for about a year and a half, and his last check of that building was about two years ago. Apparently sometime since then the fire department has closed off that area and prohibited anyone to walk in that building without respiratory protection. The reason for respiratory protection was not made clear to him. He also is not sure what the mill made prior to their closing down. He was told that they did some sort of dye work. He is a nonsmoker and he uses alcohol only socially. He is not following any particular diet or using any herbal medications.

PREADMISSION PHYSICAL EXAMINATION: The patient was not in acute distress. His blood pressure was 124/80, pulse 74, respirations 18, temperature 97.3, room air oxygen saturation was 95%. HEENT examination was within normal limits. Neck examination was within normal limits. Lung examination was significant for bilateral crackles diffusely. There were no wheezes or rhonchi appreciated. Heart had a normal S1, S2. There was no murmur or gallop. Abdomen was benign. There was no organomegaly. Bowel sounds were present. The abdomen was nontender. The musculoskeletal examination had no joint swelling or deformity. Skin examination was without rash except for dark discolorations on the palmar aspect of the fingers. Extremities: The patient has no peripheral edema. There was clubbing of his fingernails. Neurological: The patient was alert and oriented x3. Deep tendon reflexes were 2+ bilaterally. Cranial nerves intact. Sensory was intact. Muscle power was 5/5 bilaterally.

ADMISSION MEDICATIONS:

1. Metformin 1500 mg per day.
2. Lipitor 10 mg per day.
3. Diovan 80 mg per day.
4. Nasacort nasal spray.
5. Advair 250/50, 1 b.i.d. for two months.
6. Allegra 1 pill per day for two months.
7. ProAir p.r.n. for acute situations.

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MBK 028



Patient GILLIARD, MARVIN  
Attending

Birth Date 12/03/1969 Sex M  
MR # 249313305

Adm Date

**HOSPITAL COURSE:** After informed consent was obtained, the patient was taken to the operative theater on 4/18/07 by Dr. James Weaver where he underwent a noncomplicated right VATS thoracoscopic wedge resection x2. The patient tolerated this procedure without difficulty and was extubated and sent in stable condition to the PACU. Shortly thereafter, he met PACU discharge criteria and was discharged in stable condition to the general surgery floor. Upon arrival to the general surgery floor, the patient remained afebrile with stable vital signs. He continued on a PCA for pain management. His chest tube was to -20 cm of water suction. He was alert and oriented and in no acute distress. On 4/19/07, the patient had his chest tube placed to water seal. He had a chest x-ray which confirmed only the presence of a very small pneumothorax. This remained unchanged after the change to water seal instead of suction. The decision was made to wean the patient's O2. He was continued on CPAP through his hospital stay. On 4/20/07, the patient again had a chest x-ray which confirmed only a very small apical pneumothorax on the right. Thus, the chest tube was removed without incident. A followup chest x-ray after chest tube pull confirmed there was no interval increase in the patient's pneumothorax. The patient remained afebrile with stable vital signs. He did have an ongoing oxygen requirement throughout his hospital stay. It was difficult to wean him down from 2 L of oxygen. He did have 100% on 4 L and into the 90s on 2 L. Thus, oxygen for transport was arranged for the patient and he already had home oxygen set up from prior experience. Therefore the patient was deemed suitable for discharge and was eager to be discharged on 4/20/07. Oxygen was again arranged for him and a tank delivered to his room prior to discharge. The patient was discharged on 4/20/07 in stable condition.

**DISCHARGE DIET:** Patient to continue on a low-fat, low-cholesterol, diabetic diet.

**DISCHARGE ACTIVITIES:** The patient is not to drive while or consume alcohol while on pain medication. He is not to perform any heavy lifting or straining and he should not soak in the bath or swim. He may, however, shower.

**DISCHARGE INSTRUCTIONS:** The patient is to report to his physician any of the following should they occur: Fever greater than 101.5 degrees Fahrenheit, increased pain, increased shortness of breath, increased redness, swelling or drainage from his incision sites, any questions or concerns.

**DISCHARGE MEDICATIONS:**

1. Lasix 40 mg p.o. b.i.d. 2. K-Dur 40 mEq p.o. b.i.d. 3. Diovan 80 mg p.o. every day. 4. Lipitor 10 mg p.o. every day. 5. Advair 250/50, 2 puffs inhaled twice daily. 6. Allegra 180 mg p.o. every day. 7. Nasacort inhaled one dose daily. 8. ProAir Advair inhaler p.r.n. 9. Metformin 1000 mg q.a.m. and 500 mg q.p.m. with meals. 10. Ipratropium inhaler 34 mcg every day and p.r.n. 11. Oxycodone 5-15 mg p.o. q.4h. p.r.n. pain. 12. Colace 100 mg p.o. b.i.d. while on pain medications.

**FOLLOWUP:** The patient will follow up with Dr. Huang who he previously saw in pulmonary clinic. He understands that he can reach Dr. Huang at 919-684-3069. Dr. Huang's office has also been contacted and we requested that they contact the patient for a followup appointment within the next two weeks. This will be a followup of the patient's biopsy that he had performed during this hospital stay. The patient is also advised to follow up with Dr. Weaver and he may be reached at 471-0215. He is to follow up within 14 days and he understands that he is to call for an appointment for 14 days or sooner if needed.

Facility Durham Regional Hospital  
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MBK 029



Patient GILLIARD, MARVIN  
Attending

Birth Date 12/03/1969 Sex M  
MR # 249313305

Admi Date

ESA James P. Weaver, MD

Kyla Bennett, MD, DICTATING  
KB/TRA

Doc #: 845296

Job #: 000776671

cc: Kyla Bennett, MD

ESA James P. Weaver, MD

Wang, M.D.  
pulmonology

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Facility Durham Regional Hospital  
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MBK 030

**4**

RECEIVED

SEP 06 2007

CITY ATTORNEY

# REPORT

January 26, 2005

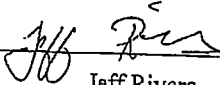
## Asbestos Survey

*for*

104 & 106 South Hudson Street  
Greenville, SC

Prepared for:  
Mr. Don Buchanan  
Asbestos & Demolition, Inc.

Prepared by:  
Applied Building Sciences, Inc.  
205 Columbia Avenue  
Chapin, SC 29036

  
Jeff Rivers  
SCDHEC License Number 23065

MBK 031

104 & 106 South Hudson Street  
Asbestos Survey

Applied Building Sciences, Inc.

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104 & 106 South Hudson Street  
Asbestos Survey

Applied Building Sciences, Inc.

## 1.0 EXECUTIVE SUMMARY

*Applied Building Sciences, Inc. (ABS)* was retained by Asbestos & Demolition to update an asbestos survey at 104 & 106 South Hudson Street, located in Greenville, S.C. The original survey was performed by AAA Environmental in October 1998. The objective of the *ABS* survey was to identify and physically assess suspect asbestos-containing building materials (ACBM) not addressed in the AAA Environmental report and to update the AAA Environmental report to meet South Carolina Department of Health and Environmental Control Regulation 61-86.1 Standards of Performance for Asbestos Projects, Effective Date May 22, 1998.

The building is approximately 20,000 ft<sup>2</sup> located on one floor with a brick exterior finish.

All materials containing > 1% asbestos in the AAA Environmental report were assumed to still be positive and were not re-sampled. All quantities presented in the AAA Environmental report were assumed to be accurate. Additional samples of the following materials were collected:

1. Pipe Insulation
2. Pipe Insulation in Boiler Room
3. Hard Joints in Boiler Room

Materials containing > 1% asbestos from the AAA Environmental report and *ABS* investigation include approximately 502 LF of pipe insulation, approximately 250 ft<sup>2</sup> of 9 x 9 brown floor tile and mastic, approximately 175 ft<sup>2</sup> of transite panels located in the restroom, approximately 300 ft<sup>2</sup> of boiler insulation, approximately 10,000 ft<sup>2</sup> of roofing shingles, approximately 700 ft<sup>2</sup> of roof flashing material over the machine shop, approximately 700 ft<sup>2</sup> of flashing material on parapet wall over the machine shop, approximately 20,500 ft<sup>2</sup> of bituminous roofing material over the roof adjacent to the fire damaged section, and 12 x 12 gray floor tile in the fire damaged section of the building.

104 & 106 South Hudson Street  
Asbestos Survey

*Applied Building Sciences, Inc.*

### Limitations

This survey and report have been executed at the request of Mr. Don Buchanan and Asbestos & Demolition and are intended solely for their use. All work related to this project has been conducted in keeping with accepted standards of environmental consulting as practiced in the State of South Carolina. No unnecessary destructive measures were undertaken during this survey. *ABS* has relied, in part, on information derived from secondary sources and, except as set forth herein, *ABS* has made no independent investigation as to the accuracy or completeness of the information derived from such secondary sources. No warranty is expressed or implied. A breakdown of suspect materials and the associated bulk samples can be found in the tables that follow.



104 & 106 South Hudson Street  
Asbestos Survey

Applied Building Sciences, Inc.

TABLE #1

ASBESTOS CONTAINING BUILDING MATERIAL (ACBM)

Project Name: A&D - 104 & 106 South Hudson Street

Location: Greenville, SC Date: January 26, 2005

| Observed ACBM               |                |                        |
|-----------------------------|----------------|------------------------|
| Material Description        | AHERA Category | Quantity               |
| Pipe Insulation             | TSI            | 502 LF                 |
| 9 x 9 Brown Floor Tile      | Misc.          | 250 ft <sup>2</sup>    |
| Mastic under Floor Tile     | Misc.          | 250 ft <sup>2</sup>    |
| Transite Panels             | Misc.          | 175 ft <sup>2</sup>    |
| Boiler Insulation           | TSI            | 300 ft <sup>2</sup>    |
| Roofing Shingles            | Misc.          | 10,000 ft <sup>2</sup> |
| Roof Flashing               | Misc.          | 700 ft <sup>2</sup>    |
| Flashing on Parapet Wall    | Misc.          | 700 ft <sup>2</sup>    |
| Bituminous Roofing Material | Misc.          | 20,500 ft <sup>2</sup> |
| 12 x 12 Gray Floor Tile     | Misc.          |                        |

104 & 106 South Hudson Street  
Asbestos Survey

Applied Building Sciences, Inc.

TABLE #2  
FRIABLE ACBM

| Friable ACBM            |                        |
|-------------------------|------------------------|
| Material                | Quantity               |
| Pipe Insulation         | 502 LF                 |
| 9 x 9 Brown Floor Tile  | 250 ft <sup>2</sup>    |
| Boiler Insulation       | 300 ft <sup>2</sup>    |
| Roofing Shingles        | 10,000 ft <sup>2</sup> |
| 12 x 12 Gray Floor Tile |                        |

TABLE #3  
NON-FRIABLE ACBM

| Non-Friable ACBM            |                |                        |
|-----------------------------|----------------|------------------------|
| Material Description        | AHERA Category | Quantity               |
| Mastic under Floor Tile     | Misc.          | 250 ft <sup>2</sup>    |
| Transite Panels             | Misc.          | 175 ft <sup>2</sup>    |
| Roof Flashing               | Misc.          | 700 ft <sup>2</sup>    |
| Flashing on Parapet Wall    | Misc.          | 700 ft <sup>2</sup>    |
| Bituminous Roofing Material | Misc.          | 20,500 ft <sup>2</sup> |

104 & 106 South Hudson Street  
Asbestos Survey

Applied Building Sciences, Inc.

TABLE #4  
ASBESTOS - SUSPECT MATERIAL DATA SHEET

Project Name: A&D - 104 & 106 South Hudson Street

Location: Greenville, SC Date: January 26, 2005

| Suspect Mat. No. | Material Description        | Quantity               | Location                         | Present Condition | Potential Disturb. | Asbestos Finding (P or N) |
|------------------|-----------------------------|------------------------|----------------------------------|-------------------|--------------------|---------------------------|
| HM - 01          | Pipe Insulation             | 502 LF                 | Throughout                       | F/SD              | PSD                | P                         |
| HM - 02          | Pipe Insulation             | 30 LF                  | Boiler Room                      | F/D               | PSD                | N                         |
| HM - 03          | Hard Joints                 | 16 ea.                 | Boiler Room                      | F/D               | PSD                | N                         |
| HM - 04          | 9 x 9 Brown Floor Tile      | 250 ft <sup>2</sup>    | Back Room at Former Fur Area     | F/SD              | PSD                | P                         |
| HM - 05          | Mastic under Floor Tile     | 250 ft <sup>2</sup>    | Back Room at Former Fur Area     | NF/D              | PSD                | P                         |
| HM - 06          | Transite Panels             | 175 ft <sup>2</sup>    | Restroom                         | NF/SD             | PSD                | P                         |
| HM - 07          | Boiler Insulation           | 300 ft <sup>2</sup>    | Boiler Room                      | F/D               | PSD                | P                         |
| HM - 08          | Roofing Shingles            | 10,000 ft <sup>2</sup> | Fire Damaged Area                | F/SD              | PSD                | P                         |
| HM - 09          | Roof Flashing               | 700 ft <sup>2</sup>    | Machine Shop                     | NF/D              | PSD                | P                         |
| HM - 10          | Flashing on Parapet Wall    | 700 ft <sup>2</sup>    | Machine Shop                     | NF/D              | PSD                | P                         |
| HM - 11          | Bituminous Roofing Material | 20,500 ft <sup>2</sup> | Back Section / Fire Damaged Area | NF/D              | PSD                | P                         |
| HM - 12          | 12 x 12 Gray Floor Tile     |                        | Fire Damaged Area                | F/SD              | PSD                | P                         |

Present Condition

F = Friable      G = Good (Very localized limited damage)  
 NF = Non-Friable      D = Damaged (Damage of less than 10% distributed and less than 25% localized)  
                                  SD = Significantly Damaged (Damage equal to greater than 10% distributed / 25% localized)

Potential for Future Disturbance

LPD = Low Potential for Disturbance (Contact, Vibration, and Air Erosion all of Low Concern)  
 PD = Potential for Damage (Contact, Vibration, or Air Erosion of Moderate Concern)  
 PSD = Potential for Significant Damage (Contact, Vibration, and Air Erosion of High Concern)

Asbestos Finding

P = Positive

N = Negative    A = Assumed

104 & 106 South Hudson Street  
Asbestos Survey

*Applied Building Sciences, Inc.*

TABLE #5

## ASBESTOS - BULK SAMPLE DATA SHEET

Project Name: A&D - 104 & 106 South Hudson Street  
Location: Greenville, SC Date: January 26, 2005

[illegible]

\* Chry = Chrysotile      Amos = Amosite      Croc = Crocidolite  
NAD = No Asbestos Detected      DNA = Did Not Analyze

*104 & 106 South Hudson Street  
Asbestos Survey*

*Applied Building Sciences, Inc.*

## LABORATORY RESULTS

**EMSL Analytical, Inc.**

706 Grafin Street, Kernersville, NC 27284

Phone: (336) 992-1026 Fax: (336) 992-4175 Email: [greensborolab@emsl.com](mailto:greensborolab@emsl.com)**EMSL**

Attn: **Lee Capell**  
**Applied Building Sciences**  
**205 Columbia Avenue**  
**Chapin, SC 29036**

Fax: (803) 345-2823

Phone: (803) 345-3833

Project: A &amp; D - South Hudson St.

Customer ID: ESE52A

Customer PO:

Received: 01/21/05 10:00 AM

EMSL Order: 020500231

EMSL Proj:

Analysis Date: 1/22/2005

Report Date: 1/22/2005

### Asbestos Analysis of Bulk Materials via EPA 600/R-93/116 Method using Polarized Light Microscopy

| Sample                    | Location                    | Appearance                                 | Non-Asbestos                                   |               | Asbestos       |
|---------------------------|-----------------------------|--------------------------------------------|------------------------------------------------|---------------|----------------|
|                           |                             |                                            | % Fibrous                                      | % Non-Fibrous | % Type         |
| HS - 01<br>020500231-0001 | Aircell Pipe Insulation     | Gray/Tan/Brown<br>Fibrous<br>Heterogeneous | 1% Synthetic<br>20% Cellulose                  | 4% Matrix     | 75% Chrysotile |
| HS - 02<br>020500231-0002 | Aircell Pipe Insulation     | Tan/Gray/White<br>Fibrous<br>Heterogeneous | 1% Synthetic<br>25% Cellulose                  | 4% Matrix     | 70% Chrysotile |
| HS - 03<br>020500231-0003 | Aircell Pipe Insulation     | Tan/Gray/White<br>Fibrous<br>Heterogeneous | 1% Synthetic<br>25% Cellulose                  | 4% Matrix     | 70% Chrysotile |
| HS - 04<br>020500231-0004 | Boiler Room Pipe Insulation | Orange/Tan<br>Fibrous<br>Homogeneous       | 100% Min. Wool                                 | <1% Matrix    | None Detected  |
| HS - 05<br>020500231-0005 | Boiler Room Pipe Insulation | Orange/Tan<br>Fibrous<br>Homogeneous       | 100% Min. Wool                                 | <1% Matrix    | None Detected  |
| HS - 06<br>020500231-0006 | Boiler Room Pipe Insulation | Orange/Tan<br>Fibrous<br>Homogeneous       | 100% Min. Wool                                 | <1% Matrix    | None Detected  |
| HS - 07<br>020500231-0007 | Hard Joints                 | Gray/Tan/Brown<br>Fibrous<br>Heterogeneous | 1% Synthetic<br>45% Min. Wool<br>10% Cellulose | 44% Matrix    | None Detected  |

Analyst(s)

Scott Combs (9)

  
 Joe McOscar  
 or other approved signatory

Due to magnification limitations inherent in PLM, asbestos fibers in dimensions below the resolution capability of PLM may not be detected. Samples reported as <1% or none detected may require additional testing by TEM to confirm asbestos quantities. The above test report relates only to the items tested and may not be reproduced in any form without the express written approval of EMSL Analytical, Inc. EMSL's liability is limited to the cost of analysis. EMSL bears no responsibility for sample collection activities or analytical method limitations. Interpretation and use of test results are the responsibility of the client.

Analysis performed by EMSL Greensboro (NVLAP #102104-0)

PLM-1

1  
MBK 040

**EMSL Analytical, Inc.**

706 Grallin Street, Kernersville, NC 27284

Phone: (336) 992-1026 Fax: (336) 992-4175 Email: [greensboroleb@emsl.com](mailto:greensboroleb@emsl.com)**EMSL**

Attn: **Lee Capell**  
**Applied Building Sciences**  
**205 Columbia Avenue**  
**Chapin, SC 29036**

Fax: (803) 345-2823 Phone: (803) 345-3833  
Project: A & D - South Hudson St.

Customer ID: ESE52A  
Customer PO:  
Received: 01/21/05 10:00 AM  
EMSL Order: 020500231

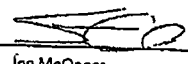
EMSL Proj:  
Analysis Date: 1/22/2005  
Report Date: 1/22/2005

**Asbestos Analysis of Bulk Materials via EPA 600/R-93/116 Method using Polarized  
Light Microscopy**

| Sample                    | Location    | Appearance     | Non-Asbestos  |               | Asbestos      |
|---------------------------|-------------|----------------|---------------|---------------|---------------|
|                           |             |                | % Fibrous     | % Non-Fibrous | % Type        |
| HS - 08<br>020500231-0008 | Hard Joints | Gray/Tan/Brown | 1% Synthetic  | 44% Matrix    | None Detected |
|                           |             | Fibrous        | 45% Min. Wool |               |               |
|                           |             | Heterogeneous  | 10% Cellulose |               |               |
| HS - 09<br>020500231-0009 | Hard Joints | Gray/Tan/Brown | 1% Synthetic  | 44% Matrix    | None Detected |
|                           |             | Fibrous        | 45% Min. Wool |               |               |
|                           |             | Heterogeneous  | 10% Cellulose |               |               |

Analyst(s)

Scott Combs (g)

  
Joe McOscar  
or other approved signatory

Due to magnification limitations inherent in PLM, asbestos fibers in dimensions below the resolution capability of PLM may not be detected. Samples reported as <1% or none detected may require additional testing by TEM to confirm asbestos quantities. The above test report relates only to the items tested and may not be reproduced in any form without the express written approval of EMSL Analytical, Inc. EMSL's liability is limited to the cost of analysis. EMSL bears no responsibility for sample collection activities or analytical method limitations. Interpretation and use of test results are the responsibility of the client.  
Analysis performed by EMSL Greensboro (NVLAP #102104-0)

PLM-1

THIS IS THE LAST PAGE OF THE REPORT.

2  
MBK 041

**5**



**From:** Marvin Gilliard  
**To:** majorc@greatergreenville.com  
**Date:** 5/16/2007 10:07 AM

**CC:** maddenm@greatergreenville.com

Hi Claudia I went to the doctor on 5/15/07 and I found out more about my condition. the doctor said that my specific condition is called (NSIP) Non-Sspecific Interstitial Pneumonitis which is in the pulminary fibrosis family but not pulminary fibrosis. he wants to wait until July 16, 2007 to see how I am responding to the prednlisone and other medicine. he also said that he needs to know what type of chemicals were in the building at 104 south hudson st. so that he could better isolate what I was exposed to. I need your help on obtaining the demolition report did on the city's behalf at this location. I have gained 5% more Lung compacity in three weeks. Doctor Huang thinks that I have a good chance of getting most of it back. He has your letter but will respond after July 16 visit.

MBK 042

**From:** Marvin Gilliard  
**To:** Gammons, Debra  
**Date:** 5/22/2007 8:46 AM  
**Subject:** Hi Debra I am requesting the environmental report that was completed on location of 104 South Hudson

**CC:** Madden, Mike; Major, Claudia; Smith, Robin; Wilfong, Terri  
Hi Debra I am requesting the environmental report that was completed on location of 104 South Hudson st. located within the city limits of Greenville SC. I was told that I have to go through legals specifically you to get access to the information. I have spoke with a representative O Carolina Wrecking Co. who was contracted by the city to demolish the building. The representative told me that they would be happy to resend the report that they already gave the city back in 2005 when they demolished the building. They only ask that Steve Landrith send them a letter on city letterhead requesting the information. I spoke with steve and he stated that I would have to go through legals. My doctor needs this information so that he may treat my condition and speed my healing process. He also told me that osha standards allows me full access for health reasons. call me 444-6324.

MBK 043

**6**

Form 6251  
Revised 12/19/2001  
Print or type in  
black ink

Page 1

BUDGET & CONTROL BOARD  
South Carolina Retirement Systems

Member's Disability Report

(please complete all sections)

To be completed by member or legal representative

| Section I                                          |                                       |                                                      | PERSONAL INFORMATION |                                                 |
|----------------------------------------------------|---------------------------------------|------------------------------------------------------|----------------------|-------------------------------------------------|
| 1. Last Name & Suffix<br><u>Gilliard</u> <u>SR</u> |                                       | 2. First/Middle Name<br><u>Marvin</u> <u>Lourell</u> |                      | 3. Social Security Number<br><u>249-31-3305</u> |
| 4. Date of Birth<br><u>12/03/1969</u>              | 5. Address<br><u>410 Woodfield Dr</u> |                                                      |                      | 6. Phone<br><u>864 220-0362</u>                 |
| 7. City<br><u>Piedmont</u>                         | 8. State<br><u>SC</u>                 | 9. ZIP+4<br><u>29673</u>                             |                      |                                                 |

Section II

a) Describe your disability? Non-Specific Interstitial pneumonitis

b) When did your disability prevent you from working? Month 5 Day 18 Year 2007

c) Explain why you stopped working: My Employer directed me to go to A light duty Status, where I am still at this time.

d) Have you returned to work? ☒ Yes ☐ No If yes, when \_\_\_\_\_

e) Have you applied for Social Security Disability benefits? ☐ Yes ☒ No If yes, when \_\_\_\_\_

f) Has your disability resulted from an on the job injury? ☐ Yes ☒ No If yes, when \_\_\_\_\_

g) Have you filed a Workers Compensation claim? ☐ Yes ☒ No If yes, when \_\_\_\_\_

Section III

A) Please list the names, addresses, and telephone numbers of physicians who have your current medical records. Or, submit any current medical records you have with this Disability Report. If further medical evidence develops while your claim is being evaluated, please forward the documentation to the SCRS Medical Board.

1. Physician's name: Yuh-Chin Tony Huang MD  
Address: 4309 Medical Park Dr. Suite 100 Durham, NC 27704  
Telephone: 919-620-7300  
How often did you see this physician? 1/monthly  
Date first seen: 4/16/07 Date last seen: 5/16/07  
Treatment Received: medication, Surgery, Recovery

2. Physician's name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
How often did you see this physician? \_\_\_\_\_  
Date first seen: \_\_\_\_\_ Date last seen: \_\_\_\_\_  
Treatment Received: \_\_\_\_\_

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3. Physician's name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
How often did you see this physician? \_\_\_\_\_  
Date first seen: \_\_\_\_\_ Date last seen: \_\_\_\_\_  
Treatment Received: \_\_\_\_\_

B) Have you been treated at a hospital or clinic for your disability? ☒ Yes ☐ No If yes, complete the following:

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                        |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>① Name and Address: <u>Durham Regional Hospital</u><br/> <u>3643 W. Roxboro Rd Durham NC 27704</u></p> <p><input checked="" type="checkbox"/> Inpatient: If yes, give dates of admission and dates of discharge.<br/> <input type="checkbox"/> Outpatient: If yes, give date of admission<br/> <u>4/18/07</u> to <u>4/20/07</u><br/> to _____<br/> Reason for admission: <u>major chest biopsy</u><br/> Type of treatment received: <u>post-operation recovery medication</u></p> | <p>② Name and Address: _____</p> <p><input type="checkbox"/> Inpatient: If yes, give dates of admission and dates of discharge.<br/> <input type="checkbox"/> Outpatient: If yes, give date of admission<br/> _____ to _____<br/> to _____<br/> Reason for admission: _____<br/> Type of treatment received: _____</p> |
| <p>③ Name and Address: <u>ST FRANCIS Hospital</u><br/> <u>1 ST Francis Dr Greenville SC 29601</u></p> <p><input type="checkbox"/> Inpatient: If yes, give dates of admission and dates of discharge.<br/> <input checked="" type="checkbox"/> Outpatient: If yes, give date of admission<br/> <u>2/16/07</u> to <u>2/16/07</u><br/> to _____<br/> Reason for admission: <u>lung Biopsy</u><br/> Type of treatment received: <u>None</u></p>                                          | <p>④ Name and Address: _____</p> <p><input type="checkbox"/> Inpatient: If yes, give dates of admission and dates of discharge.<br/> <input type="checkbox"/> Outpatient: If yes, give date of admission<br/> _____ to _____<br/> to _____<br/> Reason for admission: _____<br/> Type of treatment received: _____</p> |

C) Have you been evaluated by other agencies for your disability? ☐ Yes ☒ No (for example, Veterans Administration, Workers Compensation, Vocational Rehabilitation, Social Security Administration)  
If yes, name of agency: \_\_\_\_\_  
Address: \_\_\_\_\_  
Your claim number with this Agency: \_\_\_\_\_  
Dates of visits: \_\_\_\_\_  
Type of treatment or examinations received: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D) If you have additional medical information to support your disability, please attach a separate sheet listing information required above.

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Page 2

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Section IV

Has your doctor restricted your work activities in any way? ☒ Yes ☐ No

If yes, which doctor? Richard Laurens

State what the physician told you not to do: Stated that I was currently unable to perform my job classification as a Police officer.

Section V

Has your disability restricted your activities of daily living such as: home duties, social activities, or your ability to care for your personal needs? ☒ Yes ☐ No

If yes, please describe your limitations: My Breathing or Difficulty of Breathing has limited me to short stints of activity. I have to plan not to go far or park away from destination that take long or hilly walks. I have to stay closer to the bathroom as well.

Section VI

a) What was your most recent job(s) before you stopped working? If you have more than one job, please list separately.

Job Title: Police officer Employer: Greenville City

From: 4/94- present to: \_\_\_\_\_

b) In this job did you:

1. Use machines, tools, or equipment of any kind? ☒ Yes ☐ No

If yes describe type of tools/equipment used: CAR, Gun, OC Spray, ASP Baton, Shotgun, Rifle, Handcuffs, office machine

2. Use technical knowledge or skills? ☒ Yes ☐ No

If yes, describe technical knowledge or skills: Computer skills, Investigation Skill, Social and Psychological Skills, physical skills.

3. Do any writing, complete reports, or perform similar duties? ☒ Yes ☐ No

If yes, please describe: Reports are a daily task for the job.

4. Have supervisory responsibility? ☒ Yes ☐ No

If yes, please indicate the number of employees supervised and the extent of your supervision:

Supervise recruit officers, Community Service personnel, and students (officers in training) work requires functioning as a lead worker performing essentially the same work as those directed, and includes training, and scheduling work.

c) Please describe your essential job duties:

State-certified police Corporal enforcing laws of the South Carolina, municipal codes of the City of Greenville, and Federal laws as they apply. Patrol on foot, bicycle, and in vehicle to detect criminal activity observe & report any unsafe actor conditions within assign patrol Section. Conduct field interviews. Investigate suspicious persons & situations. Assist motorists, respond to animal nuisances, environmental code violations, missing persons.

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MBK.046

d) Describe the amount of physical activity your job involves during a typical work day.

WALKING (check number of hours a day) 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☒

STANDING (check number of hours a day) 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☒

SITTING (check number of hours a day) 1 ☒ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐

BENDING / STOOPING (check number of hours per day) 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☒

CLIMBING (check number of hours per day) 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☒

RUNNING (check number of hours per day) 1 ☐ 2 ☒ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐

LIFTING AND CARRYING:

OCCASIONALLY (UP TO 1/3 OF AN 8-HOUR DAY) LIFTS AND/OR CARRIES:

☐ LESS THAN 10 LBS. Kinds of objects lifted: \_\_\_\_\_

☒ 10 LBS. Kinds of objects lifted: equipment

☐ 20 LBS. Kinds of objects lifted: \_\_\_\_\_

☐ 50 LBS. Kinds of objects lifted: \_\_\_\_\_

☒ 100 LBS. OR MORE Kinds of objects lifted: people, assist in emergency help

FREQUENTLY (1/3 TO 2/3 OF AN 8-HOUR DAY) LIFTS AND/OR CARRIES:

☐ LESS THAN 10 LBS. Kinds of objects lifted: \_\_\_\_\_

☒ 10 LBS. Kinds of objects lifted: equipment

☒ 25 LBS. Kinds of objects lifted: Duty Belt with weapons and gear

☐ 50 LBS. OR MORE Kinds of objects lifted: \_\_\_\_\_

Section VII

Remarks: This section may be used for additional information that will be helpful to make a decision about your disability claim:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The information I have provided is correct to the best of my knowledge.

Signature of Applicant: ma bled

Date: 5/23/07

(If signed by other than the applicant, a copy of the Power of Attorney for the person signing must be attached)

Return to:  
State Budget and Control Board  
South Carolina Retirement Systems  
Customer Annuity Claims  
PO Box 11960, Columbia SC 29211-1960

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JUN 5 2007

Page 4

MBK 047

**7**



*File*  
Title of Presentation: AJ Whittenburg Proposed Site

Goal(s) Supported: Goal 3: Provide a school environment supportive of learning.

**Facts and Impact Statement:** Facts and Impact Statement: The West Washington Street proposed site for the A. J. Whittenburg Elementary school has contaminated soil. Contaminants that were found were Perchloroethene (PCE), (a cleaning solvent), Polycyclic aromatic hydrocarbons (PAHs), Elevated Hydrocarbon Contamination, (fuel oil), and contaminated ground water. DHEC has directed Greenville County Schools to submit a corrective remediation plan, which DEHEC must approve, before any remediation can begin. The remediation plan must address installing permanent ground water wells, securing additional soil samplings in confirmed contaminated areas to evaluate the lateral and vertical extent of the contaminants and provide an appropriate management plan including all risk assessments. The plan must include an action plan for removal of above ground fuel oil tanks, removal or containment of contaminated soil, removal of potentially hazardous materials and have a contingency plan for unforeseen sources of contaminated soils.

South Carolina DHEC has given us three options for site remediation. These three options are

- (1) removal of all contaminated soils at the site,
- (2) remove only soils exceeding the soil screening levels and properly cover the remaining soils exceeding the direct exposure levels and
- (3) perform a risk assessment to determine appropriate soil cleanup levels for the site specific conditions, i.e., different uses of different areas of the site.

Option (2) would require restrictive covenants on the deed of the property and require that we use impervious surfaces over the contaminated soils. Some combination of all three options would be the most cost effective.

The consultants have developed an order of magnitude estimate range, based on best case, from \$300,000 to, worst case, \$3,700,000. Cost estimates for the remediation include a wide range because many issues relating to the remediation are unknown. Some of those unknowns are items such as buildings still covering potentially contaminated ground, the ground depth of the contaminants and additional contaminants which may be found as the remediation proceeds, and the final site layout has not been determined.

We believe, based on what we know today, that a budget of \$1,700,000 should be established for this remediation. Our real estate broker estimates the land purchase will cost approximately \$1,600,000. Structures on the properties would have to be remediated and a business would have to be relocated at a cost estimate of \$500,000. The order of magnitude budget needed to have a sufficient site is \$3,800,000. The current land budget

MBK 048

for this project is \$2,600,000. An additional \$1,200,000 will have to be appropriated from other sources for this project.

Due to the increase in construction costs and inflation added at five percent (5%) per year, the construction budget would need to be increased by \$5,000,000.00.

The time line to complete the purchase of the land is one year. The site remediation is estimated to take 18 months due to DHEC approvals. The design and construction of the school will take 24 months. The complete project is estimated, at a minimum, to take four and one half to five years. Based upon these time estimates, the school would open in the 2010-11 school year. This project will not be within the timeline of the Institutional Resources New Facilities Program and, therefore, will be totally managed by the Greenville County School's Facilities Department.

**Facts to be considered:**

- Takes minimum of 30 months to prepare land (purchasing and remediation)
- A minimum of 24 months to design and build
- Institutional Resources Contract ends in April 2007
- Determine if money can be moved from BEST to the Districts Building Funds
- Estimated cost for this property exceeds land budget by \$1,200,000.00
- Estimated inflation cost for the A&E fees and construction exceeds the budget by \$5,000,000.00

**Conclusion:** The administration needs time to consider the impact of this information and because an intergovernmental agreement between the School District and the City of Greenville was associated with this site the administration needs to review the impact of this information with the city.

**8**

STATE OF NORTH CAROLINA    )  
                                          )    AFFIDAVIT  
COUNTY OF DURHAM            )

The undersigned, being duly sworn, deposes and says that :

My name is Yuh-Chin Tony Huang, M.D. I am an adult, am over the age of eighteen years and am competent to make this affidavit.

I am a physician, licensed to practice in the state of North Carolina. I am board-certified in the fields of internal medicine, critical care medicine, and pulmonology. I currently practice pulmonology and critical care medicine at Duke University Medical Center, and have done so for the past nineteen years. I currently hold the title of Professor of Medicine at Duke, and maintain an active clinical practice. I have been treating Marvin Gilliard since April 16, 2007, when he was referred to me with an abnormal chest CT and shortness of breath on exertion.

Based on my initial physical examination and review of Mr. Gilliard's history and previous diagnostic studies, I arrived at a diagnosis of chronic hypersensitivity pneumonitis. I have continued to follow Mr. Gilliard and his diagnosis has remained essentially the same.

By history, he reported intermittent exposure to various chemicals while employed as a police officer, as a function of his job was to patrol an abandoned building which had been used to store chemicals. In an effort to confirm his diagnosis, I asked him to obtain whatever information he could locate that would document the chemicals to which he had been exposed.

He obtained, and I have reviewed, a document entitled "Title of Presentation: AJ Whittenburg Proposed Site" (Exhibit A), which lists contaminants found in the soil from the site of the building Mr. Gilliard patrolled. Those chemicals include perchloroethene, polycyclic aromatic hydrocarbons, and fuel oil.

MBK 050

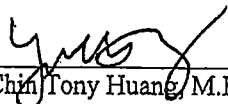
Based on his history, on the examinations I have performed, on the diagnostic studies I have reviewed, on the information provided regarding the chemicals at the site, and on the lack of other predisposing causes, I am of the opinion, with a reasonable degree of medical certainty, that Mr. Gilliard's current lung condition was most probably caused by his intermittent repeated exposure to the chemicals found at the site of the abandoned building he patrolled as a police officer.

My opinion is supported, in my view, by a 2004 case report documenting the development of hypersensitivity pneumonitis caused by exposure to the same chemical to which Mr. Gilliard was apparently exposed (Tanios MA, El Gamal H, Rosenberg BJ, Hassoun PM. Can we still miss tetrachloroethylene-induced lung disease? The emperor returns in new clothes. Respiration 71: 642-645, 2004).

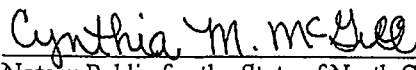
Mr. Gilliard currently requires oxygen support for any activity. He has significant dyspnea and cough that limit his daily activity. He likely will need lung transplantation if his condition deteriorates in the future.

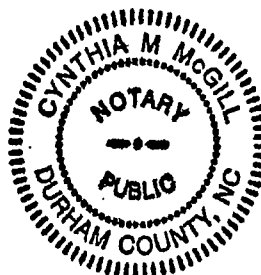
I reserve the right to amend this affidavit as more information may become available but I believe that the information currently available to me is sufficient to support my opinions.

Further, affiant sayeth not.

  
Yuh-Chin Tony Huang, M.D.

Sworn to before me the 24 day of June, 2010.

  
Notary Public for the State of North Carolina  
My commission expires: 1/12/2015



MBK 051



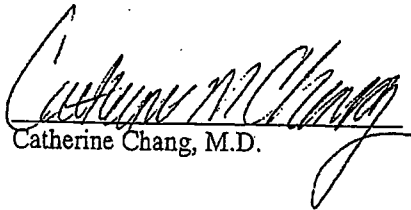
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

AFFIDAVIT

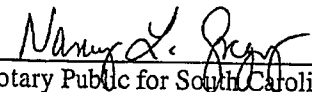
Catherine Chang, M.D., being duly sworn, deposes and says that:

1. I am a physician with my principal place of practice in Greenville, South Carolina. I am licensed by the state of South Carolina. I am board-certified in the specialty of pulmonology. I am over the age of eighteen years, and am competent to make this affidavit.
2. I began treating Marvin Gilliard on November 17, 2008 for interstitial lung disease.
3. My treatment of Marvin Gilliard for interstitial lung disease continued until his death on August 12, 2010.
4. I am of the opinion, to a reasonable degree of medical certainty, that Marvin Gilliard's death was the result of his interstitial lung disease. This opinion is based on the examinations performed and care provided to Marvin Gilliard during the twenty-one (21) months he was my patient and his death certificate.
5. I reserve the right to amend this affidavit if provided more information regarding this case.

Further, affiant sayeth not.

  
Catherine Chang, M.D.

Sworn to before me this 17 day of February, 2011

  
Notary Public for South Carolina  
My commission expires: 5/9/2020

MBK 052

**10**



BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
WCC FILE NO. 0627382

MARVIN GILLIARD,  
Employee,

vs.

CITY OF GREENVILLE,  
Employer,

and

HEWITT, COLEMAN & ASSOCIATES, TPA,  
Carrier.

**COPY**

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DEPOSITION OF MARVIN GILLIARD

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DATE TAKEN: February 22, 2008  
TIME BEGAN: 10:10 a.m.  
TIME ENDED: 11:47 a.m.  
LOCATION: Mooneyham, Flowers, Berry & Karow  
1225 south church street  
Greenville, South Carolina

REPORTED BY: Rusti Davis, Court Reporter  
Notary Public for South Carolina



APPEARANCES

JOSEPH A. MOONEYHAM, ESQUIRE  
MOONEYHAM, FLOWERS, BERRY & KAROW  
1225 South Church Street  
P.O. Box 8359  
Greenville, South Carolina 29604  
Attorney for Employee.

MICHAEL A. FARRY, ESQUIRE  
HORTON, DRAWDY, WARD & JENKINS  
307 Pettigru Street  
P.O. Box 10167  
Greenville, South Carolina 29603  
Attorney for Employer/Carrier.

STIPULATIONS: The within deposition was taken pursuant to  
the South Carolina Rules of Civil Procedure.

WAIVER: Examination and reading of the deposition are waived  
by the witness and by the parties.

I N D E X

| Examination by | Page |
|----------------|------|
| Mr. Farry      | 4    |

E X H I B I T S

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| 1      | Copy of Driver's License   | 62   |
| 2      | Copy of List of Physicians | 62   |

1 MARVIN GILLIARD, being duly sworn, testified as  
2 follows:

3 EXAMINATION BY MR. FARRY:

4 Q. Would you state your full name, please, sir?

5 A. Marvin Luvell Gilliard.

6 Q. Mr. Gilliard, my name's Mike Farry, and I  
7 represent the City of Greenville in this workers'  
8 compensation claim you have pending. And I'm  
9 going to ask you some questions today about your  
10 claim and your job and how you're doing now.  
11 If I ask you a question that's confusing or I  
12 mumble, like my wife is fond of telling me, you  
13 just tell me I didn't do a very good job of  
14 asking the question and ask me to repeat or  
15 rephrase. All right, sir?

16 A. Okay.

17 Q. If at any time I ask you a question you don't  
18 know the answer to or don't remember, there's  
19 nothing wrong with saying under oath, I don't  
20 know or I don't remember. I'd rather you do that  
21 than to guess. Okay?

22 A. Yes.

23 Q. Any time you need to take a break, get up and  
24 move around, go to the restroom, you just let us  
25 know. We shouldn't be here much longer than an

- 1 hour or hour and a half, but at any time you need  
2 to take a break, you let us know. We'll  
3 accommodate you as best we can.
- 4 A. Yes, sir.
- 5 Q. Tell me your full name, please, sir.
- 6 A. Marvin Luvell Gilliard.
- 7 Q. And your date of birth?
- 8 A. 12, 3rd of '69.
- 9 Q. And your Social Security number?
- 10 A. 249-31-3305.
- 11 Q. I know you take a number of different medications  
12 for a number of different ailments. Can you tell  
13 me in the last 24 hours what medication you have  
14 taken?
- 15 A. I took -- this morning I took my Prednisone.
- 16 Q. Now, your Prednisone, that's a steroid. Is that  
17 an inhaler or a pill?
- 18 A. A pill.
- 19 Q. And you take that Prednisone for what?
- 20 A. For my lung condition.
- 21 Q. And what doctor prescribes that?
- 22 A. Dr. Huang.
- 23 Q. And that's doctor -- spell his last name for me.
- 24 A. H-U-A-N-G.
- 25 Q. H-U-A-N-G?

- 1 A. Yes.
- 2 Q. Is that the doctor at Duke?
- 3 A. Yes. It's Tony Huang. I think Tony may be a  
4 nickname.
- 5 Q. But he's at Duke University or Duke Medical?
- 6 A. Yes.
- 7 Q. All right. I got you interrupted and off track  
8 there. You were telling me what other  
9 medications you've taken in the last 24 hours.
- 10 A. I took my Lipitor.
- 11 Q. Who prescribes the Lipitor?
- 12 A. Stacy Bizzell, Dr. Stacy Bizzell.
- 13 Q. That's your family doctor?
- 14 A. Yes.
- 15 Q. And how long has Stacy Bizzell been your family  
16 doctor?
- 17 A. Probably maybe as long as five years now.
- 18 Q. And before that, I believe Dr. Stephenson --
- 19 A. Rufkin Stephenson, yes.
- 20 Q. -- Rufkin Stephenson at the Westwood Medical  
21 Center --
- 22 A. Yes.
- 23 Q. -- was your family doctor since about '96 it  
24 looks like?
- 25 A. Woodward Medical Center.

- 1 Q. Yes, sir. I said Westwood. Woodward Medical  
2 Center. And the Lipitor you take for what?  
3 A. Is that the cholesterol?  
4 Q. Yes. Normally.  
5 A. That is cholesterol.  
6 Q. Other medication?  
7 A. Diovan.  
8 Q. Diovan?  
9 A. Yes.  
10 Q. What do you take that for?  
11 A. That's my blood pressure.  
12 Q. What doctor prescribes that, Dr. Bizzell?  
13 A. Dr. Bizzell.  
14 Q. Other medication?  
15 A. I'm taking Avelox.  
16 Q. Avelox?  
17 A. Yeah.  
18 Q. What do you take that for?  
19 A. I think that's the -- that was for -- I don't  
20 know to be honest with you. It was -- I can tell  
21 you it's for -- I was getting some kind of  
22 infection or something.  
23 Q. Like an antibiotic of some sort?  
24 A. Yes. Antibiotic.  
25 Q. And who prescribes that?

- 1 A. That's Dr. Bizzell.
- 2 Q. And the infection, where was it showing up in
- 3 your body?
- 4 A. In my chest and in my nasal.
- 5 Q. Any other medication?
- 6 A. Yeah. I'm on Humulin.
- 7 Q. Humulin?
- 8 A. Yes.
- 9 Q. What's that for?
- 10 A. It's insulin.
- 11 Q. That's your diabetes?
- 12 A. Yes.
- 13 Q. Is that injection or a tablet?
- 14 A. It's injection.
- 15 Q. How long have you been giving yourself injections
- 16 for diabetes?
- 17 A. Probably eight months now.
- 18 Q. Prior to that time, did you take a tablet?
- 19 A. Yes, I was.
- 20 Q. How long have you taken medication of some sort
- 21 for diabetes?
- 22 A. Maybe two years.
- 23 Q. What doctor prescribes that?
- 24 A. Stacy Bizzell.
- 25 Q. All right, sir.



- 1 A. And I'm -- well, go ahead.
- 2 Q. Any other medication?
- 3 A. My Lantus, which is insulin.
- 4 Q. That's another injection?
- 5 A. It's Lantus, not mylantus, but Lantus.
- 6 Q. Oh, it's your Lantus?
- 7 A. Yeah.
- 8 Q. And is that also an injection?
- 9 A. Injection.
- 10 Q. Do you have to give yourself two injections, or
- 11 are they in one syringe?
- 12 A. I have to give myself -- say it again.
- 13 Q. When you inject the Humulin, do you have to give
- 14 a separate injection for the Lantus, or is it all
- 15 in one syringe?
- 16 A. No. It's separate.
- 17 Q. Separate?
- 18 A. Yeah. I do five shots a day. Well, up to five.
- 19 I do one Lantus and then before every meal of the
- 20 Humulin.
- 21 Q. Have they talked about a pump for you?
- 22 A. A pump?
- 23 Q. A pump that you wear on your belt or your pants
- 24 that automatically administers the insulin?
- 25 A. No.

1 Q. And again, Dr. Bizzell takes care of the Lantus?

2 A. Yes.

3 Q. Any other medication?

4 A. I take -- I still take the pills, which are  
5 Metformin.

6 Q. That's for your diabetes?

7 A. Yeah, I have to take that, too.

8 Q. And that's also Dr. Bizzell?

9 A. Yes.

10 Q. All right. Any other medication?

11 A. There's -- there's two more.

12 Q. Okay.

13 A. I take Lasix.

14 Q. Lasix?

15 A. Yeah. It's called something else, but it's  
16 Lasix.

17 Q. That's for fluid?

18 A. Yes.

19 Q. It's a diuretic of some sort?

20 A. Yeah.

21 Q. Dr. Bizzell?

22 A. No. Dr. Huang.

23 Q. Tony Huang?

24 A. Yes.

25 Q. Anything else?

- 1 A. There's one more. I can't think of what it is.
- 2 Q. Do you know what you take it for?
- 3 A. Yeah. It's going to be for my nasal. I also
- 4 take this spray for my nasal, too.
- 5 Q. Inhaler spray?
- 6 A. Yeah -- no. I have an inhaler. And it's a new
- 7 one. I can't even give you the name of it. It's
- 8 a new one that I started using.
- 9 Q. The inhaler that you use, is it as-need, or you
- 10 use it regularly?
- 11 A. At night. Yeah, I use it at night.
- 12 Q. What doctor prescribes that?
- 13 A. That's Dr. Huang. It's a steroid also.
- 14 Q. The nasal spray, is it a steroid?
- 15 A. No. That one's just for like allergies.
- 16 Q. And who's prescribing that?
- 17 A. That's Dr. Bizzell.
- 18 Q. All right.
- 19 A. I should have brought that. I can't remember the
- 20 name of it.
- 21 Q. That's all right. That's a spray?
- 22 A. That's a spray.
- 23 Q. And the inhaler is a steroid of some sort as
- 24 well?
- 25 A. Yes.

- 1 Q. Any other medications?
- 2 A. Well, the -- I told you one that I couldn't
- 3 remember that's a pill. It's for my nasal also.
- 4 I mean for like allergies.
- 5 Q. What doctor prescribes that?
- 6 A. Dr. Bizzell.
- 7 Q. Anything else?
- 8 A. I think that's about it.
- 9 Q. Do you have any medication prescriptions that you
- 10 take on an as-need basis but you may not have
- 11 taken in the last 24 hours?
- 12 A. I got a Combivent, which is an inhaler that I
- 13 will take if I get in a position --
- 14 Q. Distress?
- 15 A. Yeah.
- 16 Q. And what doctor prescribes that?
- 17 A. That's Dr. Huang.
- 18 Q. When's the last time you had to use it?
- 19 A. I guess about two weeks ago.
- 20 Q. Is there some kind of trigger normally for that?
- 21 You get somewhere and you smell something, or you
- 22 get in an environment?
- 23 A. Yeah. Could be just I'm moving around too much.
- 24 It doesn't stop anything, but, you know, it does
- 25 something, you know.

1 Q. Any other medications that you take on an as-need  
2 basis? I notice you've got supplemental oxygen  
3 that you have also. What doctor prescribes that?

4 A. That's through Dr. Huang.

5 Q. And how often do you use the supplemental oxygen?

6 A. Well, I'm supposed to be on it all the time. I  
7 sleep under it, and I'm supposed to use 4 liters  
8 that I'm supposed to, you know, have it on all  
9 the time.

10 Q. Now, the medications that you've identified  
11 either by name or what they're taken for, do any  
12 of them individually or in combination with the  
13 others affect your ability to understand my  
14 questions or give truthful answers?

15 A. It shouldn't.

16 Q. If you think of anything else as we go through  
17 the deposition, just let me know. Okay?

18 A. Okay.

19 Q. Do you have a driver's license?

20 A. Yes, I do.

21 Q. Do you have that with you? If we can put that on  
22 the table, we'll make a copy of it. Make sure  
23 you get home with the original.

24 A. I'll have to go back to the car and get it.

25 MR. FARRY:

1           We'll get it at the end of the deposition. Just  
2           remind me that we need to make that Exhibit 1,  
3           Madam Reporter.

4   THE DEPONENT:

5           I thought I had my billfold in my pocket.

6   EXAMINATION RESUMED BY MR. FARRY:

7   Q.     Tell me your home address, please.

8   A.     It's 410 Woodfield Drive, Piedmont, South  
9           Carolina 29673.

10   Q.    About how long have you lived at that address?

11   A.    10 years.

12   Q.    Are you married?

13   A.    I am.

14   Q.    What's your wife's name?

15   A.    Lisa Gilliard.

16   Q.    How long have you been married to Miss Lisa?

17   A.    Oh, God, you asked me.

18   Q.    Get me close. We won't tell her.

19   A.    Be 12 years this -- this August.

20   Q.    And is that your only marriage?

21   A.    Yes.

22   Q.    Miss Lisa ever been married before?

23   A.    No.

24   Q.    Any children?

25   A.    No.

- 1 Q. Did Miss Lisa have any children?
- 2 A. No.
- 3 Q. Does anyone live with you at the Woodfield
- 4 address, other than Miss Lisa?
- 5 A. No.
- 6 Q. How tall are you, sir?
- 7 A. 5'11".
- 8 Q. And how much do you weigh?
- 9 A. 269.
- 10 Q. In the last year, has your weight changed up or
- 11 down much, give or take 10 pounds?
- 12 A. Yes. It's gone down, come up, gone down.
- 13 Q. A year ago how much did you weigh roughly?
- 14 A. I don't know.
- 15 Q. About the same, a little heavier, a little
- 16 lighter?
- 17 A. Maybe a little less.
- 18 Q. Okay. Two years ago, about the same, a little
- 19 less, a little more?
- 20 A. More.
- 21 Q. You staying around 269, 270 though, give or take?
- 22 A. Yeah. I've been -- I've been down. I think the
- 23 lowest I got was around 240ish. That's when --
- 24 that was back right when I retired. I was pretty
- 25 sick right in there.

1 Q. Now, when did you -- you say when you retired  
2 now --

3 A. September 5th.

4 Q. Now, is September when you retired, or is that  
5 the day you last worked or --

6 A. Well, that's the day they put down for my  
7 retirement.

8 Q. Yes, sir. Prior to September 5th of 2007, when  
9 did you last work?

10 A. Probably September 5th.

11 Q. Okay. I didn't know if you stayed on the books  
12 for a period of time while you were out on  
13 medical leave or --

14 A. Well, I was out, but I was using my own time. I  
15 wouldn't say medical leave. It was my vacation  
16 time.

17 Q. So can you get me close as to when you actually  
18 last worked for the City?

19 A. In uniform?

20 Q. Yes, sir. Or street clothes I mean --

21 A. Well, I still have to say that because I was  
22 still doing work even though --

23 Q. Okay. Light duty, paperwork --

24 A. Yeah. It was heavy duty. I was breaking down  
25 desks and carrying out furniture.



1 Q. All right. Tell me about your educational  
2 background, sir.

3 A. I have my -- I have my bachelor's in arts.

4 Q. Where did you get that from?

5 A. USC Upstate.

6 Q. When was that?

7 A. 2005.

8 Q. According to my records, you went to work with  
9 the City in 1996; is that right?

10 A. Yes.

11 Q. Prior to working for the City in 1996, where were  
12 you working?

13 A. County detention center.

14 Q. How long did you work down there?

15 A. Year and a half.

16 Q. So sometime '94 to '96 roughly?

17 A. Yes.

18 Q. And prior to working at the county detention  
19 center, where did you work?

20 A. At Harris Teeter Grocery Store.

21 Q. Which one?

22 A. I worked at several different ones. The last one  
23 that I worked at was -- well, I transferred back  
24 to -- it was here in Greenville. It was over on  
25 the eastside, Old Spartanburg.

1 Q. Oh, yeah. My wife's spent a lot of money in that  
2 store. Two growing boys.

3 When did you work for Harris Teeter, over what  
4 period of time or how long?

5 A. Maybe six, seven years. I know I got a five-year  
6 service award. Part of that -- I went like  
7 part-time when I was working at the -- I was  
8 still working there and working at the detention  
9 center.

10 Q. Got you. What did you do for Harris Teeter?

11 A. I was a meat cutter.

12 Q. And did you quit Harris Teeter to go to work full  
13 time at the detention center?

14 A. Well, no. I was still working at Harris Teeter,  
15 and I eventually left. But I was still working  
16 for them. I worked for them for a good while  
17 while I was doing both jobs.

18 Q. All right. But why did you leave Harris Teeter  
19 and work for the detention center?

20 A. Well, yeah, I had to let something go.

21 Q. Got it.

22 A. Yeah.

23 Q. And then when you left the detention center in  
24 '96, why did you leave there and go to work for  
25 the City?

- 1 A. Just natural progression.
- 2 Q. Better job?
- 3 A. Yeah. Little more opportunity.
- 4 Q. Got it. Did you have to go through the Academy?
- 5 A. Yes, I did.
- 6 Q. When did you do that, sir?
- 7 A. That's -- I'd say that same year.
- 8 Q. '96?
- 9 A. Yeah. Toward the end of the year.
- 10 Q. Yes, sir. What I'd like you to do for me, if you
- 11 don't mind, you started work with the City
- 12 February 5, 2006. I'd like you -- I'm sorry,
- 13 '96. February 5, 1996. Can you walk me through
- 14 each job you had with the City as far as your
- 15 assignment or what your rank was? You started
- 16 out in February 5, 2006, doing what?
- 17 A. We was just being -- I say, we. There was
- 18 several of us, new officers --
- 19 Q. Yes, sir.
- 20 A. -- coming on in the introductory period where you
- 21 just pretty much get introduced to and acclimated
- 22 to the City. We didn't do any police work. We
- 23 learned a little bit.
- 24 Q. Right. Still rookies?
- 25 A. Yeah. Well, we wasn't in uniform then.

1 Q. Right.

2 A. And then after you get through that period, you  
3 go to the Academy.

4 Q. Right. So sometime in the latter part of '96,  
5 you went to the Academy?

6 A. Yeah. I had to go to the Academy. We actually  
7 went -- I guess it was -- it was warm, so it  
8 was --

9 Q. Summertime?

10 A. Yeah. Before -- right before the summer, yeah.

11 Q. And did you graduate from the Academy?

12 A. Yes, I did.

13 Q. Do you remember when that was approximately?

14 A. I actually had to go back because somebody had  
15 gotten sick, and so I had to rotate out of that  
16 first class. I only had like a weekend, and they  
17 brought me back to Greenville where I stayed  
18 around and did like paperwork and stuff like  
19 that.

20 Q. You had to fill in for somebody that was sick?

21 A. Yes.

22 Q. So they just bumped you to the next class?

23 A. Yeah. Well, no. I didn't have to fill in for  
24 somebody. Before I left to go down there, I was  
25 just -- cause the person got sick, so they had me

- 1           answering her phone, and I got her bug.
- 2   Q.       Oh, then you got sick?
- 3   A.       Yeah. So I came back.
- 4   Q.       I got you.
- 5   A.       Cause usually if you can't finish the Academy,
- 6           they just tell you they're not going to hire you,
- 7           but since they knew I got the same thing that
- 8           this person had, they let me --
- 9   Q.       Right.
- 10  A.       They rotated me to another class.
- 11  Q.       Got it. So you finally graduated in the latter
- 12           part of '96?
- 13  A.       of '96.
- 14  Q.       Do you remember about when that was?
- 15  A.       I don't know. I don't know. It was starting to
- 16           get cold.
- 17  Q.       Yes, sir. So then you come back to work a
- 18           uniformed officer?
- 19  A.       Yes.
- 20  Q.       Sometime in late '96?
- 21  A.       Yes.
- 22  Q.       And what were you doing as a uniformed officer?
- 23  A.       Well, you ride with a training officer for a
- 24           while, and that's what I did.
- 25  Q.       How long did you do that roughly?

1 A. The whole program was 36 weeks, so I spent 10  
2 weeks -- 8 to 10 weeks down there, a couple weeks  
3 -- I probably rode with somebody probably 20  
4 weeks when I got back. Can't be for sure.

5 Q. In the patrol car?

6 A. Yes.

7 Q. And then after you completed your training  
8 program about 20 weeks after you finished the  
9 Academy, what was your assignment, or what did  
10 you do?

11 A. They assigned me to uniformed patrol.

12 Q. So this is early -- is this still late '96 or  
13 early '97?

14 A. It would be '97.

15 Q. And your rank at that point was what?

16 A. Still a private.

17 Q. And uniformed patrol, did you work by yourself,  
18 or you working with an officer?

19 A. You ride by yourself.

20 Q. You assigned a particular section of the city, or  
21 do you patrol the entire city?

22 A. No. They give you assignments when you get in,  
23 but generally they keep you in the same area.  
24 But being a rookie, they will swap you around so  
25 you get used to learning the streets. My primary

- 1 area was called Gamma, so -- it's a beat.
- 2 Q. Gamma?
- 3 A. Yeah.
- 4 Q. Where is Gamma? Am I at liberty to know that?
- 5 A. Yeah. It incorporated like the Nicholstown area.
- 6 Q. Yes, sir.
- 7 A. 291, if you're going north on 291, it would be
- 8 your left-hand side. It would go all the way up
- 9 to -- what's the name of the street?
- 10 Q. East North Street that way?
- 11 A. It wouldn't go that far. It would stop before
- 12 you get there. Almost to where the county gas --
- 13 what's the street you go across there?
- 14 Q. Yeah, I know what you're talking about.
- 15 A. Yeah, right in that area. Everything over to the
- 16 left if you're going that way. And pretty much,
- 17 if I can give you a block or whatever, all the
- 18 way down to the law enforcement center on that
- 19 side.
- 20 Q. As a uniformed patrol officer, you've got a
- 21 patrol car, and you're just out working patrol --
- 22 A. working patrol.
- 23 Q. -- taking calls, or if you see something you need
- 24 to respond to, you respond?
- 25 A. Yes.

1 Q. Did you work different shifts depending on --

2 A. Yes. You rotate.

3 Q. And so how long did you do the uniformed patrol  
4 officer job?

5 A. You do that for two years before you up for a  
6 promotion.

7 Q. Did you did it two years?

8 A. Yes.

9 Q. That takes us into early '99?

10 A. Yes.

11 Q. Did you change in early '99 to something else?

12 A. Yes. I went to community patrol.

13 Q. What's different about that?

14 A. They just make you more responsible for the area  
15 you in because I didn't move. I stayed --  
16 instead of having the -- instead of having that  
17 what I call, Gamma area, you then become  
18 concentrated to a neighborhood.

19 Q. Which one were you in?

20 A. Nicholstown. But that doesn't mean that's the  
21 only thing you're going to do. You still get  
22 traded around.

23 Q. Yeah. You get a call and --

24 A. Yeah. They can point the finger at you if  
25 something don't get done in Nicholstown.



- 1 Q. Got it. So how long did you work community  
2 patrol in Nicholtown?
- 3 A. Maybe three or four years.
- 4 Q. What was your next assignment?
- 5 A. I went to -- from Nicholtown to Southern Side  
6 community.
- 7 Q. Southern Side?
- 8 A. Yes.
- 9 Q. You were still community patrol?
- 10 A. Yes. Still community patrol.
- 11 Q. Did your rank change?
- 12 A. No. Well, it did when I went to community  
13 patrol. When I first went to it, they make you a  
14 corporal.
- 15 Q. And then after three or four years in Nicholtown,  
16 you went to --
- 17 A. Southern Side.
- 18 Q. -- Southern Side?
- 19 A. Yeah.
- 20 Q. All right. I'm going to show my ignorance. That  
21 is, I assume, on the south side of Greenville?
- 22 A. Yes. Over by the train depot.
- 23 Q. Got it.
- 24 A. West Washington Street area.
- 25 Q. Yes, sir. So if you did the Nicholtown community

- 1 patrol for three or four years, that takes us up  
2 into '02, '03 roughly --
- 3 A. Yes.
- 4 Q. -- when you went to Southern Side?
- 5 A. Uh-huh.
- 6 Q. You need to say yes or no.
- 7 A. Yes. I'm sorry.
- 8 Q. That's all right. So then you switch over in  
9 '02, '03, to community patrol in Southern Side?
- 10 A. Yes.
- 11 Q. You're still doing patrol work, but you're more  
12 dedicated at community primarily?
- 13 A. Yes.
- 14 Q. And you still work by yourself?
- 15 A. Yes.
- 16 Q. Did your assignment or job change after that?
- 17 A. Not really from -- not from -- you mean from  
18 the --
- 19 Q. After you went to Southern Side community patrol.
- 20 A. No. You just -- just another neighborhood.  
21 Pretty much the same thing.
- 22 Q. So how long did you do the Southern Side job?
- 23 A. For a couple years. For about two years.
- 24 Q. That takes us up to 2004, 2005?
- 25 A. Yes.

1 Q. And then what happened?

2 A. Then I went to J. L. Mann High School, school  
3 resource.

4 Q. Resource officer?

5 A. Yes.

6 Q. That's a real eye-opening experience, isn't it?

7 A. It's different.

8 [Discussion off the record.]

9 EXAMINATION RESUMED BY MR. FARRY:

10 Q. J. L. Mann resource officer working primarily  
11 during the time the school's in session?

12 A. Yes.

13 Q. What do you do in the summertime?

14 A. Then we get put back in the communities. You  
15 just go wherever the chief or commander feels  
16 like you -- you know, where they need the extra  
17 help.

18 Q. Right. So in the summertime, when you're a  
19 resource officer, you get assigned to whatever  
20 patrol community they need you in?

21 A. Yes.

22 Q. So how long did you do the J. L. Mann resource  
23 officer job?

24 A. Up until 2000 -- September 2007. Actually, bring  
25 that back a little bit because they actually

1 brought me out of school. So it might have  
2 been --

3 Q. May?

4 A. Yeah. Before the summer.

5 Q. May I think is when you came out; is that right?

6 A. Yes. Something like that.

7 Q. So you did that job up until May of 2007 roughly?

8 A. Yes.

9 Q. And what changed in May of 2007 to come out of  
10 school?

11 A. Because I was sick and didn't know exactly what  
12 all was going on.

13 Q. And so from roughly May of '07, until September,  
14 what did you do?

15 A. I was working what you call, light duty, but like  
16 I -- it's not -- it wasn't light duty. They just  
17 say it was light duty.

18 Q. Where were you working physically?

19 A. Down at the Law Enforcement Center.

20 Q. At the LEC. What were you doing at the LEC?

21 A. Just whatever they need. With the new chief  
22 coming in, we was doing inventory, and that was  
23 requiring a lot of cleaning. We had a lot of  
24 weapons that were not properly accounted for. We  
25 was going through those. Guns that's been taken

1 and stuff like that. Breaking down the supply  
2 room and changing everything out, which meant  
3 shelving. And we was also over at the garage  
4 with old radios and just a whole bunch of house  
5 cleaning, getting inventory done for the new  
6 chief.

7 Q. And then you did that job until September '07,  
8 when you went out on disability retirement?

9 A. Yes.

10 Q. And basically what took you out on disability  
11 retirement?

12 A. What took me out?

13 Q. Yes, sir. Physically or health-wise, what was  
14 it?

15 A. The condition I have with my lungs, yeah,  
16 interstitial pneumonitis.

17 Q. Interstitial pneumonitis. What doctor tells you  
18 you have that?

19 A. Dr. Huang.

20 Q. Any other doctor?

21 A. No.

22 Q. Now, I know none of us, except maybe your lawyer,  
23 who knows a lot, know a whole lot about medicine,  
24 but what is your understanding of what  
25 interstitial pneumonitis is?

1 A. It's a pulmonary fibrosis family.

2 Q. All right.

3 A. My understanding though of what it is is  
4 basically my -- well, I know that my air goes in,  
5 but it doesn't get transferred into my body like  
6 it should. It's basically stagnant, and most of  
7 it's being rejected pretty much.

8 Q. It's not converting oxygen to the blood cells  
9 that you need?

10 A. It's not taking, that's right.

11 Q. Pulmonary fibrosis, what's your understanding of  
12 that? You've told me interstitial pneumonitis is  
13 a pulmonary fibrosis. Tell me what your  
14 understanding of pulmonary fibrosis is.

15 A. Well, just what the doctor said is part of my --  
16 my capillaries being swollen at the end of my --  
17 the blood vessels or whatever being swollen at  
18 the end and not allowing the air to transfer.

19 Q. And what doctor has diagnosed you with this  
20 condition?

21 A. Dr. Huang.

22 Q. Any others?

23 A. No.

24 Q. Would it be fair to say that Dr. -- how do you  
25 say it?

- 1 A. Huang.
- 2 Q. -- Huang is your primary doctor for your lung or  
3 breathing problems?
- 4 A. Yes. And I do need to say this too about my --  
5 you had asked me earlier about that medication.
- 6 Q. Yes, sir.
- 7 A. My -- all my Humulin and my insulin, even though  
8 Dr. Bizzell is the one that administers, Dr.  
9 Huang is the one that has to -- because the  
10 steroids and all, he does keep an eye on it.
- 11 Q. He manages it, but Dr. Bizzell prescribes it with  
12 him managing it?
- 13 A. Yeah. Because she had started it, and he said  
14 the levels need to go up. They both, I guess,  
15 decide on that.
- 16 Q. Got it. Do you get medication from any other  
17 physician, other than Dr. Huang or Dr. Bizzell?
- 18 A. Not anymore. I had when I was going to Dr.  
19 Scott, and that's -- that was before we  
20 determined what it actually was.
- 21 Q. Dr. Scott was your family doctor?
- 22 A. No, he wasn't. It was just I was getting another  
23 opinion --
- 24 Q. Oh, okay.
- 25 A. -- from Dr. Bizzell. This is before I started

1 going to Dr. Huang. And he was pretty much in  
2 there.

3 Q. Now, what kind of doctor is Dr. Scott, family  
4 doctor?

5 A. Yeah. He's a family doctor.

6 Q. Dr. Bizzell sent you over there for another  
7 opinion?

8 A. I went over there for another opinion.

9 Q. Got it. But Dr. Scott is not treating you now?

10 A. No.

11 Q. When is the last time you saw Dr. Scott? And I'm  
12 not trying to test you. I've got a September 15,  
13 '07, visit or diagnostic study.

14 A. Yeah. I got into -- well, I got into a little  
15 trouble, and I went over there. I didn't know  
16 what it was, and it wound up being my sugar  
17 levels. It was just so high. And he wasn't  
18 there. He had a nurse practitioner there. They  
19 wound up sending me to the hospital.

20 Q. Cheryl Millington? You don't remember who it  
21 was?

22 A. Huh-uh.

23 Q. Or Marilee Mullinax, one of them?

24 A. That may be it.

25 Q. Okay. Was that the last time though then, about



- 1           September '07, that you were in Dr. Scott's  
2           office to see a physician or nurse practitioner?  
3    A.     Probably, yes.  
4    Q.     Do you have any appointments scheduled to go back  
5           to see Dr. Scott?  
6    A.     No, I don't.  
7    Q.     Is he treating you for any reason now?  
8    A.     No, he's not.  
9    Q.     And you don't have any prescription medication  
10           that you take that he has prescribed?  
11   A.     No.  
12   Q.     And I may have just asked you this. Bear with  
13           me. You don't have any appointments scheduled to  
14           go back to see Dr. Scott?  
15   A.     I do not.  
16   Q.     Did you drive here today?  
17   A.     I did.  
18   Q.     What kind of vehicle do you drive?  
19   A.     A van.  
20   Q.     What kind of van?  
21   A.     2002 Chrysler.  
22   Q.     What color is it?  
23   A.     It's white.  
24   Q.     Does your wife have a vehicle that she drives?  
25   A.     Yes.

1 Q. What does she drive?

2 A. 2002 Honda Accord.

3 Q. What color is it?

4 A. Beige.

5 Q. Any other vehicles at home for you to drive?

6 A. No.

7 Q. Boats, campers, motorcycles, any of that?

8 A. No. Lawn mower.

9 Q. Other than this workers' compensation claim that  
10 brings us here today, have you ever been a  
11 plaintiff or a defendant in a lawsuit, sued  
12 someone, or been sued by someone?

13 A. Yes, I have.

14 Q. Tell me about that, sir.

15 A. Well, I mean it didn't go through. We have  
16 people sue us at the law enforcement.

17 Q. Oh, okay. When you were working at the detention  
18 center?

19 A. No. As a police officer.

20 Q. Police officer?

21 A. Yeah.

22 Q. And some perpetrator or somebody would sue?

23 A. Yeah, try to sue.

24 Q. Got it. But other than being sued in your  
25 capacity as a police officer, have you ever been

- 1 sued?
- 2 A. No.
- 3 Q. And none of those cases ever went anywhere?
- 4 A. No, they didn't.
- 5 Q. Ever had a workers' compensation claim that you
- 6 filed working anywhere, other than this one?
- 7 A. No.
- 8 Q. You ever been injured in an automobile accident?
- 9 A. No.
- 10 Q. Any other claims for personal injury, slip and
- 11 fall in a hamburger place, grocery store,
- 12 anything?
- 13 A. I mean I've gotten hurt, but I've never filed any
- 14 claims. I've got hurt at the police department,
- 15 but they -- you know, just go to the -- you go to
- 16 the --
- 17 Q. Nurse?
- 18 A. Go to the doctor, yes. You don't have to start a
- 19 claim.
- 20 Q. Have you missed any time from work because of a
- 21 job injury and not filed a workers' compensation
- 22 claim?
- 23 A. Yes.
- 24 Q. Tell me about that.
- 25 A. Here at the police department when I've had a

1 surgery on this wrist right here. That was when  
2 I was chasing a guy, and he jumped the ravine.  
3 And I fell out in the -- I didn't know the  
4 territory. I fell in the ravine and kind of --

5 Q. Had to have surgery on the wrist?

6 A. Yeah.

7 Q. Some kind of carpal tunnel, or did you break  
8 something?

9 A. A cyst came up on it, and they took it off.

10 Q. Got it. Your bills got paid?

11 A. Yeah.

12 Q. Did you miss any time from work, or did they just  
13 keep paying you?

14 A. Well, I missed some time, but I used my own time.

15 Q. And did you ever file a claim for that?

16 A. No.

17 Q. Healed up from that?

18 A. Yes.

19 Q. Any problems with that hand or wrist now?

20 A. No. Huh-uh.

21 Q. And that's on your left hand?

22 A. Yes.

23 Q. About when was that that you jumped in the ravine  
24 and hurt your wrist?

25 A. I don't know. Certainly after 2000, but I don't

- 1 know the date.
- 2 Q. Were you working southside or Southern Side?
- 3 A. I don't -- I don't think so.
- 4 Q. May have been in Nicholtown?
- 5 A. Yeah. I may have been in Nicholtown because I
- 6 don't think I would have made it all the way over
- 7 from here to there for a chase.
- 8 Q. Got it.
- 9 A. Yeah, probably Nicholtown.
- 10 Q. And it was certainly before you went in as a
- 11 resource officer?
- 12 A. Yeah. It was before then.
- 13 Q. Any other injuries on the job for which you lost
- 14 time, had to get medical treatment, and did not
- 15 file a claim, other than this wrist injury?
- 16 A. No.
- 17 Q. You ever served in the military?
- 18 A. No.
- 19 Q. Ever applied for military service?
- 20 A. No.
- 21 Q. Did you have to periodically take PT tests,
- 22 physical endurance tests working with the city
- 23 police department?
- 24 A. Yes.
- 25 Q. How often did you have to do that?

1 A. We would -- every quarter.

2 Q. And what would that test consist of?

3 A. Mile and a half in the park running, pushups,  
4 sit-ups. And that's all determined by your age  
5 and gender.

6 Q. All right. And did you submit yourself each  
7 quarter as required for those?

8 A. Yes.

9 Q. Any time that you failed to pass?

10 A. Well, I mean they -- it's -- you don't really --  
11 it's participation.

12 Q. It's not a pass/fail?

13 A. No. Huh-uh. It's participation. They have a  
14 level that they suggest that you be at.

15 Q. And the target level is mainly the running a mile  
16 and a half?

17 A. And they say you should be able to do a certain  
18 amount of pushups, sit-ups in a minute's time,  
19 and I started to -- it was -- this last time I --  
20 well, I didn't finish the last one that we had.

21 Q. When was the last one you didn't finish?

22 A. It was -- well, of course you know it was before  
23 I retired, but I can't really remember the date.

24 Q. It was before you went out in May?

25 A. Yeah. It was before then.

- 1 Q. Was it in 2007 or 2006?
- 2 A. Probably 2007, maybe towards the end of 2007. It  
3 was cold I can remember.
- 4 Q. You retired September 2007.
- 5 A. Excuse me.
- 6 Q. 2006?
- 7 A. Might have been toward the end of 2006.
- 8 Q. Yes, sir.
- 9 A. Yeah.
- 10 Q. Now, you've got a driver's license. Any other  
11 license or certification you've got?
- 12 A. No..
- 13 Q. Do you smoke?
- 14 A. No.
- 15 Q. Tell me all the surgeries you've had in your  
16 lifetime. I know you had your wrist surgery.
- 17 A. Yeah. I've had my tonsils taken out and part of  
18 the -- I don't know what you call it back there,  
19 like the vocal cord -- not the vocal cord. But  
20 Dr. McClear, he took out some other stuff  
21 while --
- 22 Q. Uvula, the thing that hangs down?
- 23 A. Yeah, that.
- 24 Q. Is that through the sleep study doctor?
- 25 A. No, it's not. It was a different one.

- 1 Q. When was that surgery done?
- 2 A. It was done the same time they was doing my  
3 tonsils.
- 4 Q. About when was that?
- 5 A. 2005.
- 6 Q. And why did you need that surgery? What was  
7 going on?
- 8 A. Well, it was part of the -- yeah, it was part of  
9 the snoring and all that, the sleep study.
- 10 Q. Did they take your adenoids out, too?
- 11 A. I don't think he took those out. I don't know.
- 12 Q. Now, did you go see a sleep study doctor?
- 13 A. I did.
- 14 Q. Was that Dr. Freddie Wilson?
- 15 A. I saw Dr. Freddie Wilson, and I also did another  
16 one with Dr. -- Dr. Laurens had me do one.
- 17 Q. Rick Laurens?
- 18 A. Yeah, he didn't do it. I mean somebody --
- 19 Q. He sent you somewhere else?
- 20 A. Well, it was still over there at St. Francis,  
21 over there by his office. But I'm sure one of  
22 the other physicians was the one that did it, but  
23 he was the one that ordered it.
- 24 Q. Now, about when did you see Freddie Wilson?
- 25 A. Probably 2003.



- 1 Q. And did he diagnose you with sleep apnea?
- 2 A. Yes.
- 3 Q. Is that the first time you got diagnosed --
- 4 A. Yes.
- 5 Q. -- with sleep apnea?
- 6 A. Uh-huh.
- 7 Q. Did you get prescribed a C-PAP machine?
- 8 A. Yes.
- 9 Q. Was that the first time you had used a C-PAP
- 10 machine?
- 11 A. Yes, that was.
- 12 Q. Do you still have to use that now?
- 13 A. Well, now I'm on oxygen, straight oxygen, but I
- 14 still have one that Dr. Wilson -- not Dr. Wilson.
- 15 Dr. Laurens, that group over there.
- 16 Q. When did you last use your C-PAP?
- 17 A. Right before I got diagnosed with the -- with Dr.
- 18 Huang.
- 19 Q. About when was that?
- 20 A. I started using it -- in April.
- 21 Q. of '07?
- 22 A. of '07. I was using it in conjunction with the
- 23 oxygen, but it kept -- the C-PAP kept giving me
- 24 infections.
- 25 Q. Okay. How long have you had high blood pressure?

- 1 A. I don't know exactly when she started prescribing  
2 me the pills.
- 3 Q. A few years?
- 4 A. No. It hadn't been that long. I didn't start to  
5 get all these until this other stuff come up. It  
6 just come up all of a sudden.
- 7 Q. And was Dr. Bizzell the first doctor that  
8 prescribed medication for high blood pressure?
- 9 A. Yes. The only doctor.
- 10 Q. And your diabetes, how long have you been  
11 diagnosed with diabetes?
- 12 A. Maybe two years. About the same time.
- 13 Q. Do you have any heart problems?
- 14 A. No.
- 15 Q. Any arthritis that you're aware of?
- 16 A. No.
- 17 Q. Are you allergic to anything?
- 18 A. Shellfish.
- 19 Q. What happens if you eat shellfish?
- 20 A. I swell up or --
- 21 Q. Have trouble breathing?
- 22 A. -- get the hives. Yeah. Feels like I'm  
23 breathing through a straw.
- 24 Q. Anything else that you're allergic to that you're  
25 aware of?

- 1 A. Not that I know of.
- 2 Q. When's the last time you saw Dr. Richard Laurens
- 3 or somebody at Palmetto Pulmonary Critical Care?
- 4 A. I don't know. I had to go back over there
- 5 February 6th, just for a breathing test that was
- 6 ordered by --
- 7 Q. February '08?
- 8 A. Yeah.
- 9 Q. Prior to that time, had you been there when?
- 10 A. It was probably before April 2007.
- 11 Q. I've got a report January 18, 2007, but it looks
- 12 like since that time you had several diagnostic
- 13 studies, pulmonary function tests. Is that where
- 14 you go when Dr. Huang needs you to get a test for
- 15 him to review?
- 16 A. He has asked me to sometimes go ahead and go back
- 17 over there, get like a chest x-ray; yeah, and
- 18 stuff like that, so I'll have it when I come --
- 19 he'll have it before I come up.
- 20 Q. Have you seen Dr. Laurens since January of 2007?
- 21 A. I don't think so.
- 22 Q. I was trying to understand how there was some
- 23 diagnostic tests but I didn't have a narrative
- 24 report for it, but Dr. Huang may have sent you
- 25 over there for a CT scan or chest x-ray.

1 A. And some of the reason for me leaving there, too,  
2 because I would go over there, and I wouldn't --  
3 I would have an appointment to see Dr. Laurens,  
4 but then it would be somebody else, a nurse  
5 practitioner. And I was kind of getting up --  
6 you know.

7 Q. I can understand that. Are you still seeing Dr.  
8 Laurens' group for anything over there now?

9 A. No.

10 Q. Other than if Dr. Huang wants you to go over  
11 there to get a test done?

12 A. Yeah.

13 Q. No return appointments?

14 A. No.

15 Q. When's the last time you saw Dr. Bizzell for any  
16 reason?

17 A. Well, I go to her the 29th so -- and she sees me  
18 I think every -- I think it's every three months,  
19 so this is my normal time.

20 Q. So if we work back from February 29th, about  
21 every three months is when you see her?

22 A. Yeah, I think so.

23 Q. Is it mainly to manage what medications she's  
24 prescribing, as well as your diabetic and blood  
25 sugars?

- 1 A. Yes.
- 2 Q. Is she treating you for any of your pulmonary or  
3 lung problems?
- 4 A. No. She just -- I mean she goes over suggestions  
5 and stuff like that, exercises, different things  
6 I can do for myself, but no, she's not treating  
7 me.
- 8 Q. Has she got you on any type of exercise program  
9 or weight reduction program now?
- 10 A. Yeah.
- 11 Q. And what's she telling you?
- 12 A. She gave me the sheets they give you for your  
13 dietary, you know, suggesting that you change  
14 your diet and --
- 15 Q. Eat all that stuff that doesn't taste good and  
16 doesn't have any taste to it at all.
- 17 A. Yeah. Oatmeal.
- 18 Q. Cheerios, all that stuff.
- 19 Does she want you to try to continue to lose  
20 weight?
- 21 A. Yes.
- 22 Q. Does she have a target for you on your weight  
23 loss or a target weight?
- 24 A. No. She just always says any weight loss is  
25 better than -- I mean I don't really have like a

1 weight.

2 Q. who would have been your supervisor or person you  
3 reported to when you were a resource officer?

4 A. Mike -- Sergeant Mike Madden, immediate  
5 supervisor.

6 Q. What was his job or assignment?

7 A. He was the sergeant in community patrol that was  
8 over all school resources, and I think he was  
9 over the downtown officers, too, at the time. I  
10 think his current position now was just -- I  
11 don't think he really have a crew. The last time  
12 I heard he was just handling special events for  
13 the city.

14 Q. Now, when you were working in that May to  
15 September time period, who would have been your  
16 supervisor?

17 A. The time that I was on light duty?

18 Q. Yes, sir.

19 A. I was reporting to Lieutenant Otho McLaughlin.

20 Q. Otho.

21 A. Even though -- that's the one I reported to even  
22 though they still had me listed under my -- you  
23 know, my -- still Mike Madden was my supervisor,  
24 but during this time, I was really under Otho  
25 doing the work.

- 1 Q. That's that May to September '07, time period?
- 2 A. Yes.
- 3 Q. When you were a resource officer, '04, '05, of
- 4 2000, it's Mike Madden?
- 5 A. Mike Madden.
- 6 Q. Okay. And when you worked community patrol
- 7 Southern Side, who was it?
- 8 A. Greg Williams. Sergeant Greg Williams.
- 9 Q. How about when you were working community patrol
- 10 Nicholstown?
- 11 A. That would have been Sergeant Mike Harmon for the
- 12 most part. He's now a captain.
- 13 Q. Mike Harmon?
- 14 A. Yes.
- 15 Q. He was a sergeant then; he's a captain now?
- 16 A. Yes.
- 17 Q. And when you were a uniformed officer, '97, '99,
- 18 do you remember who your supervisor would have
- 19 been then?
- 20 A. Sergeant Lee Jones. He retired. And Robin
- 21 Smith, she -- she's the captain now, too. She
- 22 would have been on the platoon with him, so she
- 23 was part of our sergeant, too.
- 24 Q. All right. The last full year you worked with
- 25 the City, I've got records showing you earned

- 1           about \$51,642. Does that sound about right?
- 2    A.     Yeah.
- 3    Q.     I'm sorry?
- 4    A.     Yes. I'm sorry.
- 5    Q.     Did you have any other side jobs or anything?
- 6    A.     Well, that's -- side jobs is --
- 7    Q.     That's with the side jobs?
- 8    A.     Yeah, that's with the side jobs.
- 9    Q.     That rolls up everything?
- 10   A.     Yeah. City wasn't paying me that much though.
- 11           That's side jobs and everything.
- 12   Q.     I got you. Did you have side jobs that were
- 13           regular side jobs or --
- 14   A.     Yes.
- 15   Q.     -- just caught them when you could wherever?
- 16   A.     I had some that was regular side jobs, and I did
- 17           pick up other jobs also.
- 18   Q.     All right. And let's start '05, and bring me
- 19           forward. Tell me what kind of side jobs you were
- 20           doing. Let's start in January '05.
- 21   A.     Well, I did -- primarily I did a lot of the
- 22           school activities, basketball, football, soccer,
- 23           baseball, wrestling. I also did the clubs
- 24           regularly.
- 25   Q.     Which clubs did you regularly work?



- 1 A. Well, Astro. We did the Astro was one.
- 2 Q. The bowling alley Astro?
- 3 A. We did the bowling alley also. Yeah, the one
- 4 beside the bowling alley?
- 5 Q. Right.
- 6 A. Yeah. We did the Astro. We did the bowling
- 7 alley. I was even doing Greenville Tech. That
- 8 was later on, you know, with the housing unit.
- 9 Q. Right.
- 10 A. The church, Redemption World Outreach, every
- 11 Sunday and Wednesday nights.
- 12 Q. Lot of people down there.
- 13 A. Yeah. Pretty good crowd. Hampton Inn Hotel.
- 14 Q. What did you do there, just patrol the lot?
- 15 A. Yeah. On the weekends at night.
- 16 Q. Which one?
- 17 A. The one off of Haywood.
- 18 Q. In Orchard Park over there?
- 19 A. No. It's right off of Haywood on the backside.
- 20 Is it Dyson Center? Right across from the mall.
- 21 Q. I know where you are.
- 22 A. Yeah. I would often work over here at the
- 23 Carolina Center. It was the -- you know, the
- 24 Carolina Center?
- 25 Q. Yes, sir.

- 1 A. We'd do things over there.
- 2 Q. Those were your primary side jobs?
- 3 A. Uh-huh.
- 4 Q. You need to say yes or no.
- 5 A. Yes. Yes. I'm sorry.
- 6 Q. That's all right. Just want to make sure we get
- 7 your answers down accurately, and uh-huh and
- 8 huh-uh sometimes get confused.
- 9 A. Yes.
- 10 Q. All right. Tell me what happened. Workers'
- 11 compensation claim you filed, how'd you get hurt?
- 12 A. Going into the building over there at the West
- 13 Washington Street. I was assigned to the area
- 14 over there, and I was given instructions to go
- 15 inside to -- you know, some of the homeless
- 16 people would go in that building, and I would
- 17 have to go in to remove them from the building.
- 18 Q. West Washington Street building?
- 19 A. It's on Hudson. Hudson and West Washington. I
- 20 think it's 104 South Hudson Street. I think
- 21 that's the actual address they use for the
- 22 building.
- 23 Q. Is that building still there?
- 24 A. Building's no longer there. It's been torn down.
- 25 Q. And over what period of time are you going into

1 this West Washington Street building?

2 A. When you say -- maybe a year and a half to two  
3 years over the whole thing.

4 Q. When are we talking about, '03-'04, '04-'05,  
5 '05-'06?

6 A. When I was at Southern Side, if those times  
7 matches.

8 Q. '02-'03 is what I understood Southern Side to be.

9 A. That's the general -- I'm thinking that's the  
10 time that I was over there, yeah.

11 Q. The West Washington Street building is a part of  
12 Southern Side --

13 A. Yes.

14 Q. -- area that you're patrolling?

15 A. Yes.

16 Q. Now, the building that you said you were required  
17 to go into that's no longer there, when was that  
18 building raised or torn down?

19 A. I don't know the exact -- I don't know the exact  
20 date or the year.

21 Q. Before or after you went on as a resource  
22 officer?

23 A. If it was torn down -- it may have been torn down  
24 just after I left the area.

25 Q. Okay. What was the building used for before it

1           was vacant?

2   A.     It was -- my understanding, it was a chemical  
3           company.

4   Q.     And what's your understanding based upon?

5   A.     Other officers who worked the area before me.  
6           officers that been on it longer.

7   Q.     And those officers' names?

8   A.     Maybe like Allen Brown. I mean I'm just throwing  
9           out some names, guys that been around 20 plus  
10          years.

11   Q.    Anybody else?

12   A.    I'm trying to think of who's still down there.  
13          Well, certainly like Captain Henderson and  
14          Captain Harper. They're retired, but they -- you  
15          know, they would have been around during that  
16          time probably patrolling, know the layout of the  
17          city, so they would have to know.

18   Q.    Now, Southern Side area where this building is  
19          located is the period of time that you would have  
20          been in this building when you were working as a  
21          community patrol officer in Southern Side,  
22          correct?

23   A.    That's the time I would have been in the  
24          building?

25   Q.    Yes, sir.

1 A. Yes, more than like -- yes.

2 Q. Would you have been in the building any other  
3 time before or after you worked as a community  
4 patrol officer assigned to Southern Side?

5 A. There's a possibility I could have went in there,  
6 like backed somebody up when they go in to check  
7 the building.

8 Q. Got a specific call and you had to go in there as  
9 a backup?

10 A. Yeah. Well, I was assigned to it, so I didn't  
11 have to get a call. It was part of my job to  
12 check it every day.

13 Q. But when you weren't assigned to community  
14 patrol --

15 A. Yeah.

16 Q. -- if you're in that building, you were backing  
17 somebody up on a call?

18 A. Yeah. It would have been on a call, yes, sir.

19 Q. All right. Now, during the time you worked as a  
20 community patrol officer for Southern Side, how  
21 often would you have to go in that building?

22 A. Daily.

23 Q. Why daily?

24 A. They'd give it what we call a extra patrol, and  
25 it was given extra patrol by -- I remember one

1           being Lieutenant Randy Evitt specifically called  
2           my lieutenant and told him to make sure that I'm  
3           checking that building every day.

4    Q.     All right.

5    A.     And extra patrol would be placed through our  
6           dispatch, which, you know, a sheet comes out, and  
7           it comes to your beat area, this is your extra  
8           patrol. And it basically state what you need to  
9           be doing.

10   Q.     All right. So there's some paperwork generated  
11           when an extra patrol designation or assignment is  
12           given?

13   A.     Yes.

14   Q.     And so somewhere in the morass of paper that the  
15           city has should be some documentation as to how  
16           often extra patrol you were put in that building?

17   A.     Yes.

18   Q.     What do you call that paperwork?

19   A.     I don't know.

20   Q.     How is it generated, through dispatch?

21   A.     Yeah. Dispatch usually sends it up. You call  
22           dispatch, say you want extra patrol on whatever  
23           location.

24   Q.     And that's Lieutenant Evitt or somebody  
25           designating that?

- 1 A. Yeah. Somebody did it. Somebody designated.
- 2 Q. And so where is this extra patrol paperwork
- 3 generated?
- 4 A. I guess dispatch.
- 5 Q. Okay. And then how does dispatch get the paper
- 6 in your hand?
- 7 A. They bring it to roll call.
- 8 Q. Okay.
- 9 A. Okay. And roll call will put it into a -- they
- 10 sort it out. They would give it to the area
- 11 officers and also the community patrol officer.
- 12 Then it comes -- you know, it would come to the
- 13 attention of community patrol supervisor, who
- 14 would then assign it to you.
- 15 Q. Okay. So community patrol supervisor would be
- 16 the one that would assign you the extra patrol
- 17 and put the paperwork in your hand?
- 18 A. Yes. Now, I can go -- you know, you're not
- 19 babies, so you can go -- you can go to where the
- 20 paperwork is located at, and you can get a heads
- 21 up on, you know, what's coming up in your
- 22 community, which would be in roll call.
- 23 Q. But your supervisor's going to know about that
- 24 extra patrol?
- 25 A. Yeah. Supervisor's gonna cause they sign off on

1 it.

2 Q. So the supervisor for Southern Side, when you  
3 were community patrol, Greg Williams?

4 A. He was the sergeant, and I want to say the  
5 lieutenant was Myron Alderman. And --

6 Q. Myron Alderman?

7 A. Alderman. And he would have been the one who  
8 would -- then he hands it to the sergeant. The  
9 sergeant then hands it to the officers.

10 Q. So either Myron Alderman, Lieutenant Alderman, or  
11 Sergeant Greg Williams would know about the extra  
12 patrol?

13 A. They should. I mean, you know, they should.

14 Q. Would someone else know better than the two of  
15 them for the extra patrol assigned for Southern  
16 Side --

17 A. Only the person that --

18 Q. -- during the time that you were there?

19 A. Only the person that initiated it would know  
20 better because they the ones that would have.

21 Q. All right. And so what would you do on a daily  
22 basis with respect to that building?

23 A. Well, I would go. I would call out to dispatch,  
24 let them know that's where I'm at, I'm on that  
25 call, and then I would go into the building and



- 1 start searching for, you know, if anybody's in  
2 there.
- 3 Q. Whenever you went into that building, you'd leave  
4 your patrol car obviously and go in the building?
- 5 A. Yes.
- 6 Q. And when you would do that, you would notify  
7 dispatch that you're --
- 8 A. In the building.
- 9 Q. -- leaving your patrol unit --
- 10 A. Yeah. I'm on foot.
- 11 Q. -- and going in the building --
- 12 A. Yeah.
- 13 Q. -- and doing whatever you got to do?
- 14 A. Yeah.
- 15 Q. So that record is made somewhere in dispatch  
16 whenever you would physically get in the  
17 building?
- 18 A. Yes. Should be.
- 19 Q. Okay. And when you would go in the building,  
20 what would you do?
- 21 A. Well, I would search the building, see if anybody  
22 trespassing.
- 23 Q. How long would that take?
- 24 A. It could take an hour, just searching the  
25 building, maybe a little longer. If you're doing

1           it properly, you would have, you know, more than  
2           one officer.

3    Q.     But you went in there by yourself?

4    A.     Well, a lot of times there just wasn't enough --  
5           you know, there wasn't enough bodies to go  
6           around --

7    Q.     Sure.

8    A.     -- and, you know, you'd call out.  Somebody may  
9           show up; they may not.  You know, like I say,  
10           we're not babies.  When you hear somebody call  
11           out on a foot and they're checking a building,  
12           your next closest officers should be the one that  
13           come and assist, but that don't always happen.

14   Q.     Right.

15   A.     In theory it does, but it don't always happen.

16   Q.     So you would spend an hour in this building?

17   A.     Sometimes longer if you found someone.  And a lot  
18           of times I wouldn't find just one person.  You'd  
19           find three or four.  And you come back, say,  
20           well, I know I saw another guy laying back in  
21           there when I took this one out.

22   Q.     So what would you do when you found somebody?

23   A.     Sometimes you take them to jail.  Sometimes you  
24           just run them off.  It depends on the volume of  
25           calls that day, that night, you know, the things

1           that you got to do. If it's like a day that  
2           where not a lot was going to be, you know, going  
3           on, then you would have time to properly do your  
4           job, which is arrest them for trespassing. You  
5           know, the thing was to stop people from going in  
6           there.

7    Q.     If you had to arrest somebody for trespassing,  
8           there would be some paperwork generated on that,  
9           too?

10   A.     Yes.

11   Q.     Another dispatch call that I've got --

12   A.     Yes. An arrest.

13   Q.     -- to bring somebody in for trespassing or call  
14           for a unit to come pick them up?

15   A.     Uh-huh. And -- well, no. You'd have to do it  
16           yourself. You wouldn't call for a unit to come  
17           pick them up. And a lot of times we consider  
18           arrest when we just write a ticket, don't  
19           necessarily take them down to jail, but it'd  
20           still be paperwork.

21   Q.     Sure.

22   A.     Yeah.

23   Q.     When you'd go in this building, what did you  
24           find? I mean what did it look like when you went  
25           in?

- 1 A. It was dirty, dirt floor, broken stairs. There  
2 was still drums, barrel drums and stuff  
3 throughout the building, oil. Well, it looks to  
4 be oil, oily dirt, and floor falling out. There  
5 was several different levels in this building. I  
6 think one was up and one was down. So it might  
7 have been like -- it's three floors, but one  
8 would have been like a basement type. You had to  
9 watch yourself. Rusted out water tank. It was  
10 overgrown, windows knocked in, just, you know,  
11 human feces, everything throughout.
- 12 Q. What was in the drums, you know?
- 13 A. I don't know.
- 14 Q. You got any idea what was in there?
- 15 A. Never opened them.
- 16 Q. I mean other than what looked to be oily dirt,  
17 anything else in there that you knew of?
- 18 A. Powder. There was powder and stuff in there like  
19 -- I don't know, maybe like a mixer or something  
20 had been in that spot or close to that. They had  
21 like a -- it was white.
- 22 Q. Right.
- 23 A. Old bags.
- 24 Q. But you don't know what any of the chemicals or  
25 substances were in the building?

1 A. No.

2 Q. Okay. Did you ever find out?

3 A. Well, I got a -- I got a letter that I looked at  
4 after they did some of the stuff in there. Yeah,  
5 I did. Some of the things that was found like by  
6 the fire department and stuff like that.

7 Q. What kind of letter was that?

8 A. Well, I'm saying when he did the report. It  
9 wasn't like addressed to me.

10 Q. Do you have that report?

11 A. No, I don't.

12 Q. Have you seen it?

13 A. Yeah, I saw it.

14 Q. Where did you get it?

15 A. I got it from the -- well, the school district,  
16 when they did their -- you know, when they was  
17 doing the -- they was looking to build a school  
18 there, and when they did their report and  
19 findings.

20 Q. Did you give a copy of that to your attorney?

21 A. Yes.

22 MR. FARRY:

23 Do you have that, Joe, what he's talking about?

24 MR. MOONEYHAM:

25 I think we do.

1 [Recess taken.]

2 [Gilliard Deposition Exhibit Nos. 1 and 2 were  
3 marked.]

4 EXAMINATION RESUMED BY MR. FARRY:

5 Q. You had a chance to look through documents that  
6 your attorney has organized in a notebook, and  
7 you were looking for a letter and did not find  
8 it. The letter you're looking for is from what  
9 entity or person?

10 A. It was a -- the school district, where they did a  
11 -- I guess a report on the findings of that area.

12 Q. And when you say, area, was this report done  
13 before or after the building was torn down?

14 A. I don't know.

15 Q. Do you have a recollection as to what the report  
16 says?

17 A. Well, the names -- it listed some of the things  
18 that was found, some of the chemicals that was  
19 found.

20 Q. Where?

21 A. At 104 South Hudson.

22 Q. Was it in the building or after the building was  
23 torn down?

24 A. That's what I don't know.

25 Q. Once you locate that, assuming your attorney has

- 1 no objection, you'll get me a copy of that?
- 2 A. If he has no objection.
- 3 Q. Now, when you were working as the Southern Side
- 4 community patrol officer, did you have a
- 5 particular unit number or star number?
- 6 A. Yes.
- 7 Q. What was it?
- 8 A. My star number was 0272.
- 9 Q. 0272?
- 10 A. Yes. But that was -- that just refers to the
- 11 CAD. Now, my unit number was 771. That's when
- 12 they call me.
- 13 Q. Right.
- 14 A. Sort of like your name.
- 15 Q. And that stayed your unit number when you were at
- 16 Southern Side community patrol?
- 17 A. Yeah. It was my unit number since 1999 until the
- 18 end.
- 19 Q. Now, what's the star number?
- 20 A. It's for CAD and report purposes. They don't
- 21 call you -- that's just, I guess, paperwork
- 22 purposes, but they call you by your unit number.
- 23 Q. So if we look at the records that are generated
- 24 for these patrols, will it be designated by unit
- 25 number?

- 1 A. Probably both.
- 2 Q. Both unit number and star number or name?
- 3 A. Probably both unit number, star number, and name.
- 4 I guess that's three of them.
- 5 Q. There you go. All right. You were telling me
- 6 about going in this building. On the average you
- 7 went in there every day; is that right?
- 8 A. Yes. When I was on duty.
- 9 Q. All right. And average time you spent in there
- 10 each day was what? I know if you didn't find
- 11 anybody, it wasn't as long as if you found two or
- 12 three people. But on average how long would you
- 13 spend in there?
- 14 A. If they didn't call me, I'd say an hour. Because
- 15 sometimes when you get out and you tell them you
- 16 out, they'll still call you and say, we got a
- 17 call holding, so they can call you. And then
- 18 you, you know, say, well, I can get back to this,
- 19 so you'll leave it. But if they didn't call me,
- 20 I would say an average of an hour.
- 21 Q. But if you got a call, you'd just pull out of
- 22 there and go wherever the call was?
- 23 A. Yeah. Wherever the -- yeah. Or, you know, on
- 24 the radio if you heard that you probably need to
- 25 be somewhere else.



- 1 Q. Got it. Now, as far as your supervisor or  
2 lieutenant assigned for community patrol Southern  
3 Side, during the period of time that you  
4 patrolled that building, who is the person.  
5 working for the city police department who would  
6 best know what you were doing on a daily basis in  
7 that building or otherwise?
- 8 A. The sergeant.
- 9 Q. That person's name is?
- 10 A. At that time I think it would have been Sergeant  
11 Greg Williams.
- 12 Q. And the next best person besides Greg Williams,  
13 is that going to be Marion Alderman?
- 14 A. Yeah. Myron.
- 15 Q. Myron?
- 16 A. The lieutenant, yeah. Yes.
- 17 Q. And they would be familiar with the paperwork for  
18 extra patrol?
- 19 A. Yes.
- 20 Q. For that area or building?
- 21 A. Yes. They should.
- 22 Q. Did you ever go back in that building after you  
23 left community patrol Southern Side and went to  
24 resource officer?
- 25 A. That's what I said, there's a possibility I could

1 have gone over there to assist somebody, back  
2 somebody up because --

3 Q. Do you have any independent recollection of doing  
4 that?

5 A. Well, I mean, you know, every time I gas up,  
6 you'd go by there, so, you know, there's a -- you  
7 see what I'm saying? There's a possibility you  
8 could have stopped. You see a car out there, you  
9 could stop.

10 Q. If you stopped and assisted someone, do you tell  
11 dispatch you're --

12 A. Sometimes. Not always. Cause you don't know how  
13 long -- if you see that you're going to be there  
14 for a while, then you go ahead and call out, say  
15 don't call your way, but not always.

16 Q. Do you have any independent recollection of ever  
17 going in that building after you left southern  
18 side community patrol and went to a resource  
19 officer at J. L. Mann?

20 A. I can only say I think, you know, because I mean  
21 I've went in there so many times.

22 Q. It's hard to determine?

23 A. Yeah. And sometimes --

24 Q. What's the longest you had to spend in there?

25 A. I've been in there a couple of hours where you

1           just go right in, and they call somebody's right  
2           back in there.

3   Q.    Is there power in that building?

4   A.    I don't know. Not that I know of.

5   Q.    I mean you take a flashlight in there when you --

6   A.    Yeah. I always have a flashlight. Even in the  
7           daytime you had to have a flashlight.

8   Q.    So what about that building caused this workers'  
9           compensation claim?

10   A.   Well, the chemicals that was in the building is  
11           what the doctor seems to think caused my  
12           condition.

13   Q.    And what chemicals is that?

14   A.    I don't know the names.

15   Q.    Does the doctor know the names?

16   A.    Yes.

17   Q.    What doctor is that?

18   A.    Dr. Huang. Now, from the letter, like I say,  
19           from the things they say was found in the  
20           building that's what he pointed to as being the  
21           cause to my condition.

22   Q.    And has he given you a report that says that he  
23           thinks that your condition is caused by some  
24           chemicals that he's identified?

25   A.    Just talking to me. He didn't actually give me

1           like a written --

2    Q.     You haven't seen a written report?

3    A.     Huh-uh.

4    Q.     Has any other doctor, other than Dr. Huang,  
5           formed an opinion that your breathing problems  
6           and pulmonary problems are caused by that  
7           building?

8    A.     Not that I know of.

9    Q.     So he's the only doctor that you're aware of?

10   A.     Yes.

11   Q.     And are you aware of any written report that he  
12           has issued, a letter, statement, doctor's report,  
13           anything that Dr. Huang or someone in his office  
14           says, the building that you were in and these  
15           chemicals in the building caused the problem?

16   A.     No, I'm not aware of any written report.

17   Q.     When's the first time you saw Dr. Huang?

18   A.     April of 2007 -- April 1st.

19   Q.     How did you get to see him?

20   A.     I -- actually, I went online. And someone had  
21           told me to seek Duke out when I kept trying to  
22           find -- they couldn't find -- you know, Dr.  
23           Laurens was telling me he didn't know what was  
24           wrong with me. And I went online to -- they have  
25           an online thing, become a patient. And somebody

- 1 told me, you should go to Duke, you know.  
2 somebody said, you should go to Colorado. The  
3 hospital out there supposed to have been good  
4 with lungs. Cause I said whatever it is is in my  
5 lungs. I know that.  
6 And when I went online, it asked for certain  
7 information, and then it said, you know, like you  
8 pretty much pick a doctor and -- or they could  
9 pick one for you. And I told them I had never  
10 been there, and they picked doctor -- you know,  
11 gave me an appointment, you'll see Dr. Huang  
12 April 1st.
- 13 Q. So April 1st is your first visit?  
14 A. Yes.
- 15 Q. Did you just go up for a few hours, or did you  
16 spend the night or --
- 17 A. Well, we called, and they told us, my wife and I,  
18 they said -- I said that's four hours away, so I  
19 said we need to ask and see, you know. And they  
20 said bring an overnight bag just in case. And so  
21 we went and wound up having to stay there for a  
22 week because I went in for surgery the next day.
- 23 Q. The surgery, was that a lung biopsy?  
24 A. Yes.
- 25 Q. Any other surgery besides a lung biopsy?

1 A. I guess they -- I guess it's the same thing.

2 They drained a lot of stuff, you know, from it.

3 Q. Now, what city are you in when you went to Duke?

4 A. Durham. He's actually at the -- it's called,

5 Allergy and Airway -- Disease, Allergy, and

6 Airway Center, something like that.

7 Q. But the hospital you're in, was it Durham --

8 A. Regional.

9 Q. -- Hospital?

10 A. Yeah. Durham Regional. Cause he said he could

11 have put me into another one, but this one was

12 like -- you know, either I had to wait and get

13 into this one, or either I can go in this one

14 right now.

15 Q. So you did that April 1st?

16 A. Yeah. I think surgery might have been like the

17 3rd or 4th or something like that.

18 Q. Were you hospitalized again in April?

19 A. Not in Durham. Just one time.

20 Q. Any other place you spent the night in a

21 hospital, other than Durham? The reason I ask

22 that is I've got some records where you were

23 admitted April 18, 2007, and discharged April 20,

24 2007.

25 A. That's what it -- they moved me to April 15th.

1 Q. 18th?

2 A. I was going to be April 1st, and they moved my  
3 time to April 15th. So that's what it was. I  
4 said April 1st.

5 Q. That's fine. But we just know there was just one  
6 time you spent the night in the hospital up there  
7 in Durham?

8 A. Yes.

9 Q. And it looks like you were there from April 18 of  
10 2007 to April 20?

11 A. Well, no. I was up there longer. That may be  
12 it.

13 Q. All right.

14 A. I've only been in the hospital once up there.

15 Q. And how many nights do you think you spent the  
16 night in the hospital?

17 A. It might have been two.

18 Q. Okay. However long it was, that's when the lung  
19 biopsy was done --

20 A. Yes.

21 Q. -- that Dr. Huang ordered?

22 A. Yes.

23 Q. And you said they drained some things, too?

24 A. Yeah. It was a lot of fluids and stuff they  
25 drained. Now, I had a lung biopsy also with

- 1 Dr. --
- 2 Q. Laurens.
- 3 A. Dr. Laurens, but I didn't stay in the hospital.
- 4 Q. Right. You got that done here in Greenville?
- 5 A. Yes.
- 6 Q. St. Francis?
- 7 A. Yes. But they went down my throat, and this one
- 8 they went in my side.
- 9 Q. Right.
- 10 A. At Durham, they went in my side.
- 11 Q. What did Dr. Huang tell you was going on?
- 12 A. Well, he didn't know at the time, but when it
- 13 came back, it was interstitial pneumonitis, which
- 14 he said is in the pulmonary fibrosis family.
- 15 Q. Right. Do you know what pulmonary fibrosis is?
- 16 A. Yeah. I mean, you know, yeah and no. I guess.
- 17 I don't know the whole thing. I think there's
- 18 different things on pulmonary fibrosis. It's
- 19 like, you know, my lungs.
- 20 Q. Can you get pulmonary fibrosis from sources other
- 21 than breathing chemicals, or do you know?
- 22 A. I don't know.
- 23 Q. You have been diagnosed with some type of
- 24 interstitial lung disease; is that your
- 25 understanding?



- 1 A. Yes.
- 2 Q. And Dr. Huang is the only doctor that has talked  
3 to you about what he thinks caused that?
- 4 A. Yes.
- 5 Q. And he told you that breathing or being around  
6 chemicals did it?
- 7 A. Yes. He thought it was chemicals. Even before  
8 he saw it, he thought it was chemical cause  
9 because he said I didn't smoke, my age. And he  
10 did say he was concerned about asbestos, but, you  
11 know, when -- when I gave him that report - maybe  
12 I gave it to him. I thought I gave it to you but  
13 - the chemicals that was on it he said is well  
14 known to cause it.
- 15 Q. Cause asbestos or asbestosis?
- 16 A. No. Cause the condition.
- 17 Q. Has any doctor diagnosed you with any problems  
18 with asbestos or asbestosis?
- 19 A. No.
- 20 Q. When you went up to see Dr. Huang and you spent  
21 several nights in the hospital, we think from  
22 April 18 to April 20, came home after that?
- 23 A. Yes.
- 24 Q. Have you been back to Dr. Huang since?
- 25 A. Yes. I went to him like a week after that, one

1 week. And I mean I been -- I go back the same --  
2 three times or four times a year, every three  
3 months.

4 Q. So after you went back a week later, do you go  
5 back to see Dr. Huang about every three months?

6 A. About every three months.

7 Q. Do you have to spend the night, or you just see  
8 him in his office?

9 A. No. I just see him in his office.

10 Q. When's the last time you saw Dr. Huang?

11 A. Well, let's put it this way, I got to go see him  
12 March 3rd. But it would have been in February,  
13 but I pushed everything out of February to -- you  
14 know, at the end of February to March.

15 Q. Why did you do that?

16 A. Scheduling.

17 Q. Was something else going on that you needed --

18 A. No. My wife's a school teacher. I want to make  
19 sure she's off, and we can go.

20 Q. Where does she teach?

21 A. She teach at Grove Elementary.

22 Q. What does she teach?

23 A. First grade.

24 Q. How long has she taught over there?

25 A. This may be her third year.

- 1 Q. Where did she teach before that?
- 2 A. She was a -- like a student teacher where they --
- 3 she'd go around.
- 4 Q. Teacher's aide?
- 5 A. No. Student teacher. She was in school.
- 6 Q. Okay.
- 7 A. Yeah. They just sent you to different schools.
- 8 Q. Where did she work before she worked at the
- 9 school district?
- 10 A. FBI.
- 11 Q. What did she do for the FBI?
- 12 A. Evidence control technician.
- 13 Q. What kind of control technician?
- 14 A. Evidence.
- 15 Q. Evidence?
- 16 A. Evidence control.
- 17 Q. Which office did she work out of?
- 18 A. Right here in Greenville.
- 19 Q. How long did she work for the FBI?
- 20 A. About five years, I think.
- 21 Q. Does she have health insurance coverage with the
- 22 school district?
- 23 A. No. She has it with me.
- 24 Q. And you still have it with the City?
- 25 A. With the City, yeah.

1 Q. And the City's coverage, is that Blue Cross Blue  
2 shield?

3 A. Yeah. We just switched. Yeah.

4 Q. Do you remember who it was before you switched?

5 A. It was Cigna. And the year before it was Blue  
6 Cross Blue Shield.

7 Q. They jump back around?

8 A. Yeah.

9 Q. Now, your bills from Dr. Huang, have those been  
10 paid under your health insurance with the City?

11 A. Yeah. And then the part that I have to pay.

12 Q. You have a co-pay and deductible?

13 A. Yes.

14 Q. And the same thing with your bills with Dr.  
15 Laurens and Dr. Bizzell, those have been paid  
16 for?

17 A. Yeah. Insurance and myself.

18 Q. Now, we've made a copy of a list of doctors and  
19 marked it as Exhibit 2. Can you go through that  
20 list of doctors and tell me if you're still  
21 seeing any of those doctors and when you did see  
22 them, what you were seeing them for?

23 A. Just go straight down the list?

24 Q. Yes, sir.

25 A. Dr. Hearn and Dr. Simms, those were my -- they

- 1           were like from Anderson Clinic. That's when I  
2           was small. I don't even know, you know, anything  
3           about them anymore. Not seeing them anymore.
- 4    Q.     That's when you were a child, okay.
- 5    A.     Yes. Dr. Stephenson, like I was seeing him  
6           before --
- 7    Q.     -- Dr. Bizzell.
- 8    A.     Exactly.
- 9    Q.     Got it.
- 10   A.     And then I think he just went to like older  
11           patients, so he gave me Dr. Bizzell.  
12           Dr. Desmond Smith, I was not actually seeing him.  
13           I was going to a clinic that he owned. And he  
14           had some doctors in there, but I couldn't  
15           remember the name. I just remember he was the  
16           doctor over there.
- 17   Q.     And what did you see --
- 18   A.     Family physician, you know, just --
- 19   Q.     Before you started seeing Dr. Stephens  
20           (phonetic)?
- 21   A.     Before I started seeing Dr. Stephenson.  
22           And then of course, Dr. Bizzell, I still see her.  
23           Anne Parker, she's on there. She's the eye  
24           doctor. I see her.
- 25   Q.     What do you see her for, other than just checkup

- 1 on your eyes?
- 2 A. Yeah. I had the lasik surgery.
- 3 Q. When did you have that done?
- 4 A. A couple years ago, yeah. And so I go back --
- 5 she's my eye doctor.
- 6 And Dr. Fuzia, that's just a dentist.
- 7 Dr. McClear, he did my throat.
- 8 Q. When you had your throat surgery?
- 9 A. Yeah, tonsils and all that.
- 10 Q. '05, I think you said?
- 11 A. Uh-huh. And then Dr. William Scott, I told you I
- 12 was going to him just to get a different opinion
- 13 from Dr. Bizzell.
- 14 Q. Right.
- 15 A. And then Dr. Laurens, same thing, trying to
- 16 figure out what was wrong with me.
- 17 And then Dr. Huang is who I'm still seeing.
- 18 Q. Okay. What's Dr. Huang say about your condition,
- 19 how it's going to do or what can be done for it?
- 20 A. Well, he says that it'll always be with me, you
- 21 know, just hopefully that -- the Prednisone, what
- 22 I was worried about, I didn't want to have to
- 23 stay on steroids, but he said he thought that I'd
- 24 always be on steroids some form or another. He
- 25 just didn't see me coming off of it. And as far

1 as my lungs, this -- you know, when I first went  
2 to him, my breathing was down to -- the test they  
3 do had me at 30 something percent, and he said,  
4 you know, we'll do what we can to raise it back  
5 up. But 52 percent, which is the tops that he  
6 told me I probably -- which is what I reached  
7 before, that may be the tops of what they can get  
8 me to.

9 Q. So his treatment, medication, and therapy has  
10 helped your breathing capacity to get up to  
11 around 52 percent?

12 A. 52 percent. But then again, when I went to him,  
13 I had some type of infection. So when I get an  
14 infection, my capacity do go down.

15 Q. Now, the breathing tests you take, are you  
16 breathing in something, or are you in a box that  
17 you breathe?

18 A. I'm in that box, and I'm breathing cause that --  
19 you know, I'm still breathing that --

20 Q. But you get in a box?

21 A. Yeah. I get in the box.

22 Q. When's the last time you had a breathing test?

23 A. February 6th. I had to go to -- over here to St.  
24 Francis, and that was being done by South  
25 Carolina, the disability.

1 Q. Right. Have you applied for social security  
2 disability?

3 A. Yeah. That's who sent me over there.

4 Q. Now, do you have a lawyer helping you with your  
5 social security disability claim yet?

6 A. Huh-uh.

7 Q. You're handling that on your own?

8 A. Yes.

9 Q. Have you received any determination as far as  
10 your initial filing?

11 A. When I first filed, they turned me down.

12 Q. When was that?

13 A. That was September. Right first of September  
14 like when I was retiring.

15 Q. '07?

16 A. Yeah. I sent it in, and they got me by two --  
17 they said I sent it in two days early, and I was  
18 still on the payroll. I said, well, I sent it  
19 in, but I'm retiring this day -- they're putting  
20 it this day. And they denied it.

21 Q. So you appealed that?

22 A. Yes. And that's where we're at now.

23 Q. And you're waiting on a determination on the  
24 appeal?

25 A. Yes.



- 1 Q. Have you had any hearing on the appeal or any  
2 paperwork?
- 3 A. No. The last thing was just go -- they sent me  
4 over there to get a --
- 5 Q. Breathing test?
- 6 A. Yes.
- 7 Q. Now, in May of 2007, you went on light duty till  
8 September, and then that's when you retired in  
9 September 2007, correct?
- 10 A. Yes.
- 11 Q. Was it your lung problems and breathing problems  
12 that put you on light duty?
- 13 A. Yes.
- 14 Q. Have you applied for any short-term disability or  
15 long-term disability?
- 16 A. No. Just the disability I get in South Carolina.
- 17 Q. The retirement disability?
- 18 A. Yes.
- 19 Q. You applied for that?
- 20 A. Yes.
- 21 Q. And you qualified for that?
- 22 A. Yes.
- 23 Q. And how much money do you get  
24 retirement-disability-wise?
- 25 A. It's like 31,000 a year.

- 1 Q. Do you get a monthly check?
- 2 A. Yes.
- 3 Q. How much is your monthly?
- 4 A. Before taxes?
- 5 Q. Yes, sir.
- 6 A. Like -- before taxes, say 25, 26.
- 7 Q. Hundred?
- 8 A. Yes.
- 9 Q. Now, if you qualify for workers' comp, what do  
10 you understand will happen with that disability  
11 check?
- 12 A. Say what now?
- 13 Q. If you qualify for workers' comp --
- 14 A. Yeah.
- 15 Q. If you file a claim and the commission and the  
16 courts and after all the appeals everybody files  
17 says you're entitled to get a weekly check from  
18 workers' comp, do you know what happens to your  
19 disability check?
- 20 A. No. What do you mean?
- 21 Q. I mean do you still get it, or do you have to  
22 reimburse them; or do you know?
- 23 A. I don't know.
- 24 Q. Okay. And do you know how long your retirement  
25 disability will pay you?

- 1 A. Well, every two years I have to go back up for  
2 a --
- 3 Q. Get reassessed?
- 4 A. Yeah.
- 5 Q. And assuming your condition hasn't improved to  
6 the point that you no longer qualify, do you know  
7 how long you'll get that retirement? Is it the  
8 rest of your life?
- 9 A. That's what I'm thinking. I was told the rest of  
10 my life, but I'll have to keep going up.
- 11 Q. Right. To get checked?
- 12 A. Yeah.
- 13 Q. Okay. Now, the health insurance coverage you  
14 have, does that get paid for under your  
15 retirement, or do you have to pay for that?
- 16 A. I have to pay for it.
- 17 Q. And your wife, she is or is not covered at the  
18 district, but she's covered under yours?
- 19 A. Yeah. Under my insurance.
- 20 Q. Is it cheaper that way than her just going  
21 under --
- 22 A. Yeah. I think that's why she came under mine, we  
23 was cheaper. Either it was cheaper, or we  
24 offered more. There was something.
- 25 Q. Right. Better package or benefits.

1 A. One of them I know was her doctor was not covered  
2 under theirs.

3 Q. Wasn't one of their approved doctors?

4 A. Yeah.

5 [Discussion off the record.]

6 EXAMINATION RESUMED BY MR. FARRY:

7 Q. Looks like it's got to be reevaluated in 2010;  
8 does that sound right, your disability  
9 retirement?

10 A. Well, I guess.

11 Q. But assuming you qualify for retirement  
12 disability medically, is it your understanding  
13 that your retirement check will continue the rest  
14 of your life?

15 A. Yes.

16 Q. And your dollar amount you get now monthly or  
17 yearly, before taxes or anything?

18 A. It's like 31,000.

19 Q. Do you know how a Social Security disability  
20 claim will affect your retirement claim, if any?

21 A. I did not -- I mean I don't. I thought it would  
22 be in addition to. If I get that, I'll get that  
23 on top of this.

24 Q. I don't -- I'm just asking.

25 Could you go back to being a police officer now?

- 1 A. No, I can't.
- 2 Q. Tell me why not.
- 3 A. Because I don't -- I can't pass the physicals.
- 4 Q. And what keeps you from being able to pass the
- 5 physical?
- 6 A. My lung condition.
- 7 Q. What can you not do now that you could do prior
- 8 to this lung condition developing?
- 9 A. Running, be able to fight, to defend someone off,
- 10 even actually to make arrests at this point, just
- 11 not enough oxygen.
- 12 Q. And the supplemental oxygen you have now is all
- 13 the time?
- 14 A. Yes, sir.
- 15 Q. What's Dr. Huang say about the supplemental
- 16 oxygen, about continuing to need that, or is it
- 17 going to get better to where you don't need it?
- 18 A. Well, he says, just -- well, like now just like
- 19 wearing it can just help strengthen my lungs and
- 20 just use it because if I don't, then it makes my
- 21 heart work harder and stuff like that.
- 22 Q. Do you understand that's something you're going
- 23 to need from now on?
- 24 A. Yes.
- 25 Q. Has Dr. Huang sent you to any other specialists

1 or for any other further tests, other than what  
2 you get done here in Greenville?

3 A. No.

4 Q. Are you scheduled to see any another doctors that  
5 we have not identified today?

6 A. No.

7 Q. Other than your lung biopsy that you had through  
8 your side in Durham at Duke and the lung biopsy  
9 down your throat here in Greenville, St. Francis,  
10 have you had any other surgical procedure as a  
11 result of this claim?

12 A. No.

13 Q. Could you sit at a desk and work now?

14 A. Yes.

15 Q. Do paperwork?

16 A. Yes.

17 Q. Are you aware if there are desk jobs at the city  
18 police department?

19 A. No.

20 Q. You're not aware, or there are not any?

21 A. Oh, well, there are some. I'm not aware if some  
22 might be open for me.

23 Q. Oh, I got you. You just don't know if they're  
24 available or not?

25 A. Yes.

- 1 Q. But you understand there are some there?
- 2 A. Yeah.
- 3 Q. May not be open or available?
- 4 A. But you got to have rank to get those, and I
- 5 didn't have that, so --
- 6 Q. What's the highest rank you attained?
- 7 A. Corporal. At least I say I wasn't offered those
- 8 positions. I was -- you know, maybe a dispatcher
- 9 or something, but the pay was -- it was less than
- 10 what you get for disability, so --
- 11 Q. Were you offered that job?
- 12 A. As dispatch, yeah.
- 13 Q. What was the pay you were offered as a dispatch?
- 14 A. She didn't tell me. It was the chief. She said
- 15 it would be -- I said, would it be my salary now.
- 16 She said, no, it would be reduced salary. You'd
- 17 make more by doing your disability. So I don't
- 18 know the actual.
- 19 Q. And the chief, that's Chief Wifong?
- 20 A. Yes.
- 21 Q. And so rather than work as a dispatch, you
- 22 elected to take disability retirement because it
- 23 was more money?
- 24 A. Yes.
- 25 Q. Other than the building, Hudson and Washington --

1 is that where it was?

2 A. Yeah. It was like 104 Washington -- 104 Hudson  
3 Street.

4 Q. Other than going in that building however many  
5 times you went in there, do you contend that some  
6 other aspect of your job, other than going in  
7 that building, caused your breathing problems?

8 A. That's the only place I know that I've been that  
9 I knew that there was -- you know, I feel like  
10 there was a problem in that building.

11 Q. So if I understand your testimony correctly - and  
12 you correct me if I'm wrong - the problems you  
13 have with your lungs now and your breathing,  
14 respiratory system now, you believe were caused  
15 by being in that building at Hudson and  
16 Washington whenever you went in there to check  
17 it?

18 A. Yes.

19 Q. And that's during the period of time that you  
20 served as a community patrol officer at Southern  
21 Side?

22 A. Yes.

23 Q. Or after you went to be a resource officer where  
24 you came to someone's aid?

25 A. Yes.



1 Q. Did you ever go in that building before you were  
2 a community patrol officer at Southern Side?  
3 A. Not community patrol, no, because I was just -- I  
4 was over --  
5 Q. Different section?  
6 A. Yeah.  
7 Q. And you don't know when that building was torn  
8 down?  
9 A. No, I don't.  
10 Q. Is there anything else you want to tell me about  
11 this claim that I haven't asked you or you  
12 think's important or I need to know?  
13 A. No.  
14 [Discussion off the record.]  
15 MR. FARRY:  
16 I don't have any further questions.  
17 MR. MOONEYHAM:  
18 I don't have any questions.  
19 [Whereupon, at 11:47 a.m. the taking of the deposition  
20 was concluded.]  
21  
22  
23  
24  
25

CERTIFICATE

I, the undersigned, Rusti Davis, Notary Public in and for the State of South Carolina, do hereby certify that the foregoing deposition was taken on the aforementioned date;

That the within named deponent was sworn to tell the truth and that the foregoing is an accurate transcription of the testimony taken under oath;

That all exhibits entered herein are attached hereto and made a part of the deposition.

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In Witness Whereof, I have hereunto set my hand and seal this 6th day of March, 2008.

**COPY**

Rusti Davis

Notary Public for South Carolina

My Commission Expires 9/17/2017

249-31-3305  
 P18-M

**RECEIVED**

MAY 29 2007  
 CUSTOMER INTAKE

*DL-M*

**SOUTH CAROLINA**  
 DEPARTMENT OF MOTOR VEHICLES  
 DRIVER'S LICENSE

GILLIARD, MARVIN LUVELL  
 410 WOODFIELD DR  
 PIEDMONT SC 29673-3332

DL#: 008687480  
 Expires: 12-03-2008

Class: D Hgt: 5-11 Wgt: 250  
 Sex: M DOB: 12-03-1969  
 Issued: 11-18-2002 23023 RI.4

*MLB Sullivan*



12/07

**SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**  
 Division of Vital Records, Columbia, S.C.  
 ANY ALTERATION OR FALSIFICATION OF THIS CARD IS A VIOLATION OF THE LAW

|                                  |                            |
|----------------------------------|----------------------------|
| DATE ISSUED<br>FEB 08 2005       | BIRTH NO.<br>139-69-042858 |
| NAME<br>*MARVIN LUVELL GILLIARD* |                            |
| BIRTH DATE<br>DEC 03 1969        | SEX<br>M                   |
| BIRTH PLACE-COUNTY<br>ANDERSON   |                            |

This is a true certification of name and birth facts recorded by this office.

*C. Earl Hunter*  
 COMMISSIONER AND STATE REGISTRAR

*Wayne B. Nelson*  
 DIRECTOR AND ASSISTANT STATE REGISTRAR

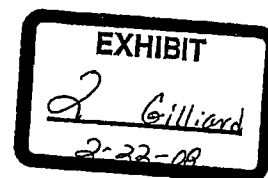
12-3-69

**EXHIBIT**

1 Gilliard  
 2-22-08

(Physicians)

- Dr. Hearn
- Dr. Simms
- Dr. Rufkin Stephenson
- Dr. Desmond Smith
- Dr. Stacy Bizzell
- Dr. Anne Parker
- Dr. Fuzia
- Dr. McClean
- Dr. William Scott
- Dr. Richard Lamens
- Dr. Tony Huang



MBK 144



STATE OF SOUTH CAROLINA  
CERTIFICATION OF VITAL RECORD

DEATH CERTIFICATION

STATE FILE NUMBER : 139-10-024776

DECEDENT'S NAME: \*MARVIN LOUVELL GILLIARD\*

AKA's: NA

ARMED FORCES: NO

DATE OF BIRTH: DECEMBER 03, 1969

TYPE OF PLACE OF DEATH: DECEDENT'S HOME

NAME AND ADDRESS OF PLACE OF DEATH: 410 WOODFIELD DRIVE, PIEDMONT, SC 29673

PLACE OF DISPOSITION: CREMATION SOCIETY OF SOUTH CAROLINA

DISPOSITION LOCATION: GREENVILLE, SOUTH CAROLINA

METHOD OF DISPOSITION: CREMATION

DECEDENT'S RESIDENCE: 410 WOODFIELD DRIVE, PIEDMONT, ANDERSON COUNTY, SC, 29673

PLACE OF BIRTH: SOUTH CAROLINA

SURVIVING SPOUSE'S NAME: LISA ANDREA WORKMAN

FATHER'S NAME: WARREN GILLIARD

MOTHER'S NAME PRIOR TO FIRST MARRIAGE: BETTY JOHNSON

INFORMANT'S NAME: LISA ANDREA GILLIARD

MAILING ADDRESS: 410 WOODFIELD DR, PIEDMONT, SC, 29673

FUNERAL HOME: CREMATION SOCIETY OF SOUTH CAROLINA, INC., 328 DUPONT DRIVE, GREENVILLE, SC, 29607

FUNERAL DIRECTOR: RANDALL G. HARRELD

EMBALMER'S NAME: NA

ACTUAL OR PRESUMED DATE OF DEATH: AUGUST 12, 2010

ACTUAL OR PRESUMED TIME OF DEATH: 0430

CAUSE OF DEATH - PART I

CHRONIC HYPOXIC RESPIRATORY FAILURE

ENDSTAGE LUNG DISEASE

HYPERSENSITIVITY PNEUMONITIS

SEX: MALE

SOCIAL SECURITY NUMBER: 249-31-3305

AGE: 40 YEARS

COUNTY OF DEATH: ANDERSON

MARITAL STATUS: MARRIED

RELATIONSHIP: SPOUSE

LICENSE NUMBER: 2489

LICENSE NUMBER: NA

MANNER OF DEATH: NATURAL

OTHER SIGNIFICANT CONDITIONS - PART II:  
PULMONARY HYPERTENSION

CORONER CONTACTED? YES

DATE OF INJURY: NA

PLACE OF INJURY: NA

LOCATION OF INJURY: NA

HOW THE INJURY OCCURRED?  
NA

AUTOPSY PERFORMED? NO

TIME OF INJURY: NA

AUTOPSY AVAILABLE? NA

INJURY AT WORK? NA

CERTIFIER NAME AND TITLE: DR. JAMES DONALD ATKISSON

CERTIFIER'S ADDRESS: 701 GROVE ROAD, GREENVILLE, SC, 29605

DATE FILED: AUGUST 20, 2010

DATE OF ISSUANCE: OCTOBER 19, 2010

SPECIAL INSTRUCTIONS:  
NA

LICENSE NUMBER: 23571

SC01282108

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

*C. Earl Hunter*

C. Earl Hunter

Commissioner and State Registrar

*Guang Zhao*

Guang Zhao

Assistant State Registrar

This copy is not valid unless prepared on an engraved border displaying the state seal and issuing agency logo.

Revision Date: 08/01/2009

