

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

Appellate Case No.: 2019-000060
W.C.C. Case No.: 1715897

Matthew Green, Appellant,

v.

Bishop Forest Products, Inc., Employer, and
Forestry Mutual Insurance Company, Carrier, Defendants,

Of Which Bishop Forest Products, Inc. is the Respondent.

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RECORD ON APPEAL

Andrea C. Roche, Esquire
Mickle & Bass, LLC
1519 Richland Street (29201)
Post Office Box 5639
Columbia, South Carolina 29250
Attorney for Appellant

Matthew A. Schonfeld, Esquire
Holder, Padgett, Littlejohn & Prickett,
LLC
349 West Coleman Blvd., Ste 300
Mount Pleasant, SC 29464
(843) 284-4692
Attorney for Respondent

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APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1715897

Matthew Green,
Claimant/Respondent,

-vs-

Bishop Forest Products, Inc, Employer,

-and-

Forestry Mutual Insurance Company, Carrier,
Defendants/Appellants.

Appellate Panel Review held in Columbia, South Carolina
on September 18, 2018, per notices timely and properly served
upon all parties of interest.

Appellate Panel Decision and Order filed on

December 18, 2018

APPEARANCES: Claimant/ Respondent represented by John R. Hetrick, Esquire,
of Hetrick, Harvin & Bonds, of Walterboro, South Carolina.

Defendants/Appellants represented by Matthew A. Schonfeld,
Esquire of Holder, Padgett, Littlejohn + Prickett, LLC, of
Mount Pleasant, South Carolina.

STATEMENT OF THE CASE

This is a denied claim on the basis that the alleged injuries did not arise out of and in the course of employment. By way of Form 50 requesting a hearing dated October 24, 2017, Matthew Green, the Claimant, alleges that on September 13, 2017, he injured his back, neck, head, ribs both ankles, both knees, and both legs as a result of a motor vehicle accident while on his way home following delivery of paperwork to his employer. Claimant seeks medical treatment and temporary total disability benefits (TTD) from the date of accident and continuing. Defendants Bishop Forest Products, Inc. (Bishop Forest Products) and Forestry Mutual Insurance Company timely filed their general denial by Form 51 dated November 9, 2017.

A hearing on compensability was held before the Hon. Gene McCaskill, (hereinafter single Commissioner) on February 15, 2018. It is Claimant's position, as stipulated, that he sustained compensable injuries to both ankles, the right patella, right femur, and two broken ribs on the left side, on September 13, 2017, that he is not at maximum medical improvement and is entitled to causally related medical treatment and TTD from the date of accident and continuing.

Claimant asserts the accident and injuries sustained therein arose out of and in the course and scope of his employment with Bishop Forest Products. When the accident occurred, Claimant was returning directly home after having delivered certain paperwork to the business office of his employer. The paperwork was required to be delivered by 8:00 AM every Wednesday as part of his job duties. Timely receipt of the paperwork was important to the employer's business; it benefitted the employer. Accordingly, Claimant asserts the trip was for the benefit of the employer, and claimant contends that since the trip to the employer's place of business was work-related and compensable, then the return trip to his home was ancillary and also compensable.

It is Defendants' position that Claimant was in the process of traveling home in his personal

car, not on the clock, and with no remaining work-related obligations or responsibilities when the car accident took place on September 13, 2017, therefore Claimant's injuries sustained as a result are not compensable. Furthermore, the facts of this scenario do not fall under any of the judicially recognized exceptions to the going and coming rule. Finally, Defendants assert Claimant has not met his burden of proving entitlement to TTD from the date of accident and continuing.

In a Decision and Order dated May 29, 2018, the single Commissioner found and concluded that Claimant's stipulated injuries sustained on September 13, 2017, are compensable as the accident is an exception to the coming and going rule, and that he is entitled to causally related medical treatment and TTD from September 13, 2017 and continuing (see in *italics* below). It is from these findings and conclusions of law that Defendants timely appealed.

FINDINGS OF FACT

1. *The question at bar is whether the motor vehicle accident on 09/13/17 is compensable under the Act? (Tr. 9:10-16; 12:14-24).*
2. *Claimant asserts that the claim arises out of and in the course and scope of his employment at the time of the MVA on 09/13/2017. (Tr. 9:12-16). He further asserts that it is given that he was acting in a manner which directly benefits the Employer and is in furtherance of the Employer's business. (Tr. 13:3-14; 39:17-23).*
3. *The Defendants assert that since Claimant was on his way home, having previously delivered his paperwork to the Employer's place of business, this accident does not fall under any of the exceptions to the going and coming rule. As such, the claim must be denied. (Tr. 12:17-24).*
4. *The facts as to the accident are not in dispute. The Claimant drove a truck for his Employer (Tr. 22:18-25) and hauled wood chips from logging sites in Colleton County to the paper mill in North Charleston. (Tr. 23:2-15). He had, as part of his job duties, responsibility to maintain*

paperwork related to his work. That paperwork included load tickets for each delivery the driver made, daily trip logs and pre-trip inspection forms. (Tr. 23:16-24). All drivers, including the Claimant, had to turn those tickets in either on Tuesday night or by 8:00 AM on the following Wednesday morning. (Tr. 61:18-62:4). This was an important requirement of the job. The Claimant and the Employer so testified. (Tr. 54:19-25; 57:17-24).

5. While the Claimant could have driven the truck home each night as was allowed by the Employer, he had nowhere to park the truck so he drove his personal vehicle to and from work each day. Claimant so testified. (Tr. 29:15-30:12).

6. On the day of the accident which was a Wednesday, Claimant was involved in a major motor vehicle accident that was not his fault. Claimant had gotten up that morning at 3:30 AM. He had left his home and driven directly to the office of the Employer to leave his paperwork which was due in the office before 8:00 AM. Claimant delivered the paperwork and was returning home when the accident occurred. Claimant so testified. (Tr. 34:16-35:25).

7. The question is whether the accident is an exception to the going and coming rule? I find that it is.

8. It is an undisputed fact that on the early morning of the accident Claimant traveled in his personal vehicle to the business office of his Employer, Bishop Forest Products, Inc. (Tr. 33:24-34:5). It is an undisputed fact that the purpose of his trip was to deliver paperwork to his Employer which his Employer required by 8:00 AM that Wednesday morning. (Tr. 34:6-14). It is an undisputed fact that timely delivery of the load tickets was an important, if not the most important, aspect of the Employer's business since this was required for payment to the business. (Tr. 53:25-54:25). It is an undisputed fact that the Employer acknowledged receipt of the paperwork the following morning which confirmed the early morning delivery. (Tr. 34:6-14; 59:4-7). It is an

undisputed fact that the Claimant went directly to his Employer's office and was returning directly to his home when the accident occurred. (Tr. 33:18-34:1; 34:15-20; 48:3-10). Based on these undisputed facts, it is clear that Claimant was "charged with some duty or task in connection with his employment" on his way to or from work, and the task was for the benefit of his employer. As such Claimant's actions constitute an exception to the 'coming and going' rule as determined by the Court of Appeals in *Stough v. Westinghouse Savannah River Company*, 311 S.C. 129, 427 S.E.2d 716 at 717 (Cl.App.1993). See, also, *Sola v. Sunny Slope Farms*, 244 S.C. 6, 135 S.E.2d 321 (1964).

9. The Claimant was returning directly home from delivering paperwork he was required to complete and turn into the Employer's business office before 8:00 AM that Wednesday morning. (Tr. 48:3-10). This is congruent with the directive he received from his Employer. (Tr. 53:20-54:3). Both Claimant and Employer so testified. While there was a window from Tuesday evening until 8:00 AM on Wednesday, the Claimant had the latitude as allowed by the Employer to complete the task at his own pace as long as it was completed by Wednesday at 8:00 AM. (Tr. 58:16-20). The Claimant completed the task in the prescribed time frame. (Tr. 58:21-59:13). This task is clearly a requirement of his employment and for the benefit of the Employer. This task must be completed outside normal working hours.

10. Claimant chose to do this task early Wednesday morning which, again, he had the latitude to do. (Tr. 58:16-20; 59:4-13).

11. The accident occurs as he is returning home from the completion of that task. (34:10-23). He did not deviate on his return trip and would not have been when and where the accident occurred had it not been for this work-related errand. (Tr. 47:19-48:10).

12. To conclude that because Claimant had dropped off the paperwork and completed his delivery, he is not covered by the exception that exists to provide coverage for such an errand is a strained interpretation. Furthermore, it is illogical. If Claimant's employment required him to make the trip, then by implication he had a right to return. Stated differently, if he was covered coming, then he was covered going. The case law is clear that coverage should be liberally construed in favor of the Claimant. Had Claimant gone on to another task or errand, the Defendants' position might prevail, but that is not the case here. The Claimant is on the concluding leg of the trip to deliver the work-required paperwork which was the sole purpose of the trip. That trip and its timing is consistent with the guidelines set forth by the Employer.

13. When the evidence— both lay and medical— is viewed as a whole, I find that this claim is compensable.

14. The Claimant is entitled to payment for past causally-related medical treatment and associated mileage.

15. The Claimant is not at MMI. (Tr. 21:8-13).

16. The Claimant is entitled to continuing medical care and treatment with a physician(s) of the Defendants' choosing. His causally-related injuries as stated in the Trident Medical Center ICU admission record are as follows: 1) Fracture of eight or more ribs of left side; 2) Multiple fractures of ribs of both sides; 3) Open dislocation of right knee; 4) Open right ankle fracture; 5) Open dislocation of right ankle; 6) Fracture of right knee region; 7) Pulmonary contusion; 8) Closed left ankle fracture; 9) Pneumothorax; 10) Hemothorax. (Cl. APA 1:14-15).

17. While there is not an out-of-work note in the record, the Claimant was involved in a major head-on motor vehicle accident. (Tr. 34:24-36:3). He suffered serious injuries and spent from 09/13/17 to 09/22/17 at Trident Medical Center. (Tr. 36:4-13). He was then transferred to

Colleton Medical Center for continued care and physical therapy. (Tr. 36:14-37:1). Once he was discharged from there, Claimant testified that he could not put any weight on his leg until December (Tr. 37:15-25) and used a walker until mid-January. (Tr. 38:8-19). Claimant testified that he has used a cane since that time. (Tr. 38:20-39:3). He had the cane with him at the hearing. Claimant testified that he wants to return to work for the Employer. (Tr. 39:4-7). Mr. Bishop, who owns the business, testified that he wished the Claimant could return to work immediately. (Tr. 53:6-10). Based on the testimony of the Claimant and my observations of him entering and leaving the hearing, it is clear he cannot work at this time. Claimant is entitled to TTD from the date of the accident and continuing.

18. While the depositions of both the Claimant and Employer were entered into evidence, both testified live at the hearing. As such, I neither read nor considered their deposition testimony in determining the outcome of this case.

19. All other issues not specifically addressed herein are held in abeyance for consideration at a future time.

CONCLUSIONS OF LAW

1. Jurisdiction and venue are proper as governed by the South Carolina Workers' Compensation Act and as agreed to by the parties.
2. The Claimant's average weekly wage is \$989.32 with a corresponding compensation rate of \$659.58 pursuant to SC Code Ann. Sec. 42-1-40.
3. Claimant sustained an injury by accident arising out of and in the course of his employment pursuant to SC Code Ann. Sec. 42-1-160.
4. Proper notice of the injury was given pursuant to SC Code Ann. Sec. 42-15-20.
5. The claim was filed in a timely manner pursuant to SC Code Ann. Sec. 42-15-40.

6. *Claimant has received and is continuing to receive medical care for his causally-related injuries which is designed to lessen the period of disability pursuant to SC Code Ann. Sec. 42-15-60.*
7. *Claimant has not reached maximum medical improvement.*
8. *Claimant is entitled to payment of temporary total compensation from the date of accident and continuing until further order of the Commission pursuant to Workers' Compensation Commission Reg. 67-502, et.seq.*

ORDER

IT IS NOW ORDERED:

1. *The Defendants shall pay all causally-related, past and future medical expenses for Claimant resulting from his work-related motor vehicle accident in Colleton County on 09/13/17, and/or shall promptly reimburse to Claimant or any providers or entities any of Claimant's medical expenses paid by him or them on his behalf. The Defendants shall pay all associated mileage to Claimant at the statutory rate.*
2. *The Defendants shall pay contested TTD benefits to Claimant and his attorney from 09/13/17 until the date of this Decision and Order. Thereafter, the Defendants shall continue to pay weekly TTD benefits to Claimant until terminated by law or further Order of the Commission.*
3. *The Defendants are entitled to choose which physician(s) will provide continuing medical care and treatment for Claimant.*
4. *All other issues are held in abeyance for determination at a future time.*

AND IT IS SO ORDERED.

At the time of the accident, which took place while on his way home in his personal vehicle and not on the clock, Claimant was not charged with a duty or task in connection with his

employment and was not in the process of performing a special errand for his employer. Accordingly, the single Commissioner's Decision and Order, as discussed below, is reversed.

EVIDENCE OF THE CASE

At all relevant times, Claimant was a truck driver for Bishop Forest Products who transported chipped wood to a paper mill multiple times a day. (Hr. Tr. p. 23). Bishop Forest Product wood chip truck drivers would normally begin their shift around 7:00 am, with an occasional day starting at 6:00 am if there was work left over from the day before. (Dep. of Bishop p. 21).

In addition to physically transporting wood chips, Claimant's employment with Bishop Forest Products required him to keep up with paperwork throughout the week and return/deposit the paperwork to the company's office on a weekly basis. *Id.* Specifically, it was Claimant's responsibility to *retain*, and in some cases personally complete, specific paperwork and receipts associated with his daily truck driving activities. *Id.* Each week he was responsible for returning to Bishop Forest Products his mill tickets, pre-inspection checklists, time sheets, and trip log sheets. (Hr. Tr. p. 26). He kept all of these documents in a file folder provided to him by his employer. *Id.* The Bishop Forest Products office had a mail slot on its front door, as well as a mailbox so employees can deposit paperwork if the office is closed. (Hr. Tr. p. 31).

Claimant was responsible for ensuring the office received his weekly mill/load tickets either on Tuesday night or 8:00 AM the following Wednesday. (Hr. Tr. p.54). As for the remaining paperwork (pre-inspection checklists, timesheets, and trip logs), there was no deadline set in stone for when it had to be delivered to the office. (Dep. of Bishop, p. 34). Not all of the paperwork for which Claimant was responsible required any action on his part other than retaining it and turning it in at the proper time. Specifically, the information recorded on the truck pre-inspection checklist,

timesheets, and travel logs were placed there by claimant, and the majority of truck drivers did this in their trucks following each shift. (Hr. Tr. p. 42). The pre-inspection required Claimant to fill out the truck's safety checklist before starting work each morning. The load sheets required Claimant to record things like the times he arrived/left the logging site, and the timesheets required him to enter his starting and stopping times each day. (Hr. Tr. p. 24).

In contrast to the other documents that required manual recording of information on the part of the drivers, the mill tickets required no action on Claimant's part to be considered complete, as they were merely receipts generated by a computerized scale recording the weight of each load he delivered. (Hr. Tr. p. 43). Claimant would receive tickets printed from the mill computer which he would retain and later deposit at the Bishop Forest Products office, in order to comply with his duties. *Id.* This was further confirmed when Claimant was presented with page 226 of Defendants' APA, which was a photocopy of typical mill tickets. (Hr. Tr. p. 42).

Bishop Forest Products has been in business long enough to experience a situation where, for some reason or another, an employee was unable to deposit his/her tickets by the deadline. (Hr. Tr. p. 58). When this would happen, the employee usually notified a supervisor, and if asked by the employee, the supervisor would go and retrieve the paperwork for them. *Id.*

It was Claimant's normal Tuesday routine to return from a day of hauling and park his work truck at the Bishop Forest Products property where the office was located. (Hr. Tr. p. 41). He would then gather all of his paperwork for that week, depart with it in his personal vehicle from the Bishop Forest Products premises, and take it home ensure that all his paperwork and mill tickets were in order. (Hr. Tr. p. 26). Claimant admits that he could very well have completed and ensured the accuracy of his papers every Tuesday evening before leaving Bishop Forest Products property instead of taking it home if he had wanted to. (Hr. Tr. p. 44).

Claimant had planned to go into work late on Wednesday morning, September 13, 2017, the date of the accident, because he had an appointment scheduled with his lawyer and planned to report to work about 11:00 AM. Claimant had discussed his delayed arrival with his supervisor who had agreed to let him off work. (Tr. 31:23-32:21).

On the morning of Wednesday, September 13, 2017, the day of the accident, claimant woke up earlier than usual at 3:30 am because he "couldn't sleep." (Hr. Tr. p. 33). At about 4:00 am, Claimant left his home in his personal car to deposit his paperwork. (Hr. Tr. p. 33). He arrived at the office at approximately 4:15 am and completed the task by depositing his paperwork in the mail slot in the office door. He did nothing else incidental to his employment while on the Bishop Forest Products property, he was not on the clock driving to and from the office, was not paid for his mileage, and was not paid for his time while on the Bishop Forest Property. (Hr. Tr. p. 49).

After depositing the paperwork, Claimant got back into his personal car and left for home. *Id.* He drove in his car towards home for approximately 10 minutes, when he was struck head on by another vehicle, causing the accident and subsequent injuries. (Hr. Tr. p. 35). Claimant was transported to a local hospital and treated for his injuries. (Hr. Tr. p. 36).

No individual at Bishop Forest Products, including his supervisor, directed or instructed Claimant to take his paperwork home any night, much less on Tuesday, September 12, 2017, the night before his accident. *Id.* Claimant admitted that his employment with Bishop Forest Products did *not require* him to take his documents home, and nobody at Bishop Forest Products knew he routinely took the documents home with him. (Hr. Tr. p. 44-46). This was further reinforced by the presentation of a portion of his deposition testimony taken prior to the hearing, wherein Claimant was asked "did anybody know that you had brought the paperwork home with you that night [prior to the accident]," his response was "No." (Hr. Tr. p. 46). When claimant was presented

at the hearing with Defendants' question "So at least on the night of September 12, 20 17, would you agree it's your response that nobody even knew that you brought it home that night? Correct?," to which he responded, "Yeah." *Id.*

DISCUSSION/REASONING

The Full Commission's scope of review is not limited, and it may reach its own findings of fact and conclusions of law based on all of the evidence. *See Lowe v. Am-Can Transport Serv.*, 283 S.C. 534, 324 S.E.2d 87 (S.C. Ct. App. 1984). The Full Commission does not have to uphold the findings of the single Commissioner if, in its opinion, the preponderance of the evidence leads to a different finding. *Id.*

In order to be compensable, an injury must arise out of and in the course of employment. As a general rule, any injuries sustained by an employee while going to or coming from the place where his/her work is to be performed are not compensable as they do not arise out of and in the course of employment.

South Carolina case law has carved out certain exceptions to this general rule, thereby creating a framework to determine if benefits are due for injuries sustained while an employee is traveling to or from his/her employment. These five recognized exceptions allow employees the possibility of compensation for injuries sustained while going to or coming from work if: (1) the means of transportation is provided by the employer, or the time that is consumed is paid for or included in the wages; (2) the employee, on his way to or from his work, is still charged with some duty or task in connection with his employment; (3) the way to work is inherently dangerous and is either the exclusive way or is constructed and maintained by the employer; (4) the injury occurred in close proximity to the workplace and there is an express or implied requirement that the employee use that approach in going to and coming from work; and (5) an employee is injured

while performing a special task, service, mission, or errand for his employer, even before or after customary working hours, or on a day which he does not ordinarily work. See *Medlin v. Upstate Plaster Serv.*, 329 S.C. 92, 495 S.E.2d 447 (1998).

As an initial matter, the facts of this claim eliminate exceptions (1), (3), and (4) as referenced above. Claimant's transportation was not provided or paid for by the employer, he was not paid for his travel to deposit the documents, his way to work was not inherently dangerous, and Claimant was not injured in close proximity to his workplace nor was he required to use a certain approach. Therefore, the only exceptions that potentially apply are the "continuing duty" exception and the "special errand" exception.

1. The "Continuing Duty" Exception

The general coming and going rule does not apply if, among other things, the employee, on his way to or from his work, *is still charged* with some duty or task in connection with his employment. *Stough v. Westinghouse Savannah River Co.*, 311 S.C. 129, 130, 427 S.E.2d 716, 717 (S.C. Ct. App. 1993) (emphasis added). Moreover, an injury incurred during a trip which serves both a business and a personal purpose is within the scope of employment if the trip involves the performance of a service for the employer *which would have caused the trip to be taken by someone even if it had not coincided with the personal journey.* *Id.* (citing *Corley v. South Carolina Tax Commission*, 237 S.C. 439, 117 S.E.2d 577 (1960)) (emphasis added).

In *Stough*, the court held that when an employee's primary business responsibility is to deliver documents to an office, he is considered to still be charged with a duty or task connected to his employment *while on his way home*, if he has yet to deliver the documents, and his trip home

is located along the route necessary to complete his delivery. *Stough*, at 131, 427 S.E.2d at 717-18.

In *Stough*, the employee lived in Columbia and commuted in his personal car to his main office in North Augusta. *Id.* at 130, 427 S.E.2d at 717. He received no compensation for driving to and from his home and his office in North Augusta. *Id.* One of his primary business responsibilities was to transport business documents from his North Augusta office on a regular basis of once a week to an auxiliary office in Charlotte, NC. *Id.* His travel expenses for these document transport trips were paid for by his employer. *Id.*

The employee's accident occurred during one of these required document transport trips from North Augusta to the Charlotte office. *Id.* at 131, 427 S.E.2d at 717. On the date of the accident, he left his office in North Augusta with the documents and was hit and killed while on his way to stop at home before continuing on to Charlotte the next day. *Id.* at 131, 427 S.E.2d at 717. The court noted that he would have traveled the same route to Charlotte regardless of whether he stopped in Columbia along the way. *Id.* The court determined that the purpose of his trip from North Augusta to Charlotte was *necessitated* by his work at Westinghouse, and even had he not stopped at home that evening, he would have made the same trip to Charlotte to perform his duties on behalf of Westinghouse. *Id.* at 131, 427 S.E.2d at 718. Because he had yet to complete his delivery of the documents, his employment duty had yet to cease during his trip home from work, and his resulting death arose out of and during the course of employment. *Id.* at 131, 427 S.E.2d at 718.

Critical to the analysis was the fact that the employee in *Stough* was in the process of transporting the documents to another office when he was killed. In other words, the employee was in the *performance of and fulfilling* a duty incidental to his employment when he was killed.

In the facts of the present case, Claimant had *already completed* whatever duty he may have been charged with (depositing his documents) when his accident occurred. Thus, because Claimant's continued duty was completed when he deposited his paperwork, the duty ceased to exist, and he is not protected by the "continuing duty" exception.

In Finding of Fact #12, the single Commissioner reasons that Claimant's employment *required* him to make the trip, then by implication he had a right to return; therefore, "[i]f Claimant was covered coming, then he was covered going." This reasoning is factually incorrect because Claimant was not required to make the trip in the first place, as the facts clearly establish that Claimant was not instructed or required to take the paperwork home, eliminating the need for the fateful trip in the first place. Conversely, the evidence supports the inference that but for his appointment with his attorney on the morning of Wednesday, September 13, 2017, claimant would not have taken the trip that morning. Furthermore, the reasoning does not apply to this exception, because the apparent corollary to the "continuing duty" rule is that it only applies while the duty or task has yet to be completed, and in this case the work-related task or duty at issue was already completed at the time of the accident. Therefore, the "continuing duty" exception as described in *Stough* does not apply to the facts of this claim.

2. The "Special Errand" Exception

There is no dispute that Claimant was going home when he got into the car accident, and he had no work-related duties yet to be performed on his way home, so Claimant's primary argument is that his facts fall under the "special errand" exception to the coming and going rule. Claimant's reasoning and rationale that the "special errand" rule applies to this claim fully exposes why Claimant's injuries should not be covered under the Act.

The "special errand" exception overrides the general coming and going rule and brings an injury within the scope of employment if it can be shown that an employee: (1) although not at his regular place of employment; (2) is doing, or is on the way from his home to perform, or on his way home after performing; (3) some special or unusual service, errand, or discharge of some duty incidental to the nature of his employment; (4) the service or incidental duty is not a *habit* or for the convenience of the employee; and (5) is in the interest of, or under the direction of, his employer. See *Moore v. Family Service of Charleston Cnty.*, 269 S.C. 275, 237 S.E.2d 84 (1977); see, also *Bickley v. South Carolina Electric & Gas Co.*, 259 S.C. 463, 192 S.E.2d 866 (1972). Notably, these elements are conjunctive, and all must be met for the exception to apply. This rule, when applicable, protects an employee during both the trip to complete the errand, as well as the return trip after the errand is complete.

In *Bickley*, due to hurricane damage, the powerline worker in that case was requested by his employer to work in Charleston over the weekend, which was outside his normal working area in Columbia and outside his normal working hours. *Id.* at 470, 870. Given these circumstances, the SC Supreme Court found that Bickley was covered under the Act when he was in an accident while on his way home after completing the work in Charleston. *Id.* Notably, there was no personal latitude or personal convenience component to Bickley's decision to perform work related duties that weekend – he was required to do so as a condition of his employment.

In *Moore*, the Court held that because the employee was performing an unusual service at the behest of her employer, her injuries arose out of and in the course of employment, and thus compensable. Specifically, the employee was *directed* by her supervisor to take home and study four large text books in preparation for a type of family abuse case for which she had no experience. 269 S.C. at 278, 237 S.E.2d at 85-86. On her way to work the following morning, the employee

fell down some stairs while carrying the books and sustained an injury. *Id.* at 277, 237 S.E.2d at 85. It was undisputed that the *books* were the cause of her fall. *Id.* The court noted the *most important* evidence was the testimony of the employer that it was "not a habit for [employees] to take books and files home and that this was an unusual case and [the employer] requested the Claimant to take home the books." *Id.* at 278, 237 S.E.2d at 86.

In arriving at its decision, the Court in *Moore* distinguished the employee's compensable injury and factual scenario from the non-compensable injury and factual scenario in *Sylvan v. Sylvan Bros.*, 225 S.C. 429, 82 S.E.2d 794 (1954). *Id.* at 279, 237 S.E.2d at 86. In doing so, the Court clarified further that if an employee is "in the *habit* of doing 'paperwork'" outside of regular work hours, or is doing it for "[the employee's] own *convenience*," the employee's actions do not qualify for the protections afforded by the "special errand" rule. *Id.*

In *Sylvan*, the Court held that if a journey would be made to work, irrespective of homework from the night before, the journey is not in the course of employment. *Sylvan*, 225 S.C. 429, 82 S.E.2d 794 (1954). In *Sylvan*, the claimant was injured when he slipped on ice while on his walk from home to work. *Id.* at 433, 82 S.E.2d at 795. He was in the *habit* of doing paperwork at night, and at the time of his injury, he had business papers in his pocket which he had been working on at home the night before. *Id.* He testified that he was unable to do certain paperwork during regular business hours because of interruptions from customers, "but no reason is suggested why he could not have remained in the privacy of the store after closing hour." *Id.* at 433-34, 82 S.E.2d at 795-96. The court reasoned that therefore the taking of the paperwork home was for his own *convenience*, and the fact that he had paperwork on him when he was injured does not convert his trip to work to within the course of employment. *Id.*

Similar to the employee in *Sylvan*, Claimant admitted under oath, on multiple occasions, that he was in the *habit* of doing paperwork outside of his normal business hours, as opposed to being told to do so. Additionally, like the employee in *Sylvan*, Claimant took his paperwork home the night before the deadline for his own *convenience* so that instead of having to sit in his truck and do the paperwork before departing the company's premises, Claimant would review his timesheets, load sheets, and pre-inspection checklists in the comfort of his own home.

The record makes clear that Claimant was not performing a "special errand" for Bishop Forest Products when he delivered his paperwork to the company office on the morning of September 13, 2017. Unlike the employers in *Bickley* and *Moore*, neither the owner nor any supervisor for Bishop Forest Products directed Claimant to take his paperwork home the night before his accident, or any night for that matter. The evidence furthermore reinforces this fact when Claimant testified at the hearing that none of the management of Bishop Forest Products were even aware he took his paperwork home the night before the accident, much less that he took his paperwork home every night. Additionally, even the single Commissioner acknowledged that Claimant was not directed or instructed to make the trip in question, as Finding of Fact #9 observes "...the Claimant had the *latitude* as allowed by the Employer to complete the task at his own pace as long as it was completed by Wednesday at 8:00 AM (emphasis added)."

Although Bishop Forest Products did not prohibit Claimant from taking his paperwork home, having the latitude to do something is not the equivalent of being directed to do something as demonstrated in *Sylvan*. The owner of Bishop Forest Products did not know Claimant took the paperwork home with him. Unlike the circumstances in *Bickley* and *Moore*, Claimant here made the choice to take the paperwork home, and he was not directed to do so. Claimant had identifiable space and time limits on his employment, but he was not directed to perform work at a time and

place other than at the Bishop Forest Products premises or while operating a Bishop Forest Products truck.

Contrary to the single Commissioner's finding that turning in the paperwork "must be completed outside normal working hours" (see Finding of Fact #9), the evidence clearly established that Claimant would normally arrive at Bishop Forest Products between 6:00 am - 7:00 am, and he normally would return from his last haul between 5:00 pm - 6:00 pm. These normal working hours fall within the timeframe allotted to turn in the paperwork.

Claimant, in his brief and in oral argument, mistakenly characterizes the right to do something as synonymous with being compensable when addressing the "special errand" exception. The fundamental fact that existed in the "special errand" exception cases of *Bickley* and *Moore*, which does not exist within the facts of this claim, is that the employees in those cases were *required by their employers* to go outside their normal routine and engage in work-related activity that was "unusual" or "special," thereby covering them under the Act despite the fact they were in the process of going to or coming from work at the time they were injured.

Here, the timing of Claimant's trip to and from work the morning of the accident was entirely personal to him and done for his own convenience. Relevant portions of the hearing transcript are as follows:

Q: All right. And on your return trip back, you didn't have that paperwork with you anymore, correct?

A: Correct.

Q: 'Cause it was already at Bishop Forest Products. And your plans at that point were to go back home, correct?

A: Correct.

Q: And then the next event you had that day was an appointment with your attorney, correct?

A: Yes.

Q: Now your normal routine, had you not had the appointment, would have been to drive to work, park your own personal vehicle, put the paperwork in the slot and get in the truck and clock in, correct?

A: Correct.

Q: That was your normal routine. But you didn't follow your normal routine that morning, did you?

A: No.

Q: Because you had an appointment with your attorney, correct?

A: Correct.

Q: Which was a personal appointment, correct?

A: Correct.

(Hr. Tr. pgs. 48-9).

Additionally, in his brief Claimant concedes that he was "authorized" and "allowed" by his employer to go into work later that morning because of his personal appointment with his lawyer. Under *Bickley* and *Moore*, being authorized or allowed by your employer to change your schedule for a personal reason is not what creates a "special" or "unusual" condition that amounts to a "special errand" – the origin of the "special" or "unusual" condition needs to originate with the employer in order for the "special errand" exception to apply. Put another way, the employee's needs do not create a "special errand." As the examples in the case law reveal, it is the instructions of the employer or obligations of employment that creates the exception to the general rule.

In this case, the trip taken the morning of the accident could not have been a "special errand" as the timing of the trip was chosen by Claimant at a time convenient for him because he had an appointment with his lawyer later that morning. Claimant conceded during the hearing that he could have completed the paperwork the night before the accident and turned it in before leaving his employer's premises, which would have completely eliminated the need for the fateful trip in the first place. (Hr. Tr. pg. 47). This fact, in and of itself, eliminates the possibility that Claimant's

trip to and from his home was covered under the "special errand" exception, because unlike the employees in *Bickley* and *Moore*, Claimant was not told or required by his employer to take the paperwork home or take trip when he took it.

For these reasons, the "special errand" exception does not apply, and Claimant's injuries did not arise out of and in the course of employment as they were sustained while going home.

FINDINGS OF FACT

Based upon the testimony and documentary evidence submitted by the respective parties, pursuant to the Administrative Procedures Act and the Commission's file relative to this claim, WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS FACT:

1. At all relevant times, Claimant was a truck driver for Bishop Forest Products whose primary responsibility was to transport chipped wood to a paper mill multiple times a day in a company owned truck.
2. Claimant would normally begin his shift around 7:00 am, with an occasional day starting at 6:00 am if there was work left over from the day before.
3. In addition to physically transporting wood chips in a company truck, Claimant's employment required him to retain and complete specific paperwork and receipts associated with his daily truck driving activities. Specifically, mill tickets, pre-inspection checklists, time sheets, and trip log sheets.
4. Claimant was responsible for ensuring the company's office received his weekly mill tickets between Tuesday evening and 8:00 am the following Wednesday.
5. It was Claimant's normal Tuesday routine to return from a day of hauling and park his work truck at the Bishop Forest Products property where the office was located. He would then gather all of his paperwork for that week, including the mill tickets, depart

with it in his personal vehicle from Bishop Forest Products' premises, and take it home to ensure that all his paperwork and mill tickets were in order.

6. Per Claimant's and Mr. Bishop's testimony, there was no prohibition with respect to taking home the paperwork and mill tickets, but there was nothing preventing Claimant from preparing all his paperwork and turning it in, including the mill tickets, every Tuesday evening *before* leaving Bishop Forest Products property.
7. Claimant was never told by anyone at Bishop Forest Products that he had to take his paperwork and mill tickets home with him.
8. Other than Claimant, no one with Bishop Forest Products even knew Claimant took all his paperwork home every night.
9. Claimant's decision to take his paperwork and mill tickets home with him every night, including Tuesday night, and then turn everything in on Wednesday morning by 8:00 am, was made for his convenience.
10. Claimant had an appointment with his attorney on Wednesday morning, September 13, 2017, so he arranged with his supervisor to arrive to work at 11:00 am that morning.
11. On the evening of Tuesday, September 12, 2017, which was the day before the accident, nothing prevented Claimant, in contemplation of his appointment the next day, from turning in his paperwork and mill tickets to the company office before leaving company property. Nonetheless, as was his normal routine, that evening Claimant left company property in his personal vehicle with all his paperwork, including the mill tickets, and went home.
12. On the morning of Wednesday, September 13, 2017, at about 4:00 am, Claimant left his home in his personal car to deposit his paperwork at the company's office. He

arrived at the office approximately 4:15 am and completed the task by depositing his paperwork in the mail slot in the office door.

13. While on Bishop Forest Products property the morning of September 13, 2017, Claimant did nothing else incidental to his employment, he was not on the clock driving to and from the office, was not paid for his mileage, and was not paid for his time while on the Bishop Forest Products property.

14. After depositing the paperwork, Claimant got back into his personal car, left the company property and drove towards home for approximately 10 minutes when he was struck head on by another vehicle, causing the accident and subsequent injuries.

15. The primary issue for resolution is whether Claimant's injuries arose out of and in the course of employment. We find they do not.

16. Specifically, we find that Claimant's scenario does not amount to an exception to the general rule that injuries sustained while in the process of going to or coming from work are not compensable.

17. The facts of *Stough v. Westinghouse Savannah River Co.*, 311 S.C. 129, 427 S.E.2d 716 (S.C. Ct. App. 1993) are distinguishable from the facts of this case as the employee in *Stough* had yet to complete an employment related obligation while traveling home from work when he was injured. Here, Claimant did not have any remaining work-related obligations to fulfill at the time of his accident. Furthermore, we find that Claimant was not even required to take the paperwork in question home; therefore, no separate trip to and from work was even required in the first place.

18. The cases of *Bickley v. South Carolina Electric & Gas Co.*, 259 S.C. 463, 192 S.E.2d 866 (1972) and *Moore v. Family Service of Charleston Cnty.*, 269 S.C. 275, 237 S.E.2d

84 (1977) also militate against a finding of compensability for this claim, as the employees in those cases were *instructed* by their respective employers to engage in work activities that either fell outside of regular working hours or were qualitatively distinct from their normally assigned duties. Unlike the facts of those cases, Claimant's decision to take his paperwork home and then make the trip on the morning in question was for personal convenience and because of an appointment with his attorney, and not because of any work-related requirement to take the paperwork home and then return it early in the morning.

19. We find the principles laid out in *Sylvan v. Sylvan Bros.*, 225 S.C. 429, 82 S.E.2d 794 (1954) are more applicable to this claim, as the employee in that case, like Claimant, took paperwork home for his own convenience and not because of any employment related requirement.

20. Because we find Claimant's injuries did not arise out of and in the course of employment, we hereby **REVERSE** the Decision and Order of the single Commissioner dated May 29, 2018.

21. Claimant is not entitled to any benefits under the South Carolina Workers' Compensation Act for the injuries he sustained on September 13, 2017.

CONCLUSIONS OF LAW

In view of those Findings of Fact, as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

1. Jurisdiction and venue are proper as governed by the South Carolina Workers' Compensation Act and as agreed to by the parties.
2. Proper notice of the injury was given pursuant to SC Code Ann. Sec. 42-15-20.

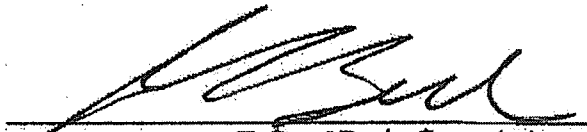
3. The claim was filed in a timely manner pursuant to SC Code Ann. Sec. 42-15-40.
4. The injuries sustained by Claimant on September 13, 2017, although accidental, did not arise out of and in the course of his employment pursuant to SC Code Ann. Sec. 42-1-160 and related case law as discussed above.
5. Claimant is not entitled to any benefits under the South Carolina Workers' Compensation Act for the injuries he sustained on September 13, 2017.

ORDER

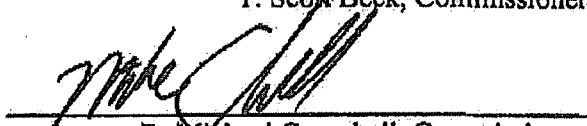
By majority vote, based upon the foregoing Findings of Fact and Conclusions of Law,
IT IS, THEREFORE, ORDERED that the Decision and Order of the single Commissioner dated May 29, 2018, is hereby **REVERSED**;

IT IS FURTHER ORDERED that Claimant is not entitled to any benefits under the South Carolina Workers' Compensation Act with respect to injuries he sustained on September 13, 2017.

AND IT IS SO ORDERED!

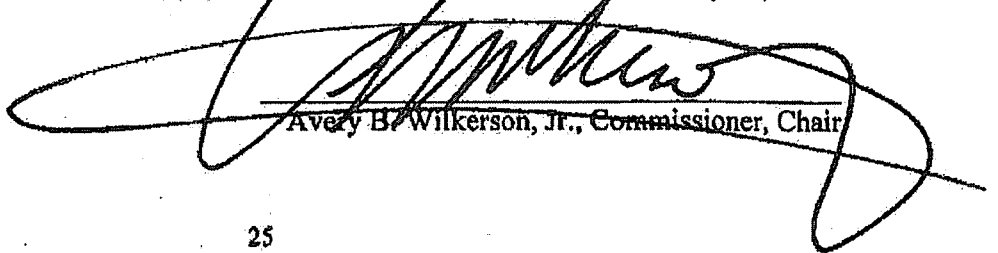


T. Scott Beck, Commissioner



R. Michael Campbell, Commissioner

The undersigned Commissioner voted to affirm the single Commissioner's Decision and Order dated May 29, 2018.



Avery B. Wilkerson, Jr., Commissioner, Chair

Matthew Green,
Claimant/Employee,
vs.
Bishop Forest Products, Inc.,
Defendant/Employer,
and
Forestry Mutual Ins. Co.,
Defendant/Carrier.

Hearing:	Held in Walterboro, S.C. on February 15, 2018.
Appearances:	John R. Hetrick Hetrick Harvin & Bonds, LLC P.O. Box 139 Walterboro, S.C. 29488 Appeared on behalf of Claimant Matthew A. Schonfeld, Esquire Holder Padgett Littlejohn + Prickett, LLC 210 Wingo Way, Suite 201 Mt. Pleasant, S.C. 29464 Appeared on behalf of Defendants.
Purpose of Hearing:	To determine the issues set forth in the Form 50 and Form 51.
Decision and Order:	Gene McCaskill, Commissioner
Filed:	May 29, 2018

APA SUBMISSIONS/EXHIBITS

A. Claimant's Submissions:

APA	Provider	Report Dates	Page Nos.
1.	Trident Medical Center	9/13/17 to 9/22/17	1-191
2.	Colleton Medical Center	9/22/17	192-280
3.	Dr. William Corey	requested not yet received	
4.	Dr. Howard Richter, Trauma Care and Acute Surgical Services	requested not yet received	
EXHIBITS			
A.	Deposition of Claimant	1/29/2018	290-355
B.	Deposition of Adrian Bishop	1/29/2018	356-397

B. Defendants' Submissions:

EXH A.	SC Dept of Employment and Workforce Wage Records	281-283
EXH B.	SC Traffic Collision Report Form	284-285
EXH C.	Driver Documents	286-289

STIPULATIONS

At the call of the case, the attorneys representing the claimant and the defendants made the following stipulations:

1. The purpose of the hearing is to determine the compensability of the claim as raised by the parties in their respective Forms 50 and 51.
2. Venue and jurisdiction are proper. (Tr. 5:17-21).
3. Notice was timely and properly served on all parties.

4. Claimant's average weekly wage was \$989.32, and his corresponding weekly compensation rate was \$659.58, subject to verification by Form 20. The Commission reserves the right to revisit the matter on the record should this be necessary. (Tr. 4:13-5:16).

STATEMENT OF THE CASE

Claimant was severely injured in a motor vehicle accident on September 13, 2017. On that date he was employed as a truck driver for Bishop Forest Products. The dominant issue is compensability. (Tr. 9:10-16). Claimant asserts the accident and injuries sustained therein arose out of and in the course and scope of his employment with Bishop Forest Products. When the accident occurred, claimant was returning directly home after having delivered certain required paperwork to the business office of his employer. The paperwork was required to be delivered by 8:00 AM every Wednesday as part of his job duties. Timely receipt of the paperwork was important to the employer's business; it benefitted the employer. Accordingly, the trip was for the benefit of the employer, and claimant contends that since the trip to the employer's place of business was work-related and compensable, then the return trip to his home was ancillary and also compensable. (Tr. 9:16-10:23; 13:3-14). Based on the compensability of the accident, claimant asserts entitlement under the Act to payment of his past medical expenses and for future medical treatment. (Tr. 10:23-11:6; Tr. 11:1-6). Medical treatment would be for causally related injuries which the parties have stipulated as fractures to claimant's right and left ankle, a fractured right patella, a fractured right femur and two broken ribs on the left side. (Tr. 7:18-9:2; 10:18-23).

Claimant believes he is entitled to payment of TTD from the date of the accident until he reaches MMI or is released to return to work. He is currently under medical care and has not been released at MMI. (Tr. 10:23-11:1; 11:16-20). Ancillary to this, claimant believes that he is entitled to reimbursement of transportation costs for his medical treatment.

The defendants contend that the claim is not compensable since the accident occurred as claimant was returning home from the business of his employer on the morning of September 13, 2017, and he was not still charged with some duty or task in connection with his employment. Based on this, the claim should be denied completely. (Tr. 12:14-24).

In the event the claim is found to be compensable, defendants contend that claimant has not met his burden of proof of entitlement to TTD benefits since the medical records are unclear as to work restrictions or whether claimant was out of work. Also, entitlement during any time frame outside his release from the hospital or during periods other than when his care was more intensive is based on speculation or conjecture. (Tr. 11:23-12:13).

EVIDENCE OF THE CASE

1. Claimant's Testimony:

At the time of the hearing claimant was age 49 with a DOB of [REDACTED]. (Tr. 15:22-25). He has lived in Colleton County most of his life and has lived at 312 Deloach Avenue for over 30 years in a house he inherited from his mother. (Tr. 16:3-17). He is divorced and currently lives with his sister who cared for him after the accident. (Tr. 16:20-25). Claimant is right hand dominant and has a valid South Carolina CDL, Class A, driver's license. (Tr. 17:20-18:1). Currently, he does not drive because of his injuries, mostly his knee and ankles, and does not believe he could pass a CDL physical at this time. (Tr. 18:2-14). Claimant graduated from Walterboro High School. (Tr. 18:15-20).

Before the accident of September 13, 2017, claimant was in generally good health with only medical conditions of high blood pressure and diabetes. These diseases did not affect claimant's ability to drive a truck or work (Tr. 18:21-19:22), and his last CDL physical was in August or September shortly before the wreck. (Tr. 18:5-7).

Claimant confirmed that his injuries from the wreck included a left broken ankle, a right broken ankle, a right broken kneecap which had to be replaced, a right broken femur in which a rod was inserted and two broken left ribs. (Tr. 20:2-20). None of these body parts were injured before the accident of September 13, 2017 (Tr. 21:1-4), and none have been re-injured between the date of the accident and the date of claimant's hearing. (Tr. 21:5-8).

Claimant is still under medical care for his injuries and is treating with Dr. William Corey and Dr. Richter, both orthopedic specialists in Charleston. Dr. Corey treats claimant's right ankle, and Dr. Richter treats his left ankle, right kneecap and right femur. (Tr. 21:9-22:9). He has received medical bills for his treatment but does not know how much the bills are for and has not paid them. (Tr. 22:10-17).

At the time of the accident, claimant had worked for Bishop Forest Products as a truck driver for about three and one-half years. (Tr. 22:18-25). He would haul wood chips from the logging woods in or near Colleton County to the Capstone paper mill in North Charleston. (Tr. 23:2-15). Claimant had to collect and complete certain paperwork as part of his job. Paperwork consisted of load tickets, DOT pre-trip inspection reports, time sheets and load sheets (trip log). (Tr. 23:16-24). Claimant described the various forms and reports he was required to keep and the information provided by the forms. He had to complete a DOT pre-trip inspection report every day that he operated his truck. (Tr. 24:3-25:19).

Claimant then described the procedure he followed in completing his forms. He would take his paperwork, including his load tickets, home with him on Tuesday evening. Then he would add his load tickets to be certain he had all of them, and he would complete his other paperwork and organize it in his plastic file folder for delivery to his employer the following Wednesday morning. (Tr. 25:20-26:18). Claimant's routine was to take all his paperwork and

tickets home to be certain all of the paperwork was in order and that his load tickets corresponded with his trip log. (Tr. 26:19-25).

Claimant was earning \$15.00 an hour at the time of the accident. He had been raised in pay from \$11.00 an hour when he began, and he had received both raises and promotions. He enjoyed his work and had a good working relationship with his primary supervisor, Adrian Bishop, the owner of the company. He believed he had been treated well and hoped to return to work for Mr. Bishop if and when his health permitted. (Tr. 27:4-24).

The physical demands of his job included standing around at the job site while the truck was being loaded, climbing in and out of the cab, sometimes trimming the load when hauling logs and mostly a lot of sitting while driving the truck. (Tr. 27:25-29:5).

The Tuesday evening before the accident claimant left his truck at his employer's place of business because he had no place to park the truck at his house. He was allowed by his employer to take the truck home and use it to go to and from work. However, since he could not park the truck at his house, he had to use his personal car to go back and forth to work. (Tr. 29:15-30:12). The employer's business office was about 20 or 30 minutes from claimant's Walterboro home on Deloach Avenue. (Tr. 30:13-17). Claimant returned to Bishop Forest Products' business office on Tuesday evening before the accident at between 5:00 and 6:00 PM. The office was closed at that time, but there is a mail slot in the door for turning in paperwork. Claimant always put his paperwork in the mail slot. As was claimant's routine, he took his paperwork from his truck and drove home to Walterboro. (Tr. 30:18-31:20).

Claimant had planned to be off work on the following Wednesday morning, September 13, 2017, the date of the accident. He had a scheduled appointment with his lawyer and planned to report to work about 11:00 AM. Claimant had discussed his delayed arrival with his supervisor who had agreed to let him off work. (Tr. 31:23-32:21).

Tuesday night before the accident claimant organized his paperwork and checked it over. He was aware he had to deliver his paperwork to the employer's place of business by 8:00 AM the following Wednesday morning as required by his job. He had planned to deliver his paperwork to the Wolfe Creek business office as his employer required. He was unable to sleep and got up about 3:30 AM. He left for his employer's office to deliver his paperwork about 4:00 AM and arrived about 4:15 to 4:20. He drove his personal vehicle. Upon arrival he put his paperwork folder in the mail slot and then left the employer's parking lot to return to his home in Walterboro. (Tr. 33:12-34:17).

Claimant was driving toward Walterboro on the Mt. Carmel Road which is another way to return directly to Walterboro. He had driven only about 5 to 7 minutes when the wreck occurred. An oncoming vehicle crossed the centerline and collided head-on with claimant's car. The impact occurred in claimant's lane of travel, and he was not faulted in the accident. Claimant does not recall much other than he saw oncoming head lights and then there was an impact. (Tr. 34:16-35:25). The accident occurred about 4:30 AM on Wednesday morning, September 13, 2017.

At some point claimant blacked out after the shock. EMS arrived, and claimant was taken directly to Trident Medical Center for acute care. (Tr. 36:2-8); (Cl. APA 15). He was hospitalized initially in ICU and as an inpatient at Trident Medical Center where he stayed from September 13, 2017 until September 22, 2017. After he was released from Trident on September 22, 2017, claimant was transferred to a rehabilitation floor at Colleton Medical Center (Walterboro Hospital) for physical therapy and continued care for about four weeks to six weeks after which he was released to home care with both legs immobilized. (Tr. 36:14-37:8). He could not weight bear until December, roughly three months from the date of accident. (Tr. 37:15-38:7). Then he used a walker for about one month until mid-January, 2018. (Tr. 38:8-19).

After this he has used a cane which he was using at the time of the hearing in mid-February. (Tr. 38:20-22).

At the time of the hearing, claimant was still having problems standing, walking, climbing and reaching. (Tr. 38:23-39:16). He had not been released by his doctors and was still receiving medical care. (Tr. 39:2-9). He was still employed by Bishop Forest Products and wanted to return to work, but he did not feel he was able to work at that time. (Tr. 39:4-14).

At the time of the accident, claimant believed that the trip to the premises of his employer to deliver the paperwork was for the benefit of his employer and was required by his job. (Tr. 39:17-23). No part of the trip was for claimant's benefit or was a personal errand. (Tr. 39:24-40:2).

Claimant has lost earnings from his job because of the accident, and he has not been paid for the lost earnings by his employer or anyone else. (Tr. 40:3-10). He anticipates future medical treatment, and he is still treating with both orthopaedic doctors. (Tr. 40:11-14).

On cross-examination claimant testified as follows:

Claimant drove a Bishop Forest Product work truck for hauls he made for his employer, and after the last haul of the day the truck was returned to Bishop Forest Products' property where the business office is located. (Tr. 40:19-41:6). Claimant had the folder of paperwork with him in the work truck, including mill tickets, time sheets, pre-inspection checklists and trip logs for each day from Wednesday to Tuesday. (Tr. 41:8-25). Claimant described a mill ticket and how it was processed at the paper mill and kept by claimant in his paperwork folder. (Tr. 42:1-43:21). Claimant would fill-in the information daily for the time sheets, inspection checklists and trip logs. (Tr. 43:22-24). Claimant could complete his paperwork in his truck and turn it in on Tuesday evening. (Tr. 44:1-15). On Wednesday morning claimant left home about 4:00 AM to drive to Bishop Forest Products where he dropped off his paperwork including the

mill tickets. (Tr. 47:22-48:2). On his return trip to Walterboro claimant did not have any paperwork with him. (Tr. 48:3-6). Claimant's normal routine was to drive to work, park his car, put the paperwork in the slot and get in his truck and clock-in. (Tr. 48:14-19). On that Wednesday morning claimant did not follow his normal routine because of an early morning appointment with his attorney. (Tr. 48:20-49:1). On the morning of the accident claimant used his personal vehicle to go to and from the employer's place of business. (Tr. 49:4-6). Claimant's employer did not provide any funds to maintain claimant's personal vehicle or provide any mileage, and claimant did not clock-in or log-in any hours on the day of the accident. (Tr. 49:7-16).

Claimant has health insurance but did not know if it had paid any of his medical bills and had not received an explanation of benefits from his health insurance company. He had received bills but had not received paperwork relating to treatment he had received following the accident. (Tr. 49:17-50:9).

On re-direct examination claimant testified as follows:

No one including Mr. Bishop had ever told claimant not to take his paperwork home. (Tr. 50:15-18). On the Wednesday morning of the wreck, claimant was required by his job to take the paperwork to the office of his employer, Bishop Forest Products (Tr. 50:19-22).

2. The Employer, Adrian Bishop's, Testimony:

On direct examination by claimant's attorney, Mr. Bishop testified that he is the president, owner and general manager of Bishop Forest Products, an incorporated business. (Tr. 52:12-18). He had been in the logging business most of his adult life and since 1980. (Tr. 52:19-23). Mr. Bishop described claimant as an "excellent employee" and wanted him to come back to work. (Tr. 53:4-10). He then described the load tickets and certain time deadlines that you have with those tickets. The drivers are required to turn in their load tickets for a particular

week either on Tuesday night or before 8:00 o'clock on Wednesday morning of the following week. This provides sufficient time to process the tickets and turn them in for payment. The deadline on Wednesday morning is necessary in order to pay his vendors for the timber and in order to get paid by the paper mill. (Tr. 53:11-54:18). Mr. Bishop then described receipt of the load tickets and submitting the tickets as the "most important" part of his business because if you don't get them in, you don't get paid. (Tr. 54:19-25). Mr. Bishop described a plastic zip lock folder which his office provides to the truck drivers to put their paperwork in. The driver's are also provided with other forms which are typically a DOT form, pre-trip inspection form and trip log form. (Tr. 55:14-56:15). The load tickets should correspond with the trip log, and there should be one load ticket for each load delivered to the mill. The driver can check the number of load tickets he needs by the number of loads shown on the trip log. (Tr. 56:16-57:3). Keeping track of the load tickets is a "very important" part of a driver's job. (Tr. 57:17-24). In circumstances in which a driver was unable to turn in his paperwork on time, someone would be sent to collect it. (Tr. 57:25-58:15). Mr. Bishop allowed his drivers to take their folder and paperwork home with them, and he had "not given them any instructions not to do that." Tr. 58:16-20). Mr. Bishop knew that claimant turned his tickets in "on time all the time." (Tr. 58:21-24). As far as the company's regulations, it was entirely proper to turn the paperwork in by Wednesday morning at 8:00 o'clock. (Tr. 59:8-13).

On cross-examination by defendants' attorney Mr. Bishop testified that the only thing he required was that the drivers turn in their mill tickets for everyone that they've hauled on Tuesday night or by Wednesday morning no later than 8:00 o'clock. (Tr. 61:18-62:4). He said that claimant could have turned in his mill tickets on Tuesday evening and then delivered the rest of his paperwork after his appointment on Wednesday. (Tr. 62:19-63:4). Mr. Bishop did not tell claimant to get up at 3:00 or 4:00 on Wednesday morning to bring his paperwork to the office

before meeting with his attorney. (Tr. 63:5-10). He did not require the drivers to take their paperwork home every night. (Tr. 63:11-13). They were allowed to lock the paperwork in the truck at the office. (Tr. 63:14-16). He was not aware that claimant was taking the paperwork home in his personal car every night. (Tr. 63:17-20). He did not pay claimant any mileage for use of his personal car to and from work. (Tr. 63:21-24). Claimant did not clock in any hours for Wednesday, September 13, 2017, the date of the accident. (Tr. 63:25-64:2).

On re-direct examination by claimant's attorney Mr. Bishop testified that one or two times there had been some vandalism on the trucks at his lot, but they had never had any paperwork missing. (Tr. 64:7-15). Mr. Bishop had no objection to claimant securing his paperwork by taking it home. (Tr. 64:16-19). It was typical for the drivers to turn in all their paperwork together and at one time. (Tr. 64:25-65:12). The driver would need to reconcile the individual load tickets with the trip log. (Tr. 65:13-21). The driver would need to fill out his hours on the payroll form. (Tr. 65:22-66:1). The trip log form would need to be completed by the driver. (Tr. 66:2-4). The DOT pre-trip inspection forms would need to be completed by the driver. (Tr. 66:5-7). The only forms that would not need to be completed by the driver were the actual load tickets, and these would need to be kept by the driver. (Tr. 66:8-13).

On re-cross examination by the defendants' attorney Mr. Bishop testified that the best practice is to document the activities on the forms as they are happening. (Tr. 66:18-22).

3. Medical Evidence:

The medical records show that claimant was actually hospitalized from September 13, 2017 until September 22, 2017 when he was discharged to Colleton Medical Center for rehabilitation care. (Cl. APA 8). His initial injuries included: 1) fracture of eight or more ribs of

left side; 2) multiple fractures of ribs of both sides; 3) open dislocation of the right knee; 4) open right ankle fracture; 5) open dislocation of right ankle; 6) fracture of right knee region; 7) pulmonary contusion; 8) closed left ankle fracture; 9) pneumothorax; and 10) hemothorax. (Cl. APA 14-15).

CT scans taken at the time of admission to Trident Hospital showed bilateral rib fractures, more on the left between the first and fifth ribs with a small right-sided pneumothorax. (Cl. APA 142). Additionally, there was a comminuted fracture of the right femoral shaft. (Cl. APA 142). Pelvic x-rays also showed the right femoral fracture. (Cl. APA 143). A CT scan without contrast of the right lower extremity, right ankle and hind foot showed a "nondisplaced talar neck fracture" and "comminuted medial and lateral malleolus fractures with multiple intra-articular bodies in the tibiotalar joint." (Cl. APA 153) Images of the lower left leg and ankle showed "a comminuted but not displaced fracture through the fibula at the level of the ankle mortise" and fractures of the medial and lateral malleoli with minimal displacement. (Cl. APA 169). Images of the right lower extremity showed a "patellar fracture" as well as "medial and lateral malleolar fractures and comminuted fracture of the talus, with the majority of the talus being dorsally displaced." (Cl. APA 170). A chest x-ray showed proper placement of an endotracheal tube for acute respiratory failure. (Cl. APA 174). Based on the testimony of the parties and the evidence in the record in its entirety, I make the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The question at bar is whether the motor vehicle accident on 09/13/17 is compensable under the Act? (Tr. 9:10-16; 12:14-24).
2. Claimant asserts that the claim arises out of and in the course and scope of his employment at the time of the MVA on 09/13/2017. (Tr. 9:12-16). He further asserts that it is given that he

was acting in a manner which directly benefits the Employer and is in furtherance of the Employer's business. (Tr. 13:3-14; 39:17-23).

3. The Defendants assert that since Claimant was on his way home, having previously delivered his paperwork to the Employer's place of business, this accident does not fall under any of the exceptions to the going and coming rule. As such, the claim must be denied. (Tr. 12:17-24).

4. The facts as to the accident are not in dispute. The Claimant drove a truck for his Employer (Tr. 22:18-25) and hauled wood chips from logging sites in Colleton County to the paper mill in North Charleston. (Tr. 23:2-15). He had, as part of his job duties, responsibility to maintain paperwork related to his work. That paperwork included load tickets for each delivery the driver made, daily trip logs and pre-trip inspection forms. (Tr. 23:16-24). All drivers, including the Claimant, had to turn those tickets in either on Tuesday night or by 8:00 AM on the following Wednesday morning. (Tr. 61:18-62:4). This was an important requirement of the job. The Claimant and the Employer so testified. (Tr. 54:19-25; 57:17-24).

5. While the Claimant could have driven the truck home each night as was allowed by the Employer, he had nowhere to park the truck so he drove his personal vehicle to and from work each day. Claimant so testified. (Tr. 29:15-30:12).

6. On the day of the accident which was a Wednesday, Claimant was involved in a major motor vehicle accident that was not his fault. Claimant had gotten up that morning at 3:30 AM. He had left his home and driven directly to the office of the Employer to leave his paperwork which was due in the office before 8:00 AM. Claimant delivered the paperwork and was returning home when the accident occurred. Claimant so testified. (Tr. 34:16-35:25).

7. The question is whether the accident is an exception to the going and coming rule? I find that it is.

8. It is an undisputed fact that on the early morning of the accident Claimant traveled in his personal vehicle to the business office of his Employer, Bishop Forest Products, Inc. (Tr. 33:24-34:5). It is an undisputed fact that the purpose of his trip was to deliver paperwork to his Employer which his Employer required by 8:00 AM that Wednesday morning. (Tr. 34:6-14). It is an undisputed fact that timely delivery of the load tickets was an important, if not the most important, aspect of the Employer's business since this was required for payment to the business. (Tr. 53:25-54:25). It is an undisputed fact that the Employer acknowledged receipt of the paperwork the following morning which confirmed the early morning delivery. (Tr. 34:6-14; 59:4-7). It is an undisputed fact that the Claimant went directly to his Employer's office and was returning directly to his home when the accident occurred. (Tr. 33:18-34:1; 34:15-20; 48:3-10). Based on these undisputed facts, it is clear that Claimant was "charged with some duty or task in connection with his employment" on his way to or from work, and the task was for the benefit of his employer. As such Claimant's actions constitute an exception to the 'coming and going' rule as determined by the Court of Appeals in *Stough v. Westinghouse Savannah River Company*, 311 S.C. 129, 427 S.E.2d 716 at 717 (Ct.App.1993). See, also, *Sola v. Sunny Slope Farms*, 244 S.C. 6, 135 S.E.2d 321 (1964).

9. The Claimant was returning directly home from delivering paperwork he was required to complete and turn into the Employer's business office before 8:00 AM that Wednesday morning. (Tr. 48:3-10). This is congruent with the directive he received from his Employer. (Tr. 53:20-54:3). Both Claimant and Employer so testified. While there was a window from Tuesday

evening until 8:00 AM on Wednesday, the Claimant had the latitude as allowed by the Employer to complete the task at his own pace as long as it was completed by Wednesday at 8:00 AM. (Tr. 58:16-20). The Claimant completed the task in the prescribed time frame. (Tr. 58:21-59:13). This task is clearly a requirement of his employment and for the benefit of the Employer. This task must be completed outside normal working hours.

10. Claimant chose to do this task early Wednesday morning which, again, he had the latitude to do. (Tr. 58:16-20; 59:4-13).

11. The accident occurs as he is returning home from the completion of that task. (34:10-23). He did not deviate on his return trip and would not have been when and where the accident occurred had it not been for this work-related errand. (Tr. 47:19-48:10).

12. To conclude that because Claimant had dropped off the paperwork and completed his delivery, he is not covered by the exception that exists to provide coverage for such an errand is a strained interpretation. Furthermore, it is illogical. If Claimant's employment required him to make the trip, then by implication he had a right to return. Stated differently, if he was covered coming, then he was covered going. The case law is clear that coverage should be liberally construed in favor of the Claimant. Had Claimant gone on to another task or errand, the Defendants' position might prevail, but that is not the case here. The Claimant is on the concluding leg of the trip to deliver the work-required paperwork which was the sole purpose of the trip. That trip and its timing is consistent with the guidelines set forth by the Employer.

13. When the evidence— both lay and medical— is viewed as a whole, I find that this claim is compensable.

14. The Claimant is entitled to payment for past causally-related medical treatment and associated mileage.
15. The Claimant is not at MMI. (Tr. 21:8-13).
16. The Claimant is entitled to continuing medical care and treatment with a physician(s) of the Defendants' choosing. His causally-related injuries as stated in the Trident Medical Center ICU admission record are as follows: 1) Fracture of eight or more ribs of left side; 2) Multiple fractures of ribs of both sides; 3) Open dislocation of right knee; 4) Open right ankle fracture; 5) Open dislocation of right ankle; 6) Fracture of right knee region; 7) Pulmonary contusion; 8) Closed left ankle fracture; 9) Pneumothorax; 10) Hemothorax. (Cl. APA 1:14-15).
17. While there is not an out-of-work note in the record, the Claimant was involved in a major head-on motor vehicle accident. (Tr. 34:24-36:3). He suffered serious injuries and spent from 09/13/17 to 09/22/17 at Trident Medical Center. (Tr. 36:4-13). He was then transferred to Colleton Medical Center for continued care and physical therapy. (Tr. 36:14-37:1). Once he was discharged from there, Claimant testified that he could not put any weight on his leg until December (Tr. 37:15-25) and used a walker until mid-January. (Tr. 38:8-19). Claimant testified that he has used a cane since that time. (Tr. 38:20-39:3). He had the cane with him at the hearing. Claimant testified that he wants to return to work for the Employer. (Tr. 39:4-7). Mr. Bishop, who owns the business, testified that he wished the Claimant could return to work immediately. (Tr. 53:6-10). Based on the testimony of the Claimant and my observations of him entering and leaving the hearing, it is clear he cannot work at this time. Claimant is entitled to TTD from the date of the accident and continuing.

18. While the depositions of both the Claimant and Employer were entered into evidence, both testified live at the hearing. As such, I neither read nor considered their deposition testimony in determining the outcome of this case.

19. All other issues not specifically addressed herein are held in abeyance for consideration at a future time.

CONCLUSIONS OF LAW

1. Jurisdiction and venue are proper as governed by the South Carolina Workers' Compensation Act and as agreed to by the parties.
2. The Claimant's average weekly wage is \$989.32 with a corresponding compensation rate of \$659.58 pursuant to SC Code Ann. Sec. 42-1-40.
3. Claimant sustained an injury by accident arising out of and in the course of his employment pursuant to SC Code Ann. Sec. 42-1-160.
4. Proper notice of the injury was given pursuant to SC Code Ann. Sec. 42-15-20.
5. The claim was filed in a timely manner pursuant to SC Code Ann. Sec. 42-15-40.
6. Claimant has received and is continuing to receive medical care for his causally-related injuries which is designed to lessen the period of disability pursuant to SC Code Ann. Sec. 42-15-60.
7. Claimant has not reached maximum medical improvement.
8. Claimant is entitled to payment of temporary total compensation from the date of accident and continuing until further order of the Commission pursuant to Workers' Compensation Commission Reg. 67-502, et seq.

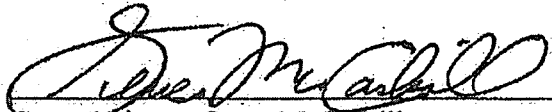
ORDER

IT IS NOW ORDERED:

1. The Defendants shall pay all causally-related, past and future medical expenses for Claimant resulting from his work-related motor vehicle accident in Colleton County on 09/13/17, and/or shall promptly reimburse to Claimant or any providers or entities any of Claimant's medical expenses paid by him or them on his behalf. The Defendants shall pay all associated mileage to Claimant at the statutory rate.
2. The Defendants shall pay contested TTD benefits to Claimant and his attorney from 09/13/17 until the date of this Decision and Order. Thereafter, the Defendants shall continue to pay weekly TTD benefits to Claimant until terminated by law or further Order of the Commission.
3. The Defendants are entitled to choose which physician(s) will provide continuing medical care and treatment for Claimant.
4. All other issues are held in abeyance for determination at a future time.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


Commissioner Gene McCaskill

CERTIFICATE OF SERVICE

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

May 29, 2018 By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1715897

Matthew Green,

Employee,
Claimant,

vs.

Bishop Forest Products, Inc.,

Employer,

and

Forestry Mutual Insurance Company,

Carrier,
Defendants.

**APPELLANTS' BRIEF TO FULL
COMMISSION**

STATEMENT OF THE CASE

This is a denied claim on the basis that the alleged injury did not arise out of and in the course of employment. By way of Form 50 requesting a hearing dated October 24, 2017, Matthew Green, the Claimant, alleges that on September 13, 2017, he injured his back, neck, head, ribs, both ankles, both knees, and both legs as a result of a motor vehicle accident while on his way home following delivery of paperwork to his employer. Claimant seeks medical treatment and temporary total disability benefits (TTD) from the date of accident and continuing. Defendants Bishop Forest Products, Inc. (Bishop Forest Products) and Forestry Mutual Insurance Company timely filed their general denial by Form 51 dated November 9, 2017.

A hearing on compensability was held before the Hon. Gene McCaskill, (hereinafter single Commissioner) on May 29, 2018. It is Claimant's position, as stipulated, that he sustained compensable injuries to both ankles, the right patella, right femur, and two broken ribs on the left

side, on September 13, 2017, that he is not at maximum medical improvement and is entitled to causally related medical treatment and TTD from the date of accident and continuing.

It is Defendants' position that Claimant was in the process of traveling home in his personal car, not on the clock, and with no work related obligations or responsibilities when the car accident took place on September 13, 2017, therefore Claimant's injuries sustained as a result are not compensable. Furthermore, the facts of this scenario do not fall under any of the judicially recognized exceptions to the going and coming rule. Finally, Defendants assert Claimant has not met his burden of proving entitlement to TTD from the date of accident and continuing.

In a Decision and Order dated May 29, 2018, the single Commissioner found and concluded that Claimant's stipulated injuries sustained on September 13, 2017 are compensable as the accident is an exception to the coming and going rule, and that he is entitled to causally related medical treatment and TTD from September 13, 2017 and continuing. It is from these findings and conclusions that Defendants appeal.

Based on the uncontested facts of this claim, Defendants assert that at the time of the accident, Claimant was not charged with a duty or task in connection to his employment, and was not in the process of performing a special errand for his employer. Furthermore, even if the claim were compensable, Claimant has not met his burden of proof in showing that he is entitled to TTD from the date of accident and continuing. It is for these reasons the single Commissioner's Decision and Order should be reversed.

ISSUES PRESENTED

- I. Whether the single Commissioner erred in finding and concluding as a matter of law that Claimant's injuries are compensable because the general coming and going rule does not apply, where the facts clearly establish that Claimant was in

the act of going home in his personal vehicle at the time of the accident, and none of the judicially recognized exceptions apply?

- II. Whether the single Commissioner erred in finding and concluding as a matter of law that Claimant was still charged by his employer with a duty or task connected with his employment while in the act of driving home in his personal vehicle where Claimant had already deposited his work-related paperwork at the Employer's place of business?
- III. Whether the single Commissioner erred in finding and concluding as a matter of law that Claimant was still covered under the Act while driving home in his personal vehicle where the facts of this claim do not fall within the parameters of the "special errand" exception to the coming and going rule?
- IV. Whether the single Commissioner erred in awarding TTD from the date of injury, September 13, 2017, and continuing, where the Claimant failed to prove by a preponderance of the evidence that his incapacity to earn wages during the relevant time period was total because of his injuries as required by § 42-9-260 and related case law where Claimant never produced any work notes to his Employer or contacted his Employer regarding work status?

FACTS OF THE CASE

I. Testimony of Witnesses and Related Documents

a. Employment Responsibilities With Bishop Forest Products

Claimant is 49 years old, and has lived in Colleton County for his entire life. (Hr. Tr. p. 8). He began working as a truck driver for Bishop Forest Products approximately 3.5 years ago, on Memorial Day of 2015. (Hr. Tr. p. 22). He was hired and worked as truck a driver, and transported chipped wood to the paper mill, multiple times a day at a rate of \$11.00 per hour. (Hr. Tr. p. 23). He later received an increase in pay, and at the time of the accident was receiving \$15.00. (Cl. Dep. p. 20 line 14). His average weekly wage is \$989.32, and his compensation rate is \$659.58. Bishop Forest Product wood chip truck drivers would normally begin their shift around 7:00 am, with an occasional day starting at 6:00 am if there was work left over from the day before. (Dep. of Bishop p. 21).

In addition to physically transporting wood chips, Claimant's employment with Bishop Forest Products required him to keep up with paperwork throughout the week and return/deposit the paperwork to the company's office on a weekly basis. *Id.* Specifically, it was Claimant's responsibility to *retain*, and in some cases personally complete, specific paperwork and receipts associated with his daily truck driving activities. *Id.* Each week he was responsible for returning to Bishop Forest Products his mill tickets, pre-inspection checklists, time sheets, and trip log sheets. (Hr. Tr. p. 26). He kept all of these documents in a file folder provided to him by his employer. *Id.* The Bishop Forest Products office had a mail slot on its front door, as well as a mailbox so employees can deposit paperwork if the office is closed. (Hr. Tr. p. 31).

Claimant was responsible for ensuring the office received his weekly mill/load tickets either on Tuesday night or 8:00am the following Wednesday. (Hr. Tr. p.54). As for the remaining paperwork (pre-inspection checklists, timesheets, and trip logs), there was no deadline set in stone for when it had to be delivered to the office. (Dep. of Bishop, p. 34). Not all of the paperwork for which Claimant was responsible required any action on his part other than retaining it and turning it in at the proper time. Specifically, the information recorded on the truck pre-inspection checklist, timesheets, and travel logs were placed there by claimant, and the majority of truck drivers did this in their trucks following each shift. (Hr. Tr. p. 42). The pre-inspection required him to fill out the truck's safety checklist before starting work each morning. The load sheets required Claimant to record things like the times he arrived/left the logging site, and the timesheets required him to enter his starting and stopping times each day. (Hr. Tr. p. 24). In contrast to the other documents that required manual recording of information on the part of the drivers, the mill tickets required no action on Claimant's part to be considered complete, as they were merely receipts generated by a computerized scale recording the weight of each load he delivered. (Hr. Tr. p. 43).

Of all the documents he retained within his file folder, the most important paperwork, and the only documentation that was not required to personally complete, were the tickets/receipts Claimant received and retained from his trips to the mill. (Hr. Tr. p. 43). The mill tickets were electronic printouts from the papermill, based on an outbound scale. *Id.* Claimant would receive tickets printed from the mill computer, and no further action was required on his part for purposes of his employment, besides *retaining* it and later depositing it at the Bishop Forest Products office, in order to comply with his duties. *Id.* This was further confirmed when Claimant was presented with page 226 of Defendants' APA, which was a photocopy of typical mill tickets. (Hr. Tr. p. 42).

Bishop Forest Products has been in business long enough to experience a situation where, for some reason or another, an employee was unable to deposit his/her tickets by the deadline. (Hr. Tr. p. 58). When this would happen, the employee usually notified a supervisor, and if asked by the employee, the supervisor would go and retrieve the paperwork for them. *Id.*

It was Claimant's *normal routine* to return from a day of hauling and park his truck to the Bishop Forest Products property where the office was located. (Hr. Tr. p. 41). He would then gather all of his paperwork for that week, depart with it in his personal vehicle from the Bishop Forest Products premises, and take it home to ensure that all his paperwork and mill tickets were in order. (Hr. Tr. p. 26). Claimant admits that he could very well have completed and ensured the accuracy of his papers every Tuesday night before leaving Bishop Forest Products property instead of taking it home if he had wanted to. (Hr. Tr. p. 44).

Nobody from Bishop Forest Products, including his supervisor, directed or instructed Claimant to take his paperwork home any night, much less on Tuesday, September 12, 2017, the night before his accident. *Id.* Claimant admitted that his employment with Bishop Forest Products did *not require* him to take his documents home, and nobody at Bishop Forest Products knew he

routinely took the documents home with him. (Hr. Tr. p. 44-46). This was further reinforced by the presentation of a portion of his deposition testimony taken prior to the hearing, wherein Claimant was asked "did anybody know that you had brought the paperwork home with you that night [prior to the accident]," his response was "No." (Hr. Tr. p. 46). When claimant was presented at the hearing with Defendants' question "So at least on the night of September 12th, 2017, would you agree it's your response that nobody even knew that you brought it home that night? Correct?," to which he responded, "Yeah." *Id.*

b. Claimant's Daily Work Routine

On an average workday morning, Claimant would wake up and drive his personal vehicle and arrive between 6:00 am and 7:00 am at the Bishop Forest Products office, where his work truck was located, park his car, and then get into his work truck and prepare for the day. (Dep. of Cl. p. 32-34 & Dep. of Bishop p. 21). Claimant would perform a pre-inspection check of the truck, and then head out to the logging site assigned to him for that day. (Hr. Tr. p. 25). He would then transport as many truckloads of wood chips as possible from the woods to the mill for that day, all the while documenting his travel in the trip log, collecting the mill ticket/receipts, recording the mill tickets on his load sheet, and placing them in his file folder. (Hr. Tr. p. 23-25).

It was Claimant's *normal routine* to return from a day of hauling between 5:00-6:00 pm and park his employer owned truck at the Bishop Forest Products property. (Hr. Tr. p. 41). This location was Bishop Forest Products headquarters and office. *Id.* He would then gather all of his paperwork for that week, depart with it in his personal vehicle from the Bishop Forest Products premises, and take it home to ensure that his paperwork was accurate and in order. (Hr. Tr. p. 26). However, Claimant fully admits he could have ensured the accuracy and order of his paperwork while sitting in his truck every Tuesday evening, and deposit it in the mail slot that night before

departing for the evening, instead of the following morning. *Id.* Furthermore, there was no particular reason for him to ensure the accuracy of the most important documents, the mill tickets, because they were pre-printed receipts, and a team of office employees reviewed the timesheets, trip logs, and pre-inspection checklists. (Dep. of Bishop p. 17). In other words, all the documents, especially the mill tickets, did not need to be taken home.

Claimant would then return the following Wednesday morning, and deposit his paperwork in the mail slot on the office door before getting in his work truck. (Hr. Tr. p. 33).

c. Claimant's Accident and Resulting Injuries

On Tuesday September 12, 2017, Claimant returned in his company truck between 5:00pm and 6:00 pm to the Bishop Forest Products property after finishing up his last load. (Hr. Tr. p. 30). The office was closed at this time, but as is always the case, the office mail slot that Claimant uses to deposit his paperwork on Wednesday mornings was available to him. (Hr. Tr. p. 31). He notified a supervisor that he *wanted* to meet with his attorney the next morning, and planned on arriving to work late, at 11:00 am Wednesday morning. (Hr. Tr. p. 32).

Instead of compiling his paperwork in his truck and depositing his paperwork in the office mail slot that night as he could have done, Claimant was in the *habit* of doing it his own way, so he placed the documents in his personal car, and drove home. (Hr. Tr. p. 31). He was well aware that he could have compiled the documents at the Bishop Forest Products property that night, and turn it in to the office, but instead took it home with him, so he could watch television while he ensured its accuracy and order. (Hr. Tr. p. 31 & 47). Further, considering he was aware of the upcoming meeting with his attorney, Claimant was fully capable of completing his paperwork and depositing it that night, so that he would not have had to travel to the Bishop Forest Products office prior to his meeting with his attorney the next morning. (Hr. Tr. p. 47).

Importantly, nobody from Bishop Forest Products told Claimant or instructed him to take these documents home with him. (Hr. Tr. p. 44). Nor does Bishop Forest Products *require* him to take them home. (Hr. Tr. p. 45). Further, Claimant confirmed at the hearing and at his deposition that nobody from Bishop Forest Products was aware that he *routinely* took his paperwork home every night, much less the night before the accident. (Hr. Tr. p. 45; Dep. of Claimant at p. 33). Additionally, Claimant and other drivers at Bishop Forest Products have no reason to take the papers home because their employment only requires them to retain them before turning them in. (Hr. Tr. p. 61). It is clear from the facts that Claimant's decision to take the paperwork home was for his own *convenience*, and it was not a routine or procedure mandated by his employer.

The following morning, September 13, 2017, the day of the accident, claimant woke up earlier than usual at 3:30 am because he "couldn't sleep." (Hr. Tr. p. 33). Like he would do *every* Wednesday morning, he drove his car to the Bishop Forest Products property and turned in his paperwork before starting his shift, and before the 8:00am deadline. *Id.* On this occasion, he planned to turn his paperwork in, as he usually did, before the Wednesday 8:00 am deadline and before the meeting with his attorney. *Id.*

Claimant left his home at about 4:00 am and drove in his personal car to deposit his paperwork. (Hr. Tr. p. 33). He arrived at the office at approximately 4:15 am, and *completed* the task by depositing his paperwork in the mail slot on the office door "like [he does] *every* Wednesday morning. (Hr. Tr. p. 34) (emphasis added). He did nothing else incidental to his employment while on the Bishop Forest Products property, he was not on the clock driving to and from the office, was not paid for his mileage, and was not paid for his time while on the Bishop Forest Property. (Hr. Tr. p. 49).

After depositing the paperwork, Claimant got back into his personal car and left for home. *Id.* He drove in his car towards home for approximately 10 minutes, when he was struck head on by another vehicle, causing the accident and subsequent injuries. (Hr. Tr. p. 35). Claimant was transported to a local hospital and treated for his injuries. (Hr. Tr. p. 36).

As a result of the accident, both parties to this claim have stipulated that Claimant is only alleging injuries to his left leg, specifically the left ankle; the right leg, specifically the right knee, right femur, right knee, and right ankle; and two ribs on his left side. (Hr. Tr. p. 8). Claimant was admitted to Trident Hospital on September 13, 2017, where he underwent multiple surgeries and then was discharged as stable on September 22, 2017 to Colleton Rehab Center. (Hr. Tr. p. 36; Claimant's APA p. 9).

At Colleton Rehab Center, Claimant continued to receive rehabilitation until October 6, 2017 (Hr. Tr. p. 37; Claimant's APA p. 201), at which time he discharged home with instructions regarding home health services, performing activities as tolerated, and walking with assistance. (Claimant's APA p. 201). Claimant attended a follow-up visit with Dr. Richter on October 30, 2017 and he released Claimant to become "weight bearing as tolerated," discontinued the use of his right knee brace, and prescribed him a walking boot. Claimant was also treated by Dr. Corey on October 30, 2017 and was fitted for a CAM walker. Claimant testified that he could not put any weight on his leg until December 2017 and used a walker until mid-January, and has had to use a cane since that time. (Hr. Tr. p. 37-39). Bishop Forest Products considers Claimant an excellent employee and wants him back to work as soon as possible (Hr. Tr. p. 53). From the time of the accident forward, Claimant has never received nor produced to Defendants or this Commission, evidence of any doctors' note(s) placing any sort of work restrictions on him because of this

accident, nor has he ever contacted his employer about returning to work (Hr. Tr. p. 39 & Dep. of Claimant pg. 52).

Claimant had an employment responsibility to turn in his paperwork to the Bishop Forest Products office at any time after completing the last haul on Tuesdays but no later than Wednesday at 8:00 am. However, it is clear that it was not an employment responsibility for him to take the paperwork home every night to ensure its accuracy. The most important business documents in the paperwork, the mill tickets, required him to merely retain them and deposit them at the office, rather than perform any sort of review of them. In addition, the facts plainly establish it was Claimant's personal habit of taking the paperwork home every night was done for his own *convenience* and not because he was required to do so.

ARGUMENTS/ANALYSIS

The Full Commission's scope of review is not limited, and it may reach its own findings of fact and conclusions of law based on all of the evidence. *See Lowe v. Am-Can Transport Serv.*, 283 S.C. 534, 324 S.E.2d 87 (S.C. Ct. App. 1984). The Full Commission does not have to uphold the findings of the single Commissioner if, in its opinion, the preponderance of the evidence leads to a different finding. *Id.*

- I. **The single Commissioner erred in finding and concluding as matter of law that Claimant's injuries are compensable where the accident took place while claimant was driving home in his personal vehicle because none of the judicially created exceptions to the coming and going rule apply.**

In order to be compensable, an injury must arise out of and in the course of employment. As a general rule, any injuries sustained by an employee while going to or coming from the place where his/her work is to be performed are not compensable as they do not arise out of and in the course of employment.

South Carolina case law has carved out certain exceptions to this general rule, thereby creating a framework to determine if benefits are due for injuries sustained while an employee is traveling to or from his/her employment. These five recognized exceptions allow employees the possibility of compensation for injuries sustained while going to or coming from work if: (1) the means of transportation is provided by the employer, or the time that is consumed is paid for or included in the wages; (2) the employee, on his way to or from his work, is still charged with some duty or task in connection with his employment; (3) the way to work is inherently dangerous and is either the exclusive way or is constructed and maintained by the employer; (4) the injury occurred in close proximity to the workplace and there is an express or implied requirement that the employee use that approach in going to and coming from work; and (5) an employee is injured while performing a special task, service, mission, or errand for his employer, even before or after customary working hours, or on a day which he does not ordinarily work. *See Medlin v. Upstate Plaster Serv.*, 329 S.C. 92, 495 S.E.2d 447 (1998).

Specific circumstances must exist while traveling to or from work for an exception to the general rule to apply. Once it is established that an accident occurred while going to or coming from work, an employee must then satisfy the elements unique to one or more of the particular exceptions to receive benefits under the Act for an otherwise non-compensable accident. At the outset, the uncontested facts and circumstances surrounding this accident eliminate exceptions (1), (3), and (4) as referenced above. Claimant's transportation was not provided or paid for by the employer, he was not paid for his travel to deposit the documents, his way to work was not inherently dangerous, and Claimant was not injured in close proximity to his workplace nor was he required to use a certain approach.

Therefore, the only exceptions possibly available to Claimant are the "continuing duty" exception and "special errand" exception. The case law is clear that the "continuing duty" exception only protects employees while they are in the process of completing the duty, but provides no protection once the duty is complete. In contrast, the "special errand" exception explicitly protects employees before and after completion of their special task. Claimant is unable to satisfy the "continuing duty" exception because any employment duty he may have had on the day of the accident ceased to exist the moment he deposited the documents in the mail slot and drove off company property. Upon depositing the documents, Claimant was no longer fulfilling an employment responsibility, and his protections (if he had any to begin with) from the continuing duty exception terminated. He then became a regular employee under the Act, subject to the general going and coming rule.

Additionally, Claimant is unable to satisfy the "special errand" rule because he is unable to satisfy several of the required elements to receive protection under the exception. Therefore, the single Commissioner's findings and related conclusions of law were in error, because the evidence and facts clearly show Claimant did not suffer an injury arising out of and in the course of his employment because he was going home at the time of the accident and none of the exceptions to the general rule apply.

- II. The single Commissioner erred in finding and in concluding as a matter of law that Claimant was charged with a continuing duty or task connected with his employment at the time of the accident because Claimant was not required to make the trip in the first place and any employment duty he may have had ended the moment he deposited the documents in the office mailbox and did not continue on the return trip home.

In finding of fact # 12, the single Commissioner reasons that Claimant's employment *required* him to make the trip, then by implication he had a right to return; therefore, "[i]f Claimant was

covered coming, then he was covered going." This reasoning is factually incorrect because Claimant was not required to make the trip, as the facts clearly establish that Claimant was not instructed or required to take the paperwork home, eliminating the need for the fateful trip in the first place. The reasoning is also legally incorrect, because the "continuing duty" rule only applies while the duty or task has yet to be completed, and in this case the task or duty at issue was already completed at the time of the accident. Therefore, Claimant's injuries did not arise out of and in the course of employment.

An injury arises in the course of employment and is therefore compensable when "the injury occurs within the period of employment at a place where the employee reasonably may be in the *performance* of his duties, and *while he is fulfilling* those duties . . . before the Act can apply." *Sola v. Sunny Slope Farms*, 244 S.C. 6, 11, 135 S.E.2d 321 (1964). When an employee is still charged with a duty or task connected with their employment, any injuries sustained going to or coming from work arise out of and in the course of employment. See *Stough v. Westinghouse Savannah River Co.*, 311 S.C. 129, 427 S.E.2d 716 (S.C. Ct. App. 1993). However, upon completion of the duty or task, the employee is no longer charged with the duty or task and the protection afforded to them by this exception *terminates*, and compensability of any subsequent injuries is controlled by the general rule. *Id.*

In *Sola*, the Court held that when an employment contract necessitates that the employee performs services at two different locations within an employer's premises, any accident that occurs during his travel between the two is within the scope of employment. *Sola v. Sunny Slope Farms*, 244 S.C. 6, 135 S.E.2d 321 (1964). The employee in *Sola* was employed as a carpenter, bookkeeper, packing shed worker, and lived at a camp provided by his employer. *Id.* at 14, 135 S.E.2d at 325. The other workers received \$12.00 per week while he received \$50.00 per week and free room and board for the performance of the extra services. *Id.* at 11, 135 S.E.2d at 324.

This increase in pay reflected the fact that he worked as a carpenter in the packing shed during the day, and handled the bookkeeping and payroll in the labor camp at night. *Id.* at 12, 135 S.E.2d at 325. These duties made it necessary for him to travel back and forth between the two places in order to perform his duties. *Id.* The employee was hit and killed by a train while travelling between the packing shed and camp. *Id.* The Court determined that because his employment contract required him to regularly perform work at two places of employment, the travel between the two locations effectively brought the location of his accident within the scope and course of his employment. *Id.* at 16

In *Stough*, the court held that when an employee's primary business responsibility is to deliver documents to an office, he is considered to still be charged with a duty or task connected to his employment *while on his way home*, if he has yet to deliver the documents, and his trip home is located along the route necessary to complete his delivery. *Stough*, at 131, 427 S.E.2d at 717-18. In *Stough*, the employee lived in Columbia and commuted in his personal car to his main office in North Augusta. *Id.* at 130, 427 S.E.2d at 717. He received no compensation for driving to and from his home to his office in North Augusta. *Id.* One of his primary business responsibilities was to transport business documents from his North Augusta office on a regular basis of once a week to an auxiliary office in Charlotte, NC. *Id.* His travel expenses for these document transport trips were paid for by his employer. *Id.*

The employee's accident occurred during one of these required document transport trips from North Augusta to the Charlotte office. *Id.* at 131, 427 S.E.2d at 717. On the date of the accident, he left his office in North Augusta with the documents, and was hit and killed while on his way to stop at home before continuing on to Charlotte the next day. *Id.* at 131, 427 S.E.2d at 717. His employer would have had to arrange to send the documents via some other person or

method had the employee not planned to deliver them the next day. *Id.* The court noted that he would have traveled the same route to Charlotte regardless of whether he stopped in Columbia along the way. *Id.* The court determined that the purpose of his trip from North Augusta to Charlotte was *necessitated* by his work at Westinghouse, and even had he not stopped at home that evening, he would have made the same trip to Charlotte to perform his duties on behalf of Westinghouse. *Id.* at 131, 427 S.E.2d at 718. Because he had yet to complete his delivery of the documents, his employment duty had yet to cease during his trip home from work, and his resulting death arose out of and during the course of employment. *Id.* at 131, 427 S.E.2d at 718.

Claimant is unable to satisfy the elements required by the Courts in *Sola* and *Stough* to receive protection from the continued duty exception to the general rule. Unlike the employee in *Sola*, Claimant's contract for employment did not require him to perform two different and distinct types of service at two separate locations. Claimant was hired by Bishop Forest Products as a truck driver to haul wood chips from select wooded sites to the paper mill. It is uncontradicted that Claimant was not hired by Bishop Forest Services for two positions. In fact, Claimant asserted that his employer was completely unaware that he was taking his paperwork home to review it. It is true that Claimant had responsibilities associated with his employment as a truck driver, such as maintaining and completing daily paperwork that was required to be turned in once a week, but these were ancillary services rather than separate and distinct services. Further unlike the employee in *Sola*, Claimant's employment did not require him to regularly perform work at two distinct places of employment. Claimant's only place of employment was the Bishop Forest Products headquarters/office.

Claimant's use of his home is in no way similar to the home of the employee in *Sola*. Claimant's wages did not reflect an increase for any of the time spent each week "ensuring the

accuracy" of his paperwork. Nor was his home included as part of his wages. Claimant decided to perform his accuracy review under his own volition, and he was not paid a higher wage for the review of his paperwork he performed at his home. Importantly, unlike the employee in *Sola*, Claimant was not on his way from one place of employment to another place of employment when the accident occurred. Claimant had already deposited his documents, and was on his way home to later attend a personal meeting with his attorney when his accident occurred. He was hit while driving his personal vehicle, which is not a place he should reasonably be in order to fulfill his employment related duties. It was impossible for Claimant to be performing or fulfilling his employment duties because any duties he may have had ceased the moment he deposited the paperwork at the office, and thus he cannot satisfy the requirements necessary to invoke the protections of the continuing duty exception as explained by the Court in *Sola*.

Similar to the employee in *Stough*, one of Claimant's employment responsibilities was to ensure his paperwork reached his office each week, and he did so using his personal vehicle. However, this delivery style employment task was considered a primary duty for the employee in *Stough*. Here, Claimant's employment task to complete delivery of his paperwork differed because he had the opportunity to complete delivery without even leaving the premises of Bishop Forest Products on the day they could be turned in, but he chose his own timeframe. In addition, the employee in *Stough* was specifically tasked with transporting documents from one office to another and he was compensated for his travel, while Claimant was only tasked with having them deposited by a certain time and was not compensated.

This is an important distinction because the employee in *Stough* had a specific route to transport the documents, which happened to pass through where his home was located. In contrast, and similar to the facts above in *Sola*, Claimant was not tasked with transporting them from one

place of employment to another place of employment. Without the knowledge of his employer, Claimant made a trip from his home to his office and deposited them. In addition, it is relevant that the court in *Stough* considered the employee's duty of transporting documents as a primary responsibility because his employers were aware of the need for him to travel in order transport the documents and that he was compensated for this travel. It follows, that Claimant's responsibility to deliver his paperwork may not rise to the same level of "primary business responsibility" because Claimant's employer was unaware of his travel, did not compensate him for it, and thus is not deserving of the protections afforded by this exception to the general rule.

Critical to the analysis is the fact that the employee in *Stough* was in the process of transporting the documents to another office when he was killed. In other words, and following the Court's analysis in *Sola*, the employee was in the *performance of* and *fulfilling* a duty incident to his employment when he was killed. Here, Claimant had *already completed* whatever duty he may have been charged with (depositing his documents) when his accident occurred. Thus, because Claimant's continued duty was completed when he deposited his paperwork, the duty ceased to exist, and he is not protected by the "continuing duty or task" exception.

Persistent throughout the *Sola* Court's and *Stough* court's analysis of the "continuing duty" exception is whether or not the employee was in the process of completing a duty or task connected to his/her employment when the injury occurred. In both instances, the charged duty or task had yet to be completed, and because of this, any injuries incurred were found to have taken place during the course of employment. The exception covers employees who are in the process of fulfilling a work-related duty, and an employee's travel after completion of the duty is no longer covered. Assuming, *arguendo*, Claimant had been on the way to deposit his documents when the accident occurred, the analysis would be different. However, those facts are not presented with

this claim, and therefore his injuries are not compensable under the "continuing duty" exception to the general "coming from or going to work" rule.

Regardless of whether or not Claimant was still charged with a duty or task to deposit his paperwork on Wednesday morning, the duty concluded the instant he completed the act of depositing the paperwork into the office mail slot. Any duty or task Claimant may have been charged with ceased to exist and Claimant became subject to the general rule during his return trip home. At the time of the accident he was no longer fulfilling any employment duties nor was he still charged with a task when the accident occurred. Thus, Claimant's resulting injuries did not arise out of and in the course of his employment, and are therefore not compensable.

III. The single Commissioner erred in finding and concluding as matter of law that Claimant was covered under the Act while in the process of driving home after depositing the paperwork, which was when the accident occurred, because Claimant was not tasked with a "special errand;" therefore, the accident is not compensable.

Claimant was not performing an unusual task or taking part in a special or unusual situation for the benefit of his employer; therefore, it was error for the single Commissioner to determine that Claimant was covered under the Act during his entire journey to and from the office to deposit his paperwork (see finding of fact #12).

This rule, like the other exceptions, overrides the general rule and brings an injury within the scope of employment if it can be shown that an employee: (1) although not at his regular place of employment; (2) is doing, or is on the way from his home to perform, or *on his way home after performing*; (3) some *special or unusual* service, errand, or discharge of some duty incidental to the nature of his employment; (4) the service or incidental duty is not a *habit* or for the *convenience* of the employee; and (5) is in the interest of, or under the direction of, his employer. See *Moore v. Family Service of Charleston Cnty.*, 269 S.C. 275, 237 S.E.2d 84 (1977). Notably, these elements

are conjunctive, and all must be met for the exception to apply. This rule, when applicable, protects an employee during both the trip to complete the errand, as well as the return trip after the errand is complete.

In *Moore*, the Court held that because the employee was performing an unusual service at the behest of her employer, her injuries arose out of and in the course of employment, and thus compensable. *See Id.* In *Moore*, the employee was *directed* by her supervisor to take home and study four large text books in preparation for a type of family abuse case for which she had no experience. *Id.* at 278, 237 S.E.2d at 85-86. On her way to work the following morning, the employee fell down the stairs while carrying the books and sustained an injury. *Id.* at 277, 237 S.E.2d at 85. It was undisputed that the *books* were the cause of her fall. *Id.* The court noted the *most important* evidence was the testimony of the employer that it was "not a habit for [employees] to take books and files home and that this was an unusual case and [the employer] requested the Claimant to take home the books." *Id.* at 278, 237 S.E.2d at 86.

The Court also distinguished the employee's compensable injury and factual scenario in *Moore*, from the non-compensable injury and factual scenario in *Sylvan v. Sylvan Bros.*, 225 S.C. 429, 82 S.E.2d 794 (1954). *Id.* at 279, 237 S.E.2d at 86. In doing so, the Court clarified further that if an employee is "in the *habit* of doing 'paperwork'" outside of regular work hours, or is doing it for "[the employee's] own *convenience*," the employee's actions do not qualify for the protections afforded by the "special errand" rule. *Id.*

In *Sylvan*, the Court held that if a journey would be made to work, irrespective of homework from the night before, the journey is not in the course of employment. *Sylvan*, 225 S.C. 429, 82 S.E.2d 794 (1954). In *Sylvan*, the claimant was injured when he slipped on ice while on his walk from home to work. *Id.* at 433, 82 S.E.2d at 795. He was in the *habit* of doing paperwork

at night, and at the time of his injury, he had business papers in his pocket which he had been working on at home the night before. *Id.* He testified that he was unable to do certain paperwork during regular business hours because of interruptions from customers, "but no reason is suggested why he could not have remained in the privacy of the store after closing hour." *Id.* at 433-34, 82 S.E.2d at 795-96. The court reasoned that therefore the taking of the paperwork home was for his own *convenience*, and the fact that he had paperwork on him when he was injured does not convert his trip to work to within the course of employment. *Id.*

Similar to the employee in *Sylvan*, Claimant admitted under oath, on multiple occasions, that he was in the *habit* of doing paperwork outside of his normal business hours, as opposed to being told to do so. Additionally, like the employee in *Sylvan*, Claimant took his paperwork home the night before the deadline for his own *convenience* so that instead of having to sit in his truck and do the paperwork before departing the company's premises, Claimant would review his timesheets, load sheets, and pre-inspection checklists while watching television in the comfort of his own home.

The record makes clear that Claimant was not performing a "special errand" for Bishop Forest Products when he delivered his paperwork to the company office on the morning of September 13, 2017. Unlike the employer in *Moore*, neither the owner nor any supervisor for Bishop Forest Products directed Claimant to take his paperwork home the night before his accident. The evidence furthermore reinforces this fact when Claimant testified at the Hearing that none of the management of Bishop Forest Products were even aware he took his paperwork home the night before the accident, much less that he took his paperwork home every night. Additionally, even the single Commissioner acknowledges that Claimant was not directed or instructed to make the trip in question, as finding of fact #9 observes "...the Claimant had the

latitude as allowed by the Employer to complete the task at his own pace as long as it was completed by Wednesday at 8:00 AM."

Furthermore, Claimant was not performing a special service for Bishop Forest Products. Unlike the employee in *Moore*, who took materials home to prepare for something she had no experience in dealing with, i.e. a special or unusual service, Claimant was familiar with the paperwork he was dealing with and he had multiple years of experience in meeting the requirements of the paperwork deadline. There was nothing special or unusual about Claimant driving to the office to deposit the paperwork as he had done so on many Wednesday mornings. Also, unlike the employee in *Moore*, Claimant was not performing an unusual service at the behest of his employer, because it was normal for Bishop Forestry Products truck drivers to turn in their paperwork before the deadline. Although Bishop Forest Products did not prohibit Claimant from taking his paperwork home, having the latitude to do something is not the equivalent of being directed to do something as demonstrated in *Sylvan*. The owner of Bishop Forest Products did not know Claimant took the paperwork home with him. Unlike the circumstances in *Moore*, Claimant here made the choice to take the paperwork home, and he was not directed to do so. Claimant had identifiable space and time limits on his employment, but he was not directed to perform work at a time and place other than at the Bishop Forest Products premises or while operating a Bishop Forest Products truck.

Claimant decided to make the trip in his own vehicle because of his personal decision to meet with his attorney that morning rather than show up to work on time and deposit his paperwork. Claimant had ample time to prepare for his absence at work and complete his paperwork and deposit it the night before.

Claimant was not performing a special task, service, or mission by delivering his paperwork. Depositing the paperwork before the deadline was a normal and customary aspect of Claimant's employment rather than special or unusual. And, contrary to the single Commissioner's finding that turning in the paperwork "must be completed outside normal working hours" (see finding of fact #9), the evidence clearly established that Claimant would normally arrive at Bishop Forest Products between 6:00 am and 7:00 am, and he normally would return from his last haul between 5:00 pm and 6:00 pm. These normal working hours fall within the timeframe allotted to turn in the paperwork; therefore, this finding is in error. Finally, Claimant did not perform any service to Bishop Forest Products while en route to the office and his trip was not a substantial part of the service for which he was employed, as Claimant, employed as a truck driver, was in his personal vehicle making a trip he was not required to take.

Claimant's early morning trip to the office was not a substantial part of the service for which he was employed – he was employed as a truck driver but was not driving a truck at the time. The mill tickets – the paperwork that what was of paramount importance to Bishop Forest Products - required no review by Claimant and could have been turned in on Tuesday evening. All the other paperwork could have been turned in after 8:00 am Wednesday. The mill tickets were pre-printed receipts, and even if Claimant were to realize he was missing some mill tickets, Bishop Products had the ability to retrieve any misplaced tickets. By depositing the paperwork on the morning of the accident, Claimant was completing a normal business responsibility rather than a special errand, therefore the accident on the return trip home did not arise out of or in the course of employment.

Claimant fails to satisfy numerous crucial elements that require the triggering of the "special errand rule," and therefore his injuries do not fall within the scope of his employment. He

was not performing a special or unusual service outside of his regular place of business for the benefit of his employer by driving to the office in his personal car to deposit the paperwork. He was in the habit of taking his paperwork home for his own personal convenience to avoid staying inside a truck any longer than necessary. Because the circumstances surrounding Claimant's actions was not an unusual situation where Claimant was directed to perform a special task for the benefit of Bishop Forest Products, he was at most a regular employee performing a basic employment responsibility. Therefore, after he dropped off the paperwork, Claimant was subject to the general going and coming rule while headed home in his personal vehicle when the accident occurred, and the resulting injuries did not arise out of and in the course of employment.

- IV. The single Commissioner erred in awarding TTD from the date of injury, September 13, 2017, and continuing, because he based his award on surmise, conjecture, or speculation, and Claimant failed to prove by a preponderance of the evidence that his incapacity to earn wages during the relevant time period was total because of his injuries as required by § 42-9-260, and related case law.**

Claimant's award of TTD from the date of injury and continuing was, beyond a certain point, based on surmise, conjecture or speculation. Therefore, the single Commissioner's findings and related conclusions of law should be reversed.

"Pursuant to section 42-9-260 and the accompanying regulations, the entitlement of TTD benefits is premised on a nexus between the work-related injury and the inability to earn wages. An injured employee will be entitled to TTD compensation when his incapacity to earn wages is due to or because of the injury." *Pollack v. S. Wine & Spirits of Am.*, 405 S.C. 9, 15, 747 S.E.2d 430, 433 (2013). S.C. Code Ann. § 42-9-260(A) (2015) provides TTD payments may begin when "an employee has been out of work due to a reported work-related injury . . . for eight days." In addition, "the burden is upon the claimants to prove such facts as will render the injury . . . compensable within provisions of the [Act] and such award *must not be based on surmise*,

conjecture, or speculation." *Sola v. Sunny Slope Farms*, 244 S.C. 6, 10, 135 S.E.2d 321, 324 (1964); citing *Gosnell v. Bryant*, 240 S.C. 215, 125 S.E.2d 405 (1962).

The single Commissioner erred in awarding TTD benefits from September 13, 2017, and continuing, primarily on the testimony and appearance of Claimant, who provided no documentary evidence that his inability to earn wages was total. On September 22, 2017, Claimant was released from Trident Hospital as stable to Colleton Rehab Center. (Hr. Tr. Pp. 36; Claimant's APA p. 9). He was discharged from Colleton Rehab Center on October 6, 2017 with instructions for home health service, activities as tolerated, and walking with assistance. (Claimant's APA p. 201). Claimant presented to Dr. Richter for treatment on October 30, 2017 and his plan for Claimant was to become weightbearing as tolerated. Claimant also presented to Dr. Corey on October 30, 2017 and he fitted Claimant with a CAM walker. Claimant testified that he could not put any weight on his leg until December, used a walker until mid-January, and has had to use a cane since that time. (Hr. Tr. p. 37-39). None of this testimony or medical documentation shows that Claimant was placed in an out of work status at any time or incapable of performing any work, rather it merely establishes Claimant's symptoms, stage of recovery and course of treatment following his accident.

In addition, the single Commissioner determined that although "there is not an out-of-work note in the record," it was his opinion that "based on the testimony of the Claimant, and [his] observations of him entering and leaving the hearing . . . that he cannot work at this time." (finding of fact # 17). In absence of any medical evidence of Claimant's inability to work, much less work with restrictions, it is clear that the single Commissioner's TTD award fails to adhere to the precedent set by our Supreme Court, as it was based on surmise, conjecture, or speculation. This is not to say that Claimant, assuming *arguendo* his injuries are compensable, was not entitled to

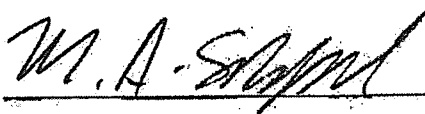
TTD for some period of time following the accident. However, by mid-January when Claimant was no longer using a walker, Claimant failed to meet his burden of proof in showing his inability to earn wages at that point was total, as Claimant never produced a work note, he apparently never asked for one, nor did he ever contact his employer about returning to work, light duty or otherwise. Claimant was unable to demonstrate that his employer could not have accommodated him in some fashion allowing him to work and make wages. Here, Claimant did nothing to keep his employer updated on his status, thereby preventing the opportunity for his employer to offer work, either with or without restrictions depending on the circumstances.

In sum, the record demonstrates that Claimant failed to meet his burden of proof in showing that his incapacity to earn wages was total because of his accident after he was able to walk, therefore the single Commissioner erred in awarding Claimant TTD benefits from the date of accident and continuing.

CONCLUSION

Based upon the forgoing arguments and authorities, the Appellants' respectfully request that the single Commissioner's Decision and Order issued on May 29, 2018, be reversed with respect to the issues of compensability and entitlement to TTD benefits.

RESPECTFULLY SUBMITTED,



Matthew Schonfeld, Esq.
Attorney for Respondents
Holder Padgett Littlejohn + Prickett, LLC
349 West Coleman Blvd, Suite 300
Mt. Pleasant, South Carolina 29464

Date: August 16, 2018

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
BEFORE THE APPELLATE PANEL
WCC FILE NO.: 1715897

Matthew Green,
Employee/Claimant,
Appellant

vs.

Bishop Forest Products, Inc.,
Employer,

and

Forestry Mutual Ins. Co.,
Carrier,
Defendants,
Respondents.

RESPONDENT'S BRIEF

Appearances:

Claimant/Respondent represented by John R. Hetrick of
Hetrick Harvin & Bonds, LLC of Walterboro, South Carolina.

Defendants/Appellants represented by Matthew A. Schonfeld,
Esquire, of Holder Padgett Littlejohn & Prickett, LLC of Mt.
Pleasant, South Carolina.

STATEMENT OF THE CASE

Claimant was severely injured in a motor vehicle accident on the early morning of September 13, 2017. He was employed as a truck driver for Bishop Forest Products. The dominant issue is compensability. (Tr. 9:10-16). Claimant asserts the accident and injuries sustained therein arose out of and in the course and scope of his employment with Bishop Forest Products. When the accident occurred, claimant was returning directly home from delivering certain required paperwork to the business office of his employer before an 8:00 AM deadline every Wednesday morning. Delivery of the paperwork by the required deadline each Wednesday was incidental to his job duties as a truck driver. Timely receipt of the paperwork was important to the employer's business; it benefitted the employer. The trip was for the sole benefit of the employer. Claimant contends that since the trip to the employer's place of business was work-related and compensable, the return trip to his home was ancillary and also compensable. (Tr. 9:16-10:23; 13:3-14). Based on compensability under the Act, claimant seeks entitlement to payment of his past and future medical treatment. (Tr. 10:23-11:6; Tr. 11:1-6). This would include causally related injuries which the parties have stipulated as fractures to claimant's right and left ankle, a fractured right patella, a fractured right femur and two broken ribs on the left side. (Tr. 7:18-9:2; 10:18-23). Also, claimant believes he is entitled to payment of TTD from the date of accident until he reaches MMI or is released to return to work. He is currently under medical care and has not been released at MMI. (Tr. 10:23-11:1; 11:16-20).

The defendants contend that since the accident occurred as claimant was returning home from the business of his employer and after he had completed his task, the claim is not compensable. They claim that when the wreck occurred, he had completed his task and was not still charged with some duty or task in connection with his employment. Because of this, the claim should be denied. (Tr. 12:14-24). If the claim is compensable, the defendants contend that claimant is not entitled to TTD benefits since the medical records are unclear as to work

restrictions or claimant's inability to work, and there are no medical opinions supporting this. Entitlement to TTD after his release from the hospital is contested based on speculation or conjecture. (Tr. 11:23-12:13).

EVIDENCE OF THE CASE

1. Claimant's Testimony:

At the time of the hearing claimant was age 49 with a DOB of [REDACTED] (Tr. 15:22-25). He has lived in Colleton County most of his life and for over 30 years at 312 Deloach Avenue in a house he inherited from his mother. (Tr. 16:3-17). He is divorced and lives with his sister who cared for him after the accident. (Tr. 16:20-25). Claimant is right hand dominant and has a valid South Carolina CDL, Class A, driver's license. (Tr. 17:20-18:1). Currently, he does not drive because of his injuries, mostly his knee and ankles. He does not believe he could pass a CDL physical at this time. (Tr. 18:2-14). Claimant graduated from Walterboro High School. (Tr. 18:15-20).

Before the accident claimant was in generally good health with medical conditions of high blood pressure and diabetes. These diseases did not affect his ability to work or drive a truck (Tr. 18:21-19:22). His last CDL physical was in August or September shortly before the wreck. (Tr. 18:5-7). Claimant testified that his injuries from the wreck included a broken left ankle, a broken right ankle, a broken right kneecap which had to be replaced, a broken right femur in which a rod was inserted and two broken left ribs. (Tr. 20:2-20). None of these body parts were injured before the accident of September 13, 2017 (Tr. 21:1-4), and none have been re-injured between the date of the accident and the date of claimant's hearing. (Tr. 21:5-8).

Claimant is still under medical care for his injuries. He is treating with Dr. William Corey and Dr. Richter, both orthopedic specialists in Charleston. Dr. Corey treats claimant's right ankle; Dr. Richter treats his left ankle, right kneecap and right femur. (Tr. 21:9-22:9). He has received

medical bills for his treatment but does not know how much the bills are for and has not paid them. (Tr. 22:10-17).

When the accident occurred, claimant had worked for Bishop Forest Products as a truck driver for three and one-half years. (Tr. 22:18-25). He hauled wood chips from the logging woods in or near Colleton County to the Capstone paper mill in North Charleston. (Tr. 23:2-15). Claimant had to collect, complete and deliver certain paperwork incident to his job. Paperwork consisted of load tickets, DOT pre-trip inspection reports, time sheets and load sheets (trip logs). (Tr. 23:16-24). His primary job with Bishop Forest Products was that of a truck driver. That was what he was hired to do. Claimant described the forms and reports he was required to keep and the information provided in the forms. He completed a DOT pre-trip inspection report every day before he operated his truck. (Tr. 24:3-25:19).

Claimant described the procedure he followed in completing his forms. He took his paperwork, including his load tickets, home with him on Tuesday evening. He would add his load tickets to be certain he had them all. Then, he would complete his other paperwork and organize it into a plastic file folder for delivery to his employer the following Wednesday morning (Tr. 25:20-26:18). This was his routine. He took home his paperwork and tickets to be certain the paperwork was in order and his load tickets corresponded with his trip log. (Tr. 26:19-25). His employer allowed him to do this.

Claimant was earning \$15.00 an hour at the time of the accident. His pay was \$11.00 an hour when he began with Bishop Forest Products; he received both raises and promotions during his employment there. Claimant enjoyed his work. He had a good working relationship with his primary supervisor, Adrian Bishop, the owner of the company. He testified he had been treated well and hoped to return to work for Mr. Bishop when his health permitted. (Tr. 27:4-24).

Physical demands of claimant's job included standing at the job site while the truck was being loaded, climbing in and out of the cab, sometimes trimming the load when hauling logs and mostly a lot of sitting while driving the truck. (Tr. 27:25-29:5).

On Tuesday evening before the accident, claimant left his truck at Bishop Forest Products' lot. There was no place to park the truck at his house even though his employer allowed claimant and all drivers to take their trucks home and use them to go to and from work. Since claimant could not park the truck at his house, he had to use his personal car to travel to work and back. (Tr. 29:15-30:12). His employer's business office was 20 or 30 minutes from claimant's Walterboro home on DeLoach Avenue. (Tr. 30:13-17). Claimant returned to Bishop Forest Products' office between 5:00 and 6:00 PM on Tuesday evening before the accident. The office was closed at this time. By routine, claimant took his paperwork from his truck and drove home to Walterboro. (Tr. 30:18-31:20).

Claimant had planned to be off work the following Wednesday morning, September 13, 2017, the date of the accident. He had scheduled an appointment with his lawyer and planned to report to work after the appointment about 11:00 AM. Claimant had received permission from his supervisor to come to work at this time. (Tr. 31:23-32:21).

On Tuesday night claimant organized and checked his paperwork. He needed to deliver his paperwork to the employer's office at Wolfe Creek by 8:00 AM the following Wednesday morning as his job required. Claimant arose about 3:30 AM and left for his employer's office about 4:00 AM to deliver his paperwork. He drove his personal vehicle and arrived about 4:15 to 4:20. Upon arrival he deposited his paperwork folder in the mail slot and left the employer's parking lot to return directly to his home in Walterboro. (Tr. 33:12-34:17). He was not going to work until about 11:00 AM that day.

Claimant was driving to Walterboro on the Mt. Carmel Road which is an alternate route to return directly to his home in Walterboro. He had driven about 5 to 7 minutes when the wreck

occurred. An oncoming vehicle crossed the centerline and collided head-on with his car. The impact occurred in claimant's lane of travel. He was not faulted in the accident.

Claimant does not recall much other than seeing oncoming headlights and remembering the impact. (Tr. 34:16-35:25). The wreck occurred about 4:30 AM, Wednesday morning, September 13, 2017. At some point claimant blacked-out. EMS arrived, and claimant was taken directly to Trident Medical Center for acute care. (Tr. 36:2-8); (Cl. APA 15). He was hospitalized in the ICU and as an inpatient at Trident Medical Center from September 13, 2017 until September 22, 2017. When he was released on September 22, he was immediately transferred to a rehabilitation floor at Colleton Medical Center (Walterboro Hospital) for physical therapy and continued care for about four weeks to six weeks. After this he was released to home care with both legs immobilized. (Tr. 36:14-37:8). He could not bear weight until December, roughly three months from the date of accident. (Tr. 37:15-38:7). Then he used a walker for about one month until mid-January, 2018. (Tr. 38:8-19). After this he has used a cane which he was still using at the time of the hearing in mid-February. (Tr. 38:20-22).

At the time of the hearing, claimant was still having problems standing, walking, climbing and reaching. (Tr. 38:23-39:16). He had not been released from medical care. (Tr. 39:2-9). He was still employed by Bishop Forest Products and wanted to return to work. At that time he did not feel he was able to work. (Tr. 39:4-14).

Claimant believed that the trip to his employer's business to deliver his paperwork benefitted his employer and was required by his job. (Tr. 39:17-23). No part of the trip was for claimant's benefit; no part of the trip was for a personal errand. (Tr. 39:24-40:2). However, at the time of the accident claimant was neither "going to or coming from work." His normal routine was to drive to work, park his car, put the paperwork in the slot and get into his truck and clock-in. (Tr.

48:14-19). On the Wednesday morning of the accident claimant did not follow his normal routine because of an early morning appointment with his attorney. (Tr. 48:20-49:1). Claimant lost earnings because of the accident. He has not been paid for the lost earnings by his employer or anyone else. (Tr. 40:3-10). Claimant anticipates future medical treatment. At the time of the hearing he was still treating with both orthopaedic doctors. (Tr. 40:11-14).

Claimant has health insurance but did not know if it had paid any of his medical bills. He had not received an explanation of benefits from his health insurance company. He had received bills but had not received paperwork relating to treatment he had received following the accident. (Tr. 49:17-50:9). No one including Mr. Bishop had ever told claimant not to take his paperwork home. (Tr. 50:15-18). On the Wednesday morning of the wreck, claimant was required by his job to deliver his paperwork to the office of his employer, Bishop Forest Products. (Tr. 50:19-22). This activity was incidental to his principal work as a truck driver.

2. The Employer, Adrian Bishop's, Testimony:

The defendant, Adrian Bishop, was called as a witness for claimant. He testified on direct examination that he is the president, owner and general manager of Bishop Forest Products, an incorporated business. (Tr. 52:12-18). He had been in the logging business most of his adult life since 1980. (Tr. 52:19-23). Mr. Bishop described claimant as "an excellent employee;" he wanted him to come back to work. (Tr. 53:4-10). Then he described the load tickets and certain time deadlines required with the tickets. The drivers are required to turn in their load tickets for a particular week either on Tuesday evening or no later than 8:00 AM on the following Wednesday morning. This provides sufficient time to process the tickets and submit them for payment. The Wednesday morning deadline is necessary to pay his vendors for the timber and to get paid by the paper mill. (Tr. 53:11-54:18). Mr. Bishop described receipt of the load tickets

and submitting the tickets for payment as the "most important" part of his business. If you don't get them in on time, you don't get paid. (Tr. 54:19-25). He described a plastic ziplock folder provided to the truck drivers by his office in which to put their paperwork. The drivers are provided with other forms, typically a DOT form, pre-trip inspection form and trip log form. (Tr. 55:14-56:15). Load tickets must correspond with the trip log; there should be one load ticket for each load delivered to the mill. The driver can check his number of load tickets by the number of loads shown on his trip log. (Tr. 56:16-57:3). Keeping track of the load tickets is a "very important" part of a driver's job. (Tr. 57:17-24). In circumstances in which a driver was unable to turn in his paperwork on time, someone would be sent to collect it. (Tr. 57:25-58:15). Mr. Bishop allowed his drivers to take their folder and paperwork home with them; he had "not given them any instructions not to do that." Tr. 58:16-20). Mr. Bishop knew that claimant turned his tickets in "on time all the time." (Tr. 58:21-24). As far as the company's regulations, it was entirely proper to turn the paperwork in by 8:00 AM on Wednesday. (Tr. 59:8-13).

Mr. Bishop testified that one or two times there had been some vandalism on the trucks at his lot, but they had never had any paperwork missing. (Tr. 64:7-15). Mr. Bishop had no objection to claimant securing his paperwork by taking it home. (Tr. 64:16-19). It was typical for the drivers to turn in all their paperwork at one time. (Tr. 64:25-65:12). The driver needed to reconcile the individual load tickets with the trip log. (Tr. 65:13-21). The driver would need to fill out his hours on the payroll form. (Tr. 65:22-66:1). The trip log form needed to be completed, also. (Tr. 66:2-4). The DOT pre-trip inspection forms would need to be completed by the driver. (Tr. 66:5-7). The only forms that would not need to be completed by the driver were the actual load tickets; these were kept by the driver. (Tr. 66:8-13).

3. Medical Evidence:

Medical records show that claimant was actually hospitalized from September 13, 2017, until September 22, 2017, when he was discharged to Colleton Medical Center for rehabilitation care. (Cl. APA 8). Claimant's initial injuries included: 1) fracture of eight or more ribs of left side; 2) multiple fractures of ribs of both sides; 3) open dislocation of the right knee; 4) open right ankle fracture; 5) open dislocation of right ankle; 6) fracture of right knee region; 7) pulmonary contusion; 8) closed left ankle fracture; 9) pneumothorax; and 10) hemothorax. (Cl. APA 14-15).

CT scans taken at the time of admission to Trident Hospital showed bilateral rib fractures, more on the left between the first and fifth ribs with a small right-sided pneumothorax. (Cl. APA 142). Additionally, there was a comminuted fracture of the right femoral shaft. (Cl. APA 142). Pelvic x-rays showed the right femoral fracture. (Cl. APA 143). A CT scan without contrast of the right lower extremity, right ankle and hind foot showed a "nondisplaced talar neck fracture" and "comminuted medial and lateral malleolus fractures with multiple intra-articular bodies in the tibiotalar joint." (Cl. APA 153) Images of the lower left leg and ankle showed "a comminuted but not displaced fracture through the fibula at the level of the ankle mortise" and fractures of the medial and lateral malleoli with minimal displacement. (Cl. APA 169). Images of the right lower extremity showed a "patellar fracture" as well as "medial and lateral malleolar fractures and comminuted fracture of the talus, with the majority of the talus being dorsally displaced." (Cl. APA 170). A chest x-ray showed proper placement of an endotracheal tube for acute respiratory failure. (Cl. APA 174).

ARGUMENT

- I. THE SINGLE COMMISSIONER DID NOT ERR IN FINDING AND CONCLUDING AS A MATTER OF LAW THAT CLAIMANT'S INJURIES ARE COMPENSABLE WHERE THE ACCIDENT TOOK PLACE WHILE CLAIMANT WAS DRIVING HOME IN HIS PERSONAL VEHICLE BECAUSE ONE OR MORE OF THE JUDICIALLY CREATED EXCEPTIONS TO THE COMING AND GOING RULE APPLY.
- III. THE SINGLE COMMISSIONER DID NOT ERR IN FINDING AND CONCLUDING AS A MATTER OF LAW THAT CLAIMANT WAS STILL COVERED UNDER THE ACT WHILE DRIVING HOME IN HIS PERSONAL VEHICLE WHERE THE FACTS OF THIS CLAIM FALL WITHIN THE PARAMETERS OF THE "SPECIAL ERRAND" EXCEPTION TO THE COMING AND GOING RULE

It is well established that the Appellate Panel of the Full Commission is the final arbiter of the facts and law in a particular case and its factual determinations must be supported by a preponderance of evidence. *Pack v. State Dept. Of Transp.*, 381 S.C. 526, 673 S.E.2d 461 (S.C.App. 2009). And the Commission shall have the right to make its own findings of fact and conclusions of law either consistent or inconsistent with the findings and conclusions of the single Commissioner. *Lowe v. Am-Can Transport Services, Inc.*, 283 S.C. 534, 324 S.E.2d 87 (S.C.App. 1984). However, great weight should be given to the factual findings of the single Commissioner since he had an opportunity to hear the testimony and evaluate the demeanor of the witnesses at the merits hearing. *Green v. Raybestos-Manhattan, Inc.*, 250 S.C. 58, 156 S.E.2d 318 (S.C. 1967). Further, the Workers' Compensation Act should be liberally construed to include coverage consistent with the purpose of its enactment. *Whigham v. Jackson Dawson Communications*, 410 S.C. 131, 763 S.E.2d 420 (S.C. 2014). Any reasonable doubts as to the construction of the Act should be resolved in favor of coverage and in favor of the claimant. *Hall v. Desert Aire, Inc.*, 376 S.C. 338, 656 S.E.2d 753 (S.C.App. 2007).

For an accident and resulting injury to be compensable under the workers' compensation law of South Carolina, the injury must both "arise out of" and be "in the course of" the injured worker's employment. This creates a two-pronged test for determining compensability, and although the criteria are similar, they are not synonymous in every instance. "Arising out of" deals with an "injury to claimant (which) resulted from a risk reasonably incident to her employment." *Williams v. South Carolina State Hospital*, 245 S.C. 377, 140 S.E.2d 601, 603 (1965). In *Williams* both the accident and resulting injury arise out of and are incident to the employment relationship. The essence of the employment relationship itself is the legal nexus upon which compensability must be assessed; it is the "contributing proximate cause of the accident." Without an employment relationship an injury cannot be said to "arise out of" or be incident to one's employment. This is the first prong of the test.

The second prong, "in the course of" refers to the time, place and *circumstances* under which the accident occurred. *Id.* at 602. Here the focus is on the factual issues surrounding a particular accident which is outside the risk reasonably incident to the employment. However, facts do not always fit nicely, neatly and exactly into one legal rule or another. When they do not, discretion and common sense consistent with the encompassing principle of compensability should prevail. Where both prongs of the test are satisfied, as in the instant case, compensability of the accident and resulting injuries is appropriate.

The single Commissioner determined the critical facts relating to compensability in his Findings of Fact 4 through 11. These are enumerated, as follows:

4. The facts as to the accident are not in dispute. The Claimant drove a truck for his Employer (Tr. 22:18-25) and hauled wood chips from logging sites in Colleton County to the paper mill in North Charleston. (Tr. 23:2-15). He had, as part of his job duties, responsibility to maintain paperwork related to his work. That paperwork included load tickets for each delivery

the driver made, daily trip logs and pre-trip inspection forms. (Tr. 23: 16-24). All drivers, including the Claimant, had to turn those tickets in either by Tuesday night or by 8:00 AM on the following Wednesday morning. (Tr. 61:18-62:4). This was an important requirement of the job. The Claimant and the Employer so testified. (Tr. 54:19-25; 57:17-24).

5. While the Claimant could have driven the truck home each night as was allowed by the Employer, he had nowhere to park the truck so he drove his personal vehicle to and from work each day. Claimant so testified. (Tr. 29:15-30:12).
6. On the day of the accident which was a Wednesday, Claimant was involved in a major motor vehicle accident that was not his fault. Claimant had gotten up that morning at 3:30 AM. He had left his home and driven directly to the office of his Employer to leave his paperwork which was due in the office before 8:00 AM. Claimant delivered the paperwork and was returning home when the accident occurred. Claimant so testified. (Tr. 34:16-35:25).
7. The question is whether the accident is an exception to the going and coming rule? I find that it is.
8. It is an undisputed fact that on the early morning of the accident Claimant traveled in his personal vehicle to the business office of his Employer, Bishop Forest Products, Inc. (Tr. 33:24-34:5). It is an undisputed fact that the purpose of the trip was to deliver paperwork to his Employer which his Employer required by 8:00 AM that Wednesday morning. (Tr. 34:6-14). It is an undisputed fact that timely delivery of the load tickets was an important, if not the most important, aspect of the Employer's business since this was required for payment to the business. (Tr. 53:25-54:25). It is an undisputed fact that the Employer acknowledged receipt of the paperwork the following morning which confirmed the early morning delivery. (Tr. 34:6-14; 59:4-7). It is an undisputed fact that the Claimant went directly to his Employer's office and was returning directly to his home when the accident occurred. (Tr. 33:18-34:1; 34:15-20; 48:3-10). Based on these undisputed facts, it is clear that Claimant was "charged with some duty or task in connection with his employment" on his way to or from work, and the task was for the benefit of his employer. As such Claimant's actions constitute an exception to the coming and going rule as determined by the Court of appeals in *Stough v. Westinghouse Savannah River Company*, 311 S.C. 129, 427 S.E.2d 716 at 717 (Ct.App.1993). See, also, *Sola v. Sunny Slope Farms*, 244 S.C. 6, 135 S.E.2d 321 (1964).
9. The Claimant was returning directly home from delivering paperwork he was required to complete and turn into the Employer's business office.

before 8:00 AM that Wednesday morning. (Tr. 48:3-10). This is congruent with the directive he received from his Employer. (Tr. 53:20-54:3). Both Claimant and Employer so testified. While there was a window from Tuesday evening until 8:00 AM on Wednesday, the Claimant had the latitude as allowed by the Employer to complete the task at his own pace as long as it was completed by Wednesday at 8:00 AM. (Tr. 58:16-20). The Claimant completed the task in the prescribed time frame. (Tr. 58:21-59:13). This task is clearly a requirement of his employment and for the benefit of the Employer. This task must be completed outside normal working hours.

10. Claimant chose to do this task early Wednesday morning which, again, he had the latitude to do. (Tr. 58:16-20; 59:4-13).
11. The accident occurs as he is returning home from the completion of his task. (34:10-23). He did not deviate on his return trip and would not have been when and where the accident occurred had it not been for this work-related errand. (Tr. 47:19-48:10).
12. To conclude that because Claimant had dropped off the paperwork and completed his delivery, he is not covered by the exception that exists to provide coverage for such an errand is a strained interpretation. Furthermore, it is illogical. If Claimant's employment required him to make the trip, then by implication he had a right to return. Stated differently, if he was covered coming, then he was covered going. The case law is clear that coverage should be liberally construed in favor of the Claimant. Had Claimant gone on to another task or errand, the Defendants' position might prevail, but this is not the case here. The Claimant is on the concluding leg of the trip to deliver the work-required paperwork which was the sole purpose of the trip. That trip and its timing is consistent with the guidelines set forth by the Employer.
13. When the evidence, both lay and medical, is viewed as a whole, I find that this claim is compensable.

In *Bickley v. South Carolina Electric & Gas Company*, 259 S.C. 463, 192 S.E.2d 866 (S.C., 1972), the Court had occasion to formulate a "special errand" rule, which it defined as an exception to the "coming and going" rule, as follows:

"When an employee, having identifiable time and space limits on his employment, makes an off premises journey which would normally not be covered under the usual going and coming rule, the journey may be brought within the course of employment by the

fact that the trouble and time of making the journey, or the special inconvenience, hazard, or urgency of making it in the particular circumstances, is sufficiently substantial to be viewed as an integral part of the service itself."

The Court went on to state:

"An exception to the aforesaid general rule is found in cases "where it is shown that the *employee*, although *not at his regular place of employment*, even *before* or after *customary working hours*, is doing, *is on his way home after performing*, or on the way from his home to perform, *some special service or errand* or *the discharge of some duty incidental to the nature of his employment in the interest of*, or under the direction of, *his employer*. In such cases, *an injury arising en route* from the home to the place where the work is performed, or *from the place of performance of the work to the home*, is considered as arising out of and in the course of employment." Id. At 869, 870.

Applying the "special errand" rule in the instant case, it is evident that the task claimant was performing was a "duty incidental to the nature of his employment." Claimant was employed primarily as a truck driver hauling wood chips for Bishop Forest Products. Incidental to this work was the requirement that he collect, complete and deliver certain paperwork, consisting of load tickets, DOT pre-trip inspection reports, time sheets and load sheets (trip logs) to his employer's place of business every Wednesday morning by 8:00 AM. This task was "an important, if not the most important, aspect of the Employer's business." (Finding of Fact #8). "This task is clearly a requirement of his employment and for the benefit of the Employer." (Finding of Fact #9). It is in the interest of and under the direction of his employer.

Claimant's "special errand" to his employer's place of business occurred "before his customary working hours." After delivering his packet, the accident occurred "not at his regular place of employment" and "on his way home after performing" his special errand.

The accident occurred away from the place of performance of his work, i.e. away from his employer's place of business, and on the way to his home, i.e. the highway where the accident occurred. As such it is "considered as arising out of and in the course of the employment." It is important and noted by the single Commissioner that **"the accident occurs as he is returning home from the completion of his task. He did not deviate on his return trip and would not have been when and where the accident occurred had it not been for this work-related errand."** (Finding of Fact #11).

The single Commissioner notes that "had Claimant gone on to another task or errand, the Defendant's position might prevail, but this is not the case here. The Claimant is **on the concluding leg of the trip to deliver the work-required paperwork which was the sole purpose of the trip.**" (Finding of Fact #12). The fact that the trip had a single purpose to deliver the required documents by the required time is significant. The "special nature of the task" is controlled by the special circumstances of that particular Wednesday. These circumstances necessitate the "special errand." The special circumstances were created by the employer's allowing claimant to report for work at 11:00 AM so that he could meet with his attorney. The "special errand" to deliver the paperwork was a product of these changed circumstances and the required delivery time. There was no other reason for claimant to travel to his employer's place of business before working hours on the morning of the accident **except** to deliver his paperwork which again was "a duty incidental to the nature of his employment and in the interest of his employer."

The World Book Dictionary defines "special" as "unusual" which in turn is defined as "beyond the ordinary" and "uncommon." Claimant's "special errand" to the premises of his

employer was "unusual" and "beyond the ordinary" as to its time and circumstances. It was the special circumstances created by the employer in allowing claimant to come to work late which necessitated the earlier trip to deliver the paperwork by the required deadline.

Defendants argue that claimant could have delivered the paperwork the preceding Tuesday evening when he returned his truck to the employer's lot after working hours. This is not disputed. Claimant could have turned his paperwork in at that time. However, he was not required to do this. He had the right to turn his paperwork in the following Wednesday morning by 8:00 AM. Maybe he forgot about the Wednesday morning appointment with his lawyer. Maybe he had left some of his paperwork at his home in Walterboro. Maybe he wanted to turn all of his paperwork in at one time as was his routine. Maybe he wanted to check his paperwork for accuracy as he routinely did. None of this matters. He had an absolute right to do this consistent with the terms of his employment.

In the case of *Sylvan v. Sylvan Bros.*, 225 S.C. 429, 82 S.E.2d 794 (1954), cited by defendants, the Court determined the claim was not compensable even though Sylvan was going to work with certain paperwork he had taken home with him when he slipped on ice and was injured.

At first glance the cases appear similar, but the "circumstances" or rather the "change of circumstances" clearly distinguish them. The *Sylvan* Court emphasized that Sylvan was "in the habit of doing paperwork outside of regular work hours" and "for his own convenience." At the time of his injury, Sylvan's actions in going to work were not unusual. In fact they were routine since he did this on a regular basis. Compare this to the fact situation where claimant drives to work every Wednesday to pick up his truck and also carries his paperwork for delivery.

Typically, he would get to the employer's premises between 6:00 and 7:00 AM and drop off his paperwork before driving his truck. This was claimant's routine. Here, his trip to work had the "dual purpose" of going to work which is clearly not compensable and delivering his paperwork which per *Sylvan* would not be compensable either since it was part of his routine. In this sense the trip to work was not "special" since it did not require a "special errand" to complete it.

The instant case, however, is clearly distinguishable. Here, the circumstances have changed. Claimant was authorized by his employer to come to work late at around 11:00 AM in order to meet with his attorney. He was doing what his employer allowed him to do. This constituted a change in his routine; it necessitated a "special errand" to his employer's place of business to deliver his paperwork before the 8:00 AM deadline.

The defendants confuse the routine in the *Sylvan* case with the change of routine in the instant case. It is essential to look to the **circumstances** which is the second prong in the two-part test for determining compensability. Did the accident occur "in the course of employment?" Again, looking at the circumstances, in the *Sylvan* case, Sylvan, was doing what he always did. He was walking to work with his paperwork when he fell and was injured. Because of his routine the *Sylvan* Court reasoned and held that "if a journey would be made to work, irrespective of homework from the night before, the journey is not in the course of employment." This would negate claimant's recovery had he been injured while delivering his paperwork as was his normal routine. In the instant case, special circumstances required claimant to make the "special errand."

Moore v. Family Service of Charleston Cnty., 269 S.C. 275, 237 S.E.2d 84 (1977), also cited by the defendants, is distinguishable from *Sylvan* and similar to the instant case. The *Moore* Court noted that it was **unusual** for employees to take files and books home to study.

This was not Moore's routine; it was Sylvan's routine. In *Sylvan* it was routine for the claimant, Sylvan, to take paperwork home and return to work with it the next morning. He was doing this when he was injured. In the instant case it was routine for claimant to take paperwork home and return with it on his way to work between 6:00 and 7:00 AM on a typical Wednesday morning when he would get in his truck and begin working. It was **not** routine for claimant to come to work at 11:00 AM. For claimant the Wednesday morning of the accident was **not** a typical Wednesday morning because he was allowed by his employer to meet with his attorney and come to work late. This constituted a change of routine; the change of routine required claimant to make the "special trip" for the benefit of the employer to deliver his paperwork on time. This is the critical distinction which distinguishes all the cases. In both *Moore* and the instant case the circumstances changed which changed the routine and created or necessitated the "special errand." In *Sylvan*, the routine stayed the same.

In *Bickley v. South Carolina Elec. & Gas Co.*, 259 S.C. 463, 192 S.E.2d 866 (S.C., 1972), Bickley was an apprentice lineman for South Carolina Electric & Gas and was called out on a weekend to repair storm damage in the Charleston area. He normally worked a 40 hour work week from Monday through Friday in the Columbia area. However, he was subject to being called out for emergency work outside his routine work area and after regular hours and on weekends. He was returning home on a Sunday from his work in Charleston when he was killed in a motor vehicle accident while driving his personal vehicle. The Court held that Bickley was performing a "special errand or mission" for his employer and that his death arose out of and in the scope (course) of his employment. Like the instant case the "special errand" was not part of his normal routine because of circumstances which made the work "out of the ordinary."

Courts look to the factual circumstances in determining which circumstances are "routine" and which are "unusual" or "out of the ordinary." This is necessary to determine if the injury occurred "in the course of employment" since it considers the time, place and *circumstances* under which the accident occurred. This must be done on a case by case basis by examining the specific facts which relate to a particular accident.

In *Sola v. Sunny Slope Farms*, 244 S.C. 6, 135 S.E.2d 321 (1964), the Court held that "an accident arises out of employment when it arises because of employment, as when employment is a contributing proximate cause." Clearly, claimant's accident and resulting injuries occurred as a result of his trip to his employer's place of business to deliver his paperwork. If he had not delivered the paperwork at that time of the morning as his job required, he would not have been in the motor vehicle accident. The employment was a proximate cause the accident and his injuries.

The second part of the test is established by determining if the claimant was acting "in the course of" his employment. This is determined by looking at "the time, place and circumstances" under which the accident occurs. In the instant case, as determined by the single Commissioner, claimant "**would not have been when and where the accident occurred had it not been for his work-related errand.**" (Finding of Fact #11). Accordingly, compensability is established and should be found consistent with the underlying purpose of the Act. The Findings of Fact and Conclusions of Law of the single Commissioner are supported by a clear preponderance of evidence and should be accepted in their entirety by the Full Commission.

IV. THE SINGLE COMMISSIONER DID NOT ERR IN AWARDING TTD FROM THE DATE OF INJURY, SEPTEMBER 13, 2017, AND CONTINUING, BECAUSE HE DID NOT BASE HIS AWARD ON SURMISE, CONJECTURE, OR SPECULATION, AND CLAIMANT DID PROVE BY A PREPONDERANCE OF EVIDENCE THAT HIS INCAPACITY TO EARN WAGES DURING THE

**RELEVANT TIME PERIOD WAS TOTAL BECAUSE OF HIS INJURIES AS
REQUIRED BY SEC. 42-9-260, AND RELATED CASE LAW.**

It is well established that "a claimant who asserts his right to compensation must establish by the preponderance of evidence the facts which will entitle him to an award under the Act and such award must not be based on surmise, conjecture or speculation." *Polk v. E.I. duPont de Nemours Co.*, 250 S.C. 468, 158 S.E.2d 765 (S.C. 1968). Evidence may be circumstantial or direct and consist of lay testimony or expert testimony or any combination thereof. In fact lay testimony may be entirely sufficient to support a claim except in medically complex cases where expert medical testimony is generally required for determining issues such as causation. This is **not** the case here. The defendants produced **no** evidence supporting their claim that claimant was able to return to work and therefore not entitled to TTD. The sole issue then is whether the claimant's evidence standing alone is sufficient to support his claim for disability. Obviously, on its face it constitutes a preponderance of evidence since there is no evidence to the contrary. Also, in considering the evidence, the defendants should not confuse "common sense" on the part of the single Commissioner with "surmise, conjecture or speculation."

Claimant was critically injured in a motor vehicle accident on September 13, 2017. At some point after the impact he blacked-out. EMS arrived and he was taken directly to Trident Medical Center for acute care. (Tr. 36:2-8); (Cl. APA 15). He was hospitalized in ICU and as an inpatient at Trident Medical Center from September 13, 2017 until September 22, 2017. (Cl. APA 8). Claimant's initial injuries included: 1) fracture of eight or more ribs of left side; 2) multiple fractures of ribs of both sides; 3) open dislocation of the right knee; 4) open right ankle fracture; 5) open dislocation of right ankle; 6) fracture of right knee region; 7) pulmonary

contusion; 8) closed left ankle fracture; 9) pneumothorax; and 10) hemothorax. (Cl. APA 14-15). CT scans taken at the time of admission to Trident Hospital showed bilateral rib fractures, more on the left between the first and fifth ribs with a small right-sided pneumothorax. (Cl. APA 142). Additionally, there was a comminuted fracture of the right femoral shaft. (Cl. APA 142). Pelvic x-rays showed the right femoral fracture. (Cl. APA 143). A CT scan without contrast of the right lower extremity, right ankle and hind foot showed a "non-displaced talar neck fracture" and "comminuted medial and lateral malleolus fractures with multiple intra-articular bodies in the tibiotalar joint." (Cl. APA 153). Images of the lower left leg and ankle showed "a comminuted but not displaced fracture through the fibula at the level of the ankle mortise" and fractures of the medial and lateral malleoli with minimal displacement. (Cl. APA 169). Images of the right lower extremity showed a "patellar fracture" as well as "medial and lateral malleolar fractures and comminuted fracture of the talus, with the majority of the talus being dorsally displaced." (Cl. APA 170). A chest x-ray showed proper placement of an endotracheal tube for acute respiratory failure. (Cl. APA 174).

When claimant was released from Trident on September 22, he was immediately transferred to a rehabilitation floor at Colleton Medical Center (Walterboro Hospital) for physical therapy and continued care. He remained at Colleton Medical Center for about four to six weeks. Then he was released to home care with both legs immobilized. (Tr. 36:14-37:8). He could not bear weight until December, roughly three months from the date of accident. (Tr. 37:15-38:7). Then he used a walker for about one month until mid-January, 2018. (Tr. 38:8-19). After this he has used a cane which he was still using at the time of the hearing in mid-February. (Tr. 38:20-22).

At the time of the hearing, claimant was still having problems standing, walking, climbing and reaching. (Tr. 38:23-39:16). On the date of his hearing, claimant was still under medical care for his injuries. He was still treating with Dr. William Corey, an orthopaedic specialist in Charleston, for his right ankle and with Dr. Richter, an orthopaedic specialist, for his left ankle, right kneecap and right femur. (Tr. 21:9-22:9). He had not been released from medical care. (Tr. 39:2-9).

Claimant described the physical demands of his job as including standing at the job site while the truck was being loaded, climbing in and out of the cab, sometimes trimming the load when hauling logs and mostly a lot of sitting while driving the truck. ((Tr. 27:25-29:5).

At the time of claimant's hearing, February 15, 2018, claimant had not been told by his doctor when he would be released, (Tr. 39:10-12), and he did not feel that he would be able to work at that time. (Tr. 39:13-14).

Claimant testified as a lay witness as to the physical demands of his job as a truck driver and gave his opinion that as of the date of his hearing, February 15, 2018, he was still unable to return to work as a truck driver. It is noted that at this time or at any time prior to this, there were no other jobs offered to claimant by the defendants. Claimant was intimately familiar with the demands and requirements of truck driving. He is in a better position than most persons to evaluate the physical demands of his particular job. Also, there is a plethora of documentation in the APAs provided, detailing the extent and severity of claimant's injuries. Common sense would lead the trier of fact to the reasonable conclusion that a person with injuries similar to claimant's in an ICU or as a hospital inpatient or as a patient in a rehabilitation hospital cannot work as a truck driver or do anything else. Even after claimant was released to home care he was

unable to weight bear. This precluded work as a truck driver as did walking with a walker. Even though he was walking with just a cane at the time of the hearing, it is hard to envision a person with a cane climbing into and out of the cab of a semi-truck. A medical doctor does not have to give an expert opinion that a person who cannot walk is unable to drive a semi-truck. Also, claimant, who was the person most familiar with his particular job, opined at the time of the hearing that he was not able to work as a truck driver even though he hoped eventually to return to driving for Mr. Bishop. Additionally, claimant was still being treated for his injuries by two orthopaedic surgeons and he did not know when he would be released.

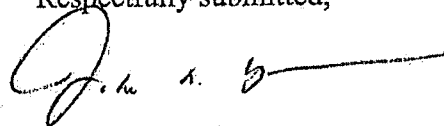
In sum, there is ample documentation by medical evidence and the testimony and opinion of claimant to support the single Commissioner's finding that claimant was entitled to TTD through the hearing and continuing. This testimony and evidence constitutes a preponderance of evidence since there is no evidence in the record to contradict it. The findings of the single Commissioner are not based on "surmise, conjecture, or speculation." The Findings of Fact are based upon common sense applied to the facts of the particular case. Also, he considered and had a right to consider the opinion of claimant as to the demands of the particular job, and this was not refuted by the defendants.

CONCLUSION

For the reasons set forth herein and in response to the arguments of appellants, claimant-respondent respectfully requests the Commission to sustain the Findings of Fact and Conclusions

of Law as determined by the single Commissioner in his Decision and Order of May 29, 2018, in all particulars.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John R. Hetrick", followed by a horizontal line.

John R. Hetrick
Attorney for Claimant-Respondent
Hetrick Harvin & Bonds, LLC
P.O. Box 139
Walterboro, S.C. 29488

Walterboro, South Carolina

August 30, 2018

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1715897

Matthew Green,

Employee,
Claimant,

vs.

Bishop Forest Products, Inc.,

Employer,

and

Forestry Mutual Insurance Company,

Carrier,
Defendants.

**APPELLANTS' REPLY BRIEF TO
FULL COMMISSION**

The primary substance of the pending appeal is whether Claimant's injuries sustained on September 13, 2017, arose out of and in the course of his employment when he got in a car accident on his way home in his personal vehicle after having dropped off some paperwork at his employer's place of business. This brief is in reply to Claimant's arguments contained in his brief to the Full Commission.

1. The "Special Errand" exception to the Coming and Going Rule does not apply to the facts of this claim because the timing and choosing of Claimant's trip to and from the employer's office on the date of the accident was for a reason that was entirely personal to Claimant and was done for his convenience, and not at the behest of his employer, therefore Claimant was not covered under the Act at the time of the accident while driving home in his personal vehicle.

There is no dispute that Claimant was going home when he got into the car accident, and he had no work-related duties yet to be performed on his way home, so Claimant's argument regarding compensability is that the single Commissioner was correct in concluding the facts of

this claim fall under the "special errand" exception to the coming and going rule. Claimant's reasoning and rationale that the "special errand" rule applies to this claim fully exposes why Claimant's injuries should not be covered under the Act. Accordingly, the single Commissioner's decision should be reversed.

Claimant mistakenly characterizes the right to do something as synonymous with compensable when talking about the "special errand" exception. This is flawed logic. The fundamental fact that existed in the "special errand" exception cases of *Bickley* and *Moore*, which does not exist within the facts of this claim, is that the employees in those cases were *required by their employers* to go outside their normal routine and engage in work-related activity that was "unusual" or "special," thereby covering them under the Act despite the fact they were in the process of going to or coming from work at the time they were injured.

In *Bickley*, due to hurricane damage, the employee in that case was required by his employer to work in Charleston over the weekend, which was outside his normal working area in Columbia and outside his normal working hours. Given these circumstances, the SC Supreme Court found that Bickley was covered under the Act when he was in an accident while on his way home from completing the work in Charleston. Notably, there was no personal latitude or personal convenience component to Bickley's decision to perform work related duties that weekend – he was required to do so as a condition of his employment. Similarly in *Moore*, the employee in that case was *tasked* by her employer to take books home for further study in the evening, which was not a habit for Moore, and her supervisor agreed that the *giving* of such a task was unusual. 269 S.C. at 278, 237 S.E.2d at 86. There was no latitude for Moore in the timing of this unusual task, i.e. she could not do it while still at work; therefore, the Court concluded that Moore's injuries, resulting from carrying the books while going back to work the next day were compensable.

Here, the timing of Claimant's trip to and from work the morning of the accident was entirely personal to him and done for his own convenience. Relevant portions of the hearing transcript are as follows:

Q: All right. And on your return trip back, you didn't have that paperwork with you anymore, correct?

A: Correct.

Q: 'Cause it was already at Bishop Forest Products. And your plans at that point were to go back home, correct?

A: Correct.

Q: And then the next event you had that day was an appointment with your attorney, correct?

A: Yes.

Q: Now your normal routine, had you not had the appointment, would have been to drive to work, park your own personal vehicle, put the paperwork in the slot and get in the truck and clock in, correct?

A: Correct.

Q: That was your normal routine. But you didn't follow your normal routine that morning, did you?

A: No.

Q: Because you had an appointment with your attorney, correct?

A: Correct.

Q: Which was a personal appointment, correct?

A: Correct.

(Hr. Tr. pgs. 48-9).

Additionally, in his brief Claimant concedes that he was "authorized" and "allowed" by his employer to go into work later that morning because of his personal appointment with his lawyer. Under *Bickley and Moore*, being authorized or allowed by your employer to change your schedule for a personal reason is not what creates a "special" or "unusual" condition that amounts to a "special errand" – the origin of the "special" or "unusual" condition needs to originate with the

employer in order for the "special errand" exception to apply. Put another way, the employee's needs do not create a "special errand," it is the needs of the employer that creates the exception.

In this case, the trip taken the morning of the accident could not have been a "special errand" as the timing of the trip was chosen by Claimant at a time convenient for him because he had an appointment with his lawyer later that morning. Claimant conceded during the hearing that he could have completed the paperwork the night before the accident and turned it in before leaving his employer's premises, which would have completely eliminated the need for the fateful trip in the first place. (Hr. Tr. pg. 47). This fact, in and of itself, eliminates the possibility that Claimant's trip to and from his home was covered under the "special errand" exception, because unlike the employees in *Bickley* and *Moore*, Claimant was not told by his employer or required by his employer to take the trip when he took it.

For these reasons, the "special errand" exception does not apply, and Claimant's injuries did not arise out of and in the course of employment as they were sustained while going home. Therefore, the single Commissioner's conclusion regarding compensability should be reversed.

- 2. Claimant did not meet his burden of proof in showing that he was entitled to TTD from the date of accident and continuing because this position was not supported by a physician or the employer.**

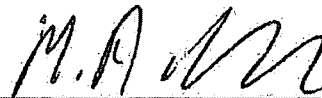
Despite what the medical records show regarding Claimant's injuries, which were sustained approximately 5 months prior to hearing of this claim, the fact remains that Claimant never received or asked for a work note from the physicians that treated him, and he never approached or contacted his employer about potential light duty. Claimant opining that he was not able to work as a truck driver is not enough to carry the burden, which in and of itself is self-serving in nature.

Assuming, *arguendo*, that Claimant could not drive a truck as of the date of the hearing, there was no evidence presented by Claimant showing that there was *nothing* for him to do for his employer that could earn him wages. Claimant never gave his employer the opportunity to consider whether he had work restrictions that could be accommodated doing some other tasks because (1) he never got a note from a physician either taking him out of work or assigning work restrictions, and (2) he never even contacted his employer about the same. Accordingly, at most, the single Commissioner's decision regarding TTD is supported up to the date of the hearing on February 15, 2018. Thereafter, awarding TTD beyond that point was based on surmise, conjecture or speculation.

CONCLUSION

Based upon the forgoing arguments and authorities, and the arguments in Appellant's previous Brief, the Appellants' respectfully request that the single Commissioner's Decision and Order issued on May 29, 2018, be reversed with respect to the issues of compensability and entitlement to TTD benefits.

RESPECTFULLY SUBMITTED,



Matthew Schonfeld, Esq.
Attorney for Appellants
Holder Padgett Littlejohn + Prickett, LLC
349 West Coleman Blvd, Suite 300
Mt. Pleasant, South Carolina 29464

Date: September 10, 2018

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1715897

Matthew Green,)
)
 Claimant,)
)
v.)
)
Bishop Forest Products,)
)
 Employer,)
)
and)
)
Forestry Mutual,)
)
 Carrier/Defendants.)

FULL COMMISSION HEARING

Tuesday, September 18, 2018
10:32 a.m. - 10:58 a.m.

The Full Commission Hearing was heard before Commissioners R. Michael Campbell, II, Avery B. Wilkerson, Jr. and T. Scott Beck, at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 18th day of September, 2018, before Travis McLeod, Court Reporter and Notary Public in and for the State of South Carolina.



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APPEARANCES

John R. Hetrick, Esquire
 Hetrick, Harvin & Bonds, LLC
 125 South Walter Street
 Post Office Box 139
 Walterboro, South Carolina 29488
 Attorney for the Claimant

Matthew A. Schonfeld, Esquire
 Holder, Padgett, Littlejohn & Prickett, LLC
 349 W. Coleman Boulevard, Suite 300
 Mt. Pleasant, South Carolina 29464
 Attorney for the Defendant

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EXHIBITS

(There were no exhibits marked during the hearing.)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



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CALL TO ORDER:

COURT REPORTER: Today is Tuesday, September 18th, 2018. This is South Carolina Workers' Compensation Case Number 1715897. This is the case of Matthew Green, claimant, versus Bishop Forest Products, employer, and Forestry Mutual, carrier. The appellant is the defendant represented by Matthew A. Schonfeld. The respondent is represented by John R. Hetrick. Each side is allowed 10 minutes for oral argument and the appellant 3 minutes in reply. You are requested to argue the grounds of exception and stay within the record.

COMMISSIONER WILKERSON: All right. Mr. Schonfeld.

ARGUMENT BY MR. SCHONFELD:

MR. SCHONFELD: Thank you, Commissioner.

COMMISSIONER WILKERSON: Thank you.

MR. SCHONFELD: May it please the Commission. The single commissioner's decision should be reversed for the following reasons. This claim is about choices versus instructions. The record is clear that on the morning of September 13, 2017 between the hours of 3:00 and 4:00 o'clock, Mr. Green decided to get up, get in his own personal vehicle, drive to his



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1 employer's place of business, drop off some
2 paperwork, and after dropping it off he turned
3 right back around and drove home. He was not
4 on the clock, there was no fuel provided by his
5 employer, none of the maintenance on the car
6 was provided by the employer and he was on a
7 public road. It was during this return trip
8 home that another vehicle drove into his lane
9 and hit him causing the injuries that he
10 sustained. Now ---

11 COMMISSIONER BECK: Would it have made any
12 difference if he did it at 9:00 o'clock in the
13 morning?

14 MR. SCHONFELD: No, sir.

15 COMMISSIONER BECK: Okay.

16 MR. SCHONFELD: It would not have because it's well
17 established in South Carolina law that when you
18 are either going to work or going home from
19 work it's not compensable unless one of the
20 judicially recognized exceptions apply. Now
21 although the single commissioner's decision
22 doesn't explicitly state which exception
23 applied to this case, there's really only two
24 possibilities. The first possibility is that
25 Mr. Green was still charged with some task or



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1 duty while on his way home or that he was
2 engaged in a special errand, which would have
3 covered him from the beginning of the special
4 errand to the end of the special errand. So
5 notably the first of these two possibilities
6 does not apply. Mr. Green on his way home was
7 not still charged with some task or duty that
8 was work related on his way home. So that
9 exception does not apply. So that leaves the
10 special errand exception, which claimant, in
11 his brief, more or less accepts is the only
12 possibility because the other exception isn't
13 even addressed. So here's why the special
14 errand exception does not apply. So employees
15 do not create special errands. Employers do.
16 And the requirements of their employment do.
17 The employee in the Bickley case, he didn't get
18 to decide when he had to go into work. It was
19 part of his job and it was a part of his job
20 description that he could get called into work
21 after hours, such as on the weekend or into
22 other areas that he didn't normally work in.
23 He didn't get to choose whether he could do it
24 earlier or later. He was simply called into
25 work and that was it. There was no latitude in



1 the timing. Similarly and more, the employee
2 was told by her employer to do something
3 unusual. Here, take these books home with you
4 and research them. It was not part of her
5 normal job to do that. The employer admitted
6 in that case that it was unusual for the
7 employee to do that. And it was in her going
8 to work the next morning down some steps
9 carrying those books that she got hurt. She
10 was told to do it so she did, and was
11 unfortunately injured in connection with those
12 instructions. It's the directive from the
13 employer to perform either unusual work or work
14 outside of regular business hours that makes
15 the difference in this case. And that's what
16 prompted the courts to cover them in those
17 situations even though they were still going to
18 or coming from work.

19 COMMISSIONER WILKERSON: Wasn't -- didn't he have to
20 present a report to the employer by a specific
21 time?

22 MR. SCHONFELD: That's correct, Commissioner.
23 However he was never required or asked or
24 directed at any time to leave the work premises
25 with those documents. Mr. Green admitted in



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1 the hearing and in his deposition that on
2 Tuesday night, or Tuesday afternoon, when he
3 pulled in from doing his last load before he
4 ever left the grounds of the employer he could
5 have stayed in his truck, completed whatever
6 needed to be completed and put that in the slot
7 and then go home. It was out of his own
8 personal convenience that he decided to take
9 those documents home.

10 COMMISSIONER WILKERSON: But it wasn't required that
11 he put it in at that point in time?

12 MR. SCHONFELD: It was not required that he put it
13 in at that time. He had the latitude between
14 a certain time period. Not that he was
15 required to at any certain time, he had the
16 latitude between a certain time period to do
17 it.

18 COMMISSIONER BECK: But there isn't any evidence
19 that he did anything other than take the
20 reports to the office and return home. No
21 evidence to the contrary, is there?

22 MR. SCHONFELD: That's correct, Commissioner. And
23 that's one of the most single important facts
24 about this. Why did he do that? Why did he
25 not go into work and clock in? The only reason



1 why he got up and made that trip at that time
2 that morning and go in and drop them off and go
3 back home was entirely for a personal reason.

4 COMMISSIONER WILKERSON: But the employer granted
5 that, right?

6 MR. SCHONFELD: That is correct. It was granted, it
7 was allowed. It was not required.

8 COMMISSIONER BECK: But it wasn't for a personal
9 reason, it was for a business reason. He took
10 those forms that were employer forms. I'm not
11 sure how I understand that that's personal in
12 nature.

13 MR. SCHONFELD: The case of -- the Silvan case is
14 the one that's most directly on point. In
15 Silvan the employee was on his way to work with
16 paperwork that was work related. It came out
17 at the hearing that he could have done that
18 stuff back at work. But he already -- well I
19 still had them on me so when I slipped and fell
20 on the way to work and broke my hip it should
21 be covered. The Court said no. When it's out
22 of your convenience, when it's done for the
23 convenience of the employee you don't get to
24 expend coverage in that case. Here you've got
25 a situation that was created entirely by



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1 decisions that Mr. Green made.

2 COMMISSIONER WILKERSON: But he's required to have
3 those reports in by 8:00 o'clock that morning,
4 right?

5 MR. SCHONFELD: Correct.

6 COMMISSIONER WILKERSON: Okay.

7 MR. SCHONFELD: He was never required to make that
8 trip at any point, never.

9 COMMISSIONER WILKERSON: But he had to have those
10 reports in by 8:00 o'clock that morning?

11 MR. SCHONFELD: Yes, Commissioner.

12 COMMISSIONER WILKERSON: Okay.

13 MR. SCHONFELD: But just like in Silvan ---

14 COMMISSIONER WILKERSON: The morning of the accident
15 as I understand it.

16 MR. SCHONFELD: Excuse me, sir?

17 COMMISSIONER WILKERSON: The morning of the accident,
18 right?

19 MR. SCHONFELD: Yes, sir.

20 COMMISSIONER WILKERSON: Okay. I just wanted to
21 make sure I -- okay.

22 MR. SCHONFELD: He got up at like 3:00 o'clock or so
23 in the morning. So it was like about 4:00 or
24 4:20 on the way back. He never would have
25 driven home, he would have never made the



1 return trip home 'cause normally he goes into
2 work, drops off the paperwork, gets in the work
3 truck and goes and starts picking up loads back
4 and forth from the woods to the mill. But he
5 didn't do that that morning. So why did he
6 make that trip? A personal reason. So Silvan,
7 Bickley and Moore all stand for the
8 proposition. Think of a counterfactual
9 scenario. Remove the personal reason. Would
10 he have still made that trip? Absolutely not.
11 He -- the only reason why he made that trip
12 that morning back and forth was because he had
13 an appointment the next morning with his
14 lawyer. So Mr. Green didn't present one shred
15 of evidence at any time that he was ever
16 required by his employer to number one, take
17 the documents home. In fact evidence was to
18 the contrary. Nobody even knew he took them
19 home. Second, there was never any directive
20 much less that he should have traveled early in
21 the hours of the morning to deliver those
22 documents. In fact it's quite the opposite.
23 No one told him to take them home. And most
24 importantly he agreed on the record he could
25 have turned that paperwork in before he left



1 the grounds on Tuesday night. This is why Mr.
2 Green's case is not compensable. A task which
3 could have been completed earlier was not.

4 **COMMISSIONER BECK:** Any evidence that this was a
5 common practice of the claimant?

6 **MR. SCHONFELD:** His normal routine was to take the
7 documents home each night on Tuesday night, get
8 up the next morning, go into work, put the
9 documents in the slot, clock in, get in the
10 truck, go do his thing. The only reason why
11 this was out of the ordinary was because of the
12 claimant's plans, Mr. Green's plans. Not any
13 directive of the employer. Not like a
14 hurricane and say hey, you're going to have to
15 work this weekend. Not like Ms. Moore, hey
16 take some books home tonight. Nothing like
17 that ever happened. So a task which could have
18 been completed earlier and because of a choice
19 that Mr. Green made for an entirely personal
20 reason is what lead to the injury. The
21 employer was not the reason behind the trip
22 that was outside of the working hours. The
23 only reason Mr. Green made that trip in the
24 first place was because of the appointment that
25 he had with Mr. Hetrick. So the error of the



1 single commissioner's decision internally is
2 laid bare when you look at Finding of Fact
3 Number 12. It says, if claimant's employment
4 required to make -- required him to make the
5 trip, then my implication he had a right to
6 return. What is missing from this calculation
7 is the requirement to make the trip. There was
8 none. This claim falls squarely within the
9 Silvan case where the claimant could have left
10 the documents at work, completed them there
11 instead of taking them home and then having
12 them with him when he went to work the next
13 morning. The Court in that case focused on
14 language that says, injury during a trip which
15 serves both a business and a personal purpose
16 is within the course of employment if the trip
17 involves the performance of a service for the
18 employer which would have caused the trip.

19 COMMISSIONER WILKERSON: Go ahead and finish your
20 thought if you got something to add because we
21 stopped you a couple of times.

22 MR. SCHONFELD: I'll finish, Commissioner. In
23 closing this claim should be denied because to
24 do otherwise would further erode the coming and
25 going rule and this is exactly what the Court



1 in Silvan warned against. Thank you,
2 Commissioners.

3 COMMISSIONER WILKERSON: Is there a third party
4 recovery available?

5 MR. SCHONFELD: There is, Commissioner.

6 COMMISSIONER WILKERSON: Okay. That's all I wanted
7 to know.

8 MR. SCHONFELD: Thank you.

9 ARGUMENT BY MR. HETRICK:

10 MR. HETRICK: Thank you, Commissioner. May it
11 please the Commission. I'll state for the
12 record, it's nice to be a respondent on a case.
13 I want to talk first of all about the coming
14 and going rule and that is promulgated by the
15 case of -- or not the coming and going rule,
16 I'm sorry, but the special errand rule. I
17 apologize. And that is set forth in the case
18 -- in the Bickley case which is 192-Southeast-
19 2nd-866259-SC-463. That's a 1972 case. It's
20 interesting in that case that -- and this kind
21 of goes down through -- this was the first case
22 in South Carolina really to discuss the special
23 errand rule, and we believe that this case
24 falls squarely within the four corners actually
25 of the special errand rule. The Bickley case



1 cited a case, it was a Kyle case also. The
2 Kyle case is Kyle v. Green High School 208-
3 Iowa-1037226-Northwest reporter 71, and that
4 was adopted by the Massey case which is a North
5 Carolina case, Massey v. Board of Education of
6 Mecklenburg County 204-N.C.-193167-Southeast
7 reporter 695. And the language in the Kyle
8 case is adopted in the Bickley case, and I'll
9 read the language and then I want to go over
10 the specific language. An exception to the
11 aforesaid general rule, that would be the
12 coming and going rule, is found in cases where
13 it is shown that the employee, although not at
14 his regular place of employment, even before or
15 after customary working hours, is doing so on
16 his way home after performing or on the way
17 from his home to perform some special service
18 or errand or, and I emphasize this, the
19 discharge of some duty incidental to the nature
20 of his employment in the interest of or under
21 the direction of his employer. In such cases
22 an injury arising in route from home to the
23 place where the work is performed or from the
24 place of performance of the work to home is
25 considered arising out of and in the course of



1 employment. Now I want to look at the specific
2 case, the case that's before us and go over
3 each of those elements as cited in the -- or
4 incorporated in the Bickley case which adopted
5 the North Carolina case again of Massey versus
6 Board of Education. And I would note also of
7 course that South Carolina courts give great
8 deference to the workers' comp laws of North
9 Carolina. In the Bickley case in examining the
10 elements with respect to the incident case,
11 we've got an accident and resulting injuries to
12 claimant that did not occur at claimant's
13 regular place of business. Presumably Bishop
14 Forest Products home office, that's where he
15 went to deliver the paperwork. The accident,
16 of course, occurred on a highway in South
17 Carolina approximately five miles from the
18 place of business, from the home as claimant
19 was proceeding directly to his home after
20 leaving his paperwork. And it's very important
21 in this case that he was going directly home.
22 The accident and resulting injuries occurred
23 before customary working hours. This wreck
24 occurred about 4:30 in the morning on September
25 13th, 2017. Claimant's normal working hours



1 began about 7:00 to 8:00 a.m. Claimant was on
2 his way home directly from his employer's home
3 office after delivering his paperwork and
4 without any deviation or detour. And this is
5 significant, that's in Factual Finding Number
6 12 in the decision. Now this is the part that
7 I think is particularly important. Claimant
8 had discharged a duty incidental to the nature
9 of his employment and in the interest of his
10 employer. Language straight out of the Bickley
11 case and straight out of the Kyle and Massey
12 cases also. And it's important because the
13 defendants even agree that the receipt
14 collection and delivery of the paperwork was a
15 job duty incidental to the claimant's
16 employment as a woodchip driver. I'd cite the
17 defendant's or appellant's brief at page 15 and
18 I'll quote what it says. Claimants have
19 responsibilities associated -- or claimant had
20 responsibilities associated with his employment
21 as a truck driver such as completing daily
22 paperwork. These were ancillary services
23 rather than separate and distinct services.
24 Ancillary services. Isn't an ancillary service
25 a duty incidental to the nature of the



employment? Of course it is. I mean that's almost verbatim. In such cases an injury arising en route from a place of performance of the work to the home is considered arising out of the course of employment. And of course this is the basis for the special errands exception. It's called special errands exception but it could be called just as easily an incidental duty exception.

COMMISSIONER BECK: Mr. Hetrick, does it matter to you whether or not the claimant was instructed to perform that task -- was never instructed to perform that task in the manner in which he performed it?

MR. HETRICK: It does not in this sense, Commissioner. I think that he, by implication, was instructed to perform that task. That was a task, that was a duty, that was required of him. Typically, and I want to give an example in a case. Let's say that in a particular case he, as it was typically his job -- not his job but as he typically did, he delivered his paperwork that Wednesday morning, say he delivers at 4:30, and he decides, I'm gonna get in my truck and I'm gonna make a couple runs or



1 a run before I go to my attorney's office. He
2 makes the run, he comes back, he parks his
3 truck, then he goes to his attorney's office.
4 Would that trip to his attorney's office be
5 covered, no. First of all ---

6 COMMISSIONER BECK: You're getting to my point.

7 MR. HETRICK: Well, okay. That trip would not be
8 covered and the reason it wouldn't be covered,
9 first of all that's a personal errand for his
10 benefit to go from the lot to see his attorney
11 in that example I give. The second reason it
12 wouldn't be covered because he would have
13 intervening work. The purpose is he goes to
14 work and actually work in that hypothetical.
15 That didn't happen in this case. He went for
16 the sole purpose of benefitting the employer.

17 COMMISSIONER BECK: For his convenience.

18 MR. HETRICK: Not for his convenience -- well that's
19 the argument that the appellants are making in
20 the case. They're arguing in the case that ---

21 COMMISSIONER BECK: Well had he not had the
22 appointment that morning he wouldn't have done
23 it at 4:00 o'clock in the morning.

24 MR. HETRICK: That's correct. But our position is,
25 Commissioner, that you've got to focus on the



1 trip itself. You don't look at the -- you
2 don't look at anything outside the trip, you
3 look at the trip itself. And the trip itself,
4 leaving his home and going back to his home had
5 one purpose and that was for the benefit of the
6 employer. That was why -- and you know they
7 talk about the Silvan case. First of all the
8 Silvan case is more along the lines of a duel
9 purpose case if you look at it. Silvan was
10 taking paperwork but he was also going to work.
11 And I think the Court simply said in the Silvan
12 case, you know, he's going to work, we're not
13 -- that was the primary purpose in the Silvan
14 case. I think also they didn't want to open up
15 the floodgate, they didn't want some attorney
16 flying around law books in the back of his SUV
17 every time he goes to work and say, yeah I had
18 to study last night.

19 COMMISSIONER BECK: But I think the argument I hear
20 from Mr. Schonfeld is that this was a benefit
21 to the claimant, otherwise he would have done
22 it in the normal course that he always did it
23 in, show up to work, turn the paperwork in, get
24 in the truck and go to work. The only reason
25 that he did it when he did it was a personal



1 convenience to him. And in your scenario, had
2 he done it in the normal course, it wouldn't
3 have been covered because it would have just
4 been commuting at that point.

5 MR. HETRICK: That's correct. I mean I agree with
6 that. But I don't agree with their position.
7 I agree that you look at the trip and don't
8 look at the factor down the road. I mean it
9 would have been different if he, again, had
10 gone to work, had taken the paperwork, had
11 picked up his truck and then come back and
12 taken his car and gone into ---

13 COMMISSIONER WILKERSON: Go ahead and finish 'cause
14 we asked some things.

15 MR. HETRICK: --- see his attorney. I think you've
16 got to focus solely on the trip and the trip,
17 aside from the fact that it meets all the
18 parameters of the special errand rule that's
19 set forth in the Bickley case. Aside from that
20 I think you look at the trip, the trip is for
21 the sole benefit of the employer. The trip
22 itself that morning had no benefit to the
23 employee. Thank you, Commissioners.

24 COMMISSIONER WILKERSON: In reply please.

25 MR. HETRICK: One other thing. I will rest on my



1 arguments made regarding the second argument as
2 far as the TTD.

3 REPLY BY MR. SCHONFELD:

4 MR. SCHONFELD: May it please the Commission.
5 Personal convenience does not equate to an
6 incidental or ancillary responsibility. It
7 just doesn't. And I agree with Mr. Hetrick.
8 The focus is on the trip. Why was Mr. Green
9 making that trip between the hours of 3:00 and
10 4:00 in the morning? Not because his employer
11 told him to, not because his employment
12 required him to. It was -- he chose to do it
13 in that time frame for his own convenience
14 because he had an appointment the next morning.
15 The trip never needed to happen in the first
16 place. He could have completed those
17 documents, having forethought said, well if
18 I've got an appointment with my attorney and
19 I'm not even going to go into work until 11:00
20 o'clock I can do this paperwork right now here
21 in the truck.

22 COMMISSIONER WILKERSON: If he hadn't turned it in
23 by 8:00 o'clock and he decided to come after
24 that, would they have fired him?

25 MR. SCHONFELD: There's no evidence that that was



1 the case.

2 COMMISSIONER WILKERSON: I know there's no evidence.

3 But if he's required to do something by 8:00
4 o'clock that morning then he'd have had a
5 violation, would he not?

6 MR. SCHONFELD: There was no evidence presented that
7 if that had happened that that would have lead
8 to his termination.

9 COMMISSIONER WILKERSON: Okay.

10 MR. SCHONFELD: It was important to get that
11 paperwork in, no doubt about it. The timing of
12 it was the claimant's choosing. The trip was
13 his choosing. If for some reason Mr. Green
14 couldn't have turned it in, at the hearing Mr.
15 Bishop, his employer, said, we just would have
16 sent somebody out there to get it 'cause, you
17 know, that's how important it is. We would
18 have sent somebody out there to get it.
19 Wouldn't have been the end of the world, would
20 have been inconvenient for me, but it would
21 have been done. So at the end of the day I do
22 agree the trip is the focus but there was no
23 connection with the employment as far as the
24 reason why it was chosen to be made. It never
25 needed to be made therefore it is certainly not



1 a special errand 'cause the making of the trip
2 did not arise from the employer. And there was
3 certainly no duties left to be fulfilled on the
4 way home. That's not an argument. So for
5 these reasons this claim should be denied. He
6 was not in the course of employment, didn't
7 arise out of employment, it's not compensable
8 and I rely on arguments within the brief
9 regarding the issue of TTD. Thank you,
10 Commissioners.

11 (There being nothing further, the full commission
12 hearing concluded at 10:58 a.m.)
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STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1715897

Matthew Green,)
)
 Claimant,)
)
 v.)
)
 Bishop Forest Products,)
 Inc.,)
)
 Employer,)
)
 and)
)
 Forestry Mutual Insurance)
 Company,)
)
 Carrier/Defendants.)
)

COMMISSIONER'S HEARING

Thursday, February 15, 2018
1:44 p.m. - 2:49 p.m.

The Commissioner's Hearing was heard before Commissioner Gene McCaskill, at the Colleton County Courthouse, Jury Room, 101 Hampton Street, Walterboro, South Carolina, on the 15th day of February, 2018, before Travis McLeod, Court Reporter and Notary Public in and for the State of South Carolina.



CREEL COURT REPORTING, INC.
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(803) 252-3445 / (800) 822-0896

APPEARANCES

John R. Hetrick, Esquire
 Hetrick, Harvin & Bonds
 125 South Walter Street
 Post Office Box 139
 Walterboro, South Carolina 29488
 Attorney for the Claimant

Matthew A. Schonfeld, Esquire
 Attorney at Law
 210 Wingo Way, Suite 201
 Mount Pleasant, South Carolina 29464
 Attorney for the Defendant

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(There were no exhibits marked during the hearing.)



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STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



CALL TO ORDER:

COMMISSIONER MCCASKILL: Today's date is February 15th, 2018. This is workers' compensation commission file number 1715897. This is the case of Matthew Green versus Bishop Forest Products, Inc. The carrier is Forestry Mutual Insurance Company. The claimant is represented today by John R. Hetrick and the employer/carrier represented by Matt A. Schonfeld. Date of the accident is September 13th, 2017. We had some discussion prior to going on the record as to average weekly wage and comp rate. And the defendants have offered as the average weekly wage -- comp rate and average weekly wage of 389.32 with a corresponding compensation rate of 659.58. Is that what you told me or did I write it down wrong?

MR. HETRICK: I think it was 989 ---

MR. SCHONFELD: 32.

MR. HETRICK: --- 989.32, Commissioner.

COMMISSIONER MCCASKILL: I understand. That's what I got. 989.32 and 659.58.

MR. HETRICK: That's correct.

COMMISSIONER MCCASKILL: All right. There was some



1 discussion as to what the Form 20 would reflect
2 because we don't have a Form 20. But we do
3 have employment records. Plaintiff has worked
4 for, as I understand it, has worked for the
5 employer for at least four quarters preceding
6 the quarter in which he was injured. And, of
7 course, as we all know, the act sets forth to
8 that a computation of average weekly wage is
9 based on the four quarters prior to the quarter
10 in which the claimant is injured. So that is
11 what the Form 20 should represent. If there's
12 any discrepancy there I will, as I always can,
13 reserve the right to revisit the matter on the
14 record should we need to do that.

15 **MR. HETRICK:** Otherwise we'll stipulate to whatever
16 the Form 20 says.

17 **COMMISSIONER MCCASKILL:** All right. Very good. All
18 right. Are there objections to jurisdiction,
19 venue, APA submission or any other item?

20 **MR. HETRICK:** Nothing from the plaintiff.

21 **MR. SCHONFELD:** None for jurisdiction. Commissioner,
22 I do have an objection to some materials that
23 were submitted by Mr. Hetrick and --
24 specifically a typed statement signed by Mr.
25 Green. My objection is to that begin



1 considered evidence. It's my understanding Mr.
2 Hetrick is in agreement that that's merely a
3 recitation of the statement of facts, and not
4 considering it to be evidence.

5 **MR. HETRICK:** That's correct.

6 **COMMISSIONER MCCASKILL:** That was my understanding.

7 What other objections, Mr. Schonfeld?

8 **MR. SCHONFELD:** I object to the transcripts of the
9 depositions of Adrien Bishop and Matthew Green
10 being entered into evidence without them being
11 triggered by successful impeachment of either
12 of the witnesses since both of those witnesses
13 will be testifying here, and that's what's
14 going to be in the record, and that will be the
15 evidence of the case, Commissioner.

16 **COMMISSIONER MCCASKILL:** Okay. Mr. Hetrick, do you
17 want to speak to that?

18 **MR. HETRICK:** Yes. And they're both parties, and
19 both parties are here, and we believe under the
20 rules we have a right to submit them, we'd like
21 to submit them.

22 **COMMISSIONER MCCASKILL:** Okay. And we did discuss
23 this prior to going on the record. I am going
24 to allow them in because both witnesses are
25 here and Mr. Schonfeld or Mr. Hetrick for that



1 matter ask them any questions they wish to ask.
2 My ruling would be different if it were someone
3 not present and that deposition, barring it had
4 been taken de bene esse, I would not allow in.
5 But in that they are both present, I'm going to
6 allow the deposition transcripts in. Anything
7 else, Mr. Schonfeld, as to objections?

8 MR. SCHONFELD: None, Commissioner.

9 COMMISSIONER MCCASKILL: Any objections that have
10 arisen here in the last five minutes here, Mr.
11 Hetrick?

12 MR. HETRICK: None, Your Honor.

13 COMMISSIONER MCCASKILL: All right. Very good. The
14 commission file becomes part of the record with
15 the exceptions of self serving declarations and
16 unstipulated medical reports. Something else,
17 Mr. Schonfeld?

18 MR. SCHONFELD: If, while we're discussing
19 preliminary matters, if it's appropriate to
20 discuss stipulation as to body parts?

21 COMMISSIONER MCCASKILL: Yes. Let's -- because we
22 did talk about that prior to going on the
23 record.

24 MR. HETRICK: Yes, sir.

25 COMMISSIONER MCCASKILL: And I think y'all have



1 reached an agreement as to what body parts are
2 to be part of the case?

3 MR. SCHONFELD: Yes, Commissioner.

4 MR. HETRICK: I'd like to recite that with my
5 claimant here, and if there are any other body
6 parts, you know, that he believes that we've
7 listed, then I'd like him to say it. Otherwise
8 I think we stipulate to it. I want you to
9 listen to these body parts that they're
10 alleging or we're alleging that you injured.
11 If there are any additional body parts that are
12 not included, then I want you to speak now or
13 forever hold your peace.

14 MR. GREEN: Yes, sir.

15 MR. SCHONFELD: Left leg, specifically the left
16 ankle?

17 MR. GREEN: Yes, sir.

18 MR. SCHONFELD: Right leg, specifically the right
19 ankle?

20 MR. GREEN: Yes, sir.

21 MR. SCHONFELD: Right knee and right femur?

22 MR. GREEN: Yes, sir.

23 MR. SCHONFELD: And two ribs on your left side?

24 MR. GREEN: Yes, sir.

25 MR. HETRICK: Anything else?



1 MR. GREEN: No, sir.

2 MR. HETRICK: Okay.

3 COMMISSIONER MCCASKILL: All right, very good. I
4 think we've covered all the preliminaries.
5 We're here today, Mr. Hetrick, pursuant to a
6 Form 50 you filed on behalf of your client. If
7 you would, please, sir, place your client's
8 position on the record.

9 CLAIMANT'S POSITION:

10 MR. HETRICK: Thank you, Your Honor. This case is a
11 case of compensability, and the claim rises and
12 falls, we believe, on whether or not there was
13 an injury by accident arriving out of and in
14 the course of his employment with Bishop Forest
15 Products as a result of a motor vehicle
16 accident on 9/13 of 2017. Briefly, as far as
17 the facts go at that time, this occurred in the
18 early morning hours of September 13. Claimant
19 was required to deliver to Bishop Forest
20 Products, his employer, certain paperwork, and
21 it had to be delivered by 8:00 on that
22 Wednesday morning. He was given a right to
23 take the paperwork home with him, which by
24 habit he did. And on the particular morning in
25 question, he realized that the -- or let me



1 digress a moment. He had previous to this, he
2 had spoken with his employer and was given
3 permission to be off to go see his attorney
4 first thing on Wednesday morning -- that
5 Wednesday morning. He had the paperwork at
6 home with him in Walterboro, he realized the
7 employer needed to have that paperwork or was
8 required to have it by 8:00 that morning. So
9 I the early morning hours before 4:00, he got
10 into a personal vehicle, his personal vehicle,
11 drove to the business office of his employer,
12 deposited the paperwork -- the required
13 paperwork into -- they have a slot in the door,
14 deposited it through the slot, and it was, of
15 course, found the next day by the employer.
16 And then on the way home, he was struck head on
17 in a motor vehicle accident, and severely
18 injured and sustained injuries to -- I think we
19 stipulated to that, basically to both ankles,
20 left and right ankle, a right patella or
21 kneecap, I think, was fractured, and broken
22 right femur, and then two broken ribs on his
23 left side. Of course, if the accident is found
24 to be compensable, then we are seeking PTD from
25 the date of the accident until he's able to



1 return to work. He's still under medical care
2 and treatment. He'll testify to that. We're
3 also seeking payment for all his medical
4 expenses that were causally related or are
5 causally related to the accident and for future
6 medical care. We've stipulated to his average
7 weekly wage and comp rate. Of course, we --
8 our position would be that temporary total
9 would be paid at the respective comp rate of
10 659.58 for whatever period Your Honor sees as
11 appropriate. And I think those are the issues
12 in the case. So what we are seeking, again, is
13 an award of compensability and then, based on
14 that compensability, temporary total benefits
15 and payment of medical expenses.

16 COMMISSIONER MCCASKILL: Just so I have the magic
17 words in the record, it's your position that he
18 is not at maximum medical improvement?

19 MR. HETRICK: That's correct. And he'll testify to
20 that.

21 COMMISSIONER MCCASKILL: All right. Mr. Schonfeld.

22 DEFENDANT'S POSITION:

23 MR. SCHONFELD: Thank you, Commissioner. To address
24 some of the related matters before going to the
25 heart of the matter. With respect to temporary



1 total disability benefits that claimant is
2 alleging that he is entitled to, it's my
3 position that he will not meet his burden of
4 proof in establishing from the date of accident
5 to today ongoing, because the medical records
6 are not clear as to what his work restrictions,
7 if any, may be or whether he was out of work.
8 So anything -- any time frame outside of when
9 he was released from the hospital or during the
10 periods of time when his care was more
11 intensive, any time period after that,
12 entitlement to TTD is speculation or
13 conjecture. So that's with respect to TTD.
14 Going to the heart of the matter, which is
15 compensability. Commissioner, to find for the
16 claimant in this case would represent an
17 expansion of the law. The issue at bar today
18 is best framed as when Mr. Green was driving
19 home on the morning of September 13th, 2013,
20 was he still charged with some duty or task in
21 connection with his employment? The evidence
22 will show that he was not and therefore this
23 claim should be denied in its entirety. Thank
24 you, Commissioner.

25 COMMISSIONER MCCASKILL: All right. Anything else,



1 Mr. Hetrick?

2 CLAIMANT'S POSITION (CONT.):

3 MR. HETRICK: Just very briefly, Commissioner. Our
4 position is that if he had a right, and in this
5 case we believe he not only had a right but he
6 had a duty to -- as his job required -- to take
7 the requisite paperwork to his employer on the
8 date in question. If he had that duty to take
9 it out there and it was compensable, it was a
10 compensable claim as far as taking it to the
11 employer's place of business, then it would be
12 reasonable that it would also be compensable
13 for him to return home after making that
14 delivery.

15 COMMISSIONER MCCASKILL: Okay. Mr. Schonfeld?

16 MR. SCHONFELD: Thought we put our position
17 succinctly and accurately on the record. I
18 think that you have a firm grasp of what the
19 parties are arguing, Commissioner.

20 COMMISSIONER MCCASKILL: All right. Thank you, very
21 much. All right, Mr. Hetrick, call your first
22 witness.

23 MR. HETRICK: Thank you, Your Honor. We would call
24 the claimant, Matthew Green.

25 COMMISSIONER MCCASKILL: All right. Mr. Green,



1 gonna have you sworn in in just a moment. A
2 couple things before you're sworn. First, I
3 need you to speak up.

4 MR. GREEN: Yes, sir.

5 COMMISSIONER MCCASKILL: We don't have any
6 amplification in the room and the court
7 reporter's at one end and I'm at the other and
8 the lawyers are on both sides, and we all have
9 to hear you.

10 MR. GREEN: Yes, sir.

11 COMMISSIONER MCCASKILL: So if you'd speak up,
12 that's -- would be very helpful. And if I ask
13 you to speak up, don't let that throw you. It
14 just means I can't hear you.

15 MR. GREEN: Yes, sir.

16 COMMISSIONER MCCASKILL: The other request I have is
17 if you're asked a yes or no question please
18 give us a verbal yes or a verbal no as to the
19 answer. Now if you need to explain that,
20 you'll be given that opportunity, but when
21 witnesses answer with things like uh-huh and
22 huh-uh, those are too easily misunderstood and
23 if you shake or nod your head, Mr. McLeod, the
24 court reporter actually has to put that in the
25 record, and that'll slow him down. So if we



1 could stick to verbal yes and verbal no, that
2 would be helpful. And if you don't answer in
3 that way, one of the lawyers or I may say, is
4 that a yes or is that a no. Again, don't let
5 that throw you. We're just trying to get
6 clarity in the record for us here today, and
7 clarity in that record for anyone who might
8 read it in the future, okay?

9 MR. GREEN: Yes, sir.

10 COMMISSIONER MCCASKILL: All right. Please raise
11 your right hand. Swear the witness.

12 MATTHEW GREEN, having been duly sworn, testifies as
13 follows:

14 MR. GREEN - DIRECT EXAMINATION BY MR. HETRICK:

15 COMMISSIONER MCCASKILL: All right, put your hand
16 down. Please state your full name for the
17 record.

18 MR. GREEN: Matthew Green, Jr.

19 COMMISSIONER MCCASKILL: All right. Thank you, Mr.
20 Green. Mr. Hetrick, your witness.

21 MR. HETRICK: Thank you, Commissioner.

22 Q: How old are you, Matthew?

23 A: 49.

24 Q: What's your date of birth?

25 A: [REDACTED]



- 1 Q: And where were you born?
- 2 A: Colleton County.
- 3 Q: Have you lived in Colleton County most of your
- 4 life?
- 5 A: Yes, sir.
- 6 Q: Where do you live now?
- 7 A: Yes, sir.
- 8 Q: Where do you live?
- 9 A: 312 Deloach Avenue.
- 10 Q: And how long have you lived there?
- 11 A: Over 30 something years.
- 12 Q: Okay. Is that your momma's house?
- 13 A: Yes, ma'am -- yes, sir.
- 14 Q: And she's deceased at this time?
- 15 A: Yes, sir.
- 16 Q: But you inherited it when she died?
- 17 A: Yes, sir.
- 18 Q: Are you married or single or what is your
- 19 marital status?
- 20 A: I'm divorced.
- 21 Q: Okay. Who do you live with?
- 22 A: Sister.
- 23 Q: Okay. Has your sister taken care of you since
- 24 this accident has occurred?
- 25 A: Yes.



1 Q: Okay. You have any dependant children?

2 A: I have two.

3 Q: Okay. Tell us about how old they are, their
4 names and whether or not you pay child support.

5 MR. SCHONFELD: Objection, relevance.

6 MR. HETRICK: It gives a little bit of background,
7 Commissioner.

8 MR. SCHONFELD: I think we covered the requisite
9 amount biological data.

10 COMMISSIONER MCCASKILL: That's pretty standard. I'm
11 gonna allow him to answer that.

12 Q: Go ahead.

13 A: I have a 22-year-old and a 9-year-old.

14 Q: 22-year-old. Do you pay child support for him?

15 A: No, sir.

16 Q: 9-year-old, do you?

17 A: No, sir.

18 Q: Okay. Don't pay for either one?

19 A: No, sir.

20 Q: Are you right-handed or left-handed?

21 A: Right-handed.

22 Q: Do you have a valid South Carolina driver's
23 license?

24 A: Yes, sir.

25 Q: What kind of license?



- 1 A: CDL, class A.
- 2 Q: Okay. And do you drive or limit your driving
- 3 at this time?
- 4 A: I don't drive.
- 5 Q: Okay. When was the last time you had your CDL
- 6 physical?
- 7 A: August, I think. If not, September.
- 8 Q: Okay. Do you feel that you'd be able to pass
- 9 the CDL physical at this time?
- 10 A: No, sir.
- 11 Q: Why not?
- 12 A: 'Cause of my -- because of my injuries.
- 13 Q: Which injuries specifically?
- 14 A: Mostly knee and ankles.
- 15 Q: Okay. And how far did you go in school?
- 16 A: 12th.
- 17 Q: Did you graduate?
- 18 A: Yes, sir.
- 19 Q: Where'd you graduate from?
- 20 A: Walterboro High.
- 21 Q: Let's talk about your health briefly before the
- 22 accident -- this accident occurred. Do you
- 23 know what date the accident occurred on?
- 24 A: September 13th, 2017.
- 25 Q: That was last year?



1 A: Yes, sir.

2 Q: And what was your health prior to the accident.
3 How were you, were you in good health, bad
4 health or tell us a little bit about your
5 health.

6 A: Good health. I had low blood pressure, high
7 blood pressure, diabetes.

8 Q: High blood pressure and diabetes. Anything
9 else significant?

10 A: No, sir.

11 Q: Did these diseases or problems affect your
12 ability to drive a truck into work?

13 A: No, sir.

14 Q: Were you able to work?

15 A: Yes, sir.

16 Q: And you were working at the time -- well,
17 that's an issue before the Commission at the
18 specific time. But in general, you were
19 working for Bishop Logging Company during the
20 period of time that you were injured, is that
21 correct?

22 A: Yes, sir.

23 Q: Tell the Commissioner ---

24 MR. HETRICK: And I just want to get it in the
25 record. I think we stipulated to it very



- 1 briefly.
- 2 Q: What body parts were injured in the accident?
- 3 A: Left ankle, right ankle, right kneecap, femur
- 4 on the right thigh and two ribs ---
- 5 Q: Okay.
- 6 A: --- on the left side.
- 7 Q: When you say injured, were they broken?
- 8 A: Yes, sir.
- 9 Q: Both ankles were broken?
- 10 A: Yes, sir.
- 11 Q: Was the kneecap broken?
- 12 A: Yes, sir.
- 13 Q: Did they replace the kneecap?
- 14 A: Yes, sir.
- 15 Q: Was the femur broken?
- 16 A: Yes, sir.
- 17 Q: What did they do with the femur?
- 18 A: The put a rod in it.
- 19 Q: Okay. And the ribs, were they broken?
- 20 A: Yes, sir.
- 21 Q: And they healed back, pretty much, by
- 22 themselves?
- 23 A: Yes, sir.
- 24 Q: Now of the body parts that you've listed --
- 25 listen closely to me -- of the body parts that



1 you've listed, were any of these body parts
2 injured, that you're aware of, before this
3 accident that you had on 9/13 of 2017?

4 A: No, sir.

5 Q: And have you reinjured any of these body parts
6 that you listed between the date of the
7 accident of 9/13 of 2017 and today?

8 A: No, sir.

9 Q: Okay. Are you still treating with your
10 doctors?

11 A: Yes, sir.

12 Q: Have they released you?

13 A: No.

14 Q: Tell us a little bit about the doctors that --
15 you treating with specialists, is that correct?

16 A: Yes, sir.

17 Q: Which doctors are you treating with and what is
18 their specialty?

19 A: Dr. William Corey for the -- he's the
20 orthopedic.

21 Q: And where is he located?

22 A: Charleston.

23 Q: Dr. Corey?

24 A: Yes, sir.

25 Q: Okay. And then any other doctors?



1 A: Dr. Richter.

2 Q: Dr. Richter. And what kind of doctor is he?

3 A: He's orthopedic.

4 Q: Okay. And both of these are specialists? What
5 does Dr. Corey treat you for?

6 A: My right ankle.

7 Q: Okay. And what does Dr. Richter treat you for?

8 A: My left ankle. My left ankle and my kneecap
9 and femur.

10 Q: Okay. Have you received any bills as a result
11 of these injuries you received in the
12 automobile accident?

13 A: Yes, sir.

14 Q: And have you paid any of these bills?

15 A: No, sir.

16 Q: Do you know how much the bills are?

17 A: No, sir.

18 Q: Okay. Talk a little bit about your employment
19 with Bishop Logging. When did you begin
20 working there?

21 A: Three years ago on Memorial Day.

22 Q: About 2015?

23 A: Yes, sir.

24 Q: So you worked there roughly three, three and a
25 half years?



1 A: Yes, sir.

2 Q: All right. And what was the nature of the work
3 that Bishop Logging does? What kind of company
4 are they?

5 A: Logging company.

6 Q: Okay. Do they carry chip wood to the mills?

7 A: Yes, sir.

8 Q: And they have a chipper in the fields and then
9 they load up trucks and carry -- you carry it
10 to the mill?

11 A: Yes, sir.

12 Q: What was your specific job with Bishop Logging
13 Company?

14 A: Get loaded with chips, pine chips, and carry it
15 to the mill in Charleston and receive a ticket.

16 Q: Okay. And is there certain paperwork that you
17 would have to do as a result of working with
18 Bishop Logging Company?

19 A: Yes, sir.

20 Q: Tell the Commission briefly about the paperwork
21 that you had to complete.

22 A: Paperwork is considered of your ticket,
23 inspection -- inspection of the truck, time
24 sheets, your load sheets.

25 Q: Okay. Now the load sheets, are those the



1 tickets?

2 A: No, sir.

3 Q: Tell us what the -- tell us the difference then
4 between the load -- what I call the load sheet

5 ---

6 A: The load sheets are where we write down
7 tickets, the time we leave the woods and what
8 time we come back into the woods.

9 Q: Okay. And you would complete that?

10 A: Yes, sir.

11 Q: And then what about your time sheet. Tell us
12 how that works.

13 A: You write down the time you get started and --
14 the time you get started for work and the time
15 you end.

16 Q: Okay. And the tickets are what?

17 A: The tickets are from the Cap Stone where we
18 write down on the load sheets, write down the
19 load and the tonnage.

20 Q: Cap Stone is a paper mill down here in
21 Charleston, is that correct?

22 A: Yes, sir.

23 Q: And that's where most of your work would go --
24 I mean, most of your hauling would go to the
25 Cap Stone Mill?



1 A: Yes, sir.

2 Q: Okay. And then the final thing was that -- did
3 you have any -- I think you said there was some
4 other form that you had to fill out.

5 A: Mostly ---

6 Q: You said your load sheets, your load tickets,
7 your time sheets and there was one other form.

8 A: Inspection paper?

9 Q: Inspection reports. And what was that?

10 A: That's the inspection of the truck.

11 Q: Okay. And when -- you inspected the truck
12 every day?

13 A: Yes, sir.

14 Q: So did you fill out a report every day or how
15 did that work?

16 A: You fill out one every day.

17 Q: And these were required for you to turn into
18 Mr. Bishop?

19 A: Yes, sir.

20 Q: All right. Now tell us a little bit about the
21 time frame, when you were required to turn
22 these specific things in and, kind of, what you
23 would do. How would you go about that?

24 A: At the end of the week, like a Tuesday morning,
25 which is a Tuesday -- I would tally up all my



1 tickets on a Tuesday, and Tuesday when I get
2 out the truck, I would take my paperwork home.
3 You could either turn your paperwork in on a
4 Tuesday or a Wednesday. So what I do is take
5 my tickets home on Tuesday, add my tickets up,
6 be sure I have all the tickets, paperwork, the
7 load sheets, the inspection papers are all in
8 order to turn in.

9 Q: Did you have a file folder of some kind or did
10 the employer provide you with a folder?

11 A: Yes, sir.

12 Q: And what -- how was the folder -- I mean,
13 describe that a little bit.

14 A: It's simply a plastic paper with your name.
15 Each employee had a folder with your name on
16 it. And what we do is put our paperwork in the
17 folder to turn in. That way your paperwork is
18 together, it's not all over the place.

19 Q: Now why did you take your paperwork home
20 instead of just filling it out in the cab of
21 your truck or filling it out at the employer's
22 office?

23 A: I take my home to be sure I have it all in
24 order, all my paperwork and my tickets in
25 order.



1 Q: Okay. Are there any security problems with
2 leaving it in the truck at the office?

3 A: No, sir. I just take mine home.

4 Q: Okay. I may not have asked you this. How much
5 were you paid per hour?

6 A: 15.

7 Q: Did you receive any raises or promotions while
8 you worked for Mr. Bishop?

9 A: Yes, sir.

10 Q: Tell the Commission about that.

11 A: I started off -- they start you off \$11 an
12 hour, they give you your raise.

13 Q: Do you feel like they were pleased with your
14 work?

15 A: Yes, sir.

16 Q: What is your relationship with Mr. Bishop here?

17 A: He's my super- -- my primary supervisor.

18 Q: Okay. Have y'all had a good working
19 relationship? You enjoy working for his
20 company and for Mr. Bishop?

21 A: Yes, sir.

22 Q: Okay. You feel like you've been fairly
23 treated?

24 A: Yes, sir.

25 Q: Now the physical requirements of your job,



1 let's talk real briefly about that. Do you
2 have any -- tell the Commission a little bit
3 about that. What are the physical requirements
4 with respect to standing, sitting, walking,
5 bending, stooping, this kind of thing,
6 climbing, of being a truck driver.

7 A: Basically you pull in the truck, you're in a
8 truck to run pine chips, you know, you wait
9 around for a little while, stand around for a
10 little while to get loaded, you know. And
11 sitting, you can sit in your truck if you don't
12 mind. If you don't mind, sit in your truck and
13 wait to get loaded.

14 Q: Well you do a lot of sitting, I assume, when
15 you're driving your truck.

16 A: Yes, sir.

17 Q: All right. And you'd have to climb in and out
18 -- it's a tractor trailer truck, so you'd have
19 to climb in and out of it?

20 A: Yes, sir.

21 Q: You think you're able to climb in and out of
22 the truck now?

23 A: No, sir.

24 Q: All right. How about when you're out at the
25 job site? Do you have to trim any trees or do



1 anything like that?

2 A: Yes, sir. They require, if you have logs, to
3 trim your truck.

4 Q: Okay. Most of the time you carry chips?

5 A: Yes, sir.

6 Q: How about servicing the trucks, do you do any
7 of that?

8 A: Mechanic.

9 Q: Okay. I think we talked about your paperwork
10 requirements and everything that you were
11 required to do. Let's talk about the day of
12 the accident that you had. Do you recall the
13 accident or the day of the accident?

14 A: Yes, sir.

15 Q: I want to go back a little bit to that Tuesday
16 before, and let's start when you return from
17 work the end of that day. You recall you
18 returned to work?

19 A: Yes, sir.

20 Q: And what did you -- what did you do? Why did
21 you leave your truck at Mr. Bishop's?

22 A: I have no place to park it at home.

23 Q: Okay. Did he give you the option of taking the
24 truck if you have a place to park it? I mean,
25 would you have been able to take it home with



1 you?

2 A: Yes, sir.

3 Q: Okay. But you didn't have a place, and so you
4 had to use your car to get back and forth to
5 his place of business?

6 MR. SCHONFELD: Objection, leading.

7 Q: All right. How did you get back to his place
8 of business, back and forth from his -- to his
9 -- to and from his place of business?

10 A: Car.

11 Q: Okay. And it was your personal car?

12 A: Yes, sir.

13 Q: Where is Mr. Bishop's place of business?

14 A: Wolf Creek Road.

15 Q: And roughly how far is Wolf Creek Road from
16 Deloach Avenue where you live?

17 A: 20 to 30 minutes.

18 Q: Okay. What time did you get back to Mr.
19 Bishop's -- Bishop Logging or Bishop Forest
20 Products on that Tuesday?

21 A: Between 5:00 and 6:00.

22 Q: And do you know if the office is open at that
23 time?

24 A: It was closed.

25 Q: Okay. Is there anything that they have, like,



1 in the door of the office where you can turn
2 your paperwork in?

3 A: They have a mail slot and a mailbox on the side
4 of the wall.

5 Q: Okay. Are you -- do you leave it in the
6 mailbox, do you put it in the mail slot, what
7 are you instructed to do?

8 A: I put mine in the mail slot in the door.

9 Q: And why do you do that?

10 A: So when they open the door they'll be sure to
11 get my paperwork.

12 Q: Okay. The -- you get back 5:30, 6:00 o'clock,
13 the business is closed, what do you do then?

14 A: I usually take my paperwork home and get my
15 things out of the truck, get in my car.

16 Q: Get your things out, get in your car, get your
17 paperwork, and you go home?

18 A: Yes, sir.

19 Q: Did you do that that Tuesday night?

20 A: Yes, sir.

21 Q: And what did you do after you got home?

22 A: Watched a little TV and did my paperwork.

23 Q: All right. Had you discussed with anyone at
24 Bishop Logging Company being off the next day,
25 which would have been Wednesday the 13th of



1 September?

2 A: Yes, sir.

3 Q: Who did you discuss it with?

4 A: Supervisor Spook.

5 Q: Spook was the name of the supervisor. Do you
6 know the gentleman's name?

7 A: No, not right off hand.

8 Q: Okay. But in any event, what did you -- what
9 did you tell him, why did you tell him you
10 needed to be off?

11 A: I wanted to meet with my lawyer, so I told him,
12 I'm gonna meet with my lawyer tomorrow morning,
13 Wednesday.

14 Q: Okay. And what time did you plan then to come
15 into work?

16 A: Right after I see my lawyers.

17 Q: What time would that roughly be?

18 A: It'd be about 11:00.

19 Q: Okay. Now you'd already discussed that with
20 your supervisor. Had he agreed to let you off?

21 A: Yes, sir.

22 Q: All right. And you came home, and I think you
23 said you did your paperwork, watched a little
24 TV, you went to bed. Is that correct?

25 A: Correct.



1 Q: And what time then did you get up?

2 A: Like 3:30.

3 Q: Why'd you get up so early?

4 A: Couldn't sleep. Just got up. And then I had
5 a prior engagement, you know.

6 Q: Okay. What were your plans for that morning?
7 What did you plan to do?

8 A: Go see my appointment with my lawyers.

9 Q: Well I understand that later. But as far as
10 going to your employer's place of business.
11 What were you gonna do with respect to that?

12 A: Oh, I completed my work Tuesday night, checked
13 my paperwork over, and turned my paperwork in
14 Wednesday morning.

15 Q: Okay. And did you -- when did you typically
16 turn your paperwork in?

17 A: Wednesday morning.

18 Q: Okay. So what time did you leave to go to your
19 employer's place of business?

20 A: I left roughly out of the house at 4:00.

21 Q: Okay. Left about 4:00 o'clock, did you go
22 straight there?

23 A: Yes, sir.

24 Q: And what time did you get to Bishop Forest
25 Products?



- 1 A: I got there about 4:15 to 4:20.
- 2 Q: Okay. And how did you get there?
- 3 A: Car.
- 4 Q: Your car, personal car?
- 5 A: Yes, sir.
- 6 Q: All right. What did you do when you got to
- 7 Bishop Forest Products?
- 8 A: Got out of the car.
- 9 Q: And ---
- 10 A: Had my paperwork together and put it in the
- 11 mail slot like I every do -- like I do every
- 12 Wednesday morning.
- 13 Q: Did you do anything else there?
- 14 A: No, sir.
- 15 Q: What did you do then?
- 16 A: Left Bishop, left there, went down Mount Carmel
- 17 Road.
- 18 Q: And is that another way to basically come back
- 19 to Walterboro?
- 20 A: Yes, sir.
- 21 Q: And how far did you go on down Mount Carmel
- 22 Road when the wreck happened?
- 23 A: 10 minutes, 5 minutes top -- 5 to 7 minutes.
- 24 Q: Very briefly, what do yo recall about the
- 25 wreck?



- 1 A: Riding down the road and the next minute bam,
- 2 hit me.
- 3 Q: Was the wreck your fault?
- 4 A: No, sir.
- 5 Q: What happened in the wreck?
- 6 A: I looked up -- I was riding down the road and
- 7 this -- it just -- saw head lights and bam.
- 8 Q: Were you in your lane?
- 9 A: Yes, sir.
- 10 Q: The other vehicle, the oncoming vehicle, was it
- 11 -- that vehicle in it's lane?
- 12 A: Couldn't tell.
- 13 Q: What parts of the vehicles collided?
- 14 A: The front ends.
- 15 Q: Okay. Was it front to front or was it offset
- 16 any, or describe it.
- 17 A: Front to front.
- 18 Q: Okay. So it was a head on wreck?
- 19 A: Yes, sir.
- 20 Q: And it occurred in your lane of travel?
- 21 A: Yes, sir.
- 22 Q: What do you recall after the wreck happened?
- 23 A: The EMS came and blacked out after the shock.
- 24 And I remember the EMS coming down the road and
- 25 heard the sirens and what not. I was still in



1 the car.

2 Q: Were you taken to the hospital?

3 A: Yes, sir.

4 Q: Where were you taken?

5 A: Trident.

6 Q: Did they take you directly to Trident or take
7 you to Colleton Regional first?

8 A: They took me to Trident -- straight to Trident.

9 Q: Okay. And how long did you stay in Trident
10 Hospital?

11 A: Like two weeks, three weeks.

12 Q: Two to three weeks?

13 A: Two to three weeks.

14 Q: What happened after you were released from
15 Trident Hospital? Did you go anywhere else?

16 A: Yeah. They transferred me to Walterboro
17 Hospital.

18 Q: And ---

19 A: Physical -- to the physical therapy.

20 Q: Physical therapy at Walterboro Hospital?

21 A: Yes, sir.

22 Q: Need you speak a little bit louder if you can.

23 A: Yes, sir.

24 Q: And how long were you in Walterboro hospital in
25 the physical therapy unit?



- 1 A: Two to three weeks.
- 2 Q: Okay. So you were in the hospital there
- 3 roughly six weeks?
- 4 A: Yes, sir.
- 5 Q: Four to six weeks?
- 6 A: Yes, sir.
- 7 Q: Okay. And after that you went home?
- 8 A: Yes, sir.
- 9 Q: Did you have any nurses or anybody come to
- 10 treat you while you were in your house or ---
- 11 A: Yes, sir. I had nurses and physical therapy in
- 12 the house.
- 13 Q: Okay. And how long did that go on?
- 14 A: A month.
- 15 Q: All right. And at one point in time when you
- 16 went home were you able to put weight on your
- 17 leg?
- 18 A: No, sir.
- 19 Q: How long were you -- was it before you could
- 20 put any weight on -- which leg are we speaking
- 21 of?
- 22 A: Both of them.
- 23 Q: Okay. How long was it before you were able to
- 24 put any kind of weight on your legs?
- 25 A: December.



- 1 Q: Okay. So that would be roughly three months?
- 2 A: Yes, sir.
- 3 Q: Or, let's see -- you know when in December?
- 4 A: Like near the middle part of December.
- 5 Q: All right. So roughly 9/13 to say December 13
- 6 or somewhere like that.
- 7 A: Yes, sir.
- 8 Q: And when you were able to put some weight on
- 9 your legs, were you using a cane or crutches or
- 10 describe that for the Commission.
- 11 A: A walker.
- 12 Q: Using a walker. And how long did you have to
- 13 use a walker?
- 14 A: A good month.
- 15 Q: Okay. So that would have been January?
- 16 A: Yes, sir.
- 17 Q: When in January, you recall?
- 18 A: I'd say I stopped using the walker the second
- 19 week, third week in January.
- 20 Q: Okay. And then after that you've been using a
- 21 cane?
- 22 A: Yes, sir.
- 23 Q: Okay. Do you still have problems standing?
- 24 A: Yes, sir.
- 25 Q: Do you have problems walking?



- 1 A: Yes, sir.
- 2 Q: And again you have not been released?
- 3 A: No, sir.
- 4 Q: Are you still employed with Bishop Logging?
- 5 A: Yes, sir.
- 6 Q: Would you like to return to work when you can?
- 7 A: Yes, sir.
- 8 Q: And are you still receiving medical care?
- 9 A: Yes, sir.
- 10 Q: Has a doctor told you when he thinks you'd be
- 11 released?
- 12 A: No, sir.
- 13 Q: You feel like you're able to work at this time?
- 14 A: No, sir.
- 15 Q: What's the biggest problem that you're having?
- 16 A: Walking and standing, climbing, reaching.
- 17 Q: Okay. Now the -- on the morning of the
- 18 accident, the trip you made to Bishop Logging
- 19 Company, was that for the benefit of your
- 20 employer?
- 21 A: Yes, sir.
- 22 Q: And required by your job also?
- 23 A: Yes, sir.
- 24 Q: Was any part of that trip for your personal
- 25 benefit? I mean were you running an errand or



1 doing anything for yourself at that time?

2 A: No, sir.

3 Q: You've lost earnings, I assume, since this
4 accident, is that correct?

5 A: Yes, sir.

6 Q: Have you been paid anything by anybody, not
7 just the employer, but have you been paid by
8 anybody for the loss in earnings that you've
9 had?

10 A: No, sir.

11 Q: And as far as your future medical treatment,
12 are you still treating with both orthopedic
13 doctors?

14 A: Yes.

15 Q: Okay. I don't have anything further.

16 COMMISSIONER MCCASKILL: Mr. Schonfeld?

17 MR. GREEN - CROSS-EXAMINATION BY MR. SCHONFELD:

18 MR. SCHONFELD: Thank you, Commissioner.

19 Q: Mr. Green, I'm gonna go over a little bit about
20 your normal routine real quickly. So when you
21 complete your last haul for the day with Bishop
22 Forest Products, you are in a Bishop Forest
23 Product work truck, correct?

24 A: Correct.

25 Q: So you take that, at the end -- after you're



1 doing your last haul for that day, you take
2 that work truck back to Bishop Forest Products
3 property, correct?

4 A: Correct.

5 Q: And that's where their office is maintained,
6 correct?

7 A: Correct.

8 Q: And when you pull in in the evenings with the
9 work truck, you've got that folder of paperwork
10 with you?

11 A: Yes.

12 Q: And it's got those four items, it's got mill
13 tickets, correct?

14 A: Yes, sir.

15 Q: Your time sheets?

16 A: Yes.

17 Q: Which keeps track of your hours, correct?

18 A: Correct.

19 Q: And you got the pre-inspection checklist?

20 A: Correct.

21 Q: One from each day from Wednesday to Tuesday?

22 A: Correct.

23 Q: And you've also got the trip logs that shows
24 where you went to and from each day?

25 A: Yes, sir.



1 Q: Okay. Now the mill tickets specifically ---

2 MR. SCHONFELD: I'm gonna hand to Mr. Green real
3 quickly our APAs, if you can hand that to him.

4 Q: That stack of documents, there's page numbers
5 at the bottom right. If you could, flip to
6 page 286. If you look at the bottom right
7 corner, keep -- you'll start to see numbered
8 pages at the bottom, and it's toward the end of
9 the stack.

10 MR. HETRICK: Can I just ---

11 MR. SCHONFELD: Yeah.

12 MR. HETRICK: --- turn it for him?

13 MR. SCHONFELD: Absolutely.

14 Q: Page 286 of defendant's APAs, Mr. Green, do you
15 recognize those -- the documents that are on
16 that photocopy?

17 A: Yes, sir.

18 Q: Are those mill tickets?

19 A: Yes, sir.

20 Q: And that's a print out you're given when you
21 bring a load to the lumber mill, is that
22 correct?

23 A: Correct.

24 Q: And that's a print out that comes from a
25 computer?



1 A: Yes.

2 Q: Do you put any information into a computer to
3 get that -- all that information printed out on
4 that ticket?

5 A: Yes.

6 Q: What do you do? How do you get that ticket?

7 A: How I get this ticket? From an outbound scale.

8 Q: And who gives that to you?

9 A: The computer.

10 Q: The computer prints it out?

11 A: The computer prints this ticket out.

12 Q: Okay. After you get that ticket out, do you do
13 anything on that ticket, write anything, do any
14 calculations whatsoever?

15 A: No, sir.

16 Q: All right. You just keep it, right?

17 A: Just keep it.

18 Q: And those accumulate over a week? Those
19 accumulate over the wee? You get those ---

20 A: Yes.

21 Q: --- and you keep them in that folder? Okay.
22 The time sheets, inspection checklists, trip
23 logs, you fill in that information daily?

24 A: Yes.

25 Q: Okay. All right. So -- all right. So all of



1 that paperwork that we've been talking about
2 that you keep in that folder, if you had wanted
3 to, every Tuesday night, could you have
4 completed all that paperwork and turned it in
5 every Tuesday night?

6 A: Tuesday night, if I'm sitting.

7 Q: And you can sit in your truck, right?

8 A: Yes.

9 Q: And there's lights, overhead lights in the
10 truck, correct?

11 A: Correct.

12 Q: So if you wanted to, you could complete all
13 that paperwork and turn it in on Tuesday night,
14 correct?

15 A: Correct.

16 Q: Nobody tells you to take these documents home,
17 do they?

18 A: Supervisor said, you can take your paperwork
19 home.

20 Q: Does anybody instruct you to take them home?

21 A: I take them home.

22 Q: Does anybody instruct you to take them home?

23 A: Oh, no.

24 Q: Okay. So it's not -- you're not required to
25 take them home, is that correct?



1 A: No.

2 Q: Okay. Isn't it correct that no one at Bishop
3 Forest Products even knew of your routine of
4 taking everything home every night? Isn't that
5 correct?

6 MR. HETRICK: Objection. There's no way he'd know
7 what Bishop knew or what they didn't know.
8 Calls for speculation on his part.

9 COMMISSIONER MCCASKILL: You obviously have some
10 basis for the question.

11 MR. SCHONFELD: Yes, Commissioner. May I hand --
12 I'm handing Mr. Green his deposition testimony.

13 COMMISSIONER MCCASKILL: So he's already testified to
14 this ---

15 MR. SCHONFELD: Yes, Commissioner.

16 COMMISSIONER MCCASKILL: --- in his deposition?
17 Then I'm gonna allow it.

18 Q: Page 33, you see it in the top, the pane in the
19 top left corner.

20 MR. SCHONFELD: I've just handed to Mr. Green a
21 transcript or a copy of his deposition
22 transcript.

23 Q: In the top, you see that pane in the top left
24 corner, it's labeled 33?

25 A: Yes.



1 Q: I asked you a question directed to you about
2 Tuesday night, September 12th, 2017. I said,
3 did anybody know that you had brought that
4 paperwork with you that night. What did you
5 say? What was your response?

6 A: What number?

7 Q: Line 18, did anybody know that you had brought
8 the paperwork with you that night?

9 A: I said no.

10 Q: Okay. So your response was no?

11 A: Yeah.

12 Q: So at least on the night of September 12th,
13 2017, would you agree it's your response that
14 nobody even knew that you brought it home that
15 night? Is that correct?

16 A: Where?

17 Q: Is the statement in your deposition correct?
18 Did you tell the truth in your deposition?

19 A: Yeah. I said no.

20 Q: Okay. So is that a correct response in your
21 deposition?

22 A: No.

23 Q: It is not a correct response?

24 A: Correct.

25 Q: Did you tell me the truth when you answered no



1 to my question?

2 A: Rephrase your question again. You said did
3 anybody know if you brought the paperwork with
4 you that night? No.

5 Q: Was that a truthful response?

6 A: Yes.

7 Q: Okay. All right. Now so let's focus
8 specifically on the evening of September, 2017
9 -- September 12th. So that night, not just any
10 other night but specifically September 12th,
11 2017, on that evening, you could have completed
12 all your paperwork that night and turned it in
13 if you had wanted to, correct?

14 A: Correct.

15 Q: And that way you wouldn't have needed to get up
16 early the next morning to turn in all that
17 paperwork, correct?

18 A: Correct.

19 Q: Okay. But the next morning you did get up
20 early in the morning?

21 A: Yes.

22 Q: You woke up about 3:30 and about 4:00 you left
23 to drive to Bishop Forest Products, correct?

24 A: Correct.

25 Q: And then you dropped off the paperwork which



1 included the mill tickets, correct?

2 A: Yes, sir.

3 Q: All right. And on your return trip back, you
4 didn't have that paperwork with you anymore,
5 correct?

6 A: Correct.

7 Q: 'Cause it was already at Bishop Forest
8 Products. And your plans at that point were to
9 go back home, correct?

10 A: Correct.

11 Q: And then the next event you had that day was an
12 appointment with your attorney, correct?

13 A: Yes.

14 Q: Now your normal routine, had you not had the
15 appointment, would have been to drive to work,
16 park your own personal vehicle, put the
17 paperwork in the slot and get in the truck and
18 clock in, correct?

19 A: Correct.

20 Q: That was your normal routine. But you didn't
21 follow your normal routine that morning, did
22 you?

23 A: No.

24 Q: Because you had an appointment with your
25 attorney, correct?



1 A: Correct.

2 Q: Which was a personal appointment, correct?

3 A: Correct.

4 Q: Now in that trip to and from work that morning,
5 were you in your personal vehicle?

6 A: Yes.

7 Q: Does your employer provide you any funds to
8 maintain your personal vehicle?

9 A: No.

10 Q: Do they provide you with any mileage?

11 A: No.

12 Q: Were you on the clock at any point driving to
13 and from work that morning?

14 A: No.

15 Q: Did you log in any hours that day?

16 A: No.

17 Q: Real briefly about your ongoing medical
18 treatment, your attorney asked some questions
19 about whether you had received any of these
20 bills. You have health insurance?

21 A: Yes.

22 Q: Has health insurance paid for any of these
23 bills that you're aware of?

24 A: Not that I know of.

25 Q: Have you received explanation of benefits from



1 your health insurance company?

2 A: No.

3 Q: You have not?

4 A: I've received bills.

5 Q: With your -- have you received any paperwork
6 from your insurance company relating to
7 treatment you've received following this
8 accident?

9 A: No.

10 Q: Okay. Those are all the questions I have for
11 Mr. Green.

12 COMMISSIONER MCCASKILL: All right. Mr. Hetrick?

13 MR. GREEN - REDIRECT EXAMINATION BY MR. HETRICK:

14 MR. HETRICK: Just one or two on follow up.

15 Q: Did Mr. Bishop or anyone at Bishop Logging
16 Company tell you not to take your paperwork
17 home at any time?

18 A: No, sir.

19 Q: And on the morning that you took that paperwork
20 out to Bishop Logging Company, was that
21 required by your job?

22 A: Yes, sir.

23 Q: Was that also for the benefit of Bishop Logging
24 Company?

25 MR. SCHONFELD: Objection, asked and answered.



1 Q: If you had not taken the paperwork out, would
2 Mr. Bishop or someone have had to send somebody
3 and get the paperwork?

4 A: No, sir.

5 Q: How would it have gotten there?

6 A: Oh, he would ---

7 MR. SCHONFELD: Objection, speculation and conjecture
8 as to what the employer would have done.

9 COMMISSIONER MCCASKILL: I'll sustain that.

10 MR. HETRICK: I'll withdraw that.

11 COMMISSIONER MCCASKILL: All right.

12 MR. HETRICK: I don't have anything further.

13 COMMISSIONER MCCASKILL: All right. Mr. Schonfeld?

14 MR. SCHONFELD: No other questions for Mr. Green.
15 Thank you.

16 COMMISSIONER MCCASKILL: All right. Thank you, Mr.
17 Green. Other witnesses, Mr. Hetrick?

18 MR. HETRICK: We'll call Mr. Bishop as our witness.

19 COMMISSIONER MCCASKILL: All right. Mr. Bishop.

20 MR. BISHOP: Yes, sir.

21 COMMISSIONER MCCASKILL: You were present for speak
22 up and answer yes and no. Unless you have
23 questions about that, I'll spare you a
24 recitation of what you already heard.

25 MR. BISHOP: Yes, sir. I understand.



1 COMMISSIONER MCCASKILL: All right. Raise your
2 right hand. Please swear the witness.

3 ADRIEN BISHOP, having been duly sworn, testifies as
4 follows:

5 COMMISSIONER MCCASKILL: All right. Please state
6 your full name for the record, sir.

7 MR. BISHOP: My name is Adrien Ernest Bishop.

8 COMMISSIONER MCCASKILL: All right, Mr. Hetrick, your
9 witness.

10 MR. HETRICK: Thank you, Your Honor.

11 MR. BISHOP - DIRECT EXAMINATION BY MR. HETRICK:

12 Q: Mr. Bishop, are you the president, owner and
13 general manager of Bishop Forest Products?

14 A: Yes, sir.

15 Q: And how long have you been in that position?

16 A: I incorporated that particular business in
17 1993. So I've been owner and president since
18 then.

19 Q: How long have you been in the logging business
20 in general?

21 A: Since 1980.

22 Q: Okay. Most of your adult life?

23 A: Yes, sir.

24 Q: Okay. And you've driven trucks I assume ---

25 A: Yes, sir.



1 Q: --- and are familiar with all aspects of the
2 business?

3 A: Yes, sir.

4 Q: You know Matthew Green?

5 A: Yes, sir.

6 Q: What kind of employee was Matthew Green?

7 A: Excellent employee.

8 Q: If he's able to come back to work, would you
9 like him to come back?

10 A: I need him today.

11 Q: Thank you. As far as the requirements of
12 getting the receipts, what I'll call the load
13 receipts, is that the correct name, are they
14 load receipts? What do you call them?

15 A: You can call them that. We call them tickets.

16 Q: Load tickets?

17 A: Yes. It's actually a load receipt.

18 Q: Okay. Well I'll call them load tickets then.

19 A: Okay.

20 Q: How about that? As far as the load tickets,
21 are there certain time deadlines that you have
22 to have those tickets by?

23 A: Yes, sir.

24 Q: Tell the Commission, if you would, about that.

25 A: We require our drivers to turn in their tickets



1 for the week either on Tuesday night or
2 sometime before 8:00 o'clock on Wednesday
3 morning.

4 Q: And why is that?

5 A: That gives our secretaries time to copy the
6 tickets, make sure everything's in order, turn
7 them in so that we can pay our vendors for the
8 timber, and so that we can get paid from the
9 paper mill.

10 Q: Do you have time deadlines on Wednesday morning
11 that you have to comply with?

12 A: I do.

13 Q: And what time deadlines are those?

14 A: One section of our tickets have to be in to
15 their office at 9:00 so that they can invoice
16 the people in California that own the power
17 plant that we haul to. The other is normally
18 before 12:00.

19 Q: All right. And the receipt of those tickets
20 and submitting the tickets, is that an
21 important part of your business?

22 A: Most important.

23 Q: Okay. You don't get them in, you don't get
24 paid?

25 A: That's correct.



1 Q: Okay. And I assume if you don't get paid then
2 your employees don't get paid?

3 A: I tell them that. I never have done that.

4 Q: Well we won't go into that any further. But
5 also the land owners are involved in this also,
6 is that correct?

7 A: Yes, sir. I work through a broker, dealer,
8 whatever you want to call him. But I don't
9 work directly for the land owner. But I work
10 for a broker who buys the wood from the land
11 owner and then I do the harvesting. He pays
12 the land owner a set price and pays me to do
13 the harvesting.

14 Q: Okay. And as far as the maintenance or the
15 keeping, I guess, of the tickets -- well let me
16 digress a moment. Do you give a package or
17 provide a package to your employees with
18 respect to certain things that they have to
19 turn in every week, a folder?

20 A: Yes, sir. The ladies give them a plastic
21 ziplock type folder that's water proof that
22 they can put their tickets in, their paperwork
23 in every week. We supply them with the forms,
24 and then when they pick up their paycheck on
25 Thursday night or Friday morning, their



1 paycheck and all their new forms that they need
2 will be in that folder for the following week.

3 Q: Tell the Commission a little bit about what the
4 forms are.

5 A: The forms are typical DOT, what they call a
6 pre-inspection, a pre-trip inspection. And
7 that form is a DOT regulated form. We copy
8 that and give it out to our drivers so that
9 they can fill that out. The other form is a
10 trip log, which states the load, when he was
11 loaded, when he was in the woods, when he left
12 the woods, when he got unloaded, when he left
13 the mill and if he was going home, whatever
14 time that was, or if he was going back to the
15 woods for another load, whatever time that was.

16 Q: Now should the load tickets correspond with the
17 trip log?

18 A: The load tickets should correspond with the
19 trip log, yes.

20 Q: So should there be a load ticket for each load
21 that's delivered from the woods?

22 A: Yes, sir.

23 Q: Okay. And these are -- you can check on by the
24 other? In other words the driver would be able
25 to check the number of load tickets he needs to



1 have by the number of loads that's showing on
2 his load log?

3 A: That's correct.

4 Q: Okay. Is that a good way to do it?

5 A: That's a good way to do it, yes, sir.

6 Q: The driver completes the load log, is that
7 correct?

8 A: That's correct.

9 Q: Okay. Then he picks up the load tickets at the
10 mill?

11 A: After every load is unloaded, yes.

12 Q: And in the course of a week, how many -- you
13 know, what would be a typical number of load
14 tickets that a driver would have?

15 A: Matthew would probably unload 12 to 15 loads a
16 week.

17 Q: Okay. The driver, it's their responsibility to
18 keep track of these tickets?

19 A: Yes.

20 Q: Do they ever lose them?

21 A: Yes.

22 Q: But as far as keeping track of them, that is an
23 important part of their job?

24 A: Very important.

25 Q: Have you ever had a situation where a driver



- 1 got sick or there was some reason that they
- 2 couldn't bring the tickets out on a Wednesday
- 3 morning or a Tuesday night, and you had to go
- 4 get the tickets?
- 5 A: Yes.
- 6 Q: What happens then under those circumstances?
- 7 A: Normally I would have a conversation with the
- 8 driver and he would let me know where the
- 9 tickets were and his paperwork. And I would go
- 10 and get them for him.
- 11 Q: So if in the case of Matthew, if Matthew had
- 12 gotten sick or whatever reason couldn't bring
- 13 those tickets, you'd send somebody in to
- 14 Walterboro to pick them up?
- 15 A: I would if he asked for it, yes.
- 16 Q: Okay. As far as allowing the drivers to take
- 17 this folder home that you give them, I mean,
- 18 are they allowed to do that?
- 19 A: Yes. I have not given them any instructions
- 20 not to do that.
- 21 Q: Okay. And are you familiar with when Matthew
- 22 typically turned his tickets in?
- 23 A: All I know is he had his tickets in on time all
- 24 the time.
- 25 Q: Okay. But you specifically don't know whether



1 he turned in Tuesday night or Wednesday
2 morning?

3 A: No, I don't.

4 Q: He testified he turned them in Wednesday
5 morning. You don't have anything -- any
6 information to refute that do you?

7 A: No, sir.

8 Q: Okay. And as far as your regulations go, that
9 was entirely proper as long as he got them in
10 by 8:00?

11 A: That's fine.

12 Q: Wednesday morning?

13 A: Yes, sir.

14 Q: All right. I don't have anything further.
15 Thank you.

16 COMMISSIONER MCCASKILL: Mr. Schonfeld.

17 MR. SCHONFELD: Thank you, Commissioner.

18 MR. BISHOP - CROSS-EXAMINATION BY MR. SCHONFELD:

19 Q: Mr. Bishop, I'm handing you defendant's APAs.
20 If you flip at the bottom right, there's some
21 page numbers. I'm gonna start you off at page
22 286.

23 A: Okay.

24 Q: Just real quick, 286, is that the load tickets
25 that we've been calling them?



- 1 A: Yes.
- 2 Q: And what's the next page?
- 3 A: Next page is a trip log.
- 4 Q: And the next page, 288, is that just another
- 5 version of a trip log?
- 6 A: Yeah. Actually -- yeah. I don't know whether
- 7 Matthew even had -- this is a new style trip
- 8 log that we have. But the next page is the
- 9 original trip log that we used.
- 10 Q: Okay. So the most recent version is 287. But
- 11 the one that you believe that Matthew Green was
- 12 using ---
- 13 A: Right.
- 14 Q: --- at or about the time this accident or
- 15 before this accident was 288?
- 16 A: Yeah. Probably so.
- 17 Q: Okay. And 289 is a -- is it correct that's --
- 18 those are the inspection ---
- 19 A: Yes. That's a standard form put out by the
- 20 Department of Transportation.
- 21 Q: And they -- your drivers, they fill this out
- 22 before they leave -- before they go on the
- 23 road, is that correct?
- 24 A: Correct. They're supposed to fill it out.
- 25 It's called a pre-trip inspection and they're



1 supposed to fill it out before they start the
2 day.

3 Q: Okay. What -- and I'm guessing -- is it
4 correct that what is missing from these
5 documents is an example of their time sheet, is
6 that right?

7 A: Yeah, uh-huh.

8 Q: And the time sheet, it just contains date, time
9 you started on the clock and time you ended on
10 the clock?

11 A: That's correct.

12 Q: All right. And the total number -- did they
13 total up the hours?

14 A: Some of them did. Most of them don't. They
15 just put the hour they started and then the
16 hour they ended. And then we do the
17 calculations from there.

18 Q: All right. So your drivers, they don't do
19 anything -- they don't have to do anything with
20 the mill tickets other than hang on to them, is
21 that correct?

22 A: Only thing that I require them to do is to have
23 them on Wednesday morning, everyone that
24 they've hauled.

25 Q: Right. And they can either turn them in



1 Tuesday night or Wednesday morning?

2 A: On Tuesday night or Wednesday morning.

3 Q: No later than 8:00 o'clock?

4 A: Correct.

5 Q: All right. So if a driver wanted to, like, if
6 they had a reason to, for example, like, if
7 their paperwork, the stuff that requires to
8 fill stuff out, if that wasn't completed and
9 they wanted to finish that at home, would it be
10 fine for them to turn in mill tickets on
11 Tuesday night?

12 A: Yes.

13 Q: Would it be the end of the world if they turned
14 in the rest of the paperwork that requires some
15 actual completion -- would it be the end of the
16 world if that didn't make it to your office by
17 8:00 a.m. Wednesday morning?

18 A: No. The only requirement was the tickets.

19 Q: Okay. So on the evening of September 12th,
20 2017, which was a Tuesday, Matthew Green could
21 have turned in the mill tickets and put them in
22 that slot, is that correct?

23 A: That's correct.

24 Q: And if he wanted to, he could have come back
25 after his attorney's appointment on Wednesday,



1 September 13th and turned in the rest of the
2 paperwork after the appointment, isn't that
3 correct?

4 A: That would have been fine.

5 Q: Okay. Did you tell Matthew Green to get up
6 early in the morning of Wednesday, September,
7 2017, tell him to get up around 3:00 or 4:00
8 o'clock and go to Bishop Forest Products and
9 drop off all that paperwork?

10 A: No.

11 Q: Did you require the drivers to take home the
12 paperwork every night?

13 A: No.

14 Q: Was it fine if they locked it in the truck if
15 they left the truck at the office?

16 A: Yes.

17 Q: Were you even aware that Mr. Green was taking
18 any of these documents home in his personal car
19 every night?

20 A: No.

21 Q: Did you pay Mr. Green any mileage coming and
22 going to and from work for mileage in his
23 personal car?

24 A: No.

25 Q: And did Matthew Green clock in any hours on



1 Wednesday, September 13th, 2017?

2 A: No.

3 Q: All right. That's all the questions I have.

4 Thank you.

5 COMMISSIONER MCCASKILL: Mr. Hetrick.

6 MR. BISHOP - REDIRECT EXAMINATION BY MR. HETRICK:

7 Q: Do you have any -- have you ever had any
8 problems with any vehicles been broken in --
9 being broken into at your lot?

10 A: We have had some vandalism on trucks, yes. But
11 probably once or twice.

12 Q: How about any paperwork that was taken or
13 missing?

14 A: Never have had any. Never have had any
15 paperwork missing.

16 Q: Do you have an opinion whether it would be
17 reasonable for a person to secure their
18 paperwork by taking it home?

19 A: I don't have any objection to it.

20 Q: Okay. And again, Matthew Green was not
21 required to keep his paperwork in the truck?

22 MR. SCHONFELD: Objection, asked and answered.

23 COMMISSIONER MCCASKILL: Sustained.

24 MR. HETRICK: I don't think I have anything further.

25 Q: Did the drivers -- is it typical for the



1 drivers to turn in all their paperwork
2 together?

3 A: It is typical, yes.

4 Q: Okay. So they turn in four sheets, they turn
5 in -- or not four sheets, but they turn in the
6 tickets, the log, the DOT form and the pay
7 sheet or their payroll ---

8 A: Yes.

9 Q: --- information? And it's typical that they
10 turn it all in together?

11 A: Yes. It is typical that they turn in
12 everything at one time.

13 Q: And does your office then reconcile the tickets
14 themselves with the log, do they do that?

15 A: Not on an employee of mine. We do reconcile
16 that on a contract truck, someone that's hired
17 to haul. But it's not that important for, you
18 know, an employee of mine to do that.

19 Q: But the driver would need to do that, is that
20 correct?

21 A: Yes, the driver would need to do it, yes.

22 Q: And so there's certain forms that have to be
23 filled out. I assume the form with the payroll
24 form would have to be completed by the driver,
25 is that correct?



1 A: Yes. His hours, yeah.

2 Q: And the log form would have to be completed by
3 the driver?

4 A: That's correct.

5 Q: And the DOT forms would have to be completed by
6 the driver?

7 A: That's correct.

8 Q: And the only forms that wouldn't be completed
9 by the driver would be the actual log -- or the
10 actual load tickets, is that correct?

11 A: That's correct.

12 Q: And they'd have to be kept by the driver?

13 A: That's correct.

14 Q: All right. I don't have anything further.

15 COMMISSIONER MCCASKILL: Mr. Schonfeld.

16 MR. SCHONFELD: Briefly, Commissioner.

17 MR. BISHOP - RECROSS-EXAMINATION BY MR. SCHONFELD:

18 Q: The activities that are documented on these
19 forms, would you agree that it's the best
20 practice that the driver put in this
21 information as these events are happening?

22 A: Yes.

23 Q: As opposed to doing them later?

24 A: Yes. There is a reason for that. The reason
25 is that we don't run a log book 'cause we're



1 considered intrastate. Our authority is
2 intrastate and not interstate. We're saying
3 that we don't haul out of state. So with our
4 authority being intrastate, we only have to
5 keep a trip sheet. We don't have to run a
6 actual driver's log. And if they were stopped
7 by a DOT personnel, they could check their trip
8 sheet. They usually don't but they could.

9 Q: And it needs to be ---

10 A: It would need to be updated. If it wasn't
11 there would be no way for the officer to know
12 how many hours he'd been on duty.

13 Q: All right. Thank you. I don't have any other
14 questions.

15 MR. HETRICK: And I'm through, Commissioner.

16 COMMISSIONER MCCASKILL: All right. Thank you, sir.

17 MR. BISHOP: Yes, sir.

18 COMMISSIONER MCCASKILL: All right. Any other
19 witnesses?

20 MR. HETRICK: None, Your Honor.

21 COMMISSIONER MCCASKILL: That's your case. Any
22 witnesses, Mr. Schonfeld?

23 MR. SCHONFELD: Mr. Bishop would have been mine, but
24 he's been called and testified, Commissioner,
25 so we have no other witnesses.



1 COMMISSIONER MCCASKILL: All right. Then that
2 concludes this proceeding.
3 (There being nothing further, the commissioner's
4 hearing concluded at 2:49 p.m.)
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1 SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
2 W.C.C. FILE NO.: 1715897
3 Matthew Green,)
4 Employee,)
5 Claimant,)
6 v.)
7 Bishop Forest Products, Inc.,)
8 Employer,)
9 and)
10 Forestry Mutual Insurance)
11 Company,)
12 Carrier,)
13 Defendants.)
14 *****
15 DEPOSITION OF: ADRIAN BISHOP
16 DATE TAKEN: January 29, 2018
17 TIME: 3:02 p.m.
18 PLACE: Hetrick, Harvin & Bonds
19 125 South Walter Street
20 Walterboro, South Carolina
21 REPORTED BY: Kendra E. Johnston, RPR, CRR
22 Registered Professional Reporter,
23 Certified Realtime Reporter
24 and Notary Public
25 *****
26 2349 TALL SAIL DRIVE - UNIT B
27 CHARLESTON, SOUTH CAROLINA 29414

COPY

A P P E A R A N C E S

REPRESENTING THE EMPLOYEE/CLAIMANT:

JOHN "BO" HETRICK, ESQUIRE
BOBBY BONDS, ESQUIRE
Hetrick, Harvin & Bonds
Post Office Box 139
Walterboro, South Carolina 29488

REPRESENTING THE DEFENDANTS:

MATTHEW A. SCHONFELD, ESQUIRE
Holder, Padgett, Littlejohn & Prickett
210 Wingo Way, Suite 201
Mount Pleasant, South Carolina 29464
mschonfeld@hplplaw.com
twilliams@hplplaw.com

I N D E X

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Testimony of Adrian Bishop

Examination by Mr. Hetrick.....4

REPORTER'S CERTIFICATE.....42

I N D E X

(No exhibits were marked.)

1 (The deposition commenced at 3:02 p.m.)

2 ADRIAN BISHOP, SWORN.

3 EXAMINATION

4 BY MR. HETRICK:

5 Q. Adrian, we've known each other for some
6 time, but, for the record, I'm Bo Hetrick, and I'm a
7 lawyer and practice law with Hetrick, Harvin and Bonds
8 in Walterboro. Our firm represents Matthew Green in a
9 motor vehicle accident and a workers' compensation
10 claim, both of which are pending.

11 We're here today to take your deposition in
12 a workers' compensation case involving one of your
13 employees at that time, Matthew Green, and Mr. Green,
14 which you're well aware I'm sure, was severely injured
15 in a motor vehicle accident on September 13th of 2017,
16 and he's still treating for his injuries and has not
17 completely recovered. I know it's inconvenient for you
18 to take off work, and we shouldn't be here very long.

19 We noticed this deposition to address some
20 of the issues about his employment, Mr. Green's
21 employment, with your company and what some of his job
22 duties are and the nature of his job and that kind of
23 thing, and it's important that, of course, you listen
24 to my questions carefully -- I tell people this in
25 every deposition that we do -- and then answer them

1 truthfully, as I know you will do. Only if you don't
2 understand a question, then ask me to repeat it. If
3 you don't hear the question, I'll be glad to repeat it.
4 If you don't understand it, again, I'll be glad to
5 rephrase it. So just ask me if there's any kind of
6 problem.

7 You have the right to explain your answer at
8 any time, and I'll ask a question, and if you feel it
9 needs explanation, then, by all means, feel free to
10 explain.

11 Again, the purpose of the deposition is to
12 discover what you know about certain facts, and that's
13 what we lawyers call a discovery deposition, and that's
14 what this is today.

15 Do you have any questions that you need
16 addressed before we start?

17 A. No.

18 Q. Okay. If you need to take a break or you
19 need anything, just let us know.

20 State your name for the record, please.

21 A. Adrian Ernest Bishop.

22 Q. How old are you, Mr. Bishop?

23 A. Sixty-four.

24 Q. And what is your date of birth?

25 A. It's [REDACTED].

- 1 Q. Where do you live?
- 2 A. I live at [REDACTED]
- 3 Q. And how long have you lived there?
- 4 A. Ten years.
- 5 Q. Are you married?
- 6 A. Yes.
- 7 Q. And you work in a business?
- 8 A. Yes.
- 9 Q. And what is your position with that
- 10 business?
- 11 A. I am the owner and president of Bishop
- 12 Forest Products.
- 13 Q. So you would be the person that would be
- 14 qualified, certainly, to testify about all aspects of
- 15 the business.
- 16 A. Yes.
- 17 Q. Is that a fair statement?
- 18 A. Yes.
- 19 Q. And what is the name of the business again?
- 20 A. Bishop Forest Products.
- 21 Q. Is that a corporation?
- 22 A. Yes.
- 23 Q. And is it incorporated or LLC or what is it?
- 24 A. It's incorporated.
- 25 Q. Okay. Are there any other family members in

7

1 the business with you?

2 A. No, sir.

3 Q. Okay. What is the business address?

4 A. The physical address is 2035 Wolfe Creek
5 Road.

6 Q. Is that at your home or is that where you
7 live or is that a different address?

8 A. It's right down the road from me.

9 Q. Okay. How long have you had a business
10 address at that location?

11 A. I think -- I think 12 years, I believe.

12 Q. Okay. You said the business is
13 incorporated. I assume in South Carolina; is that
14 correct?

15 A. Yes.

16 Q. And how long has it been incorporated?

17 A. Since 1993.

18 Q. Are there any adjacent businesses or
19 residual businesses that are related to this business?
20 Do you have other companies or corporations that would,
21 for instance, own your trucks or do other various
22 forest product businesses that relate to this primary
23 business?

24 A. You're asking me if I own anything that --

25 Q. Own any other business.

1 A. No, sir.

2 Q. Okay. Your trucks that you have, they're
3 all under the business umbrella?

4 A. Yes.

5 Q. And if you own any property, it would all be
6 under your business umbrella; is that correct?

7 A. Yes.

8 Q. Okay. And I believe you said you are the
9 president and the, I guess, head supervisor --

10 A. Yes.

11 Q. -- and general manager and the whole
12 nine yards.

13 A. Yes.

14 Q. How many -- Tell us a little bit about your
15 business. What do you do?

16 A. Currently I run three separate logging and
17 chipping sites. Now, I say logging because we do the
18 chipping in woods. We cut the timber down, pull it to
19 the loader, load it in the chipper, grind it, blow it
20 in a chip van, and haul it to KapStone Paper Mill in
21 Charleston, South Carolina, and I do that with two of
22 my what we call clean chip crews, and then I've got one
23 crew that does primarily fuel chips, and they haul
24 those to EDF Corp in Dorchester, or I think the actual
25 address is Harleyville, and Allendale.

1 Q. So some of the chips, as I understand it, go
2 to one mill, but then primarily they go down to the
3 port in Charleston; is that correct?

4 A. Not the port. They actually go to the paper
5 mill.

6 Q. And is that Westvaco or what we --

7 A. The old Westvaco. It's called KapStone now.

8 Q. And who owns that company now?

9 A. KapStone.

10 Q. KapStone.

11 A. Yeah.

12 Q. Okay. Do you do any logging work where you
13 would take the actual log timber or the timber to a
14 mill? Do you do any of that type of work?

15 A. Yes. The only time we do that is as a
16 residual on a chip tract. It's a tract that might have
17 some log material, and we can pay the land owner more
18 for the log material than we can the chips, so then
19 we'll send the logs somewhere else.

20 Q. Okay. Now, Matthew Green was an employee of
21 your company; is that correct?

22 A. Correct.

23 Q. I don't know what his status is at this
24 time. Is he still an employee? Has he been
25 terminated? He hasn't been able to work, certainly.

1 A. As far as I'm concerned, he's still an
2 employee, just hasn't been able to work.

3 Q. Okay. What type -- how did he fit into this
4 business? I mean was he -- did he drive to KapStone,
5 or was he part of that crew, or would he drive to
6 another area, or how did you work that?

7 A. Just for convenience, I might have some
8 designated trucks to one particular crew, but, as a
9 policy, he goes at my guidance. If I tell him to go to
10 crew three, he'll go to crew three. If I tell him go
11 stay on crew one, he'll stay on crew one. So normally
12 what they'll do is they'll -- if I tell him to go to
13 crew one, he'll stay on crew one until I change.

14 Q. Okay. He testified in his earlier
15 deposition about a gentleman named Al.

16 A. Right.

17 Q. Who is that?

18 A. Al Brown. He's a supervisor on crew one.
19 And Matthew hauled there probably 85 percent of the
20 time.

21 Q. So you occasionally would put Matthew on
22 another crew, but most of the time he hauled on crew
23 one, and that was the one with Al.

24 A. Yeah.

25 Q. And from my understanding, is it fair to say

1 that most of the time they would haul to KapStone?
2 A. That's correct.
3 Q. And who is this gentleman named or nicknamed
4 Spook?
5 A. Spook. That gentleman's name is Allen
6 Higgins.
7 Q. Okay.
8 A. And Allen, his job description would be an
9 overall supervisor for all three crews.
10 Q. All right. So kind of the chain of command
11 then, as I understand it, you're at the top.
12 A. Yeah.
13 Q. Then Spook or Allen Higgins is over all
14 three crews.
15 A. Right.
16 Q. And Al -- What was Al's last name?
17 A. Brown.
18 Q. Al Brown --
19 A. Yeah.
20 Q. -- would be the supervisor on crew number
21 one.
22 A. Yeah.
23 Q. All right. I think you told me a little bit
24 about it. There are two different kind of chips; is
25 that correct?

1 A. That's correct.

2 Q. And tell me a little bit about the
3 distinction between the chips.

4 A. What we call a clean chip is a chip that has
5 a good enough quality to make paper.

6 Q. Okay. That would be a pulp wood chip?

7 A. Yes, it would be a pulp wood chip.

8 Q. All right.

9 A. But, now, even the fuel is a pulp wood chip,
10 too, but the lower diameter -- basically, usually
11 seven-inch diameter and under goes for fuel.

12 Q. So that would be a bigger chip.

13 A. That would be a one-inch chip, correct.

14 Q. All right.

15 A. And the clean chip would be anything over
16 that would not make a log, and that would be a
17 seven-eighths chip or a six-millimeter.

18 Q. And what do they use those clean chips for?

19 A. They use that for -- KapStone is a container
20 company.

21 Q. Okay.

22 A. And they make beverage containers. They're
23 not in the brown paper business anymore, but they
24 make -- they make diable paper for like beer containers
25 and things like that, something that can be stenciled,

1 they make the basic paper for that.

2 Q. Do you make any chips or produce any chips
3 for, I'll call it, landscaping chips, any of that kind
4 of stuff?

5 A. No.

6 Q. All right. So the small chips are for
7 the -- are clean, are called clean chips, and they're
8 more for beverage containers, and the larger chips are
9 for fuel and paper?

10 A. Right. Now, one step I left out is on the
11 clean chips, we debark it. We run it through a
12 debarker. And the fuel chips, we do not. It's dirty.

13 Q. All right. How about the paper chips?

14 A. That's the clean chip. That's debarked.

15 Q. Okay. So paper would be -- there would be
16 two kind of paper. One would be a smaller paper chip
17 would be clean, and they would be used for the
18 stenciled paper, and then the larger paper chip would
19 be used to make just rolls of paper and stuff like
20 that?

21 A. No, sir. When I -- when I say a dirty chip,
22 fuel chip, only thing it's used for is burning.

23 Q. Fuel.

24 A. They use it for BTUs in a generation plant,
25 power plant.

1 Q. And all of the clean chips would either be
2 used for this printable paper that you described --

3 A. Right.

4 Q. -- or either, I guess -- how about --

5 A. They have fuel there also, yes.

6 Q. Okay. You have a portable mill that you
7 take into the woods with you?

8 A. Yes.

9 Q. And what is the capacity to the mill?

10 A. The portable mill?

11 Q. The portable mill.

12 A. It's a 25-inch diameter chipper, 1200
13 horsepower. It will produce probably 600 tons of chips
14 a day.

15 Q. That's amazing. As far as the trucks go,
16 the trucks would go to the site, I guess; is that
17 correct?

18 A. Correct.

19 Q. And how many truck loads typically would one
20 of your people do a day?

21 A. Well, it would mainly depend on how far away
22 from Charleston we were.

23 Q. Okay.

24 A. But just for reasoning purposes, say if we
25 were 50 miles, a typical day would probably be three

1 loads per truck.

2 Q. All right.

3 A. And that would depend on traffic in
4 Charleston because the paper mill in Charleston is in a
5 terrible spot.

6 Q. Sometimes people get slowed down in the mill
7 or backed up?

8 A. Yeah. Sometimes they'll sit in the mill for
9 an hour or so at a time.

10 Q. How many trucks do you have or how many
11 trucks would you have, say, in one of your crews? And
12 by trucks, I mean hauling trucks hauling chips.

13 A. And that again would also depend on the
14 mileage, but on like a 50-mile haul -- and I say
15 50-mile haul because we try not to do anything over a
16 hundred mile. We're insured to be a hundred mile or
17 less. And so on a 50-mile haul we would probably have
18 five trucks, sometimes eight trucks, depending on, you
19 know, the type tract. And some tracts, you're not
20 capable of producing 600 tons. Some tracts you might
21 not be able to produce but 450 tons just simply because
22 ground conditions and other reasons, you know, timber
23 reasons. But if we were on a tract that would run
24 600 tons a day, then we would probably run eight, nine
25 trucks.

1 Q. Okay. The tract that you-all were on the
2 day before Matthew got hurt, can you tell us a little
3 bit about that, where it was?

4 A. I cannot. I couldn't remember where they
5 were at the time.

6 Q. Okay. The waiting time at the mill while
7 filling a truck or waiting time at the job site, I
8 don't know whether I asked you that or not. How long
9 does it take to fill a truck?

10 A. Fifteen minutes.

11 Q. Okay. And you'd run the chip mill in the
12 field, you'd run that basically the whole time that you
13 were out in that particular location or pretty much so?

14 A. Yes.

15 Q. And I guess you have what, a logging crew
16 that would actually cut the wood, then they'd bring it
17 to the -- you have a skidder?

18 A. Correct.

19 Q. And the skid would bring it to the chip
20 mill?

21 A. Correct.

22 Q. And then somehow you'd load it in or put it
23 in the chip mill?

24 A. Yeah.

25 Q. And then it would go in the trucks that

1 would carry it to the mill?

2 A. Correct. You have to feed it with a loader.

3 Q. Okay. Now, how many are employed at your
4 office? You have your office at Wolfe Creek. How many
5 employees do you have in your office itself?

6 A. Two; my wife and my sister-in-law.

7 Q. And what is their job?

8 A. My wife takes care of accounts payables,
9 accounts receivables, and my sister-in-law does my
10 trucking records, mileages, all DOT requirements, such
11 as that.

12 Q. Payroll. Who does the payroll?

13 A. My wife.

14 Q. Okay. And how do you pay individuals like
15 or how -- how was Matthew Green paid?

16 A. He was getting paid hourly.

17 Q. Okay.

18 A. His time started whenever he left with the
19 truck, and his time ended whenever he come back with
20 the truck and parked it.

21 Q. Did he get paid overtime?

22 A. Yes.

23 Q. And how much do you pay overtime? Time and
24 a half?

25 A. Time and a half, yes.

1 Q. And typically, I mean -- I think we can go
2 back -- You pay everything by check, I assume.

3 A. Yes.

4 Q. So I think we can go back and figure out how
5 much he was making on average.

6 A. Right.

7 Q. But, typically, can you give us an idea? I
8 mean, you know, obviously, there are some weeks when
9 you don't work full time, and obviously there's some
10 weeks you work more, but what would be typical?

11 A. I would say Matthew probably averaged 60
12 hours or more.

13 Q. Okay. I think you said that on a particular
14 crew, you could have as many as nine truck drivers?

15 A. Sometimes.

16 Q. And sometimes maybe --

17 A. Five.

18 Q. -- five or six?

19 A. Uh-huh.

20 Q. Somewhere in there.

21 Tell me about Matthew's job. Give me his
22 job description, what he was required to do.

23 A. Well, DOT, Department of Transportation,
24 requires a driver to fill out a pre-trip inspection,
25 which is a walk around of the truck, checking your

1 tires, checking your lights, just normal things that
2 you would do to be safe, and we have that in a standard
3 DOT checklist, so first thing he would do, do that
4 checklist.

5 Q. Is that something you do every day?

6 A. Yes, daily, yes.

7 Q. Do you have to do it -- Do you just do it in
8 the morning when you start?

9 A. It's supposed to be -- they call it a
10 pre-trip inspection, and what they require us to do is
11 just once a day.

12 Q. Okay. You have a particular form. Is it a
13 form from the DOT or is it your form?

14 A. It's a form from the DOT.

15 Q. Okay. And let me ask you this. Do you have
16 a CDL?

17 A. Yes.

18 Q. Okay.

19 A. Well, I don't now. I couldn't pass my
20 physical.

21 Q. But you did at one time?

22 A. Yes.

23 Q. So you're familiar with checklists and that
24 kind of thing.

25 A. Yes.

1 Q. When you had your CDL, have you ever driven
2 a truck down to the mill?

3 A. Yes.

4 Q. And so you're familiar generally with the
5 procedures there also; is that correct?

6 A. That's correct.

7 Q. All right. Goes around and checks the
8 truck, gets in the truck. Continue on. Tell me about
9 his job.

10 A. He would drive to the designated job site.

11 Q. Okay. And who would tell him where the job
12 site was or who would tell him where he was going on a
13 particular day?

14 A. That would be my responsibility.

15 Q. Would you tell him or would you tell, I
16 believe, Al Brown?

17 A. I would do both. It's not a formal
18 condition. I would tell Al, and then Al could tell,
19 you know, the trucks that he knew he was going to have.

20 Q. When the people left your office in the
21 morning at Wolfe Creek, I mean, were you there every
22 morning?

23 A. In the office?

24 Q. At the office.

25 A. No, I'm not there.

1 Q. All right. So when you say you would tell
2 the people, I mean, how would you tell the people?

3 A. Usually by mobile phone the day before.

4 Q. Okay. And how many employees do you have
5 working for you?

6 A. I've got 25.

7 Q. Okay. Would you call all of them to tell
8 them their specific job duties?

9 A. No. Just the trucks. I would tell them
10 where they need to go.

11 Q. All right. What time do you start work in
12 the morning?

13 A. Probably -- depending on where we're at, but
14 probably average 6:00.

15 Q. Okay. Your business is something where I
16 assume the people with the trucks would leave fairly
17 early; I mean they'd get there early and leave early?

18 A. Common, common to leave early, yeah.

19 Q. Do you have any set hours? Do you open up
20 at any particular time?

21 A. Normally our crew starts at 7:00, but that's
22 not set in stone. If we have an abundance of wood left
23 from the day before, we might have two or three trucks
24 come in at 6:00 and load.

25 Q. As far as operation of the trucks, would the

1 driver have a particular truck that they drive every
2 day that would be their designated truck?

3 A. Yes, most of the time, yes.

4 Q. All right. And the trucks were left at the
5 Wolfe Creek facility?

6 A. Not all of them, no.

7 Q. Tell me about that.

8 A. I think, now, Matthew's case, I think he
9 didn't have enough room to park the truck at his house.
10 Now, I could be wrong there, but I think that was the
11 reason why he wanted to park it at the shop. And I
12 have -- you know, sometimes I might have two or three
13 of them park it at the shop and drive there, but I --
14 I'm not against them taking it home, taking the truck
15 home, to keep them from having to drive, you know, to
16 the shop and, you know, back like that.

17 Q. That would be an option that they have?

18 A. That's an option that we discuss before they
19 hire on.

20 Q. Okay. Let's get back to Matthew then and
21 tell me -- I mean, he'd come up. You'd call him, I
22 think, the night before, told him where he needed to
23 be. He'd come up, pick the truck up because he kept it
24 at Wolfe Creek; is that right?

25 A. That's correct.

1 Q. What did he do then? Tell me about some of
2 the other things that he would do.

3 A. Matthew, like any other driver, would --
4 there's no set time that I designate each truck to be
5 in the woods. They know what time we start. They
6 coincide that with their foreman, which would be like
7 an Al Brown. He would indicate to them which -- which
8 trucks he wanted there early or whatever. My
9 requirement was for the trucks to be there at least by
10 7:00 unless they were loaded from the night before. If
11 they were loaded from the night before, obviously, it
12 would depend on when they get unloaded. But Matthew's
13 particular case was one of the trucks that would
14 normally come early. He would normally get -- coincide
15 with Al and then he would get a load early. He was
16 usually one of the first trucks.

17 Q. And I assume this was one of these deals
18 that -- I believe I asked you this. He got paid by the
19 hour?

20 A. Yes.

21 Q. Okay. What was his wage rate? Do you know?

22 A. What was his what?

23 Q. Wage rate. How much did he get paid per
24 hour? He testified about \$15.

25 A. I think that's right, yeah.

1 Q. All right. So if he got there early, you'd
2 have a chance at least to get more loads in; is that
3 fair?

4 A. That's correct. I think the incentive for
5 them to get there early was so they didn't get hung up
6 in that 5:00 traffic in Charleston.

7 Q. I see. Okay. Now, then Matthew would take
8 his loads down to the mill and go back, get more loads,
9 I guess, during the day; is that right?

10 A. That's right.

11 Q. Tell us about any other requirements of his
12 job. I assume there was some paperwork involved.

13 A. Yes. We have a trip report. Of course,
14 we've talked about, you know, the inspection, but we
15 have a trip report where he puts down the tract that
16 he's hauling from and each load that he hauls. Say he
17 goes to KapStone three times that day. He'll have
18 three entries on that trip log. And the reason for
19 that is because we're intrastate, we have intrastate
20 authority. We're not interstate, so we don't have to
21 run a logbook, but we run a trip report, so if DOT
22 stops and audits me, they can look on the trip reports
23 and see how many trips this truck has made to
24 Charleston. So he's required to do that, and he's
25 required to put down his time.

1 Q. When you say DOT, is this U.S. DOT or --

2 A. Yes. South Carolina -- Both, but mostly
3 South Carolina Transport Police.

4 Q. So the federal government has some control
5 over this, even though it's intrastate commerce?

6 A. That's correct.

7 Q. And then the state police authority has
8 control over it, too?

9 A. That's correct. We have a federal DOT
10 number.

11 Q. Okay. So he would have to fill out the trip
12 reports, and you turned the trip reports in, I assume,
13 or --

14 A. Yes.

15 Q. -- you'd have to turn them in also?

16 A. They turn in all their paperwork on Tuesday
17 night or Wednesday morning.

18 Q. What other kind of paperwork would they
19 have?

20 A. They would have their time. They would have
21 their trip sheet. They would have their tickets of
22 every load.

23 Q. Let's talk about the time. How is the time
24 handled?

25 A. Okay. Time goes in on, obviously, not on

1 Tuesday night, but time goes in from Saturday night or
2 Sunday till Monday, but the payables, the tickets that
3 I get paid on, that particular time ends on Tuesday
4 night, so we have to have our tickets to us by
5 Wednesday morning so that we can copy and make sure
6 everything is in order and then get them to our
7 representative at KapStone so that they can pay us.

8 Q. The drivers, as far as the drivers getting
9 paid, is there some kind of meter in the truck? I mean
10 how can you tell --

11 A. No.

12 Q. Do they have a time clock or is it all on
13 the honor system?

14 A. They -- it's an honor system. I do have GPS
15 tracking on the trucks.

16 Q. Okay.

17 A. And I can tell if, you know, something is
18 fudged a lot.

19 Q. And you can tell if they're deviating from
20 their --

21 A. Yeah. I know the routes.

22 Q. You've got pretty well standard routes.

23 A. Right. Right.

24 Q. So if they're going someplace else, you'd
25 know.

1 A. Now, I will tell them what route to run.

2 Q. Okay. And you monitor that?

3 A. Yes.

4 Q. Okay. The tickets at the mill, let's talk
5 about that a little bit. You get paid based on these
6 tickets; is that right?

7 A. I get paid by the ton.

8 Q. Okay. So, I assume the tickets and the
9 accuracy of the tickets and providing the tickets to
10 you is an important part of their job.

11 A. It is the most important part, yes. My --
12 my -- but not only that; I am required to make sure the
13 tickets are there so that the land owner can get paid
14 for his product. They're all paid by the ton, so they
15 have to have a ticket from me in order for us to pay
16 them for their timber.

17 Q. Is it important that the drivers keep track
18 of the tickets?

19 A. It is important.

20 Q. Have you ever had a driver, possibly
21 Matthew, possibly other drivers, lose a ticket?

22 A. Yes.

23 Q. And I assume that's frowned upon by
24 management.

25 A. Yes.

1 Q. Is there a way to recover the information if
2 they lose a ticket?

3 A. Yes.

4 Q. How do you do that?

5 A. What we do is we contact KapStone, and
6 they'll go back to their log on the computer, and then
7 they'll regenerate a ticket for that.

8 Q. But the actual ticket is the receipt. I
9 mean that shows you how much --

10 A. Right.

11 Q. -- you brought in. Now, tell us a little
12 bit about how this thing works. If Matthew is driving
13 to the mill, he'll go in the mill, and I assume there's
14 some scales or something?

15 A. Yes. There's a set of inbound scales, and
16 there's a set of outbound scales.

17 Q. Okay.

18 A. There's five different dumps at KapStone,
19 lifts where you back your truck and trailer, and then
20 it lifts the whole rig up and dumps it out. There's
21 five different dumps there.

22 Q. How long does it take to dump a trailer?

23 A. Five minutes.

24 Q. Okay.

25 A. It takes longer to weigh in, get in line,

1 back on to dump, than it does the actual process of
2 dumping.

3 Q. Sometimes the lines are long?

4 A. Sometimes the lines are long, yeah.

5 Q. You go and you weigh in, and it gives you a
6 weight. Now, how do they subtract the weight of the
7 truck from the tare weight or the weight of the load?

8 A. Whenever they leave the dump, before they
9 exit the paper mill, they go across a set of outbound
10 scales, and they weigh the rig every load.

11 Q. So, the difference then between the weight
12 of the load, the weight of the truck, the whole truck,
13 going in --

14 A. Right.

15 Q. -- and the truck minus the load going out
16 would be the amount of the tare weight of the material.

17 A. That would be the tare weight of the
18 material. That's what I owe the land owner for and
19 that's what I get paid on.

20 Q. And you would determine, basically, your
21 profit based on any agreements you had with the land
22 owner versus what you get for the -- The mill pays you.
23 You pay the land owner; is that correct?

24 A. Correct. Right now I'm working for a
25 dealer, and they would pay the dealer, and the dealer

1 would pay me.

2 Q. All right. So the forms that you needed to
3 have by Wednesday -- and I assume that would be by the
4 time your business opened on Wednesday, 8:00 on
5 Wednesday.

6 A. Right.

7 Q. Did those forms go out, were they processed
8 on Wednesday?

9 A. Yes.

10 Q. And what kind of timeframe was that? Was
11 that done in one day?

12 A. Yes.

13 Q. Did they have to be to KapStone before a
14 certain time?

15 A. They have to be to KapStone or the dealer
16 that we're working with no later than 11:00 Wednesday
17 morning. Now, the fuel chip, the dirty chip, where we
18 haul to the fuel plant, their main office is in
19 California, so we would try to turn those tickets in
20 early. That's why the ladies will get there at 8:00,
21 so they could get those tickets in and done, copied and
22 done and get them to the dealer, so that he could send
23 them to California by fax or however they did it, and
24 then, that way, they could get paid, so he could pay
25 the land owner and pay me.

1 Q. When did you get your checks then?

2 A. Thursday, Thursday evening.

3 Q. And how would you get a check? Would you go
4 down to KapStone?

5 A. No. I would go to my dealer and get it from
6 them.

7 Q. Who is your dealer?

8 A. Tidewater Land and Timber.

9 Q. And they're like a middleman or broker
10 somehow?

11 A. That's right.

12 Q. Do they line up the jobs for you?

13 A. Yeah, uh-huh.

14 Q. So they get a cut then for lining up the
15 job, and they'll tell you where to go, and you work out
16 how much you get per load or per --

17 A. Right.

18 Q. -- ton I guess it is --

19 A. That's correct.

20 Q. -- with them. Does that vary or is that
21 pretty well standard?

22 A. It varies on mileage.

23 Q. Okay. So the paperwork then on Wednesdays
24 needed to be in by 11:00, and that was to California,
25 or did it need to be in before that?

1 A. No. It needed to be in there before, but
2 the -- the lady at Tidewater Land and Timber, the
3 dealer, she would like to have them by 9:30, the
4 tickets going to California. Now, the KapStone
5 tickets, she was more lenient with that. She would
6 take them by 11:00.

7 Q. All right. Was there any policy that you
8 had regarding these tickets and regarding the paperwork
9 that the people couldn't take it home?

10 A. No.

11 Q. I mean -- and I assume by that -- your
12 earlier testimony was that some people even took the
13 truck home, so I assume some of them would take it in
14 the truck?

15 A. I assume.

16 Q. Okay. In any event, it was their
17 responsibility to keep track of the paperwork.

18 A. That's correct.

19 Q. And you gave them -- they had a file folder
20 I guess you provided them?

21 A. Yes.

22 Q. Matthew testified they had a slot in the
23 office door.

24 A. Yes.

25 Q. Was there any policy that, you know, they

1 had to have it there by Tuesday night as opposed to
2 Wednesday morning?

3 A. No. They knew that our procurement time
4 ended on Tuesday night, and so as long as they had them
5 in by Wednesday morning, we were happy with that.

6 Q. Matthew's had two accidents while at least
7 employed with you.

8 A. Right.

9 Q. The accident we're here about was in
10 September, and I think there was an earlier accident in
11 April.

12 A. He actually had three.

13 Q. Okay. In August, backed into?

14 A. Yeah, backed into him.

15 Q. Has there been any lawsuit or anything? I
16 mean that was a fairly nominal --

17 A. Right. I paid for fixing the lady's bumper,
18 and they were happy with that. Now, the other, the
19 prior accident that he was in, was not his fault at
20 all. The people run in the back of him.

21 Q. To your knowledge, do you have any knowledge
22 about the one we're here about today? Have you heard
23 or do you know whether or not that was his fault?

24 A. I don't know.

25 Q. Okay. I think you testified that Matthew,

1 that it's your belief, at least, that he took -- he did
2 not take his truck home because he didn't have any
3 place to park it.

4 A. That was my understanding, yeah.

5 Q. So as far as the paperwork that would come
6 in on Wednesday or Tuesday night or Wednesday, what
7 paperwork did you require? Did it all come in at that
8 time? I mean, as I understand it, you had to have the
9 tickets.

10 A. Right. The most -- some of them would turn
11 their time in on Saturday night if we -- we hardly ever
12 worked Sunday, so Saturday night they might turn in
13 their time, but all of their tickets, load receipts,
14 would have to be in on Tuesday night or Wednesday
15 morning.

16 Q. Okay. And how about the logs that you had
17 for the trucks?

18 A. There's no required time for that. I just
19 expected it at the same time that they turned in their
20 paperwork, their tickets.

21 Q. Okay. So if you expected it at that time,
22 then they would be expected at least -- they're
23 required to turn the tickets in by Tuesday or Wednesday
24 morning by 8:00.

25 A. Right. Correct.

- 1 Q. They are expected to turn the DOT forms in
2 at that time --
- 3 A. Correct.
- 4 Q. -- also.
- 5 A. Right. The DOT doesn't require a turn in
6 time. They just -- they just -- if they would audit,
7 they look at it.
- 8 Q. I see. You got to -- in other words, you
9 get that each week.
- 10 A. Right.
- 11 Q. You put it in a file somewhere.
- 12 A. Correct.
- 13 Q. And then if you're audited, you've got it.
- 14 A. Right.
- 15 Q. And the time sheets could be turned in --
16 When were the drivers paid? When did you pay them?
- 17 A. He's paid from Sunday through Monday.
- 18 Q. When does he get his check?
- 19 A. Thursday, Thursday evening.
- 20 Q. So he'd have to have it at least in by
21 Thursday morning to get paid Thursday evening, or was
22 there any set time as far as your bookkeeping?
- 23 A. My wife would probably be on them pretty
24 heavy if they didn't have it in there by Wednesday.
- 25 Q. Okay. So really they needed to have all

1 their paperwork in Tuesday night or Wednesday.

2 A. Or Wednesday morning, correct.

3 Q. And Matthew testified you-all got a slot in
4 your door.

5 A. And we got a mailbox on the wall.

6 Q. Okay. That particular day -- and I think
7 this thing happened on the 13th of September. When
8 your wife went in that morning, do you know if
9 Matthew's tickets were there?

10 A. They said they were there.

11 Q. And they would have been slipped through the
12 box?

13 A. On the floor, yes.

14 Q. I may have asked you this. I don't want to
15 be redundant. Did anybody ever tell the people that
16 they could not take the paperwork home?

17 A. No.

18 Q. I think I did ask you.

19 A. Yeah, you did ask me, but no, no.

20 Q. And Matthew was driving his car at the time
21 this happened?

22 A. I'm assuming it was his car, same car he
23 always drove.

24 Q. But it certainly wasn't any of your
25 equipment.

1 A. Nothing that I own, no.

2 Q. Have you spoken with Matthew after this
3 accident occurred?

4 A. Spoke to Matthew probably -- probably five
5 or -- five or so weeks ago, called just to check on
6 him.

7 Q. And I think you called even earlier to check
8 on him, too.

9 A. Oh, yeah. I called his aunt and talked to
10 her the very day.

11 Q. Well, I want to thank you for that.

12 A. Yeah. I -- you know, I mean, everybody at
13 Bishop Forest Products likes Matthew.

14 Q. Well, I was getting -- that's basically
15 about the last question I've got. I want to talk with
16 my co-counsel here a minute. But Matthew was a good
17 employee?

18 A. Yes.

19 Q. Did you have any problem with him as far as
20 turning in his forms that he was required to?

21 A. No.

22 Q. Okay. He was honest?

23 A. Yes.

24 Q. Dependable?

25 A. Yes.

1 Q. And I think you said he got there early?

2 A. Yes.

3 Q. And as far as promotions or raises, I think
4 he said when he started working for you, he was making
5 about \$12 an hour?

6 A. Yes.

7 Q. And at least you gave him a raise up to 15
8 an hour?

9 A. That's correct.

10 Q. And I assume that was because he did his job
11 well?

12 A. That is correct.

13 MR. HETRICK: Okay.

14 (Recess taken.)

15 BY MR. HETRICK:

16 Q. All right. On the paperwork, are there
17 basically four forms? The mill tickets and trip
18 tickets.

19 A. Right.

20 Q. The DOT pre-checklist.

21 A. Right.

22 Q. And the DOT trip list.

23 A. Now, that's not a DOT. That trip list is
24 made by us.

25 Q. Okay. The trip list. And then is there a

1 separate form for the payroll?

2 A. Yeah.

3 Q. I mean, is there a form that you give them?

4 A. It's just an office made sheet with each day
5 on it and where you put in the designated area the
6 amount of time.

7 Q. Are there any other forms?

8 A. No.

9 Q. And those four forms would be -- Now, there
10 may be multiple trip tickets.

11 A. Oh, sure, yeah.

12 Q. But those four areas would be what is in the
13 folder that's provided to you on Tuesday or Wednesday.

14 A. That's correct, yes.

15 Q. And as far as compiling information on the
16 forms, is there work that has to be done by the
17 drivers? I mean, do they have to -- with the trip
18 tickets, do they have to compile any summation or do
19 anything like that?

20 A. No.

21 Q. Just give you the tickets.

22 A. Yes.

23 Q. Okay. And as far as the pre-checklist, they
24 would do that --

25 A. Every morning.

1 Q. -- every morning before they go.

2 A. Right.

3 Q. And the DOT trip list, what kind of
4 information do they have to put in?

5 A. The trip list is made -- the form is made up
6 by us, and then it's got on the actual trip list the
7 load number, the time, the date, where it was loaded,
8 where it was unloaded, and I think that's about it.

9 Q. And the driver will fill in that
10 information?

11 A. He would fill in that information, yes.

12 Q. And as far as his time sheet, he would keep
13 a running total of the time, and then he'd add up all
14 his --

15 A. Most of them wouldn't add them up. Most of
16 them would just put the time in the daily spot and then
17 sign it at the bottom.

18 MR. HETRICK: I don't think I have anything
19 further, Adrian. I appreciate your time, and I'm sorry
20 we had to get you away from your business.

21 THE WITNESS: That's fine.

22 MR. HETRICK: Appreciate your interest in
23 Matthew, too.

24 THE WITNESS: Yeah.

25 MR. HETRICK: That's it. Thank you, sir.

1 Have a good day.

2 (The deposition concluded at 3:47 p.m.)

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DATE: 01/11/87

Ticket: 3077344
 Tract: S-TLT-Cainhoy Plantation
 Primary: S-TLT-Cainhoy Plantation
 Vendor: TIDEWATER LAND & TIMBER INC
 Buying: SNV DPS
 State: SC
 County: BERKELEY
 Landown: CAINHOY PLANTATION
 Comod: Pine chips
 Sort: Unscreened
 Species: NA
 Date In: 12/Jan/18 13:23
 Weight: 88360 LBS
 Date Out: 12/Jan/18 11:57
 Weight: 25960 LBS
 Net Ton: 29.19 TON
 Driver: CHARLES
 Truck #: 002
 BOL/Ven:
 Scales: C. UScale
 un-out empty-Open

Ticket: 3077344
 Tract: S-TLT-Cainhoy Plantation
 Primary: S-TLT-Cainhoy Plantation
 Vendor: TIDEWATER LAND & TIMBER INC
 Buying: SNV DPS
 State: SC
 County: BERKELEY
 Landown: CAINHOY PLANTATION
 Comod: Pine chips
 Sort: Unscreened
 Species: NA
 Date In: 12/Jan/18 09:06
 Weight: 85040 LBS
 Date Out: 12/Jan/18 09:53
 Weight: 30400 LBS
 Net Ton: 27.50 TON
 Driver: CHARLES
 Truck #: 002
 BOL/Ven:
 Scales: C. UScale
 un-out empty-Open

Ticket: 3077320
 Tract: S-TLT-Cainhoy Plantation
 Primary: S-TLT-Cainhoy Plantation
 Vendor: TIDEWATER LAND & TIMBER INC
 Buying: SNV DPS
 State: SC
 County: BERKELEY
 Landown: CAINHOY PLANTATION
 Comod: Pine chips
 Sort: Unscreened
 Species: NA
 Date In: 12/Jan/18 16:14
 Weight: 89140 LBS
 Date Out: 12/Jan/18 16:38
 Weight: 29960 LBS
 Net Ton: 29.59 TON
 Driver: CHARLES
 Truck #: 002
 BOL/Ven:
 Scales: C. UScale
 un-out empty-Open

Ticket: 3077320
 Tract: S-TLT-Cainhoy Plantation
 Primary: S-TLT-Cainhoy Plantation
 Vendor: TIDEWATER LAND & TIMBER INC
 Buying: SNV DPS
 State: SC
 County: BERKELEY
 Landown: CAINHOY PLANTATION
 Comod: Pine chips
 Sort: Unscreened
 Species: NA
 Date In: 13/Jan/18 08:47
 Weight: 86720 LBS
 Date Out: 13/Jan/18 09:04
 Weight: 29860 LBS
 Net Ton: 28.43 TON
 Driver: CHARLES
 Truck #: 002
 BOL/Ven:
 Scales: C. UScale
 un-out empty-Open

WAPSTONE CHARLESTON KRAFT
 Charleston Truck Scales
 Loop Pa: 263109
 Ticket: 30774113
 Tract: S-TLT-Cainhoy Plantation
 Primary: S-TLT-Cainhoy Plantation
 Vendor: TIDEWATER LAND & TIMBER INC
 Buying: SNV DPS
 State: SC
 County: BERKELEY
 Landown: CAINHOY PLANTATION
 Comod: Pine chips
 Sort: Unscreened
 Species: NA
 Date In: 13/Jan/18 10:50
 Weight: 80740 LBS
 Date Out: 13/Jan/18 11:14
 Weight: 30100 LBS
 Net Ton: 28.32 TON
 Driver: CHARLES
 Truck #: 002
 BOL/Ven:
 Scales: C. UScale
 un-out empty-Open

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

s/ Andrea C. Roche
Andrea C. Roche, Esquire
Mickle & Bass, LLC
Post Office Box 5639
Columbia, South Carolina 29250
(803) 929-0029
aroche@mickleandbass.com
SC Bar No. 7563

Attorney for Appellant

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