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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE WORKERS COMPENSATION COMMISSION

David W. Huffstetler, Commissioner
Andrea C. Roche, Commissioner
Avery B. Wilkerson, Jr., Commissioner

WCC File No. 1003812

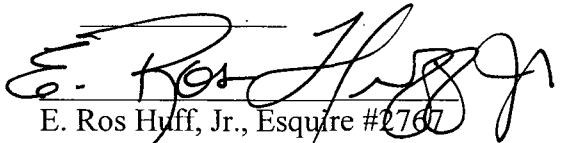
Andrew Marrs, ... Respondent,

v.

1751, LLC d/b/a Saludas and
The South Carolina Uninsured Employer's Fund, ... Defendants,
Of Whom

1751, LLC d/b/a Saludas is the Appellant.

Record on Appeal



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SC COURT OF APPEALS

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BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Andrew Marrs,

Employee,

vs.

1751, LLC d/b/a Saluda's

Unqualified Self-Insurer,
Employer,

and

Uninsured Employer's Fund,

Carrier.

WCC FILE NO: 1003812

ORDER

HEARING:

Held in Columbia, South Carolina on September 23, 2010

APPEARANCES:

Claimant was represented by Allison P. Sullivan, Esquire
of Bluestein, Nichols, Thompson and Delgado, LLC

Defendants 1751, LLC d/b/a Saludas was represented by
E. Ros Huff, Jr., Esquire of the Huff Law Firm, LLC

Uninsured Employer's Fund was represented by Lisa C.
Glover, Esquire

PURPOSE OF HEARING:

To determine the issues as set forth in the Form 50 and
Form 51

DECISION AND ORDER:

Commissioner T. Scott Beck

ORDER FILED:

December 17, 2010

*Form 3c due
from CI party
12/28/10
(aw)*

STIPULATIONS

At the commencement of this hearing, counsel for the respective parties stipulated that:

1. The purpose of the hearing was to determine the issues raised by the Forms 50 and 51.
2. Notice of the hearing was timely and properly served upon the parties of interest.
3. Venue was properly set in Columbia, South Carolina, pursuant to South Carolina Code Annotated Section 42-17-20.
4. The Commission's file was made part of the record in this matter with the exception of any self-serving declarations and unstipulated medical reports.
5. The average weekly wage is \$265.00 with the resulting compensation rate of \$176.67.

APA

<u>APA Number</u>	<u>Physician</u>	<u>Dates</u>	<u>Page Numbers</u>
1	Doctor's Care	3/8/10-5/15/10	1-6
2	Progressive Physical Therapy	3/8/10 – 3/12/10	7-8
3	Palmetto Imaging	5/12/10	9-10
4	Dr. Jeffrey Guy	6/17/10	11-12

STATEMENT OF THE CASE

The Claimant contends that on March 3, 2010 while in the course and scope of his employment, he injured his left knee. The Claimant seeks temporary total disability benefits, medical treatment for his injuries, and further seeks sanctions against the Defendants for unreasonable denial of this claim. Defendants deny that the Claimant sustained an accidental

injury arising out of or in the course of employment and therefore the claimant is not entitled to benefits under the Act. The Uninsured Employer's Fund has issued a general denial to the claim.

EVIDENCE OF THE CASE

The Claimant alleges that on March 3, 2010 he clocked in around 4:30pm for his shift as a cook at Saluda's Restaurant. (Hearing Transcript p. 12 ln. 19-22). The Claimant further alleges that after he clocked in, the head chef determined that he was going to send one of the cooks home. (Hearing Transcript p. 13 ln 20-22). At that time, the Claimant's co-employee, Rob Helvey, was told to go home. The Claimant said that he walked outside the back door to speak with Rob regarding any prep work that was left to be done. The Claimant indicated that Rob was at the bottom of the steps, so in order to hear him better, the Claimant walked down the steps. He testified that as he was walking down the steps, he suddenly fell forward when his knee buckled. (Hearing Transcript p. 14 ln 13-25). The Claimant stated that after holding his knee in pain, he returned back to his work station and told the head chef Blake Farris that he hurt himself. (Hearing Transcript p. 14 ln 2-13). Not long after, Mr. Farris decided to let someone else go home, and the Claimant indicated he needed to go home because he was in pain. (Hearing Transcript p. 14 ln 13-15).

On direct examination, the Claimant testified that he knew that the back steps were in disrepair because another employee was previously injured on the steps. (Hearing Transcript p. 19 ln 10-14). "Originally, he was informed by one of his co workers about the broken stair because he was one of the ones who had stepped on it...he was later informed by Mr. Cook...that the stair was broken." (Hearing Transcript p. 27 ln 2-6). In addition, he stated that tape had been placed on the stairs a number of times to indicate the potential danger on the stairs. (Hearing Transcript p. 27 ln 17-18). When asked upon cross examination if he agreed that the

tape was placed on the steps as a warning to people that the step was broken, the Claimant agreed. (Hearing Transcript p. 33 ln 9-12). He further testified on cross examination that he was told maybe two to three weeks prior to his incident that the step was defective. (Hearing Transcript p. 32 ln 12 - 17). In addition, he was told the step was broken by Ali, a coworker (Hearing Transcript p. 32 ln 18 - 23) Mr. Cook, the owner of Saluda's, (Hearing Transcript p. 32 ln 24-25) and also Richard Burts, the landlord of the building (Hearing Transcript p. 33 ln 1-5).

The Claimant's attorney then called Rob Helvey to the stand. Mr. Helvey testified that [steps] were in bad shape. (Hearing Transcript p. 40 ln 10-14). Mr. Helvey also testified that Mr. Marrs was not the first person to have an incident on the stairs. (Hearing Transcript p. 41 ln 13 - 18). He also stated that there was tape on the steps to warn about the danger of the one missing stair. (Hearing Transcript p. 42 line 25). Generally the tape was there about 60% of the time. (Hearing Transcript p. 42 ln 3-7). Mr. Helvey then stated that everyone knew the stairs weren't exactly the safest in the world. (Hearing Transcript p. 44 ln 6 - 8).

Mr. Blake Ferris, the executive chef testified next. Mr. Ferris testified that before the step was broken, everyone came up the back steps. That after the step broke, the employees were instructed to come up the front door. (Hearing Transcript p. 48 ln 5-15). On cross examination, Mr. Ferris indicated that there was tape put on the steps as a warning to employees multiple times. (Hearing Transcript p. 49 ln 6-9). Mr. Ferris specifically said that Steve Cook said not to walk down the [back] steps. Mr. Ferris was asked whether there was ever any communication from Mr. Cook to him and the other employees instructing them because of the danger on the steps not to use them. Mr. Ferris' response was "Yes, sir. I came in the back of the kitchen and this is what I recollect. He was right in front of the back door. And he said, hey, do not walk down these steps. The step is broken. He did say that." (Hearing Transcript p. 50 ln 6-10). It was

obvious why Mr. Cook told them that, because the step was broken. (Hearing Transcript p. 50 ln 16-17). Mr. Ferris also testified that Richard Burts came into the kitchen and told people not to use the steps and he put up tape. (Hearing Transcript p. 50 ln 5-9).

Steven Cook was then called to the stand by the Defendants. Mr. Cook indicated that he is the owner of the restaurant. (Hearing Transcript p. 54 ln 1 – 4). Mr. Cook testified that prior to March 3, 2010 (the date of the alleged incident), if there were four connectors, one was broken so that the stair was loose. (Hearing Transcript p. 56 ln 20-21). He indicated that another employee, Ali, had an incident on the steps. (Hearing Transcript p. 57 (ln. 15-21). That over the course of the next three to four weeks, they put tape at the bottom of the stairs and tried to block them. (Hearing Transcript p. 57 ln 2-8). On multiple occasions, Mr. Cook said that he told the employees not to use the stairs. He testified that he specifically instructed the employees not to use the stairs because there was no reason to use them because someone could get injured. (Hearing Transcript p. 59 ln 10-14). He further said that he “made it clear to all employees that work in different departments. I made it clear to all of the servers. I made it clear to all of the back of the house. And I specifically made it clear to Blake who was really the only supervisor that he controls the kitchen employees.” (Hearing Transcript p. 59 ln 1 – 6). When asked whether he specifically told Mr. Marrs not to use those steps, his response was “yes.” (Hearing Transcript p. 59 ln 7-9). The fire code prevents them from locking the door, but he instructed them not to use the stairs. (Hearing Transcript p. 71 ln 15-19). Commissioner Beck then asked the witness questions regarding his conversations with the Claimant. Mr. Cook indicated that they have a line up every day with all of the employees and on multiple occasions he told everyone during those gatherings not to use the back steps. (Hearing Transcript p. 62 ln 23-25 and p. 62 ln 1-12). Upon being questioned by Commissioner Beck, Mr. Cook said that he was one hundred percent

sure that he told Mr. Marrs not to use the steps because after the incident occurred he remembers telling the Claimant that he was told not to go on the steps and Mr. Marrs didn't refute that. (Hearing Transcript p. 63 ln 2-14). On re-direct examination, Mr. Cook stated that Mr. Burts, the landlord was present during these lineups and he also instructed the employees not to use the back steps. (Hearing Transcript p. 64 ln 7-15). On cross-examination, Mr. Cook testified that for two to three weeks he made a point during the employee lineups to tell them not to use the back steps. (Hearing Transcript p. 65 ln 1-5).

FINDINGS OF FACT

Based upon the testimony of the Claimant, the documentary evidence submitted by the respective parties pursuant to the Administrative Procedures Act, the Commission's file relative to this claim, and the greater weight of the evidence, I find the following:

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act. This finding is based upon the stipulations and admissions of the parties.
2. Jurisdiction and venue are proper. I base this upon the stipulations of the parties.
3. An employer/employee relationship existed on March 3, 2010 between the Claimant and the Employer. I base this finding upon the stipulation of the parties.
4. The Claimant's average weekly wage is \$265.00 with a corresponding compensation rate of \$176.67. This finding is based upon the stipulation of the parties.
5. The Claimant knew that the back steps were in disrepair because a co-employee previously injured himself on the steps. I base this finding on the testimony submitted.
6. The Claimant was told two to three weeks prior to his incident that the steps were defective. I base this finding on the testimony submitted.

7. The Claimant was specifically instructed, on multiple occasions, not to use the back steps by the owner of the restaurant, Steve Cook, and the landlord, Richard Burts. I base this finding on the testimony of Steve Cook and Blake Ferris.
8. The Claimant has failed to meet his burden of proof to show that he suffered from an accidental injury arising out of and in the course of his employment.

CONCLUSIONS OF LAW

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.
2. Under Section 42-17-20 jurisdiction and venue are proper.
3. Under Section 42-1-130 the Claimant was an employee.
4. Under Section 42-17-140, 1751 LLC, dba Saluda's was an employer.
5. Under Section 42-1-150, an employer/employee relationship existed on March 3, 2010.
6. Under Section 42-1-40, the Claimant's average weekly wage is \$265.00 with a corresponding compensation rate of \$176.67.
7. Under Section 42-1-160 the Claimant did not suffer from an accidental injury arising out of and in the course of his employment.
8. Under Section 42-3-180 and 42-17-40 the claimant did not carry his burden of proof by submission of proof that would entitle him to benefits.
9. Pursuant to Wright v. Bi-Lo, Inc., 314 S.C. 152, 442 S.E.2d 186, the Claimant is not entitled to benefits based on the fact that he was instructed not to use the back steps.

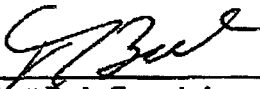
ORDER

IT IS THEREFORE ORDERED that the Claimant did not sustain an accidental injury arising out of and in the course of his employment and his claim is denied.

IT IS FURTHER ORDERED that the Claimant is not entitled to workers' compensation benefits

IT IS FURTHER ORDERED that no costs are assessed for this hearing

AND IT IS SO ORDERED.



T. Scott Beck, Commissioner

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.
December 17, 2010

By: Amy Bracy, Administrative Assistant to Commissioner Beck

APPELLATE PANEL
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

ORDER

WCC File No: 1003812

Andrew Marrs,
Claimant/Appellant

v.

1751, LLC d/b/a Saluda's,
Defendant/Respondent

and

South Carolina Uninsured Employer's Fund,
Defendant/Respondent

Appellate Panel Review held in Columbia,
South Carolina on April 19, 2011, per
notices timely and properly served on all
parties of interest.

Appellate Panel Decision and Order filed

7-14

2011

APPELLATE PANEL
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

ORDER

WCC File No: 1003812

Andrew Marrs,
Claimant/Appellant

v.

1751, LLC d/b/a Saluda's,
Defendant/Respondent

and

South Carolina Uninsured Employer's Fund,
Defendant/Respondent

Appellate Panel Review held in Columbia,
South Carolina on April 19, 2011, per
notices timely and properly served on all
parties of interest.

Appellate Panel Decision and Order filed

7-14, 2011

Appearances: Claimant represented by Blake A. Hewitt, Esquire, BLUESTEIN,
NICHOLS, THOMPSON & DELGADO, LLC, P.O. Box 7965,
Columbia, South Carolina, 29202

Defendant represented by E. Ros Huff, Jr., Esquire, HUFF LAW FIRM,
LLC, P.O. Box 1935, Irmo SC 29063

The South Carolina Uninsured Employer's Fund represented by Lisa
C. Glover, Esquire

This case comes before the Appellate Panel on an application for review filed by the Claimant/Appellant, Andrew Marrs. The Claimant suffered an injury when he stepped on a broken stair on the back staircase at Saluda's, a restaurant operated by Defendant/Respondent 1751 LLC. The primary issue presented for review is whether the claim is barred because the Claimant was instructed not to use the back steps. If the claim is not barred, the Claimant argues that he is entitled to medical treatment and temporary total disability benefits.

By a majority vote, the Appellate Panel finds that the claim is compensable. The panel therefore reverses the Hearing Commissioner's finding to the contrary and remands this case for a determination of benefits.

Commissioner Wilkerson dissents and would affirm the Hearing Commissioner's decision.

STATEMENT OF THE CASE

Most of the facts of this case are not in dispute. The Claimant injured his left knee on March 3, 2010, while walking down the back steps at Saluda's – a restaurant where the Claimant was employed as a cook. The Claimant injured his knee when he stepped on a metal stair that had rusted and broken away from the staircase on one side. See (Tr. of Hr'g, p.22, lines 6–24) (describing the broken stair). He was originally diagnosed with a knee sprain, but later examination revealed tears to his ACL and meniscus. (Tr. of Hr'g, p.26, lines 3–16).

Right before his injury, the Claimant had been given permission to go on a "smoke break." (Tr. of Hr'g, p.16, lines 11–20). The Claimant testified that he walked out onto the platform at the top of the back stairs to smoke his cigarette. Id. The executive chef at Saluda's had dismissed one of the Claimant's co-workers to go home early, and when the Claimant saw this co-worker still standing at the bottom of the back stairs, the Claimant began to talk to him to see if there were other things that needed to be done in the

kitchen. (Tr. of Hr'g, p.15, lines 16-25; p.16, lines 13-20). According to the Claimant, he could not understand what his co-worker was saying, so he began walking down the stairs. (Tr. of Hr'g, p.16, lines 21-22). The Claimant was injured when he stepped on the broken stair and the stair gave way. (Tr. of Hr'g, p.16, line 22-p.17, line 1). He was able to avoid falling by grabbing the staircase rail. Id.

The Claimant commenced this action on March 23, 2010, by filing a Form 50. On this form, he requested temporary total disability benefits from the date of his injury and continuing, and he alleged that he needed medical examination and treatment for his left knee, leg, and foot.

An investigation by the Commission's compliance division revealed that Saluda's was subject to the Workers' Compensation Act but was uninsured on the date of the Claimant's accident. The Claimant then served the Uninsured Employer's Fund, which filed a general-denial answer on May 20, 2010.

Saluda's appeared in the case by filing a motion to postpone the hearing which was set to occur on August 19, 2010. See (Motion to Postpone, dated Aug. 13, 2010). Saluda's did not file an answer, but its Form 58 pre-hearing brief outlined that it contested whether the Claimant's injury was compensable,

whether he was entitled to temporary disability benefits, whether he was entitled to medical care, and the amount of his compensation rate.

A Hearing Commissioner heard the case on September 23, 2010, and in an order filed December 17, 2010, the Hearing Commissioner made the following findings of fact and conclusions of law:

Findings of Fact

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act. This finding is based upon the stipulations and admissions of the parties.
2. Jurisdiction and venue are proper. I base this upon the stipulations of the parties.
3. An employer/employee relationship existed on March 3, 2010 between the Claimant and the Employer. I base this finding upon the stipulation of the parties.
4. The Claimant's average weekly wage is \$265.00 with a corresponding compensation rate of \$176.67. This finding is based upon the stipulation of the parties.
5. The Claimant knew that the back steps were in disrepair because a co-employee had previously injured himself on the steps. I base this finding on the testimony submitted.
6. The Claimant was told two to three weeks prior to his incident that the steps were defective. I base this finding on the testimony submitted.

7. The Claimant was specifically instructed, on multiple occasions, not to use the back steps by the owner of the restaurant, Steve Cook, and the landlord, Richard Burts. I base this finding on the testimony of Steve Cook and Blake Ferris.
8. The Claimant has failed to meet his burden of proof to show that he suffered from an accidental injury arising out of and in the course of his employment.

Conclusions of Law

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.
2. Under Section 42-17-20 jurisdiction and venue are proper.
3. Under Section 42-1-130 the Claimant was an employee.
4. Under Section 42-17-140, 1751 LLC, dba Saluda's was an employer.
5. Under Section 42-1-150, an employer/employee relationship existed on March 3, 2010.
6. Under Section 42-1-40, the Claimant's average weekly wage is \$265.00 with a corresponding compensation rate of \$176.67.
7. Under Section 42-1-160, the Claimant did not suffer from an accidental injury arising out of and in the course of his employment.

8. Under Section 42-3-180 and 42-17-40, the Claimant did not carry his burden of proof by submission of proof that would entitle him to benefits.
9. Pursuant to Wright v. Bi-Lo, Inc., 314 S.C. 152, 442 S.E.2d 186 (Ct. App. 1994), the Claimant is not entitled to benefits based on the fact that he was instructed not to use the back steps.

(Or. of Dec. 17, pp.6-7).

On December 29, 2010, the Claimant filed a Form 30 requesting that the Commission review the Hearing Commissioner's order. The Claimant filed a brief in support of his application for review, and Saluda's filed a brief in opposition. On April 19, 2011, the Appellate Panel conducted oral argument.

The Claimant's chief argument on appeal is that his employer's instruction not to use the back steps did not limit the sphere of his employment, but was instead a rule that governed the Claimant's conduct while he was working. The Claimant posits that under such circumstances, Wright v. Bi-Lo provides that his injury is compensable. The Claimant also argues that he is entitled to medical treatment and temporary total disability benefits.

For its part, the employer argues that the instructions not to use the back stairs were specific prohibitions that limited the sphere of the Claimant's employment.

Section 42-17-50 of the South Carolina Code provides that if a party requests Commission review of the Hearing Commissioner's decision, the Appellate Panel "shall review the award and, if good grounds be shown therefore, reconsider the evidence, receive further evidence, rehear the parties or their representatives and, if proper, amend the award." After careful review of the evidence in the Commission's file, the parties' briefs, and the oral arguments presented, the Appellate Panel, by majority vote, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

Pursuant to section 42-3-20 of the South Carolina Code, the undersigned Commissioners find the following facts based upon a preponderance of the evidence, the parties' stipulations, the witnesses' testimony, and the APA submissions:

1. The parties to the proceedings are subject to and bound by the provisions of the South Carolina Workers' Compensation Act, per stipulation by both parties.
2. The Claimant's average weekly wage is two hundred sixty-five dollars and 00/100 (\$265.00) with a resulting compensation rate of one hundred seventy-six dollars and 67/100 (\$176.67), per stipulation by both parties.
3. The Claimant suffered a compensable injury to his left lower extremity when he was injured while in the scope and course of his employment with 1751, LLC, d/b/a Saluda's. The Claimant suffered an ACL tear, a calcified loose body in the lateral aspect of the knee, a bony contusion on the medial tibial plateau, and a small posterior horn tear of the medial meniscus when he stepped on a defective stair. (APA pp.9, 11-12). The Claimant's injury was sustained while he was on a permissive smoke break while working for Saluda's. (Tr. of Hr'g, pp. 16-17). The Claimant testified that he was usually allowed to take smoke breaks and that he did not have to clock out when he went on a smoke break. (Tr. of Hr'g, pp. 17 & 18). The

Claimant knew that the stair was broken, (Tr. of Hr'g, pp. 24, 38), but the mere knowledge of the defective stair did not remove him from the course and scope of his employment with Saluda's.

4. The Claimant was discussing his employment with another employee when he was injured and was therefore engaged in work-related conduct. He was not acting in a manner inconsistent with his employee status. (Tr. of Hr'g, p. 15, lines 16-25; p. 16, ll. 11-22).

5. Hearing costs are not assessed against either party.

CONCLUSIONS OF LAW

As provided by section 42-17-40 of the South Carolina Code, it is the determination, finding, and ruling of the undersigned commissioners:

1. At the time of the accident, the Claimant and the Employer were covered parties under the provisions of the South Carolina Workers' Compensation Act. See S.C. Code Ann. §§ 42-1-130, 42-1-140, 42-1-400.

2. The Claimant's average weekly wage was two hundred sixty-five dollars and 00/100 (\$265.00) with a resulting compensation rate that has been calculated correctly at one hundred seventy-six dollars and 67/100 (\$176.67). See S.C. Code Ann. §§ 42-1-40, 42-1-50.
3. The Claimant sustained an injury to his left knee on March 3, 2010, while on a smoke break and was still within the course and scope of his employment with the Employer under S.C. Code Ann. § 42-1-160. See *Holley v. Owens Corning Fiberglass Corp.*, 301 S.C. 519, 392 S.E.2d 804 (Ct. App. 1990) (aff'd 302 S.C. 518, 397 S.E.2d 377 (1990)) (stating that an accident "arises out of" employment when a causal connection exists between the conditions under which the work is required to be performed and the resulting injury, which is apparent to the rational mind upon consideration of all the circumstances surrounding the injury); see also *McCoy v. Easley Cotton Mills*, 218 S.C. 350, 62 S.E.2d 772 (1950) (stating that while smoking was not, of course, one of the obligatory duties of a worker's employment, it was something

permitted by the employer. Consequently, no break in claimant's employment resulted from the fact that he temporarily left his job and walked outside the building to smoke).

4. *Wright v. Bi-Lo*, 314 S.C. 152, 153, 442 S.E.2d 186, 187 (Ct. App. 1994), is not applicable to the facts of this case. *Wright* recognizes that an employer can use prohibitions to limit the scope of a worker's employment. Mr. Wright was forbidden from chasing shoplifters, and when he chose to do so despite this prohibition, he stepped outside the role of a worker going about his employer's business. The Claimant's accident was different. The Claimant was injured during a smoke break while talking to another chef about work. These activities fall within the course and scope of employment. See, e.g., *Ardis v. Combines Ins. Co.*, 380 S.C. 313, 324, 669 S.E.2d 628, 634 (Ct. App. 2008). The personal comfort doctrine specifically recognizes that acts like eating, drinking, smoking, and resting are "are necessary to the life, comfort, and convenience of the [employee] while at work, . . . and injury sustained in the performance thereof is deemed to have arisen out

of the employment." *Id.* at 324, 669 S.E.2d at 634 (quoting *Gibson v. Spartanburg Sch. Dist.*, 338 S.C. 510, 519, 526 S.E.2d 725, 730 (Ct. App. 2000)).

5. The Claimant's action of walking down the back stairs did not take him outside the sphere of his employment. See *Wright v. Bi-Lo, Inc.*, 314 S.C.152, 442 S.E.2d 186 (Ct. App. 1994). Despite being told not to use the back stairs, the Claimant's action was within the scope of his employment because "not every violation of an order given to a workman will necessarily remove him from the protection of the Workmens' Compensation Act ... 'Certain rules concern the conduct of the workman within the *sphere of his employment*, while others *limit the sphere itself*. A transgression of the former class leaves the scope of his employment unchanged, and will not prevent the recovery of compensation, while a transgression of the latter sort carries the workman outside of the sphere of his employment and compensation will be denied.'" *Id.* at 155, 442 S.E.2d at 188 (emphasis in original) (quoting *Johnson v.*

Merchs. Fertilizer Co., 198 S.C. 373, 378-79, 17 S.E.2d 695, 697-98 (1941)).

6. The Respondents did not dispute that the Claimant was talking to another employee about his employment when he was injured; therefore, while on a personal comfort break that was incidental to his work, the Claimant was still engaging in work-related behaviors. See *McCoy v. Easley Cotton Mills*, 218 S.C. 350, 62 S.E.2d 772 (1950) (stating that smoking is an activity that falls within the personal comfort doctrine).

ORDER/AWARD

The Commission reverses the Hearing Commissioner's finding that pursuant to Wright v. Bi-Lo, the Claimant is not entitled to workers' compensation benefits. This case is remanded to the Hearing Commissioner for a determination of benefits.

AND IT IS SO ORDERED.

By:



David W. Huffstetler

Commissioner

FULL REVERSAL WITH REMAND

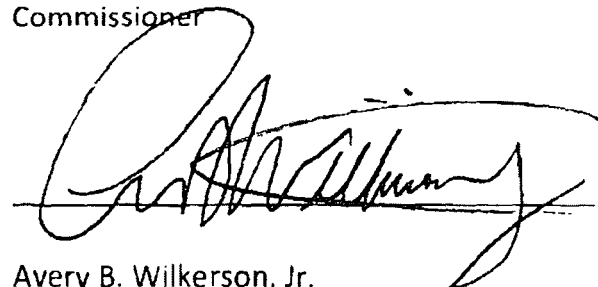
CONCUR:



Andrea C. Roche

Commissioner

DISSENT:



Avery B. Wilkerson, Jr.

Commissioner

CERTIFICATE OF SERVICE

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

This 14 day of July, 2006
By Valerie D. Dettler

Administrative Assistant to the Commissioner

Lisa C. Glover

E. Ros. Huff, Jr.

Allison P. Sullivan

Blake A. Hewitt

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1003812

Andrew Marrs,
Employee/Claimant

versus

1751, LLC d/b/a Saluda's,
Employer/Defendant

and

South Carolina Uninsured Employer's Fund,
Defendant.

Hearing: Held on November 21, 2011, in Columbia, South Carolina

Appearances: Claimant represented by Allison P. Sullivan, Esquire,
Bluestein, Nichols, Thompson & Delgado, LLC, P.O. Box
7965, Columbia, South Carolina, 29202.

Defendant represented by E. Ros Huff, Jr., Esquire, Huff Law
Firm, LLC, PO Box 1935, Irmo SC 29063

The South Carolina Uninsured Employer's Fund represented
by Lisa Glover, Esquire.

Purpose of Hearing: Remand on issues as set for by Full Commission Order

Decision and Order: By Commissioner Andrea C. Roche

*Notice of appeal
SC COM.
3/9/12
can*

Filed:

February 13, 2012

STIPULATIONS

The attorneys representing the parties to this action stipulated as follows:

1. The Claimant's average weekly wage is two hundred sixty-five dollars and 00/100 (\$265.00) with a resulting compensation rate of one hundred seventy-six dollars and 67/100 (\$176.67).
2. The hearing's venue was properly set in Columbia, SC.
3. The case file and Commissioner's notes shall be made a part of the record.
4. The Claimant is in need of left ACL reconstruction.
5. The Claimant gave his employer proper notice of his alleged injury.

A.P.A. SUBMISSIONS

Under the Administrative Procedures Act (A.P.A.), S.C. Code Ann § 1-23-310 *et seq.* (1986 & Supp. 2009), the following records and exhibits were submitted:

<u>Exhibit No.</u>	<u>Description</u>	<u>Pages</u>
Claimant's A.P.A. #1	Records of Doctor's Care	1-6

Claimant's A.P.A. #2	Records of Progressive Physical Therapy	7-8
Claimant's A.P.A. #3	Records of Palmetto Imaging	9-10
Claimant's A.P.A. #4	Records and Signed Report of Dr. Jeffrey Guy	11-15
Claimant's Exhibit A	Medical Bill of Doctor's Care	\$372.00
Claimant's Exhibit B	Medical Bill of Palmetto Imaging	\$460.00
Claimant's Exhibit C	Medical Bill of Dr. Jeffrey Guy	\$430.00
Claimant's Exhibit D	Medical Bill of DJO, LLC Brace	\$475.00
Claimant's Exhibit E	Subpoena directed to 1751, LLC, a/k/a Saluda's	
Claimant's Exhibit F	Claimant's Motion to Compel	
Claimant's Exhibit G	Affidavit of Melinda Hoffman	
Claimant's Exhibit H	SC Secretary of State business listing for 1751, LLC	

- Claimant's Exhibit I Copy of unclaimed mail envelope addressed to 1751, LLC, a/k/a Saluda's that contained Claimant's Form 50. The original mail date was 03/24/10.
- Claimant's Exhibit J Copy of unclaimed mail envelope addressed to 1751, LLC, a/k/a Saluda's that contained Claimant's subpoena to employer for employee information.
- Claimant's Exhibit K File of South Carolina Vocational Rehabilitation
- Claimant's Exhibit L Job Search Documentation

STATEMENT OF THE CASE

The Claimant commenced this action on March 23, 2010, by filing a Form 50, in which he alleged an injury while in the course and scope of his employment to his left knee. On this form, he requested temporary total disability benefits from the date of his injury and continuing, and he alleged that he needed medical examination and treatment for his left knee, leg, and foot.

An investigation by the Commission's compliance division revealed that Saluda's was subject to the Workers' Compensation Act but was uninsured on

the date of the Claimant's accident. The Claimant then served the Uninsured Employer's Fund, which filed a general denial answer on May 20, 2010.

Defendant Saluda's denied the case and alleged that the claimant did not sustain a compensable injury by accident rising out of and in the course of his employment. Defendant Saluda's was uninsured at the time of this incident. The South Carolina Uninsured Employer's Fund was present at the hearing and was represented by Lisa Glover, Esquire. The South Carolina Uninsured Employer's Fund generally denied Claimant's claim for benefits.

This matter was initially heard on September 23, 2010, by Commissioner T. Scott Beck. Commissioner Beck held that Claimant's injury did not occur within the scope of his employment. The Appellate Panel reversed the Commissioner's decision and remanded the case to the single Commissioner for a determination of benefits. Defendants appealed the Appellate Panel's decision to the South Carolina Court of Appeals. Claimant filed a Motion to Dismiss the appeal, arguing the interlocutory order of the Appellate Panel is not immediately appealable because the Appellate Panel's remand to the single

Commissioner for a determination of benefits is not a final decision and is not immediately appealable. Claimant's Motion to Dismiss the appeal before the Court of Appeals was granted on September 21, 2011. As a result, this hearing was held on November 21, 2011, before Commissioner Roche for a determination of Claimant's benefits, specifically his entitlement to past and future causally related medical benefits and temporary total disability benefits from March 3, 2010, through November 7, 2011.

EVIDENCE OF THE CASE

The witnesses at the hearing were as follows:

1. The Claimant

Claimant's Case in Chief

Direct Examination of Claimant by Allison P. Sullivan, Esquire:

Claimant testified that his full name is Andrew Richard Marrs (Hrg. Tr. p.7). Claimant testified that he is 30 years old and his date of birth is August 4, 1981 (Hrg. Tr. p.7). Claimant testified that in he is single and has no dependents currently reliant on him for financial support. *Id.*

Claimant testified that he last worked for Saluda's Restaurant on March 3, 2010, prior to starting his new job at American Red Cross on November 7, 2011. *Id.* Claimant explained his unemployment from March 3, 2010, through November 7, 2011 - when he began his job at American Red Cross - was due to his work injury to his left knee while employed at Saluda's. (Hrg. Tr. p.8).

Claimant testified that his physician had released the Claimant under a light duty work restriction, but Saluda's informed him they had no light duty work to offer Claimant. *Id.*

Claimant testified that, after his employment relationship ended with Saluda's, he was actively seeking employment and applied for numerous jobs. *Id.* Claimant stated that he worked with the WIS program, Richland County Public Library Job Center, and One Stop, in addition to participating in vocational rehabilitation. (Hrg. Tr. p.9). Claimant explained that the WIS program is a state run job bank whose main function is to assist un-employed clients in finding work. *Id.* However, Claimant testified that his attempts at finding employment through the WIS program, the Richland County Public Library Job Center, and One Stop were all unsuccessful in helping him obtain employment, but these programs assist him with resume preparation and applying to jobs. (Hrg. Tr. pp. 9-10).

Claimant went on to explain that his vocational rehabilitation program consisted of an evaluation period of approximately a month, in which time he was assessed for his vocational skills and evaluated for positions that would accommodate his knee injury. (Hrg. Tr. p.10). Claimant stated that he applied for several of the positions available; however, he was unsuccessful in obtaining employment. *Id.* Claimant testified that during the vocational rehabilitation

program he was also provided with physical therapy, as well as counseling services. *Id.*

Claimant also testified that independent of the programs he previously discussed, he applied to several other available sales and clerical positions on his own, including AT&T, Sprint, and Richland County Public Library. (Hrg. Tr. p.11). He also stated that he attended several job fairs hosted by WIS and applied to several of the temp agencies that were represented, including Apple One Temp, Roper Temp Service, and Kelly Temp Service. *Id.*

Claimant explained that one of the temp services refused to hire Claimant based on his lack of experience in clerical or administrative positions, this prompted him to take the volunteer position with American Red Cross to gain that specific work experience. (Hrg. Tr. p.12). Claimant stated he began volunteering at American Red Cross either December 10th or 12th, 2010, and he maintained his volunteer status until he was hired as a full-time employee on November 7, 2011. *Id.*

During his time as a volunteer, Claimant testified that he provided customer service, performed clerical duties, answered telephone calls, and registered customers for training services sponsored by their Health and Safety

Services Division. (Hrg. Tr. p.13). Claimant proceeded to testify had it not been for the time he spent volunteering with the American Red Cross, he would have never obtained employment with the American Red Cross. *Id.* Claimant testified that he is currently working full time as the Administrative Coordinator for the PHSS, which is the territory coordinator for essentially all of South Carolina and Western North Carolina. *Id.* When asked if there was anything else he could have done to obtain employment, Claimant testified that there was nothing he feels like he could have done in addition to what he had already attempted. *Id.*

Cross Examination of Claimant by E. Ros Huff, Jr., Esquire:

Claimant testified that he is paid based on an hourly wage at the rate of thirteen (13) dollars an hour, which results in about twenty-seven thousand five hundred (27,500) dollars annually. (Hrg. Tr. p.14). Claimant stated that this was based on the fact that he is currently working forty hours a week, beginning at 8:30 a.m. and leaving at 5:30 p.m. *Id.* Claimant testified that he is a high school graduate and a college graduate, receiving a degree in Religious Studies in 2004. *Id.* Claimant proceeded to testify that after college he received no further education, but is able to read and write and has no learning disabilities. (Hrg. Tr. p.15).

Claimant explained that his work injury was specific to his left knee and that no other body part was injured. *Id.* Claimant testified that he had not subpoenaed anyone to appear at this hearing to testify as to his job search. *Id.* He stated that he submitted paperwork to the court as evidence of his job search. (Hrg. Tr. p.16). Claimant offered the Apple One Temp paperwork as evidence that his lack of experience was the reason he was unable to obtain employment. *Id.* Claimant acknowledged that no one was present as a witness to testify as to the reasons he had been turned down for employment and the only evidence he submitted was that of the Apple One Temp paperwork. *Id.*

Claimant testified that his left knee injury was never brought up in his job search, either in his applications or as a reason for not obtaining an applied-for job. (Hrg. Tr. p.17). Claimant proceeded to explain that sometimes employer will ask an applicant questions regarding their physical ability to perform essential job functions or questions about previous work related injuries. *Id.* However, Claimant stated he had not come across those particular questions in his search for employment. *Id.*

Claimant was then asked several questions regarding documents and exhibits filed by his attorney. (Hrg. Tr. p.18). Claimant affirmed that his

evaluation period for vocational rehabilitation was in May of 2011 and that he volunteered at the American Red Cross from December, 2010, until November, 2011, when he was hired as a full-time employee. *Id.* Claimant testified that during his time as a volunteer at American Red Cross, he was also attending meetings for his vocational rehabilitation, including physical therapy and muscular development. (Hrg. Tr. p.19). Claimant testified that prior to his evaluation period in May of 2011, he was volunteering forty (40) hours a week, however, once his evaluation period and physical therapy began his hours were less consistent. *Id.*

Claimant confirmed that during the months of December, January, February, March, and April, he was volunteering with American Red Cross for forty (40) hours a week. (Hrg. Tr. pp.19-20). Claimant then testified that in the beginning of May 2011, he began the evaluation period, which included physical therapy and once he was finished with the evaluation period, he continued to participate in physical therapy on Tuesdays and Thursdays. (Hrg. Tr. pp.20-21). Claimant stated that after his evaluation period he was volunteering on Mondays, Wednesdays, and Fridays and participating in his physical therapy at the muscular development center on Tuesdays and

Thursdays. (Hrg. Tr. p.21). Claimant testified that the transportation available to the rehabilitation center made it impossible for him to volunteer on days that he had physical therapy. *Id.*

Claimant testified that his physical therapy ended when he was hired as a full-time employee due to lack of transportation. *Id.* When asked if he was physically capable, prior to beginning physical therapy, to perform his volunteer duties, Claimant responded that he was physically able to do the required clerical and administrative work. *Id.* Claimant was asked as to whether other people, working in the same capacity at American Red Cross, were earning wages. (Hrg. Tr. p.22). Claimant replied that he was uncertain of the employment status of his co-workers, but that it was possible. *Id.* Claimant admitted that people are employed and earn wages doing clerical work and that he was physically capable to perform that type of job. (Hrg. Tr. p.23). Claimant further acquiesced that in December 2010, he had the capacity to earn wages but was not earning wages as an employee. *Id.*

Re-Direct Examination by Allison P. Sullivan, Esquire:

Claimant testified that he had not earned or received any money between March 3, 2010, and November 7, 2011, in an employment context. (Hrg. Tr.

p.24). Claimant additionally stated that Saluda's had never offered him any type of work within his doctor's prescribed work limitations. (Hrg. Tr. p.25).

Claimant reiterated that the four years prior to his work injury sustained on March 3, 2010, he had primarily been employed in the food service industry, mostly working as a cook. *Id.* He stated that he worked for short order in fine dining restaurants and fast food restaurants and several other different restaurants over that period of time. *Id.* Claimant proceeded to explain that he did not seek out employment within the food service industry after his work injury because he was unable to perform that type of work as a result of his injury. (Hrg. Tr. pp.25-26).

Re-Cross Examination by E. Ros Huff, Jr., Esquire:

Claimant testified that between March, 2010, and November, 2011, he did not earn any wages as a result of being employed. Claimant was then asked whether, during his time volunteering at American Red Cross, he retained the capacity to earn wages. Claimant, after clarification by the Commissioner, admitted that other people, performing the same duties that Claimant performed as a volunteer, were earning wages and employed.

MEDICAL EVIDENCE

Claimant relied upon the following medical records which were previously submitted:

1. The medical records of Doctor's Care from March 8, 2010 through May 15, 2010.
2. The medical records of Progressive Physical Therapy (no treatment rendered) for March 8, 2010 and March 12, 2010.
3. The medical records of Palmetto Imaging for May 12, 2010.
4. The medical records of Dr. Jeffrey Guy, including a signed report, dated June 17, 2010.

On March 8, 2010, the Claimant presented to Doctor's Care stating that he twisted his left knee when a stair tread gave way causing him to fall (APA p. 1). Claimant reported that the swelling had improved but that he continued to have pain at the medial aspect of the knee and a feeling of "giving way" with weight bearing. *Id.* Claimant was diagnosed with a left knee sprain with questionable internal derangement and he was referred for an MRI and physical therapy. *Id.* The MRI referral form requested an MRI ASAP (48-96 hours) (APA

p.3). Per the physician at Doctor's Care, Claimant was allowed to return to work with restrictions which included no continuous standing (APA p.2).

Claimant returned to Doctor's Care on March 15, 2010, where he reported some improvement in his left knee pain and swelling but with continued feeling of weakness in the knee (APA p. 4). The Claimant was using crutches and stated that weight-bearing on the knee led to a sensation of giving way. It was noted that the claimant was awaiting MRI and physical therapy arrangements. *Id.* The diagnosis was a left knee sprain suspicious for meniscal tear. *Id.* Again, per the physician at Doctor's Care, Claimant was allowed to return to work with restrictions which included no continuous standing (APA p.5).

On May 12, 2010, Claimant had a left knee MRI at Palmetto Imaging (APA p.9). The impression was an ACL deficient knee; irregular chondral loss of the weight-bearing surface of the lateral femoral condyle and the medial femoral condyle; bone contusion medial tibial plateau; posterior horn medial meniscal tear, and large loose body. *Id.* On June 17, 2010, Claimant presented to Dr. Jeffrey Guy at University Specialty Clinics Department of Orthopaedic Surgery for an independent medical evaluation (APA p.11). Dr. Guy determined that

Claimant had a left ACL tear, chondral lesion in the lateral femoral condyle, as well as a loose body within the joint space. *Id.* Dr. Guy's plan was to begin work on preoperative rehab focusing on the quadriceps and hamstrings; Naprosyn 500 mg 1 p.o. b.i.d.; and to follow up in four weeks in preparation for a left ACL reconstruction. *Id.*

FINDINGS OF FACT

Pursuant to S.C. Code Ann. § 42-3-20 (1976 and Supp. 2009), the undersigned

Commissioner finds the following facts based upon a preponderance of the evidence, the parties' stipulations, the witnesses' testimony, and the APA submissions:

1. The parties to the proceedings are subject to and bound by the provisions of the South Carolina Workers' Compensation Act, per stipulation by both parties.

2. The Claimant's average weekly wage is two hundred sixty-five dollars and 00/100 (\$265.00) with a resulting compensation rate of one hundred seventy-six dollars and 67/100 (\$176.67), per stipulation by both parties.
3. The Claimant was not provided ongoing medical treatment by the Defendant following his accident and was forced to seek medical treatment on his own. The Claimant's past, causally-related medical treatment and knee brace shall be paid by the Defendant, specifically including that treatment from Doctor's Care, Palmetto Imaging, and the brace from DJO, LLC. However, the Claimant's visit to Dr. Jeffrey Guy is not to be paid by the Defendants (Exhibits A, B, C, D).
4. The Claimant is not at maximum medical improvement and the Defendants shall provide Claimant with treatment for his left knee as directed by the authorized treating physician. (September 23, 2010, Hrg. Trans. pp. 6,9; APA p. 11).
5. Claimant was restricted to ground level work with minimal walking, climbing and no continuous standing on March 8, 2010 (APA p. 2)

and he was restricted to work sitting down only on May 15, 2010 (APA p. 6).

6. Claimant testified that he was never offered work within his restrictions by his Employer. (Hrg. Trans p. 25). This testimony confirmed by his immediate supervisor Blake Fairies and Saluda's owner, Steve Cook at the September 23, 2010, hearing on the grounds that Saluda's does not have work within Claimant's restrictions to offer, (September 23, 2010, Hrg. Tr. pp. 56, 71).
7. Claimant testified that he has worked in the food service industry in the four year period prior to his March 3, 2010, work injury and that most of those jobs require continuous standing and he was unable to return to those jobs subsequent to his work injury. (September 23, 2010, Hrg. Tr. 10-13; November 21, 2011, Hrg. Tr. p. 26).
8. Claimant availed himself to the resources made available to him through the public resources of the South Carolina Vocational Rehabilitation, One Stop/WIS, and the Richland County Public

Library. Additionally, he attempted to obtain employment on his own through AT&T, Sprint, Verizon, Apple One Temp Service, Roper Temp Service, Kelly Temp Service, Aleph Wines Corporation, Severt & Sons Produce, and Palmetto Health. During his employment search Claimant undertook to volunteer at the American Red Cross to experience to make himself more attractive to potential employers. Claimant finally obtained employment on November 7, 2011, with the American Red Cross. (Hearing Tr. pp. 10–13; Exhibits K and L)

9. Claimant is entitled to temporary total disability benefits beginning March 3, 2010, and continuing through November 7, 2011. As detailed in Finding of Fact Number 8, Claimant made reasonable and diligent efforts to obtain employment from March 3, 2010, to November 7, 2011. Claimant's inability to obtain employment was due to his injury and resultant partial physical incapacity. The Claimant was written out of work on light duty and no light duty was available at Saluda's and no light duty work offered to him by Saluda's subsequent to his March 3, 2010, work injury. The

Claimant secured alternate employment on November 7, 2011.

(Hrg. Tr. pp. 7, 10-14, 18, 21; APA pp. 2, 5, 6; September 23, 2010, Hrg. Tr. pp. 56, 71).

10. Hearing costs are not assessed against either party.

CONCLUSIONS OF LAW

Accordingly, as provided by S.C. Code Ann. § 42-17-40 (1976 and Supp. 2009), it is the determination, finding, and ruling of this commissioner:

1. At the time of the accident, the Claimant and the Employer were covered parties under the provisions of the South Carolina Workers' Compensation Act. See S.C. Code Ann. §§ 42-1-130, 42-1-140.
2. The Claimant's average weekly wage was two hundred sixty-five dollars and 00/100 (\$265.00) with a resulting compensation rate that has been calculated correctly at one hundred seventy-six and 67/100 (\$176.67) under S.C. Code Ann. §§ 42-1-40, 42-9-10.
3. The Employer shall pay for the Claimant's past causally-related medical treatment, excepting Claimant's evaluation by Dr. Jeffrey Guy, and shall provide ongoing medical treatment and/or

medications that will tend to lessen the Claimant's period of disability under S.C. Code Ann. § 42-15-60.

4. The Claimant has not reached maximum medical improvement.

See O'Banner v. Westinghouse Elec. Corp., 319 S.C. 24, 459 S.E.2d 324 (Ct. App. 1995) ("Maximum medical improvement is a term used to indicate that a person has reached such a plateau that in the physician's opinion there is no further medical care or treatment which will lessen the degree of impairment.").

5. The Employer shall provide the Claimant with temporary total disability benefits beginning March 3, 2010, and continuing through November 7, 2011, pursuant to S.C. Code Ann. § 42-9-10.

See Wynn v. Peoples Natural Gas Company of South Carolina, 238 S.C. 1, 118 S.E.2d 812 (1961) ("The generally accepted test of total disability is inability to perform services other than those that are "so limited in quality, dependability, or quantity that a reasonably state market for them does not exist." Lee v. Minneapolis Street Ry. Co., 1950, 230 Minn. 315, 41 N.W.2d 433, 436 (1950); Colvin v. E. I. DuPont de Nemours Co., 227 S.C. 465, 88 S.E.2d 581 (1955);

Larson's Workmen's Compensation Law, Section 57.51); See also S.C. Code Ann. Section 42-9-190 (An employer can be relieved of the obligation of paying temporary total benefits if it offered or procured a suitable job for the employee).

6. The payments for Claimant's past and future causally related medical expenses and temporary total disability payments shall be made by the Employer; however, if the Employer is unable or unwilling to pay this Award and the South Carolina Uninsured Employers' Fund is required to pay, same will be made with all rights of indemnification and reimbursement as prescribed by statute. It is expressly understood by all parties that nothing contained in this Order, explicit or implied, shall limit any claim the South Carolina Uninsured Employers' Fund has against the Employer, pursuant to South Carolina Code Section 42-7-200, or otherwise.

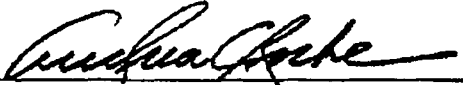
AWARD

It is therefore ordered that:

1. The Employer shall pay the Claimant's past causally-related medical bills, with the exclusion of the Claimant's visit to Dr. Jeffrey Guy.
2. The Employer shall provide the Claimant causally-related medical treatment for his left knee.
3. The Employer shall pay the Claimant weekly temporary total benefits from March 3, 2010, through November 7, 2011.
4. If the Employer is unable or unwilling to pay this Award and the South Carolina Uninsured Employers' Fund is required to pay, same will be made with all rights of indemnification and reimbursement as prescribed by statute. It is expressly understood by all parties that nothing contained in this Order, explicit or implied, shall limit any claim the South Carolina Uninsured Employers' Fund has against the Employer, pursuant to South Carolina Code Section 42-7-200, or otherwise.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


Commissioner Andrea C. Roche

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.

February 13, 2012

By: Barbara Cheeseboro, Administrative Assistant to Commissioner Roche



WCC File #: UNKNOWN
Carrier File #:
Carrier Code #:
Employer FEIN:

Claimant's Name: Andrew Marrs 251-69-7103 Employer's Name: 1751, LLC a/k/a Saluda's
Address: 1279 Rockwood Road Address: 751 Saluda Avenue
City: Columbia State: SC Zip: 29209 City: Columbia State: SC Zip: 29209
Home Phone: (803) 767-8152 Work Phone: Insurance Carrier: unknown
Preparer's Name: Allison P. Sullivan Law Firm: Bluestein, Nichols, Thompson & Delgado Preparer's Phone #: (803) 779-7599

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

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

- 1a. The claimant sustained an accidental injury to left knee, left leg, left foot on 03-03-10
part of body injured month/day/year
in Richland County, State of South Carolina
- 1b. Describe briefly how the accident occurred: Mr. Marrs injured his left knee, left leg, and left foot when he fell on a broken stair.
- 2 Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
- 3 The relationship of employer and employee existed at the time of injury.
- 4 At the time of injury the claimant was performing services arising out of and in the course of employment.
- 5 Notice of the accidental injury was given to the employer on 03-03-10 in the following manner:
Reported to Executive Chef, Blake Faries. month/day/year
- X] 6. Due to injury, the claimant is in need of (check one):
[X] (a) medical examination and treatment for: left knee, left leg, left foot.
[] (b) additional medical examination and treatment for: _____
- X] 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
Temporary total disability benefits from March 3, 2010, up to and through the time Mr. Marrs is able to return to work.
-] 8. Due to injury, the claimant has permanent disability of the following nature and extent: (check one)
[] (1) General Disability: [] Total [] (2) Specific Disability: [] Total
(3) Wage Loss [] Partial [] Partial
Body part(s) affected are: _____
-] 9. Due to injury, the claimant has a serious bodily disfigurement consisting of: _____
- 10a At the time of injury, the claimant was paid weekly wages of: Form 20 requested and demands accounting of days worked and wages earned as provided by law.
- 10b. Give names and addresses of all employers for whom the claimant has worked since the date of accident:
None.
- 11a. Further grounds or unusual aspect of claim: _____
- 11b. List the names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident:
Progressive Physical Therapy, Columbia, SC; Doctor's Care, Columbia, SC.
- 11c. To the best of your knowledge, did you have any prior permanent disability: _____
If yes, describe: _____
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
-] 13a. I am filing a claim. I am not requesting a hearing at this time.
- X] 13b. I am requesting a hearing. **A \$25 fee is required.**
14. Estimated time needed for hearing: 45 minutes

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

Allison P. Sullivan Attorney apsullivan@BNTDlaw.com 03-23-10
Preparer's Signature Title Email Date

Refer to R.67-205, R.67-206, R.67-207, and R.67-601-R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

WCC Form #50
Rev. Date 9/07

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

South Carolina Workers' Compensation Commission
P.O. Box 1715
Columbia, South Carolina 29202-1715

WCC File No. 1003812
Carrier File No. UEF 006858
Carrier Code No. _____
Employer FEIN _____

ANDREW MARRS	251-69-7103	1751, LLC d/b/a SALUDA'S
Claimant's Name	SSN	Employer's Name
1279 ROCKWOOD RD., COLUMBIA, SC 29209		751 SALUDA AVE., COLUMBIA, SC 29205
Address	City State Zip	Address City State Zip
Home Phone	Work Phone	
	LISA C. GLOYER	(803) 798-2722
	Preparer's Name	Phone

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The South Carolina Uninsured Employers' Fund in answer to the claim, respectfully shows:

1. It is denied that the employee sustained an injury on or about the date set forth in the application. The reasons for denial are:
General; there has been no proof.
2. It is denied that both the employer and employee were subject to the Worker's Compensation Act at the time in question. The reasons for denial are:
3. It is denied that the relationship of employer and employee existed at the time in question. The reasons for denial are:
4. It is denied that at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
5. It is denied that the notice of injury was given the employer. The reasons for denial are:
6. It is denied that the employee (needs)(is entitled to additional) medical care as a result of injury. The reasons for denial are:
7. It is denied that the employee is entitled to temporary total disability for the period(s) of:
8. It is denied that the employee is permanently disabled. The reasons for denial are:
9. It is denied that the employee has a serious disfigurement.
10. It is contended that an average weekly wage of \$(unknown) applies, according to attached accounting of employee's earnings as provided by law.
11. Further contentions or grounds of defense are:

See Attachment.

I certify that I have served this document pursuant to R.67-212 by delivering a copy to

See Attached Certificate Of Service

Lisa C. Glover

Preparer's Signature
220 Executive Center Drive, Suite 119 Columbia, South Carolina 29210
Address

DEPUTY GENERAL COUNSEL

Title

5/20/10
Date

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

WCC Form 51 Rev 9/90

11. The Uninsured Employers' Fund is informed and believes that no capitulation or other order has been issued by the South Carolina Workers' Compensation Commission finding that the employer is subject to Title 42 and is operating without insurance or as an unqualified self-insurer. The Uninsured Employers' Fund is not a proper party to this action and is not subject to the jurisdiction of the South Carolina Workers' Compensation Commission in this case.

All affirmative and specific defenses (see Reg. 67-603), including but not limited to Sections 42-9-60, 42-15-20, 42-15-40, 42-17-90; and fraud in the application for employment; fraud in the inducement to sign Form 15; fraud in the initiation of the claim for benefits; pre-existing disability to allegedly injured members; election of remedies; intervening trauma; no compensable injury by accident under Section 42-1-160; degree of disability, if any, attributable to this injury speculative; claimant's problems personal in nature and not work related.

Fund reserves the right to amend this Answer and plead additional defenses. This form is filed to comply with the South Carolina Workers' Compensation Commission regulations.

Fund files this Answer in response to Claimant's Form 50, Requesting a Hearing X Filing a Claim , dated 3-23-10
AND SERVED ON THE SCUEF ON 4-29-10
Fund files this Answer in response to Claimant's Amended Form 50, Requesting a Hearing Filing a Claim , dated

Further, the Uninsured Employers' Fund does not represent the uninsured employer, is not an agent for the uninsured employer, nor a carrier for the uninsured employer.

STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	WORKERS' COMPENSATION
COUNTY OF RICHLAND	)	COMMISSION
	)	
Andrew Marrs,	)	WCC FILE NO: 1003812
	)	
Employee,	)	
vs.	)	
	)	MOTION TO POSTPONE
1751, LLC a/k/a Saluda's,	)	
	)	
Employer,	)	
and	)	
	)	
SCUEF,	)	
	)	
Carrier.	)	

TO: VIRGINIA CROCKER, COMMISSIONER T. SCOTT BECK, ALLISON SULLIVAN, ESQUIRE, ATTORNEY FOR EMPLOYEE AND LISA C. GLOVER, ATTORNEY FOR SCUEF:

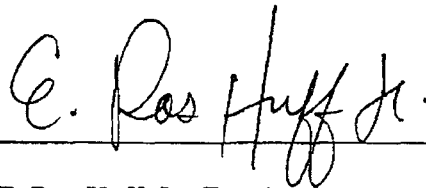
The Defendant, 1751, LLC a/k/a Saluda's, hereafter referred to as "Employer" pursuant to South Carolina Workers' Compensation Regulation 67-613, moves for an order postponing the hearing currently scheduled for August 19, 2010. The grounds for this motion are based on the following:

1. That a hearing was set in the above referenced matter to determine such issues that are set forth in the Forms 50 and 51.
2. That said hearing is set for August 19, 2010 at 11:00 a.m. in Columbia, South Carolina before Commissioner Beck.
3. That named Employer obtained legal counsel on August 12, 2010 and that attorney has workers' compensation hearings scheduled in Sumter and Florence on August 12, 2010.
4. That pursuant to Rule 4 (d), SCRCP, the Form 50 dated April 22, 2010 has not been properly served on the Employer as evidenced by Exhibit I in Claimant's Prehearing Brief.

FILE

5. That the Claimant's Form 58 was not served until August 10, 2010 approximately nine dates before the hearing. Pursuant to Regulation 67-612 B (1) "The moving party must provide the report to the opposing party at least fifteen days before the scheduled hearing."
6. Under § 1-23-330 (3), the Employer is entitled to complete discovery of any witness listed by the Claimant.
7. Regulation 67-613 provides that the Commission may postpone a hearing when additional discovery is necessary.

THEREFORE, Defendants respectfully request, pursuant to Regulation 67-613 and the above listed grounds that this matter be postponed to permit additional time to conduct discovery.



E. Ros Huff, Jr., Esquire
HUFF LAW FIRM, LLC
7244 Woodrow Street
Post Office Box 1935
Irmo, South Carolina 29063
Attorneys for Employer

Irmo, South Carolina
August 13, 2010



BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW

Margaret Miles Bluestein
John Shannon Nichols
Stacy Elizabeth Thompson
John Dennis Delgado
Allison Paige Sullivan
Ashley Trout Thompson
Blake Alexander Hewitt

OF COUNSEL

O. Eugene Powell, Jr.

December 29, 2010

VIA HAND DELIVERY

SC Workers' Compensation Commission
Ms. Virginia Crocker, Judicial Director
P.O. Box 1715
Columbia, SC 29202-1715

Re: Andrew Marrs v. 1751, LLC a/k/a Saluda's
WCC File No: 1003812

Dear Ms. Crocker:

I will be assisting Allison P. Sullivan in the handling the appeal in this case. Please consider this letter as notifying my representation of Mr. Marrs as required by regulation 67-1202.

Please find enclosed the original and two (2) copies of my Form 30. I have also enclosed a check in the amount of \$150.00, which represents the filing fee. By copy of this letter, I am serving a copy of my Form 30 on E. Ros Huff, Jr., the attorney for the defendant, and on Lisa C. Glover, attorney for the S.C. Uninsured Employer's Fund.

Should you have any questions concerning this letter, please feel free to contact me at (803) 779-7599.

Yours truly,

Blake A. Hewitt

BAH/scg
Enclosures

cc: ✓ E. Ros Huff, Jr., Esquire
Lisa C. Glover, Esquire
Andrew Marrs



Claimant's Name: Andrew Marrs SSN: 251 - 69 - 7103 Employer's Name: 1751, LLC d/b/a/ Saluda's
Address: 134 Brooksprings Road Address: 751 Saluda Avenue
City: Columbia State: SC Zip: 29223 City: Columbia State: SC Zip: 29205
Home Phone: (803) 931 - 4565 Work Phone: () - Insurance Carrier: None
Preparer's Name: Blake A. Hewitt, Esquire Law Firm: Bluestein, Nichols, Thompson, & Delgado Preparer's Phone #: (803) 779 - 7599

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ claimant ☐ employer (check one) Date of injury: 03/03/2010 (m/d/yyyy)

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

1. Did the hearing commissioner err in concluding that because the claimant was instructed not to use the back steps, *Wright v. Bi-Lo, Inc.* provides that the claimant's injury is not compensable? This question implicates the hearing commissioner's finding of fact #8 (claimant failed to meet his burden of proof), as well as conclusions of law #'s 7 (claimant's injury did not arise out of and in the course and scope of employment), 8 (claimant did not carry his burden of proof), and 9 (claimant is not entitled to benefits per *Wright v. Bi-Lo*).
2. Alternatively, did the hearing commissioner err in finding that the claimant was instructed not to use the back steps, when the greater weight of the evidence showed the contrary? This question implicates finding of fact #7 (claimant instructed not to use the back steps).
3. Did the hearing commissioner err in not ordering the defendants to provide claimant with temporary total disability benefits from March 3, 2010, and continuing pursuant to S.C. Code Ann. Sec. 42-9-10?
4. Did the hearing commissioner err in not ordering the defendants to pay for expenses incurred by the claimant in pursuit of medical treatment causally related to his March 3, 2010, work accident?
5. Did the hearing commissioner err in not ordering the defendants to provide the claimant with medical treatment causally related to his March 3, 2010, work accident?

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

I certify that I have served this document pursuant to R.67-211 by delivering a copy to E. Ros Huff, Jr., Esq., Huff Law Firm, P.O. Box 1935

Name

Irmo, SC 29603 (Attorney for 1751, LLC); Lisa C. Glover, Esq., The S.C. Uninsured Employer's Fund, 100 Executive Center Drive, Ste. 101, Columbia, SC 29210

Address

on the 29th day of December, 2010 by ☒ first class mail ☐ personal service ☐ certified mail.


Preparer's Signature

Attorney
Title

29 December 2010
Date

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

(law)

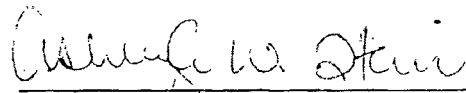
BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Andrew Marrs,)
) W.C.C. File No.: 1003812
Claimant,)
)
vs.) CERTIFICATE OF SERVICE
)
1751, LLC a/k/a Saluda's,)
)
Employer,)
)
and)
)
SC Uninsured Employer's Fund,)
)
Carrier,)
)
Defendants.)
_____)

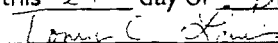
I, the undersigned, of the law office of Bluestein, Nichols, Thompson, Delgado, LLC, attorney for Claimant do hereby certify that I have served a Form 30 on this 29th day of December, 2010, by depositing in a U.S. Postal Box, to the address(es) clearly shown, postage prepaid, to the following individual(s) at the following address(es):

E. Ros Huff, Jr., Esquire
Huff Law Firm, LLC
P.O. Box 1935
Irmo, SC 29063

Lisa C. Glover, Esquire
S.C. Uninsured Employer's Fund
100 Executive Center Drive, Suite 101
Columbia, South Carolina 29210



Ashleigh W. Hair, Paralegal

SWORN and subscribed to before me
this 29th day of December, 2010
 (L.S.)

NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires 11/17/2016

State of South Carolina
Before the
South Carolina Workers' Compensation Commission
WCC File No.: 1003812

Andrew Marrs,
Claimant,
vs.
1751, LLC d/b/a
Saluda's,
Employer,
and
SC Uninsured Employer's
Fund,
Carrier, Defendants.

HEARING
September 23, 2010

Hearing reported by Deborah S. Thomas,
Certified Verbatim Reporter and Notary Public in and
for the State of South Carolina; said hearing held
before Commissioner T. Scott Beck, and in accordance
with the South Carolina Workers' Compensation Laws,
at the South Carolina Workers' Compensation
Commission, 1333 Main Street, Suite 500, Columbia,
South Carolina, on September 23, 2010, at the hour
of 3:47 p.m.

ABACTIS REPORTING SERVICES
2117 PINE LAKE DRIVE
WEST COLUMBIA, SOUTH CAROLINA 29169
(803) 206-7390

Appearances

Representing the Claimant:

ALLISON P. SULLIVAN, ESQUIRE
Bluestein, Nichols, Thompson & Delgado, LLC

4 9-23-10 marris hearing
1614 Taylor Street
5 Columbia, South Carolina 29202

6 Representing the Defendant:

7 E. ROS HUFF, JR., ESQUIRE
Huff Law Firm, LLC
8 P.O. Box 1935
Irmo, South Carolina 29063

9 Representing the SC Second Injury Fund:

10 LISA C. GLOVER, ESQUIRE
11 SC Second Injury Fund & Workers Compensation
Uninsured Employers' Fund
12 100 Executive Center Drive, Suite 101
Columbia, South Carolina 29210
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3

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21

22 * * * * *

23

24

25

4

1 This hearing is conducted in

2 accordance with the South Carolina Workers'

3 Compensation Commission Laws.

4 COMMISSIONER BECK: Today's date is

5 September 23rd, 2010. This is Workers' Compensation

6 File Number 1003812. The Claimant is Andrew Marrs

7 represented today by Attorney Allison Sullivan. The

8 Employer is Saluda's, uninsured at the time of this

9 incident, represented today by Attorney Ros Huff.

10 The South Carolina Uninsured Employer's Fund is

11 present today and represented by Attorney Lisa

12 Glover.

13 The parties have stipulated to an average

14 9-23-10 marris hearing
weekly wage of \$265, a compensation rate of \$176.67.

15 The date of accident is March 3rd, 2010.

16 I received A.P.A.s from the Claimant in
17 this matter. I did not receive any submissions from
18 the Defendant Saluda's nor from the South Carolina
19 Uninsured Employer's Fund. Are there any objections
20 to these A.P.A.s, jurisdiction, venue, or any other
21 matter, Ms. Sullivan?

22 MS. SULLIVAN: No, Commissioner.

23 COMMISSIONER BECK: Mr. Huff?

24 MR. HUFF: We have no objection to
25 the documents. And we did not submit any because we 5

1 are relying on her medical records.

2 COMMISSIONER BECK: All right.

3 Ms. Glover?

4 MS. GLOVER: None from the Fund.

5 COMMISSIONER BECK: All right.

6 without objection the Commission file becomes a part
7 of the record with the exception of self-serving
8 declarations and unstipulated medical reports.

9 During a prehearing conference in this
10 matter the respective positions of the parties was
11 discussed. From the Claimant's standpoint, they are
12 amending their Form 58. Ms. Sullivan, did you have
13 that in your 50 as well, the foot?

14 MS. SULLIVAN: Yes, Commissioner.

15 COMMISSIONER BECK: And their Form 50
16 removing the foot as a body part sought no
17 compensability. They are here for the purpose of a
18 finding of compensability on the left knee. They

9-23-10 marris hearing
19 are asking for causally-medical care associated with
20 that injury, seeking temporary total disability
21 benefits from March 3rd, 2010, to the present and
22 continuing. And further seeking sanctions against
23 the Defendants for unreasonable denial of this
24 claim.

25 Ms. Sullivan, anything in addition to

6

0
1 that, ma'am?

2 MS. SULLIVAN: No, Commissioner.

3 COMMISSIONER BECK: All right. From
4 the Defendant's Saluda's standpoint, they are
5 denying compensability of the left knee. Assert
6 that if it is compensable, that the Claimant would
7 be entitled to the medical, however, they are
8 disputing his entitlement to temporary total
9 disability benefits absent proof through this
10 hearing.

11 Mr. Huff, anything I need to add to that,
12 sir?

13 MR. HUFF: Hopefully, Commissioner,
14 by listening to the testimony today we are hoping
15 this Commissioner will conclude that this is not an
16 unreasonable defense. We have a very good defense.
17 And it's going to be based upon credibility and then
18 your determination of how you interpret the facts.

19 COMMISSIONER BECK: All right, sir.
20 Thank you.

21 MR. HUFF: Thank you.

22 COMMISSIONER BECK: From the South
23 Carolina Uninsured Employer's Fund, they are just

24 9-23-10 marrs hearing
asserting a general denial in this matter. Is that
25 correct, Ms. Glover?

7

1 MS. GLOVER: Right.

2 COMMISSIONER BECK: All right. We
3 are here on Claimant's Form 50. Ms. Sullivan, you
4 may call your first witness, ma'am.

5 MS. SULLIVAN: Claimant would call
6 the Claimant Andrew Marrs to testify.

7 COMMISSIONER BECK: All right. Mr.
8 Marrs, could you come up and have a seat, please.
9 Raise your right hand, please.

10 MR. MARRS: Yes, sir.

11 COMMISSIONER BECK: Do you swear or
12 affirm that the testimony that you are about to give
13 today is the truth, the whole truth, and nothing but
14 the truth, sir?

15 MR. MARRS: Yes, sir.

16 COMMISSIONER BECK: Please state your
17 full name for the record.

18 MR. MARRS: Andrew Marrs. I'm sorry.
19 Andrew Richard Marrs.

20 COMMISSIONER BECK: All right. Ms.
21 Sullivan?

22 WHEREUPON:

23 ANDREW MARRS, being duly sworn and
24 cautioned to speak the truth, the whole truth and
25 nothing but the truth, testifies as follows:

8

1 DIRECT EXAMINATION

2 BY MS. SULLIVAN:

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9-23-10 marrs hearing

3 Q. Mr. Marrs, we are going to start out by
4 just getting a little bit of background information
5 from you today?

6 A. Okay.

7 MR. HUFF: I have no objection to
8 leading on background.

9 MS. SULLIVAN: Okay.

10 BY MS. SULLIVAN:

11 Q. How old are you today?

12 A. I am 29.

13 Q. And what is your date of birth?

14 A. 08/04/1981.

15 Q. All right. And how far did you go to
16 school?

17 A. I went -- college graduate. I'm sorry.
18 Graduated from college with a Bachelors Degree.

19 Q. Okay. What college did you go to?

20 A. Tribeca Nazarene University.

21 Q. All right. And what was your major?

22 A. Religion.

23 Q. And what year did you graduate?

24 A. 2004.

25 Q. Okay. Are you able to read and write?

9

1 A. Yes.

2 Q. Okay. Mr. Marrs, are you -- what is your
3 marital status?

4 A. I'm single.

5 Q. All right. Do you have any children?

6 A. No, ma'am.

7 Q. All right. Do you have anyone financially
Page 7

8 dependent upon you for support?

9 A. No, ma'am.

10 Q. Okay. All right. Mr. Marrs, let's talk a
11 little bit about your background since 2004 when you
12 graduated from college?

13 A. Yes, ma'am.

14 Q. Where did you first work when you
15 graduated from college?

16 MR. HUFF: Commissioner, may I
17 interject a minute, please? And with all due
18 respect, the issue that you are going to be dealing
19 with today is going to be compensability. And if
20 it's compensable I've already stipulated that
21 medicals are needed. So the medical issue is not
22 there. And the issue of temporary total -- I think
23 going into all of this background just prolongs this
24 hearing. We can go straight to the issue of --

25 COMMISSIONER BECK: I understand, Mr. 10

1 Huff. I'm going to allow her to try her case.

2 MR. HUFF: Thank you.

3 COMMISSIONER BECK: Please proceed,
4 Ms. Sullivan.

5 MS. SULLIVAN: Thank you,
6 Commissioner.

7 BY MS. SULLIVAN:

8 Q. Mr. Marrs, I'll restate the question for
9 you. When you graduated from 2004 where did you
10 first work?

11 A. After 2004 I first worked at Consolidated
12 Steel, Incorporated.

9-23-10 marrrs hearing

13 Q. Okay. And approximately when did you work
14 there?

15 A. Began there in August and -- yeah, August
16 of 2004.

17 Q. Okay. And how long did you work there?

18 A. I worked there until I believe March of
19 2006.

20 Q. Okay. And what was your job there?

21 A. I was a claims coordinator.

22 Q. Okay. Where did you work when you left
23 Consolidated Steel?

24 A. When I left Consolidated Steel I worked
25 for Flying Saucer.

11

1 Q. All right. How long did you work at
2 Flying Saucer?

3 A. I worked at Flying Saucer for I think it
4 was a little over three months.

5 Q. Okay. And what did you do at Flying
6 Saucer?

7 A. I was a cook and a doorman.

8 Q. Okay. Where did you work after Flying
9 Saucer?

10 A. After Flying Saucer I worked at Sonic
11 Drive-In.

12 Q. Okay. And what was your job at Sonic?

13 A. At Sonic I was a shift manager.

14 Q. Okay. Where did you work after Sonic?

15 A. After Sonic I worked at Saluda's
16 Restaurant.

17 Q. Okay. And what were the approximate dates
Page 9

9-23-10 marris hearing

18 for that time at Saluda's?

19 A. That time at Saluda's I believe I began in
20 May of -- I'm sorry. I can't remember the year, but
21 it was May.

22 Q. May of '07, does that sound about right?

23 A. That sounds about right.

24 Q. Okay. And what did you do at Saluda's?

25 A. I was cook at Saluda's.

12

1 Q. Okay. And how long were you at Saluda's
2 at this point?

3 A. At that -- I'm sorry. Could you repeat
4 that?

5 Q. How long were you at Saluda's when you
6 started working for them in May of '07?

7 A. Oh, I worked there from May of '07 until
8 about September of '08, I believe.

9 Q. Okay.

10 A. So a little over a year.

11 Q. Okay. Where did you work when you left
12 Saluda's?

13 A. After I left Saluda's I was -- I worked --
14 the next place I worked was at Bull Market.

15 Q. Okay. How long were you at Bull Market?

16 A. I was at Bull Market for -- from May of
17 '09 until January of '10 -- 2010.

18 Q. Okay. And what was your job at Bull
19 Market?

20 A. I was a cook.

21 Q. Okay. And where did you work when you
22 left Bull Market?

Page 10

23 A. When I left Bull Market I began --
24 actually, I'm sorry, when I -- I was at Bull Market
25 when I began at Saluda's in January. I no longer 13

1 worked at Bull Market after beginning at Saluda's.

2 Q. Okay. So there was a brief period of time
3 where you worked two jobs?

4 A. Right.

5 Q. Bull Market and Saluda's?

6 A. I didn't -- right.

7 Q. Okay. And so you began at Saluda's for
8 the second time in January of 2010?

9 A. Right.

10 Q. All right. And what was your job at
11 Saluda's?

12 A. I was a cook.

13 Q. All right. So we've gone through your
14 entire work history since college. And is it fair
15 to say that most of those jobs were in the food
16 service industry as a cook?

17 A. Yes, ma'am.

18 Q. Okay. Did those jobs require that you
19 engage in continuous standing and walking?

20 MR. HUFF: I'm going to object now.
21 This is getting into what he's doing and his
22 abilities. That is leading. It's not getting into
23 his biographical background. I object to leading.

24 COMMISSIONER BECK: Rephrase it, Ms.
25 Sullivan.

14

1 BY MS. SULLIVAN:

2 Q. In general terms will you describe the
3 physical requirements of the jobs that you worked
4 after college as a cook?

5 A. As a cook I worked generally about I would
6 say from five to eight hours, depending on the day,
7 usually without -- you know, in a kitchen standing,
8 moving around the kitchen preparing meals. So there
9 was some, you know, dealing with -- dealing with the
10 food. So, you know, bringing in stock, stocking,
11 you know, the -- I'm sorry. Stocking the produce
12 that we brought in.

13 Q. Is working in a kitchen a sedentary job?

14 A. No.

15 Q. Okay. Let's focus now a little bit on
16 your time at Saluda's. The day of the accident --
17 the alleged accident is March 3rd, 2010. What time
18 did you get to work that day?

19 A. I came in to work early that day to pick
20 up a check for the week. I came in around
21 2:00 o'clock. Picked up my check and left. I
22 returned around 4:30 or 5:00 o'clock.

23 Q. Okay. And what did you do when you
24 returned at 4:30?

25 A. I returned at 4:30. I walked in. I went

15

1 and clocked in at the computer, went back into the
2 kitchen. Began my -- checked my prep work that was
3 previously done. And began checking all of my
4 station. Began the prep work for my station.

5 Q. And what was your station?

9-23-10 marrrs hearing

6 A. My station that night was grill and fryer.

7 Q. Okay. Can you just briefly describe to us
8 what prep work had to be done?

9 A. I believe that in general prep work is
10 chopping the vegetables and whatnot that go into
11 cooking. Checking the appetizers, the fried
12 appetizers that I would have to prepare to make sure
13 that we had enough stock. To -- also to grate
14 cheese. To prepare the meats for grilling. To
15 check our inventory and whatnot.

16 Q. Okay. Tell us how you hurt your knee on
17 March 3rd, 2010.

18 A. On March 3rd I had begun my shift and --
19 I'm sorry. I begun my shift and, as I said, done my
20 prep work. The executive chef had decided that one
21 of the people would go home that night. So he
22 decided that he was going to let Rob go home. So I
23 asked the executive chef if I could go have a smoke
24 break since he was sending somebody home before we
25 began our main service.

16

1 Q. Okay. And let me stop you right there.
2 Who was the executive chef?

3 A. It was Blake.

4 Q. Would that be Blake Farris?

5 A. Yes.

6 Q. Okay. And you testified that Rob was
7 allowed to go home early?

8 A. Correct.

9 Q. Okay. Would that be Rob Helvey?

10 A. Yes.

9-23-10 marris hearing
11 Q. Okay. So you asked Blake to go on a smoke
12 break. What happened then?
13 A. I walked out onto the back step to smoke
14 my cigarette. I saw that Rob was still at the
15 bottom of the stairs. I asked him, you know, if
16 there was anything left that he needed done since he
17 was leaving early that I would have to cover. He
18 said that there wasn't anything, but then he said
19 that there were a couple things that needed to be
20 done.
21 I couldn't understand what he was saying.
22 I began walking down the stairs. When I got to the
23 second step, I stepped down onto the broken stair.
24 The stair gave way underneath me and my knee
25 buckled, and I fell over the top of it. I was able 17

1 to catch myself on the rail.
2 I sat there for a second, but Rob at the
3 bottom of the stairs asked me if I was all right. I
4 said I hurt my knee. I said just give me a minute.
5 So I sat there for a minute trying to decide if --
6 you know, how badly I was hurt. I told him, you
7 know, just let me be.

8 So then I got up and I went back into the
9 kitchen. I walked into the kitchen and went back to
10 work. Later on that evening somewhere within an
11 hour Blake had asked -- said that he was going to
12 let someone else go home. I was in pain, so I asked
13 him if he would let me go home.

14 And when he asked why I told him, you
15 know, I fell on the back stairs. And he said, oh,

9-23-10 marris hearing
16 how did it happen? I explained to him what
17 happened. He said go ahead and go home. So I left
18 for the evening.

19 Q. You testified earlier that you left to go
20 on a smoke break?

21 A. Correct.

22 Q. Is that correct? Was it usual to be
23 allowed to take a smoke break?

24 MR. HUFF: I'm going to object again
25 to the leading question.

18

1 COMMISSIONER BECK: I'm going to
2 allow it. Please proceed.

3 BY MS. SULLIVAN:

4 Q. Was it usual to be allowed to smoke at
5 work?

6 A. Yes.

7 Q. Did you have to clock out when you went on
8 smoke break?

9 A. No, ma'am.

10 MS. SULLIVAN: May I approach the
11 witness, Commissioner?

12 COMMISSIONER BECK: Yes, ma'am.

13 (Discussion off the record.)

14 MR. HUFF: What number do you want to
15 make that, Allison? Number 1 exhibit or A exhibit
16 or how --

17 MS. SULLIVAN: Let's do K, Exhibit K,
18 because I think my exhibits go through K.

19 MR. HUFF: Okay. I have no problem
20 with that Exhibit K. No objection, Commissioner.

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(MARKED CLAIMANT'S EXHIBIT K.)

21
22 MS. SULLIVAN: May I approach,
23 Commissioner?

24 COMMISSIONER BECK: Yes.

25 BY MS. SULLIVAN:

19

1 Q. Mr. Marrs, do you recognize this photo?

2 A. Yes, ma'am.

3 Q. What is this a photo of?

4 A. The side of Saluda's restaurant.

5 Q. Okay. Do you see any stairs in that
6 photo?

7 A. Yes, ma'am.

8 Q. Okay. Are those the stairs that you went
9 down to take a smoke break?

10 A. The stairs on the side of the building
11 leading up to the door on the side of the building.

12 Q. Okay. Are those on the -- on Saluda's
13 premises?

14 A. Yes, ma'am.

15 Q. How many entrances are in to Saluda's?

16 A. There are three entrances. There is the
17 front on the front door right on the corner there.
18 There is an entrance that leads to a stairwell up
19 into the main dining room. There is an entrance
20 from the patio and then there is the entrance into
21 the kitchen.

22 Q. And where do those front two entrances
23 lead to?

24 A. Into the dining room.

25 Q. Okay. And where do those stairs on the

20

1 back left lead to?

2 A. Into the kitchen.

3 MS. SULLIVAN: And, Commissioner, for
4 the record I would like to note that this photo was
5 taken on Google Maps, for the record. Is that
6 sufficient?

7 MR. HUFF: Do you know when the photo
8 was taken?

9 MS. SULLIVAN: I cannot read the
10 date.

11 MR. HUFF: The reason I ask that,
12 Commissioner, is that these steps have been totally
13 replaced and repaired. So I don't know if this is a
14 photograph of the actual stairs that were in place
15 at that time. So that is -- so I guess with that
16 being said, I maybe have to object to it unless a
17 foundation can be laid as to when the photograph was
18 taken so we know if it's the original stairs that he
19 fell on or if they were the replacement stairs.
20 That is my concern. I just got that from my client.
21 That is why I had that --

22 COMMISSIONER BECK: Is that the point
23 that you are trying to --

24 MS. SULLIVAN: I just -- because we
25 are talking about different sets of stairs, I just

21

1 think it's easier so we have some sort of --

2 COMMISSIONER BECK: What you are
3 trying to do is identify the location of the stairs,
4 not that these are the actual steps?

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5 MR. HUFF: I have no objection if
6 it's the location of the stairs. No objection.

7 MS. SULLIVAN: I'm not offering this
8 as a picture of the actual stairs that he fell on
9 that day and the condition of the stairs that day.

10 MR. HUFF: Then I withdraw the
11 objection.

12 COMMISSIONER BECK: Without
13 objection.

14 MR. HUFF: Without objection, thank
15 you.

16 BY MS. SULLIVAN:

17 Q. All right. So, Mr. Marrs, you testified
18 that the stair was broken?

19 A. Yes, ma'am.

20 Q. Or gave way?

21 A. Yes, ma'am.

22 Q. I don't want to put words in your mouth.
23 How would you --

24 MR. HUFF: I don't want you to
25 either. Don't do that.

22

1 THE WITNESS: The stair was broken.

2 BY MS. SULLIVAN:

3 Q. Okay. All right. Did you know that the
4 stair was broken?

5 A. Yes, ma'am.

6 Q. Okay. What did you know about the broken
7 stair?

8 A. The stair had rusted on the right side.

9 Or, I'm sorry, facing downwards from the door there

Page 18

10 on the right side it had rusted and given way. One
11 of the previous employees was walking and it gave
12 way. It was attached still on the left side. So
13 that the stair was there, it wasn't completely gone,
14 but it was -- it gave way.

15 Q. Okay. When you were walking down the
16 stairs what was on your immediate left of the
17 stairs?

18 A. The immediate left is a wall.

19 Q. Okay. What was on the immediate right of
20 the stairs?

21 A. The handrail.

22 Q. Okay. And the stair had rusted on the
23 right side which was the rail side?

24 A. Correct.

25 Q. Who informed you that the stair was

23

1 broken?

2 A. Originally I was informed by one of my
3 coworkers about the broken stair because he was one
4 of the ones who had stepped on it. It was Ali. He
5 informed me that the stair was broken. I was later
6 on informed by Mr. Cook and -- that the stair was
7 broken.

8 Q. Okay. Was there anything prohibiting you
9 from using the broken stairs?

10 A. No.

11 Q. And tell us again what happened when you
12 went back in after you fell on the broken stair?

13 A. When I went back in I returned to work and
14 tried to work through the injury. I, you know,

15 continued with what I had been doing with the prep
16 work and began cooking for the night which entailed
17 going back and forth from the back side of the
18 kitchen and bringing up stock, grilling food and
19 preparing food, but again Blake decided that he was
20 going to let someone go home. I felt as if I was
21 not able to work, to continue working, because of
22 the pain and because I was unable to properly move
23 around the kitchen. I asked him to go home, and he
24 allowed me to go home.

25 Q. Did you notify anyone else at Saluda's

24

1 that you had been injured?

2 A. I notified Mr. Cook the next -- the
3 following day.

4 MR. HUFF: We will stipulate to
5 notice being given timely.

6 BY MS. SULLIVAN:

7 Q. Did Mr. Cook offer you medical treatment?

8 A. Yes, ma'am. He said to -- I had asked him
9 when I contacted him about medical treatment because
10 I felt as if I would need to see a doctor because my
11 knee was in pain and I had severe swelling.

12 He said to go to Doctors Care and give
13 them their -- the Employer information. Tell them
14 that I was hurt at work and give them Employer
15 information. I went to Doctors Care to get the care
16 that he had told me to go get. And he -- the
17 Doctors Care gave me a form to fill out and have my
18 Employer sign.

19 When I received that form I went -- I

20 returned to Mr. Cook and presented him with the
21 form. At this time he said that he felt as if it
22 wasn't his fault, that it was the broken stair. The
23 stair was broken so it was the building owner's
24 fault. And that he would give the form to the
25 building owner. And then get back in touch with me

25

1 so that I would be able to go see the doctor. So I
2 returned home.

3 And I was expecting to hear back from
4 Mr. Cook. When I didn't, I tried to contact
5 Mr. Cook to no avail. I ended up having to contact
6 the building owner, Mr. Richard Burts to find out
7 what was the situation. He told me that he had
8 talked to Mr. Cook, that he felt that --

9 MR. HUFF: I'm going on object to
10 what the landlord said. He's not a party to the
11 action.

12 COMMISSIONER BECK: Sustained.

13 MR. HUFF: He's here to testify to --

14 COMMISSIONER BECK: Sustained.

15 MR. HUFF: Thank you.

16 BY MS. SULLIVAN:

17 Q. And did you ultimately go to the doctor?

18 A. Yes. I was able to see a doctor on the
19 Monday the 8th after I had contacted Mr. Cook again.
20 And he had told me that he would -- or I gave him
21 the information to Doctors Care, and he contacted
22 Doctors Care. And I went in to see the doctor the
23 following day.

24 Q. Have you received a diagnosis for the

25 injury to your knee?

26

1 A. Yes.

2 Q. And what is that diagnosis?

3 A. The diagnosis was a knee sprain initially.

4 The doctor that diagnosed it with a knee sprain

5 required an M.R.I. for further diagnosis.

6 MR. HUFF: I object. The medicals

7 will speak for themselves. They are in there.

8 COMMISSIONER BECK: I'm going to

9 allow it as long as he's speaking from personal

10 knowledge and not just stating hearsay, I'm going to

11 allow it. Please proceed.

12 THE WITNESS: So the doctor's

13 diagnosis was for an M.R.I. I received an M.R.I.

14 The diagnosis from the M.R.I. was that I had an

15 A.C.L. tear, there was also a tear to the meniscus

16 and some kind of body floating around in my knee.

17 BY MS. SULLIVAN:

18 Q. And has treatment been offered to you to

19 repair that damage?

20 A. Yes.

21 Q. What treatment has been offered?

22 A. I'm sorry. Can I get a clarification?

23 I'm sorry.

24 Q. I'll be happy to restate. What

25 treatment -- has treatment been offered to repair

27

1 that damage?

2 A. Do you mean what treatment from a doctor?

9-23-10 marrs hearing

3 Q. Correct. what treatment has been
4 recommended to repair that damage?

5 A. Okay. I have seen Dr. Guy, an orthopedic,
6 on the recommendation of the Doctors Care. And his
7 recommendation was for A.C.L. reconstruction.

8 Q. Do you want that procedure?

9 A. Yes.

10 Q. Are you currently taking any medication?

11 A. I'm taking Aleve.

12 Q. What symptoms do you currently have with
13 your knee?

14 A. I have a grinding and popping sensation in
15 my knee whenever I bend it. There is pain when
16 there is a grinding or popping. There is -- it
17 aches if I'm on it for any amount of time, for a
18 long amount of time rather. There is also a --
19 whenever I extend it there is a popping sensation
20 and kind of like something is popping inside my
21 knee.

22 Q. Do you have any sort of assistive devices
23 for the knee?

24 A. Yes. I have a brace.

25 Q. Are you currently using the brace?

28

1 A. Yes, I am.

2 Q. Mr. Marrs, what is your current work
3 status with Saluda's?

4 A. I'm really not sure.

5 Q. Were you ever terminated from Saluda's?

6 A. No, not to my knowledge.

7 Q. Are you currently working anywhere?

- 8 A. No, ma'am.
- 9 Q. Were you ever offered light duty work at
- 10 Saluda's?
- 11 A. No, ma'am. I -- when I returned from the
- 12 doctor with the release to light duty off of the --
- 13 when I originally went to see the doctor, I asked
- 14 for light duty and they said they didn't have
- 15 anything. And they did not want me to reinjure
- 16 myself.
- 17 Q. Do you remember who you spoke to at
- 18 Saluda's?
- 19 A. Originally I spoke to Matt James. I also
- 20 spoke to Steve Cook as well.
- 21 Q. Who is Matt James?
- 22 A. Matt James I believe is the co-owner.
- 23 Q. And Mr. Cook is who?
- 24 A. Is the owner of Saluda's.
- 25 Q. When did you last work for Saluda's?

29

- 1 A. That day on March 3rd.
- 2 Q. Mr. Marris, have you looked for other
- 3 employment since March 3rd, 2010?
- 4 A. Yes, ma'am.
- 5 Q. What work have you looked for?
- 6 A. I've tried to find light duty work where I
- 7 could be seated and anything where it wasn't
- 8 physically tasking beyond what I could do.
- 9 Q. Mr. Marris, do you believe that you are
- 10 currently physically capable of working?
- 11 A. No, ma'am.
- 12 Q. Okay. And why not?

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13 A. Because of the -- in that same sense that
14 I can't perform the duties of the job. I can't be
15 on my feet for eight hours. I can't move around. I
16 can't lift, you know, anything without pain.

17 Q. Mr. Marrs, when you were on the back steps
18 talking to Rob, what was the subject of that
19 conversation?

20 A. Again, I asked him about if there was
21 anything left for -- that I needed to cover, any
22 work that he had done previously. When he left,
23 leaving early, he said that there was -- I believe
24 there were some sauces in the walk-in that needed to
25 be taken out and put on the front. And there was

30

1 also -- I couldn't hear him exactly. That is why I
2 was walking down the steps, but he was -- I asked
3 him about what other work needed to be done.

4 MS. SULLIVAN: No further questions,
5 Commissioner.

6 COMMISSIONER BECK: Mr. Huff?

7 CROSS EXAMINATION

8 BY MR. HUFF:

9 Q. In the restaurant before you took a smoke
10 break you were talking with Blake?

11 A. Yes, sir.

12 Q. And Blake is the chief chef?

13 A. Executive, sir.

14 Q. He's the big chef in the kitchen where you
15 were working?

16 A. Yes, sir.

17 Q. Would he be your boss in the kitchen?

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18 A. He would be -- I mean, Steve would be the
19 boss. I guess he would be a supervisor in a sense.

20 Q. All right. So Blake was your supervisor
21 in the kitchen?

22 A. Correct.

23 Q. The chef?

24 A. Yes, sir.

25 Q. Why didn't you ask him what needed to be

31

1 done? Why were you asking Rob?

2 A. Because Rob was there at the time, sir.

3 Q. Rob was down at the bottom of the steps
4 before you went through the door. Your boss is or
5 your supervisor is standing right next to you. He's
6 over the kitchen.

7 A. Yes, sir.

8 Q. Why didn't you ask him what needed to be
9 done?

10 A. When I was working, sir, I had
11 conversation with Blake previously as to what needed
12 to be done. He had let Rob go early. So I asked
13 Rob what he needed to be done that he was doing
14 previously. I mean, I had asked Blake what I needed
15 to do for my job, but the question I asked Rob was
16 what he had for his job that wasn't completed.

17 Q. You testified just a few minutes ago that
18 Doctors Care sent you to Dr. Guy. Is that what you
19 testified to?

20 A. No, sir. I testified that the Doctors
21 Care gave me a recommendation to see a orthopedic.
22 And I went to see the orthopedic through the

23 9-23-10 marris hearing
lawyer's office.

24 Q. Your attorney sent you over there and made
25 the appointment for you?

32

1 A. Correct.

2 Q. Okay. Got that clear. Thank you.
3 Appreciate that. You were aware anywhere from two
4 to four weeks before you went down these stairs that
5 the stairs were broken, correct?

6 A. Yes, sir.

7 Q. You were aware that at least two other
8 employees had fallen on these stairs or had some
9 incident on the stairs; is that correct?

10 A. Yes, sir.

11 Q. It was not brought up in your direct
12 examination, but let's bring it up now. You were
13 also aware that tape was -- at one time was put
14 across these stairs so people could not go up and
15 down the stairs to warn you not to use the stairs,
16 correct?

17 A. The tape was placed over the step, sir,
18 where the step was broken.

19 Q. If I'm standing here on the stairs --

20 A. Yes, sir.

21 Q. -- and there is a wall to my left as you
22 testified to and there is a rail to my right?

23 A. Yes, sir.

24 Q. You testified to me earlier and told me,
25 did you not, that there was a tape that ran down

33

1 from the top to the bottom and criss-crossed, not
Page 27

2 just on the stair itself, but criss-crossed running
3 from the top rail down to warn people about this
4 broken stair; is that correct?

5 A. Sir, the tape ran from the top of the rail
6 to the bottom of the opposite side at the step. It
7 wasn't from the top of the stairs to where the step
8 was.

9 Q. That is your testimony?

10 A. I'm sorry. I was just trying to clarify
11 what you were saying.

12 Q. Okay. It's your testimony. There will be
13 other witnesses, but your testimony then it wasn't
14 just on the stair itself. It's running from the top
15 at an angle down to the bottom to the left, correct?

16 A. At the step.

17 Q. At the step? Okay. If the record should
18 indicate that you clocked in on the computer around
19 4:56, right at 5:00 o'clock, would you dispute that?

20 A. No, sir. Like I said, between 4:30 and
21 5:00 is when I came in.

22 Q. And this accident occurred somewhere
23 around 5:30?

24 A. I believe it was between 5:45 and 6:00 is
25 about -- almost an hour after I had come in to work,

34

1 I believe.

2 Q. Do you remember me taking your deposition?

3 A.. Yes, sir.

4 Q. Do you remember telling me that you
5 weren't sure of the exact time, but you thought that
6 it occurred between 5:00 and 5:45? Do you remember

7 that? Not 6:00 o'clock, but between 5:00 and 5:45,
8 do you remember that?

9 A. I believe so, sir.

10 Q. Okay.

11 A. I said I wasn't sure about the time.

12 Q. You were already taking a smoking break
13 within 40 minutes of coming to work? Is that your
14 testimony?

15 A. As I've said, sir, the other employee was
16 leaving, so I knew that I would not be able to take
17 one later on.

18 Q. Who else was in the kitchen with you that
19 night between you and Blake?

20 A. All total it was myself, Ali, Blake, and
21 Rob when I came in.

22 Q. So Rob was leaving, so that would leave
23 three people there, correct?

24 A. Yes, sir.

25 Q. Okay. Now, I think I wrote down the note 35

1 here, and I'm going to ask you again, tell me how
2 you got hurt.

3 A. Sir, I was at the top of the stair. Or I
4 went outside to smoke a cigarette, sir. I went
5 to -- I was talking to Rob. Began walking down the
6 stairs. I stepped on the stair. My knee buckled to
7 the inside. And I fell over the top.

8 Q. You didn't actually fall and strike your
9 leg, did you?

10 A. No, sir.

11 Q. You were able to right yourself and catch

12 yourself, correct?

13 A. Yes, sir.

14 Q. And as you were stepping on the step, it's
15 your testimony today, as you testified earlier
16 today, is that your knee buckled, correct?

17 A. Yes, sir.

18 Q. You didn't strike your knee on anything,
19 did you?

20 A. No, sir. The stair gave way underneath,
21 and my knee buckled to the inside.

22 Q. Your knee buckled? Okay. You were coming
23 down the stairs when this happened?

24 A. Yes, sir.

25 Q. When you went to the doctor, the

36

1 specialist, the orthopedic surgeon, Dr. Guy, what
2 did Dr. Guy do for you? When he brought you in did
3 he ask you questions about what problems you were
4 having?

5 A. Yes, sir.

6 Q. Did he ask you if you were involved in any
7 type of an event that could precipitate you having
8 these problems?

9 A. What do you mean, sir? I'm sorry.

10 Q. Did he ask you was there any type of event
11 that may have caused this problem like getting hit
12 by a car or water skiing or falling downstairs? Did
13 he ask you if there was any event that may have
14 precipitated or caused the problem?

15 A. He asked me if I had had any trouble
16 previously with the knee.

Page 30

17 Q. No.

18 A. I'm sorry. I'm just wondering -- just
19 trying to figure out what you are asking, sir.

20 Q. well, please, I'm glad you are doing what
21 you are doing. Did the doctor ask you when you came
22 in with the knee complaint, did anything happen
23 recently to you that caused this? Did he ask you
24 what may have been the cause of it?

25 A. Yes, he asked me what happened.

37

1 Q. What did you tell him?

2 A. I told him that I was walking down the
3 stairs. I stepped on a broken step that gave way,
4 and my knee buckled to the inside.

5 Q. Okay. You made that clear to him?

6 A. Yes, sir.

7 Q. Could you have been going up the stairs?

8 A. No, sir. I was definitely going down.

9 Q. The reason I'm asking, I'm looking at
10 Page 11 of the medical evidence as submitted, and
11 the doctor said nothing about you going down the
12 stairs. He says you were going up the steps when
13 the step broke. Not that it was already broken or
14 gave way or -- the step remained there, right?

15 A. uh-huh.

16 Q. The step didn't come apart and fall on the
17 ground, did it?

18 A. No, sir.

19 Q. It just kind of -- it's like a spongy
20 thing. It kind of went up and down?

21 A. Yes, sir.

Page 31

22 Q. All right. Okay.
23 A. I'm sorry, sir. You are pointing to that
24 and saying that he said that I was going up the
25 stairs?

38

1 Q. I hate to say this. You don't get to ask
2 any questions.?

3 A. I'm sorry.

4 Q. With all due respect.

5 A. I'm sorry.

6 Q. That is okay. I'm not trying to be
7 disrespectful to you. Let's make sure we've got
8 this clear. You knew before you went down the step,
9 down those stairs to that step, that there was a
10 step that was defective. You knew that, didn't you?

11 A. Yes, sir.

12 Q. And I think when we did your deposition
13 you even told me you thought it could have been two
14 to three weeks prior to that or even a month that
15 you knew that that step was defective in some way?

16 A. Yes, sir, it was awhile before the step
17 was broken.

18 Q. And you were aware ahead of time that the
19 stair was broken because you were told it was broken
20 by a co-employee. Did you say his name was Ali?

21 A. Ali.

22 Q. Ali. He told you, right?

23 A. Correct.

24 Q. Mr. Cook told you the step was defective?

25 A. Correct.

39

1 Q. Would it also be true that Richard Burts,
2 B-u-r-t-s, the landlord because his office is in
3 that area even informed everybody that the step was
4 defective?

5 A. I believe he may have.

6 Q. And tape was even put up to warn people
7 that the step was defective, right?

8 A. There was tape previously.

9 Q. Yes? Okay. And you would agree that at
10 that tape was placed on the steps as a warning to
11 people that the step was broken?

12 A. Yes, sir.

13 Q. All right. Let me ask you a hypothetical
14 question.

15 MS. SULLIVAN: Objection, Your Honor.
16 Hypotheticals, relevance.

17 COMMISSIONER BECK: Well, let me hear
18 the question first.

19 BY MR. HUFF:

20 Q. Here is my hypothetical question. You own
21 a business. There are steps leading in and out of
22 the building, back steps, not the main entrance.
23 There is at least one, maybe two steps, but let's
24 just say one step that is defective. You've had two
25 employees stumble on that and have an accident or an

40

1 injury of some type. Tape had been placed on that
2 stair or that step as you've testified to warn
3 people not to use those steps. And you are the
4 person leasing that building. And you are aware of

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5 all of this. And you make it aware to people.
6 would you not warn them or instruct
7 them not to go down into that dangerous area? What
8 would you do?
9 A. I would -- I'm sorry, sir. Dealing with
10 your hypothetical?
11 Q. Look at your factual situation. Put
12 yourself as the owner of the company. You are aware
13 of all the defective steps. You know tape has been
14 put up there to warn people. Two of your employees
15 or coworkers have been injured. Would you not tell
16 them not to use those steps because they are
17 dangerous? Hypothetically, what would you do?
18 A. Hypothetically, sir?
19 Q. Yes.
20 A. I would have the step fixed. I would
21 report it to the landlord. I mean -- I mean --
22 Q. That is reasonable.
23 A. It's -- you know, if I was the business
24 owner --
25 Q. You don't own the building. You are the

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1 lessee. Would you not instruct your employees
2 because two people have already been injured and
3 there has been tape there to warn them not to use
4 the steps, would you not instruct your employees not
5 to use those steps because they are dangerous?
6 A. I mean, in the hypothetical, yeah.
7 Q. Okay. Okay. We are going to have some
8 other witnesses today, but let me ask you. Do you
9 think that it's reasonable your employees not to go

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10 down broken steps and warn them of the danger? Do
11 you think that is reasonable?
12 A. That is the reasonable -- yes, sir.
13 Q. All right. Do you think that Mr. Cook is
14 a reasonable man?
15 A. Yes, sir.
16 Q. Did Mr. Cook warn you or instruct you
17 specifically not to go down those steps because they
18 were dangerous, they were taped off, and two other
19 people had been injured? Did he not instruct you to
20 not use those steps?
21 A. No, sir.
22 Q. Okay. So, in other words, he was
23 unreasonable?
24 A. I did not say that, sir.
25 Q. Well, you said a reasonable man would tell

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0
1 you to do that. And he didn't do it?
2 A. Yes, sir.
3 Q. Do you consider him to be unreasonable not
4 to warn you and instruct you not to do that?
5 A. Again, sir, I did not say that. I'm
6 saying that a -- it's reasonable to ask us not to go
7 down the steps if the step is broken. I'm not
8 saying that -- I'm saying that Mr. Cook did not say
9 it.
10 Q. He did not instruct you? Okay. Did
11 Mr. Burts, the landlord, ever instruct you not to
12 use those stairs?
13 A. No, sir.
14 Q. Do you know who put the tape up there?

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15 A. No, sir.
16 Q. You are saying the tape was in only one
17 location on the steps?
18 A. Yes, sir. It was across the step.
19 MR. HUFF: Okay. I don't think I
20 have anything further. Thank you very much.
21 Appreciate your time.
22 COMMISSIONER BECK: Ms. Sullivan,
23 anything further, ma'am?
24 REDIRECT EXAMINATION
25 BY MS. SULLIVAN:

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1 Q. Mr. Marrs, were you ever disallowed from
2 using those back stairs?
3 A. No, ma'am.
4 Q. Was tape there the day of the accident?
5 A. No, ma'am.
6 Q. When the tape was there, how did you get
7 up and down the stairs?
8 A. We were to walk up the stairs and step
9 over the stair that was -- had the tape across it.
10 MS. SULLIVAN: No further questions.
11 MR. HUFF: I have nothing further.
12 COMMISSIONER BECK: All right. You
13 may step down, sir. Thank you very much.
14 THE WITNESS: Yes, sir.
15 COMMISSIONER BECK: Ms. Sullivan,
16 your next witness, please.
17 MS. SULLIVAN: We would like to call
18 Mr. Rob Helvey as a witness.
19 COMMISSIONER BECK: Helvey?

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20 MS. SULLIVAN: Helvey, H-e-l-v-e-y, I
21 believe is the correct spelling.

22 COMMISSIONER BECK: Thank you. Mr.
23 Helvey, come on up and have a seat, please.

24 MR. HELVEY: Okay.

25 COMMISSIONER BECK: Would you raise

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1 your right hand, please. Do you swear or affirm
2 that the testimony that you are about to give today
3 is the truth, the whole truth, and nothing but the
4 truth, sir?

5 MR. HELVEY: Yes, I do.

6 COMMISSIONER BECK: Please state your
7 full name for the record.

8 MR. HELVEY: Robert Andrew Helvey.

9 COMMISSIONER BECK: Ms. Sullivan?

10 WHEREUPON:

11 ROBERT HELVEY, being duly sworn and
12 cautioned to speak the truth, the whole truth and
13 nothing but the truth, testifies as follows:

14 DIRECT EXAMINATION

15 BY MS. SULLIVAN:

16 Q. Mr. Helvey, have you ever been employed at
17 Saluda's Restaurant on Saluda Avenue?

18 A. Yes.

19 Q. What was your job there?

20 A. Sous chef.

21 Q. Were you there on -- were you employed at
22 Saluda's on March 3rd, 2010?

23 A. I believe so.

24 Q. Okay. Did you work a full shift that day?

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25

A. I believe so.

45

1 Q. Okay.

2 A. I mean, it was four or five months ago, so
3 I'm pretty sure I worked a full shift.

4 Q. Okay. Do you remember an incident in
5 which Mr. -- in which you were speaking to Mr. Marrs
6 on the back stairs?

7 A. Yes.

8 Q. Okay. Did you work a full shift that day?

9 A. I believe so.

10 Q. Okay. What do you recall about the
11 incident when you were speaking to Mr. Marrs on the
12 back stairs?

13 A. I was on the lower platform of the stairs
14 smoking a cigarette. And Andrew came out and
15 started coming down the stairs and skipped the one
16 step that was missing, like he stepped over the step
17 that was missing. And then when he stepped down, it
18 kind of buckled a little bit. And then he kind of
19 immediately sat down after that and held his knee.

20 Q. Okay. Did he indicate that something
21 was --

22 MR. HUFF: I'm going to object to
23 what he indicated as being hearsay. He can testify
24 to what he saw but not -- I mean not hearsay, but
25 leading questions here, what he indicated.

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1 COMMISSIONER BECK: Rephrase it,
2 please.

3 BY MS. SULLIVAN:

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4 Q. What did you see when he stumbled on the
5 stairs?

6 A. I saw him hold his knee. He made kind of
7 the (Indicating) you know, in pain sound. And, you
8 know, he just kind of kept rubbing his knee, you
9 know. And it appeared to me that he was in pain due
10 to, you know, what happened.

11 Q. What did you do after that incident?

12 A. I mean, we talked for a little bit longer
13 or whatever. And then, you know, he stayed seated
14 for awhile and I went back inside, I think.

15 Q. Okay. But you don't remember specifically
16 whether you worked a full shift?

17 MR. HUFF: I'm going to object again.
18 That is leading. He's already testified what he
19 did, and now she's trying to say --

20 MS. SULLIVAN: Withdraw the question.

21 BY MS. SULLIVAN:

22 Q. Did you ever talk to anyone at Saluda's
23 about this accident?

24 A. I mean, I believe that, you know,
25 everybody kind of talked about it, you know. I

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1 mean, but it being four or five months ago -- I
2 mean, I'm sure I talked to Blake about it. And, you
3 know, I talked to Drew about it and that kind of
4 stuff, you know, when it happened and everything,
5 but I don't -- I don't remember specific
6 conversations with specific people from four or five
7 months ago.

8 Q. Okay. What is your recollection of the
Page 39

9-23-10 marris hearing

9 condition of the stairs back in March of 2010?

10 A. I mean, they were in bad shape, you know,
11 rusty. You know, there was one step that was almost
12 completely missing. And, you know, the hole thing
13 was a little bit shaky. I mean, it was just in
14 really bad condition.

15 Q. What entrance did you use to get to the
16 kitchen?

17 A. The back stairs.

18 Q. Okay. Were you ever instructed as to
19 which entrance you could use to get to the kitchen?

20 A. I mean, I don't recall ever being told not
21 to use the back stairs. You know, I mean when I
22 would come in to open the restaurant usually I would
23 come in through the front and then, you know,
24 throughout the shift we would always use the back
25 stairs to, you know, take trash out, you know,

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1 deliveries, everything, you know, we would go
2 through the back stairway.

3 MS. SULLIVAN: No further questions.

4 COMMISSIONER BECK: Mr. Huff?

5 CROSS EXAMINATION

6 BY MR. HUFF:

7 Q. Let me ask you about the trash.

8 A. Uh-huh.

9 Q. When you would come out the back steps,
10 out the back door by the kitchen.

11 A. Uh-huh.

12 Q. And let me just show this to you. It has
13 been used as Exhibit K. It's not being used to

Page 40

14 prove that these are the actual stairs, but this is
15 the location of the stairs. Okay?

16 A. Yeah.

17 Q. The Commissioner has got it. Can you see
18 that picture?

19 A. Yes.

20 Q. All right. Do you see the top platform
21 out where the door comes out?

22 A. Yeah, underneath the white awning.

23 Q. Right. And then immediately as you come
24 out the steps to your right do you see the big blue
25 dumpster there?

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1 A. Yeah. I mean, it's sort of straight in
2 front of the -- yeah.

3 Q. Is it not true that sometimes when you all
4 would come out to throw out the trash you would just
5 come to this top landing and drop it over the side?
6 You don't walk all the way down to the bottom of the
7 stairs, do you?

8 A. Sometimes, yeah. I mean, if the trash was
9 light enough to hold the bag out and throw it out
10 there, yeah.

11 Q. Okay.

12 A. That is true.

13 Q. Now, isn't it true that Mr. Marris was not
14 the first person having an incident on the stairs,
15 that there were other employees that had had some
16 incidents, a guy named Ali or Ali?

17 A. Ali, yeah, I believe so. I didn't
18 specifically witness that, but I heard about it.

19 Q. But there were other employees that had
20 had problems with these stairs before Mr. Marrs?

21 A. Correct.

22 Q. Would you also agree that there were --
23 there was tape placed out there to warn people of
24 the danger of these stairs?

25 A. It was more of a tape to warn people about 50

1 the danger of the one missing stair.

2 Q. All right.

3 A. But generally the tape would be there,
4 probably about 60 percent of the time, and
5 40 percent of the time, you know, the tape would
6 just be kind of moved to the side or be missing, you
7 know.

8 Q. And then when it was missing, like you
9 said 60 percent of the time, 40 percent of the time,
10 it would then be replaced and put back in place to
11 again warn people of the danger, correct?

12 A. Yeah, uh-huh.

13 Q. Do you agree with that?

14 A. I would agree.

15 Q. I need for you to say yes instead of
16 uh-huh.

17 A. Yes, I would agree.

18 Q. I'm doing that because of the court
19 reporter.

20 A. Yeah.

21 Q. Make sure you've got an affirmative answer
22 here. Do you know a Richard Burts, the landlord?

23 A. I think I met him once while I was working
Page 42

24 there. And, you know, of course I met him out in
25 the waiting room.

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1 Q. Was this tape duct tape?

2 A. Yes.

3 Q. Was the tape ever to your knowledge that
4 you can remember in any location other than just at
5 the stair? In other words, was it sometimes at the
6 top or sometimes at another location?

7 A. It would vary a bit, yeah.

8 Q. All right. Do you know who put the tape
9 out there? Do you know if it was Mr. Cook or the
10 landlord Mr. Burts?

11 A. I actually have no idea.

12 Q. Just for the record to make sure I've got
13 it right.

14 A. Uh-huh.

15 Q. Other employees before Mr. Marrs and Mr.
16 Marrs, himself, to your knowledge had some incident
17 on the stairs?

18 A. Yes.

19 Q. And there was tape on the stairs. And
20 when it was removed it would be put back in place?

21 A. Yes.

22 Q. To give knowledge that there was a
23 dangerous situation there, correct?

24 A. Correct.

25 Q. Were you aware of that situation on the

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1 stairs?

9-23-10 marrs hearing

2 A. Yes.

3 Q. Did you ever discuss that situation with
4 Mr. Marrs that the tape was back there and that
5 people had got hurt including him?

6 A. I mean, every -- like everyone knew that,
7 you know, the stairs weren't exactly the safest
8 stairs in the world.

9 MR. HUFF: I have nothing further. I
10 thank you for your time.

11 THE WITNESS: Okay.

12 COMMISSIONER BECK: Ms. Sullivan,
13 anything further?

14 MS. SULLIVAN: No further questions.

15 COMMISSIONER BECK: You may step
16 down, sir. Thank you very much.

17 THE WITNESS: Thank you.

18 COMMISSIONER BECK: Next witness,
19 please?

20 MS. SULLIVAN: I would like to call
21 Blake Fairies.

22 COMMISSIONER BECK: Spell the last
23 name.

24 MS. SULLIVAN: F-a-i-r-i-e-s.

25 COMMISSIONER BECK: F-a-r-a-i-e-s?

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1 MS. SULLIVAN: F-a-i-r-i-e-s.

2 MR. HUFF: He pronounces his name
3 Farris, I believe. Blake Farris.

4 COMMISSIONER BECK: Farris?

5 MS. SULLIVAN: I apologize for that.

6 MR. HUFF: That's okay.

9-23-10 marris hearing

7 COMMISSIONER BECK: Please have a
8 seat, sir. Ms. Glover, I apologize. I have not
9 been giving you the opportunity -- I was under the
10 impression that you were serving --

11 MS. GLOVER: That's all right.
12 That's fine.

13 COMMISSIONER BECK: Speak up if there
14 is anything that you would like to add, otherwise
15 I'm just going to keep it between Ms. Sullivan and
16 Mr. Huff.

17 MS. GLOVER: Yes. I informed you I
18 was taking a back seat here, so --

19 COMMISSIONER BECK: All right.

20 MS. GLOVER: That's all right.

21 COMMISSIONER BECK: Mr. Farris, would
22 you raise your right hand, please. Do you swear or
23 affirm that the testimony that you are about to give
24 today is the truth, the whole truth, and nothing but
25 the truth, sir?

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1 MR. FAIRIES: Yes, sir.

2 COMMISSIONER BECK: Please state your
3 full name for the record.

4 MR. FAIRIES: My name is Blake
5 Alexander Farris.

6 COMMISSIONER BECK: All right. Ms.
7 Sullivan?

8 WHEREUPON:

9 BLAKE FARRIS, being duly sworn and
10 cautioned to speak the truth, the whole truth and
11 nothing but the truth, testifies as follows:

9-23-10 marrs hearing
DIRECT EXAMINATION

12

13 BY MS. SULLIVAN:

14 Q. Mr. Farris, have you ever been employed by
15 Saluda's Restaurant?

16 A. Yes, ma'am.

17 Q. All right. Were you employed on March the
18 3rd, 2010?

19 A. Yes, ma'am.

20 Q. And what was your job there?

21 A. I was the executive chef of the
22 restaurant.

23 Q. Okay. Do you remember an incident
24 involving Mr. Marrs on March 3rd, 2010?

25 A. Yes, ma'am.

55

1 Q. All right. what do you recall?

2 A. what I recall is him walking back up from
3 the steps into the building saying that his knee was
4 bothering him, that he had slipped and fell. I had
5 not witnessed that event, but he told me that. And
6 within probably about 30 to 35 minute he was like. I
7 was fixing to cut somebody and send them home. And
8 he was like, "Dude, my knee hurts. Can I go?" And
9 I'm like, "Yeah, go right ahead." And he left.

10 Q. Okay. Did you have any conversations with
11 Mr. Marrs after that day?

12 A. A few I would say. Yeah, about four or
13 five.

14 Q. All right. what do you recall about those
15 conversations?

16 A. It was just seeing if he could come in and

9-23-10 marris hearing
17 maybe do a little bit of work. And honestly I
18 couldn't -- with him having a hurt knee or whatever,
19 I couldn't have him in the kitchen doing heavy
20 lifting and stuff like that. So, I mean, it's just
21 you have to -- you know, in a kitchen you have to be
22 able to move a little quickly and, you know, chop
23 stuff and --

24 Q. Were you Mr. Marrs' supervisor?

25 A. Yes, ma'am, I was.

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1 Q. Did you have the authority to set his
2 schedule?

3 A. Yes, ma'am, I did.

4 Q. Okay. Did you ever offer him light duty
5 work?

6 A. Not really because there wasn't any light
7 duty work to do.

8 Q. Did you ever terminate Mr. Marrs?

9 A. Well, I didn't tell him that he was fired,
10 but, you know, basically he just quit coming around,
11 so that is it.

12 Q. Okay. Mr. Farris, what do you recall
13 about the condition of the back stairs?

14 A. They were not the best.

15 Q. How many entrances are in Saluda's?

16 A. That would be --

17 Q. Saluda's restaurant?

18 A. That would be three.

19 Q. Okay. And where are those entrances
20 located?

21 A. Off the patio, there are steps going down.

9-23-10 marris hearing

22 And then in the restaurant there are steps going
23 down to the front door. And there are the back
24 steps.

25 Q. And which entrance did you use to get to

57

1 the kitchen?

2 A. I use the back steps.

3 Q. Okay. Which entrance were the other
4 workers in the kitchen instructed to use?

5 A. Well, before the step had broken everybody
6 was coming up the back steps because they were
7 raggedly honestly. And everybody came up the back
8 steps until I believe the week before when somebody
9 stepped on one and kind of -- it kind of broke. And
10 then they were instructed to go or told, you know,
11 look, the step is broken. You can come up the front
12 door or back door or basically, you know, you can
13 go -- I mean, not that you can't go down the back
14 steps, but you are not required to go down the back
15 steps.

16 Q. Okay. But were employees allowed to use
17 the back stairs?

18 A. They were, yeah.

19 MS. SULLIVAN: All right. That is
20 all the questions. Thank you.

21 COMMISSIONER BECK: Mr. Huff?

22 MR. HUFF: Thank you, Commissioner.

23 CROSS EXAMINATION

24 BY MR. HUFF:

25 Q. Do you mind if I call you Blake?

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9-23-10 marrs hearing

1 A. Yes, please.

2 Q. Blake, as the chief or the executive chef
3 you were aware that there was a problem with the
4 back steps?

5 A. Yes, sir.

6 Q. Okay. To your knowledge was any type of
7 tape ever put on the steps as a warning to the
8 employees --

9 A. Multiple times.

10 Q. Was it put in more than one location, like
11 top, bottom, middle?

12 A. Yes, sir. There was -- there was I
13 believe three rails if I recollect correctly.
14 Coming up, there was a piece of tape coming from the
15 top rail to the bottom rail where it was broken and
16 then one coming from this one, like the third rail
17 on the bottom, to another attached. There was a big
18 X.

19 Q. I want you to think about this now, on
20 this question.

21 A. Okay.

22 Q. You were the supervisor of Mr. Marrs?

23 A. Yes, sir, I was.

24 Q. And your supervisor was Steve Cook, the
25 owner?

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1 A. Yes, sir.

2 Q. All right. Was there ever any
3 communication from Mr. Cook to you and the other
4 employees instructing you because of the danger on
5 these steps you are not to use these steps?

6 A. Yes, sir. I came in the back of the
7 kitchen and this is what I recollect. He was right
8 in front of the back door. And he said, hey, do not
9 walk down these steps. The step is broken. He did
10 say that.

11 Q. Any doubt in your mind?

12 A. No doubt in my mind at all. He did -- I
13 remember it clearly.

14 Q. Did he tell you why he didn't want you to
15 use these back steps?

16 A. Well, it was obvious. The step was broken
17 because Ali broke it, you know, jogging up the
18 steps, so --

19 Q. Was there tape placed there to block the
20 people from going up and down the steps?

21 A. Yes. And honestly we did walk over the
22 tape, so --

23 Q. But you were instructed not to walk over
24 the tape and not use the steps, correct?

25 A. Well, I was told -- we were told not to

60

1 use the steps once it was broken, yeah.

2 Q. All right. Do you know who Richard Burts
3 is? Is he the landlord?

4 A. He is the landlord, yes.

5 Q. Do you know if he ever came in the kitchen
6 area with Mr. Cook and also instructed people not to
7 use the steps because --

8 A. Yes, sir, he did. He was the one that put
9 up the tape.

10 MR. HUFF: I have nothing further.
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9-23-10 marris hearing

11 Thank you.

12 COMMISSIONER BECK: Ms. Sullivan,
13 anything further? Ms. Sullivan?

14 MS. SULLIVAN: No further questions.

15 COMMISSIONER BECK: All right. You
16 may step down. Thank you very much.

17 THE WITNESS: All right. Thank you
18 guys.

19 COMMISSIONER BECK: Any other
20 witnesses from the Claimant?

21 MS. SULLIVAN: No, Commissioner.
22 Claimant rests.

23 COMMISSIONER BECK: All right. Mr.
24 Huff, call your first witness, please.

25 MR. HUFF: All right. I'm going to

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1 call if I could, Commissioner, Richard Burts.

2 COMMISSIONER BECK: Richard?

3 MR. HUFF: Burts, B-u-r-t-s.

4 COMMISSIONER BECK: Okay. Right over
5 here, sir.

6 MR. HUFF: Commissioner, may Ms.
7 Sullivan and I approach you for one second?

8 COMMISSIONER BECK: Certainly.

9 (Discussion off the record.)

10 COMMISSIONER BECK: Mr. Burts, I
11 understand from some previous testimony I believe
12 you own the building in question here today?

13 MR. BURTS: Correct.

14 COMMISSIONER BECK: All right. There
15 has been some testimony prior to you coming in the

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16 room that could be the reason for initiating a
17 potential third-party claim in this matter.

18 MR. BURTS: Uh-huh.

19 COMMISSIONER BECK: You understand
20 that if we proceed today and you testify, that
21 information comes out, it could be prejudicial to
22 you in a third-party claim?

23 MR. HUFF: I did instruct him in the
24 hallway that he may need an attorney, but I wanted
25 to wait until we got here for you to do this,

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1 Commissioner.

2 COMMISSIONER BECK: Yes, sir.

3 MR. HUFF: Before we did any
4 questions.

5 COMMISSIONER BECK: And as such,
6 before we proceed I want to make sure you understand
7 the implications of you testifying. And if you
8 would like to have counsel present during that
9 testimony, we will make some arrangement for you to
10 have that. Otherwise we are going to proceed today,
11 but I want you to understand the implications of
12 proceeding without counsel today.

13 MR. BURTS: Will this have to start
14 all over or will -- I mean, I just found out about
15 this last night. So there was no way I could
16 provide counsel for today.

17 COMMISSIONER BECK: Do you want
18 counsel?

19 MR. BURTS: I certainly don't mind
20 stating, you know, simple facts as I know them, but

21 if the questioning is in line with something that I
22 feel like counsel is needed, I mean, I feel like I
23 need representation if I'm being told that I might
24 be party to a lawsuit. I didn't come in here
25 expecting that.

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1 COMMISSIONER BECK: All right. I
2 can't tell you that you won't be.

3 MR. BURTS: Uh-huh.

4 COMMISSIONER BECK: I can tell you
5 that certain things that have been said here could
6 implicate the potential for that. You know, I'm
7 certainly willing to allow you to proceed, and if
8 you get to a point where you are uncomfortable, you
9 can say I'm uncomfortable, or we can give you the
10 opportunity to get counsel.

11 MR. HUFF: Commissioner, I just
12 talked with my client. I really didn't think so,
13 but I think you hit the nail on the head when you
14 said -- I don't know why it didn't cross my mind
15 that whatever he is saying today is under oath. And
16 if they did bring a third-party lawsuit against him,
17 this other attorney, it's not Ms. Sullivan, she's
18 not involved in this, am I correct, Allison?

19 MS. SULLIVAN: That's right.

20 MR. HUFF: They could use his
21 testimony as he said today --

22 COMMISSIONER BECK: Absolutely.

23 MR. HUFF: And he can't deviate from
24 that. And it can be used to impeach him. I feel
25 extremely uncomfortable. What I would like to do is

1 recall him from the stand, put Mr. Cook on. And if
2 I think I need him for my case, then I think that it
3 needs to be done by deposition with counsel, but I
4 may not even need him and we can dismiss him and not
5 put him in any harms way if I can do that, if you
6 don't mind me recalling him from the stand and doing
7 Mr. Cook first.

8 COMMISSIONER BECK: Why don't we do
9 that.

10 MR. HUFF: Let's do that. Just wait
11 outside. It will be about five minutes.

12 COMMISSIONER BECK: Mr. Cook, would
13 you raise your right hand, please. Do you swear or
14 affirm that the testimony that you are about to give
15 today is the truth, the whole truth, and nothing but
16 the truth, sir?

17 MR. COOK: Yes, sir.

18 COMMISSIONER BECK: Please state your
19 full name for the record.

20 MR. COOK: Steven Michael Cook.

21 COMMISSIONER BECK: Mr. Huff?

22 WHEREUPON:

23 STEVEN COOK, being duly sworn and
24 cautioned to speak the truth, the whole truth and
25 nothing but the truth, testifies as follows:

1 DIRECT EXAMINATION

2 BY MR. HUFF:

3 Q. Mr. Cook, are you the owner of Saluda's

9-23-10 marrs hearing
4 restaurant?
5 A. I am.
6 Q. Are you the tenant that is renting that
7 location from the gentleman that just left the
8 stand?
9 A. I am.
10 Q. And his name is again?
11 A. Richard Burts.
12 Q. All right. That is B-u-r-t-s?
13 A. Correct.
14 Q. And he's the landlord and you are the
15 tenant, correct?
16 A. Correct.
17 Q. All right. At that location was Mr. Marrs
18 an employee?
19 A. Yes.
20 Q. To your knowledge was he an employee on
21 March 3rd, 2010?
22 A. Yes.
23 Q. Are you aware that some event occurred on
24 March 3rd, 2010?
25 A. Yes.

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1 Q. Were you aware that Mr. Marrs has filed a
2 workers' compensation claim by way of a Form 50
3 which is a workers' Compensation Commission form
4 where by that form that was filed that he was
5 seeking workers' Compensation benefits for an injury
6 to his left knee?
7 A. Yes.
8 Q. Are you aware that he is claiming an event

9-23-10 marris hearing
9 that occurred to the back stairs on March 3rd?
10 A. Yes.
11 Q. Prior to March 3rd of 2010, were you aware
12 of the condition of the stairs in the back of the
13 building of Saluda's Restaurant?
14 A. Yes.
15 Q. Can you tell me what your knowledge is of
16 what the condition of the stairs were on March 3rd,
17 2010?
18 A. Well, that day there was -- as in previous
19 testimony, one of the stairs was -- if there were
20 four connectors, one was broken so that the stair
21 was loose. One stair was loose.
22 Q. Were the stairs made out of metal or wood?
23 A. Metal.
24 Q. Was it like a grate?
25 A. Yeah. It was like -- well, it was a flat 67
D
1 metal plate, I guess.
2 Q. Were they welded in all four corners?
3 A. Correct.
4 Q. What were the condition of the welds?
5 Were they all four off, two off, one off, three off?
6 A. You know, I would -- one was off and the
7 other were to my recollection fine, but I know one
8 was completely disconnected.
9 Q. All right. As -- was the stair still
10 attached though to the steps?
11 A. Yes.
12 Q. You heard the name of an Ali. Was he an
13 employee?

9-23-10 marrrs hearing

14 A. Yes.

15 Q. Did Ali to your knowledge have any
16 incident that occurred on the stairs?

17 A. Yes. To the best of my knowledge on the
18 way up the stairs one day coming in to work he
19 stepped on that stair and that is when that stair,
20 you know, gave way. That is where the initial, I
21 guess, damage occurred.

22 Q. Was there more than one stair that was in
23 disrepair or was that the only step that you knew of
24 on the stairs?

25 A. That is the only step that was in bad

68

1 repair.

2 Q. All right. Was any type of tape put up as
3 a warning to people using the stairs?

4 A. Over the course of, you know, three to
5 four week we would put up tape at the bottom of the
6 stairs, over the stair. You know, basically trying
7 to block not even you would be able to pass. You
8 would have to come over that to get up the stairs.

9 Q. You did this. Was like a "X" thing?

10 A. Exactly like that.

11 Q. On more than one location?

12 A. More than one location, yes.

13 Q. To your knowledge was the tape ever
14 removed and had to be replaced?

15 A. Yes, multiple times.

16 Q. What type of tape was it?

17 A. Duct tape. Just standard duct tape, gray
18 duct tape.

19 Q. Did you just put one strand of duct tape
20 around or more than one strand?

21 A. In most cases Richard Burts did do the
22 tape up, did that. So, I mean, in most cases it was
23 x'ed. And it was crossed over basically to where it
24 could not be confused.

25 Q. You used, you said about three weeks, that 69

1 it had been going on for about three weeks?

2 A. Approximately.

3 Q. All right. Did you attend the deposition
4 of the Claimant?

5 A. Yes.

6 Q. Did he also use the term two to three
7 weeks to your knowledge?

8 A. I believe so.

9 Q. Okay. We know we got the tape up here.
10 Did you as the owner of the company ever give a
11 directive to any employee, all the employees or a
12 specific employee, it's your testimony, did you ever
13 give any directive to them prohibiting them from
14 using the steps because of the dangerous situations?

15 A. Yes. On multiple occasions I told them
16 that the steps were damaged. And then specifically
17 when the landlord who became obviously aware of the
18 situation was told about it and it needed to be
19 corrected, and we blocked it off and said that is
20 the reason for that. That is the reason why we are
21 blocking the stairs. Do not use the stairs. There
22 is no reason to use the stairs. There are multiple
23 entrances. Everybody was told that.

24 Q. Did you make that clear to all of your
25 employees?

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1 A. I made that clear to all the employees
2 that work in the different departments. I made it
3 clear to all of the servers. I made it clear to all
4 of the back of the house. And I specifically made
5 it clear to Blake who was really the only supervisor
6 that he controls the kitchen employees.

7 Q. Did you tell Mr. Marris not to use those
8 steps?

9 A. Yes.

10 Q. Why did you prohibit them from using those
11 steps?

12 A. Because there was a damaged stair. And
13 there was no reason to use it because they may
14 become injured.

15 Q. Let me ask you this question. It's very
16 simple. You got the tape. Why don't you just lock
17 the door so they can't go down the stairs?

18 A. The fire code prevents me from locking the
19 back door.

20 Q. Okay. Did you instruct them not to or
21 give them a directive not to go down the stairs to
22 protect them from an injury?

23 A. Correct.

24 MR. HUFF: I have nothing further.

25 Thanks.

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1 COMMISSIONER BECK: Ms. Sullivan?

2 CROSS EXAMINATION
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3 BY MS. SULLIVAN:

4 Q. Mr. Cook, you testified that the tape was
5 often removed, it was not there constantly?

6 A. Correct. Sometimes it would be removed,
7 yes.

8 Q. Okay. Do you recall specifically the tape
9 was in place on March 3rd, 2010?

10 A. I do not.

11 Q. Okay. Did you ever offer Mr. Marrs light
12 duty work after he was injured?

13 A. To the best of my recollection Mr. Marrs
14 left work that day, made a few phone calls to me
15 saying that he was going to the doctor. And he
16 would go to the doctor. And then basically never
17 showed up again.

18 Q. I'm going to ask the question again. Did
19 you ever offer him light duty work?

20 A. No. I don't have light duty work.

21 Q. Okay. Did you ever receive out-of-work
22 slips from Mr. Marrs?

23 A. I don't believe so.

24 Q. Did you ever receive light duty slips from
25 Mr. Marrs?

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1 A. Not to my recollection, but to be
2 completely honest with you, I have no idea what
3 those would even look like or, you know, I don't --
4 you know.

5 Q. So you could have received them, but you
6 may not have known what you received? Is that what
7 you are insinuating?

9-23-10 marrs hearing

8 A. I'm sorry. Let me clarify.

9 Q. Yes.

10 A. To the best of my recollection I did not
11 receive those.

12 Q. But you -- do you know that you didn't
13 receive them?

14 A. Do I know that I didn't receive them? I
15 don't believe that I received them.

16 Q. But you don't know that you didn't?

17 MR. HUFF: Asked and answered. I
18 object.

19 MS. SULLIVAN: He didn't answer the
20 question.

21 COMMISSIONER BECK: Please answer the
22 question.

23 THE WITNESS: To the best of my
24 recollection I did not receive those, any documents
25 that you just spoke of.

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1 BY MS. SULLIVAN:

2 Q. Okay. But you testified that you
3 didn't -- you wouldn't know what they look like if
4 you did receive them?

5 A. Again, I didn't receive any paperwork from
6 Mr. Marrs.

7 Q. Okay. Did you ever terminate Mr. Marrs
8 from Saluda's?

9 A. I didn't see Mr. Marrs to terminate him.
10 Basically, you know, he told me he couldn't come
11 back to work and that was kind of the end of it. It
12 wasn't something where he repeatedly asked to be on

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13 the schedule. And that is also something that
14 Blake, his supervisor, handles, so --

15 MS. SULLIVAN: No further questions.

16 Thank you.

17 COMMISSIONER BECK: Mr. Cook, this
18 conversation that you testified earlier to that you
19 had with Mr. Marrs, describe for me the
20 circumstances and events that occurred during that
21 conversation. What was specifically said and where
22 it happened and when it happened.

23 THE WITNESS: We have a line up every
24 day basically we are gathering all the employees for
25 a small meeting, front of the house, back of the

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1 house, kitchen and front both do it. At one of
2 those meetings on multiple occasions because not
3 everybody works every day, I gathered everybody.
4 And I said do not use the back stairs. They are
5 damaged. You go and come from work out of the front
6 door.

7 There is no reason to use them. Again, I
8 had that over the course of those two to three weeks
9 I had that discussion multiple times with everybody.
10 And I also made it very clear to Blake that that
11 was -- that that was the case, that we weren't
12 supposed to use them.

13 COMMISSIONER BECK: Did you ever have
14 a personal conversation with Mr. Marrs to that
15 effect?

16 THE WITNESS: I don't -- as far as a
17 one-on-one conversation?

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18 COMMISSIONER BECK: Yes, sir.

19 THE WITNESS: I don't recall, but I
20 know face-to-face I had a discussion with every
21 single employee.

22 COMMISSIONER BECK: All right. So
23 you know -- there is not any doubt in your mind that
24 during at least one or more of those conversations
25 with employees your testimony is that Mr. Marrs you 75

1 are confident was present?

2 THE WITNESS: Absolutely a hundred
3 percent. And I also -- I mean, I'm certain of that
4 because after this happened I remember saying you
5 were told about this. You were told multiple
6 occasions. I mean, I said it direct right when it
7 happened, right after it happened. I remember
8 specifically that that happened.

9 COMMISSIONER BECK: What was Mr.
10 Marrs' response to those statements?

11 THE WITNESS: I couldn't tell --

12 COMMISSIONER BECK: Did he dispute
13 it?

14 THE WITNESS: No.

15 COMMISSIONER BECK: Did he
16 acknowledge it?

17 THE WITNESS: I believe that -- it
18 was my impression that he acknowledged it because it
19 was assumed everybody knew. Everybody had heard
20 what I said and that it was -- everybody knew.

21 COMMISSIONER BECK: Mr. Huff,
22 anything further?

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23 MR. HUFF: In response to your
24 questions, yes, Commissioner.

25 REDIRECT EXAMINATION

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1 BY MR. HUFF:

2 Q. Richard Burts is the landlord?

3 A. Correct.

4 Q. Your testimony was that Mr. Burts helped
5 put the tape up?

6 A. Yes.

7 Q. Was Mr. Burts ever present when you had
8 these meetings with the staff informing them about
9 the danger? Did he give any warnings? Tell me if
10 anything happened like that.

11 A. Absolutely. On multiple occasions again
12 at the line up kind of time we talked about he would
13 be present and would say, you know, it is -- this is
14 not -- this area is unsafe. You are not to go into
15 it. Here is why we put the tape up.

16 Q. Was the tape to your knowledge ever
17 removed sometimes?

18 A. Occasionally it was removed, yes.

19 Q. Was it replaced?

20 A. Yes.

21 Q. Did Mr. Burts give any type of warning or,
22 you know, a tongue lashing, whatever word you want
23 to use, to anybody about not removing the tape?

24 A. Absolutely. Every time it was removed he
25 came -- because he knew if it did happen it would be

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1 somebody using the back steps. And every time that
2 it was removed, it was why is that tape gone? who
3 used the back steps? why is that gone?

4 MR. HUFF: I have nothing further.

5 COMMISSIONER BECK: MS. Sullivan?

6 RECROSS EXAMINATION

7 BY MS. SULLIVAN:

8 Q. Mr. Cook, who was present at these line up
9 meetings?

10 A. I mean, everybody that works for us or
11 anybody that worked for us.

12 Q. How often did you -- do all of your
13 employees report for these line up meetings every
14 day?

15 A. Every employee -- we do line up every
16 single day, yes.

17 Q. Okay. So was every employee -- let me
18 restate that. Do all of your employees work every
19 day that you are open?

20 A. No.

21 Q. Okay. Did Mr. Marrs work every day that
22 you were open?

23 A. No.

24 Q. Okay. Did you have these conversations
25 about the stairs every day at line up?

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1 A. For two to three weeks that it was done I
2 specifically made it a point to every single time to
3 say that because it was a circumstance where I
4 wanted to pound it into their heads because the tape
5 kept getting removed. People kept going into that

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6 area. And I wanted to make sure that they knew that
7 was unsafe and not supposed to happen.

8 Q. Okay. So you had knowledge that the
9 employees were continuing to use the stairs?

10 A. When the tape was removed I assumed they
11 were using the stairs, yeah.

12 MS. SULLIVAN: No further questions.

13 COMMISSIONER BECK: Anything further,
14 Mr. Huff?

15 MR. HUFF: I have nothing further.

16 COMMISSIONER BECK: You may step
17 down, sir. Thank you very much. Any other
18 witnesses?

19 MR. HUFF: I don't think that I'm
20 going to call this other witness because I think
21 that he probably may need an attorney. So that
22 would be our case.

23 COMMISSIONER BECK: All right.

24 Anything further?

25 MS. SULLIVAN: No further witnesses, 79

1 Your Honor.

2 COMMISSIONER BECK: All right. That
3 will conclude this matter. Thank you all very much.

4 (Whereupon, the hearing
5 was concluded at 5:02 p.m.)

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Certificate of Reporter

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I, Deborah S. Thomas, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the hearing of Marrs vs. Saluda's on the 23rd day of September, 2010: that the witnesses were first duly sworn, and that the foregoing 79 pages constitute a true and correct transcription of the said hearing.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript shall be hereafter delivered to Commissioner T. Scott Beck, South Carolina workers' Compensation Commission, 1333 Main Street, 5th Floor, Columbia, South Carolina 29201.

In witness whereof I set my hand and seal this 8th day of November, 2010.

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My Commission
expires 1/4/18

Deborah S. Thomas, CVR
and Notary Public for the
State of South Carolina

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□

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Andrew Marrs,)
Claimant,) Claim No. 1003812
)
-vs-)
)
1751, LLC a/k/a Saluda's,)
Employer,)
)
and)
)
South Carolina Uninsured)
Employers' Fund,)
Carrier/)
Defendants.)
- - - - -)

(C O P Y)

FULL COMMISSION PANEL HEARING

- - - - -
Tuesday, April 19th, 2011
10:30 a.m. - 10:53 a.m.
- - - - -

The Full Commission Panel Hearing was held before the South Carolina Workers' Compensation Commission at the South Carolina Workers' Compensation Commission, 1333 Main Street, 5th Floor, Columbia, South Carolina, on the 19th day of April, 2011, before Jill H. Vickers, Certified Court Reporter and Notary Public in and for the State of South Carolina.

APPEARANCES:**COMMISSION PANEL:**

Andrea Pope Roche, Chairman
 David W. Huffstetler
 Avery B. Wilkerson

Blake A. Hewitt, Esquire.
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1 **COURT REPORTER:** Today is April 19th,
2 2011. This is South Carolina Workers'
3 Compensation Case Number 1003812. This is the
4 case of Andrew Marrs, Claimant, versus 1751, LLC
5 and the South Carolina Uninsured Employers' Fund
6 is the Carrier.

7 The Appellant is the Claimant represented by
8 Blake A. Hewitt, and the Respondent is represented
9 by E. Ros Huff.

10 Each side is allowed ten minutes for oral
11 argument and the Appellant three minutes in reply.
12 You are requested to argue the grounds of
13 exception and stay within the record.

14 **MR. HEWITT:** Thank you Madam Chair
15 Woman, and may it please the Commission. My name
16 is Blake Hewitt, and I represent Andrew Marrs.

17 Mr. Marrs essentially blew out his left knee
18 when he stepped on a broken stair on the back
19 staircase at Saluda's Restaurant on March 3rd,
20 2010. He was employed with Saluda's as a cook.
21 Mr. Marrs knew this particular stair was broken,
22 and for the purposes of this appeal, we've agreed
23 that along with all the other employees at
24 Saluda's, he was asked not to use the back
25 staircase.

1 The question presented in this case is
2 whether this order, "Please don't use the back
3 staircase, there's a broken stair", limited the
4 course and scope of his employment so that he
5 stepped outside the sphere of his work when he
6 stepped on this stair, or whether it was instead a
7 rule that governed his conduct while he was
8 working. Our position is that this rule governed
9 his conduct while he was at work, and this injury
10 is compensable.

11 The Hearing Commissioner denied this case
12 based on the Wright versus Bi-Lo decision as a
13 decision from the Court of Appeals, and I think
14 that's a good place to start. The Wright case is
15 kind of an interesting case. I think the Claimant
16 was a little bit of a likable fellow. He was
17 employed at a Bi-Lo Grocery Store as a Courtesy
18 Clerk, and his problem was that he couldn't help
19 but chase after people he thought were stealing
20 from his employer. The problem with that was that
21 chasing after shoplifters was not a part of his
22 job. Bi-Lo had a very specific policy that said
23 that hourly employees were not to pursue
24 shoplifters or confront them. Their job was just
25 to observe and report to management. Mr. Wright

1 violated this order twice and was told not to do
2 so. On the third time, he disobeyed it and chased
3 a suspected shoplifter outside of the store,
4 jumped on his moped and drove away and
5 unfortunately suffered a heart attack.

6 Here's the rule that the Court of Appeals
7 laid down, and I'm paraphrasing here, but it said,
8 "The question in this case is whether Mr. Wright
9 stepped outside of the sphere of his employment
10 when he broke the rules about shoplifters, because
11 the law is, that not every rule is a rule that
12 sets the course and scope of employment. When a
13 worker violates a rule that governs his actions
14 within the sphere of employment, that's
15 compensable, but some rules set the terms of work,
16 and a violation of those rules make it not
17 compensable."

18 I think that's a reasonable rule. I mean,
19 it makes sense to me, because it recognizes sort
20 of two things. First, the employer is the one who
21 creates the job, so he has the authority to set
22 the terms of work to say what is and is not a part
23 of someone's job. That's why Mr. Wright lost his
24 case, because the employer told him "Chasing
25 shoplifters is not a part of your work".

1 The second thing I think this rule
2 recognizes is that employees will sometimes break
3 rules. I mean, sometimes they'll do so
4 accidentally. Mr. Marrs certainly didn't intend
5 to step on a stair he knew was broken. Sometimes,
6 they'll do so intentionally.

7 The question you have to ask is, did this
8 rule govern Mr. Marrs' conduct within the sphere
9 of his work, or did it set the terms of work? The
10 Hearing Commissioner didn't ask that question, but
11 that's the question we have to answer for this
12 case.

13 And as we've laid out in our brief, when you
14 look at this rule, "Please don't use the back
15 steps, it has a broken stair", the conclusion that
16 you come to is that this sets his conduct. This
17 is a rule that asks him not to do certain things
18 when he's doing his work related activities.
19 Other than stepping on this particular stair, Mr.
20 Marrs wasn't doing anything that he wasn't
21 supposed to be doing. He was out on the back
22 stoop on a smoke break. He was within the course
23 and scope of his employment under the Personal
24 Comfort Doctrine. So, he wasn't doing anything
25 that we can say wasn't a part of his job. That's

1 unlike the Write case.

2 I was trying to, as I was preparing for
3 this, come up with, you know, a snappy sound by it
4 or an easy example to delineate between rules that
5 govern the course and scope of work and rules that
6 govern conduct within work, and I'm afraid the
7 best thing I could come up with was that this
8 rule, "Please don't use the back steps", just
9 feels like a conduct during work rule. It's
10 certainly different than Wright versus Bi-Lo where
11 Mr. Wright was told, "Chasing shoplifters is not a
12 part of your job. Your job is to bag groceries."

13 It's different than the Black versus Town of
14 Springfield Case where a Police Chief died when he
15 fell off the side of a fire truck where he was
16 riding on. Two mayors had told this Police Chief
17 and the other policeman in the Town of
18 Springfield, "Your job is not to ride on the fire
19 truck". The Police Department and the Fire
20 Department were to be separate and apart from one
21 another. "Riding on the fire truck is dangerous
22 work, and you don't have any responsibilities on
23 it".

24 In their brief, Saluda's recites the Johnson
25 versus Merchants Fertilizer Company Case, and I

1 think that's an interesting case. Part of the
2 reason is, that's a worker who was employed at a
3 fertilizer manufacturing plant sweeping floors and
4 he died after he got caught in a drive shaft in
5 the part of the factory on the same floor where he
6 was supposed to be working, but a particular area
7 where he was not supposed to be. Part of the
8 reason that that case was compensable is because
9 it wasn't clear which area of the factory he was
10 supposed to be in or not. There was only an
11 imaginary line sort of that separated where he was
12 supposed to be performing his work from where he
13 wasn't. But I think the important part of the
14 Johnson case is that, in that case, the Supreme
15 Court cited the very same rule that they had come
16 back to in Wright versus Bi-Lo, the rule that not
17 every violation of an order takes you outside the
18 context.

19 Here, the Supreme Court was looking at the
20 employer's argument that where he was, he had to
21 be outside the course and scope of his work. He
22 was in an area of the factory where he had no work
23 related responsibilities, and the Supreme Court
24 said "This is a close case, and the tie in
25 Workers' Comp. goes to worker". This was an

1 imaginary line. There wasn't any physical
2 barriers that separated where he was supposed to
3 be and where he wasn't supposed to be, and he
4 could have forgotten about this imaginary line.
5 He could have gone over there to talk to another
6 co-worker when he got caught in this drive shaft.

7 **COMMISSIONER WILKERSON:** Why did your
8 client go out and step on the step?

9 **MR. HEWITT:** Well, he went outside the
10 kitchen, Commission Wilkerson, to smoke a
11 cigarette.

12 **COMMISSIONER WILKERSON:** I'm fine with
13 that, but knowing the step is broke, knowing that
14 he was told not to go there, and if I read the
15 Commissioner's Order correctly, a fellow employee
16 had already been hurt on that step?

17 **MR. HEWITT:** That's correct, two fellow
18 employees had fallen on this step.

19 **COMMISSIONER WILKERSON:** So, why would
20 he step on the step, is my question?

21 **MR. HEWITT:** He forgot -- and that's not
22 clear in the record. I think the best answer I'd
23 have for that is he forgot. He admitted, "I know
24 the step was broken". He just forgot. And that's
25 sort of, I think, the speed bump in this case as

1 you look at it, because you say that the employer
2 gave an order that was a very reasonable order. I
3 mean, employers don't just make rules just to be
4 mean. They do it for a reason, and this employee
5 was given an order, along with all the other
6 employees at Saluda's, "Please don't use the back
7 stairs, they're broken", but the rule of Wright
8 versus Bi-Lo recognizes that rules are different.
9 Not every infraction of a rule takes the worker
10 outside the course and scope of his or her
11 employment. Some rules set the boundaries of
12 work. "Mr. Wright, your job is not to chase
13 shoplifters". "Mr. Marrs, you're a cook. Your
14 job is not to go in the front of the restaurant
15 when someone is harassing a server".

16 **COMMISSIONER WILKERSON:** Do you have any
17 children?

18 **MR. HEWITT:** No, Commissioner.

19 **COMMISSIONER WILKERSON:** Good question,
20 because when you have one, ask them when you say
21 "No", "What is it that you don't understand about
22 no?" That's a pretty direct order, "Do not go
23 out, do not step on the step". The answer is
24 "Don't do it, so why do you do it", is why I'm
25 confused.

1 **MR. HEWITT:** That's exactly correct, and
2 again, I think part of the reason that the rules
3 of Wright versus Bi-Lo was written the way it is,
4 is because workers will sometimes break rules.
5 Sometimes they'll forget. Sometimes they'll do it
6 intentionally. And the law is that not all rules
7 are created equally.

8 We've asked for this case to be reversed on
9 compensability, and also we've asked for it not be
10 remanded and for the order to be amended to
11 include causally related medical treatment both
12 before and after, as well as temporary total
13 disability benefits under 42-9-10 and a Regs 502
14 and 503.

15 As I read Saluda's brief, they didn't take
16 those two questions on other to than to say,
17 "Because the case is not compensable, those
18 requests are moot". We're asking that the
19 compensability finding be reversed and that TTD
20 and causally related medical treatment be awarded.
21 Thank you.

22 **MR. HUFF:** If it pleases the Commission,
23 I thank you for the opportunity to appear and
24 argue and respond.

25 I think the rule by my opposing counsel has

1 been stated properly, not all orders will take you
2 outside the scope of your employment. Some orders
3 will. For an example, in the Wright v. Bi-Lo
4 case, that case the Commissioner, Commissioner
5 Beck, used to deny this claim, Mr. Wright was told
6 specifically, "Do not chase shoplifters", and he
7 was told that repeatedly, if you read that case,
8 three or four times, and he kept doing it, and
9 they kept telling him not to do it, and he did it.
10 That took him outside of the sphere of his
11 employment.

12 What happened -- let's talk about this
13 specific case, and I've handed up to you some
14 pages from the hearing transcript, and I've given
15 you about 20 pages, and I've given you a little
16 index. He knew the steps were broken,
17 Commissioner Wilkerson. He knew it at Page 22,
18 23, 32. They're all there. And if you read it,
19 he was aware that other employees, not one, but
20 two employees fell on these stairs. Why did the
21 employer tell them -- he didn't tell them as the
22 prep work in the kitchen as a cook, "I want you to
23 cut the onions and the green peppers, but don't
24 touch the carrots or the potatoes". That covers
25 the conduct of performing your job duties.

1 Here, there was a dangerous situation. Two
2 employees had already fallen. There was a
3 defective stair. Not only was this man warned by
4 the employer, Mr. Cook, not to do it, even the
5 landlord told him not to do it.

6 And then unlike in Johnson, you had a
7 gentleman who was assigned to a new location with
8 only a simple warning. That's exactly what the
9 case said, the evidence only showing that the
10 foreman had warned the employee not to go close to
11 the line shaft in Belk, and he was found dead on
12 the premises. We don't know why he went up there.
13 There could have been something up there that he
14 had to clean up which was his duty. We don't know
15 in that case.

16 But in this case, the steps were defective.
17 Two employees had already been hurt. They went
18 out there and they put tape up to block the
19 passage so nobody could walk on these steps, "Stay
20 away from the steps".

21 Commissioner Beck to make sure that it
22 was clear even asked Mr. Cook, "Did you tell him?
23 Is there any doubt in your mind that you told
24 him?" And that's going to be on Page 73, 74, 75
25 and 76. He asked him, "Any doubt about it?" And

1 he said, "No, I made it crystal clear". He said,
2 "Every time we had a line meeting before any time
3 when the restaurant is open ..." -- and he brings
4 all the employees in saying "Okay, you're a
5 server, you're doing this", he had all the
6 employees come together, and he said, "I told them
7 for two to three weeks, don't go back there", and
8 he used the words, "I used it to pound it in their
9 heads that you're not supposed to go out there".
10 He even said, after the man had the accident -- he
11 said "Why did you go out there? Didn't you know
12 you're not supposed to go out there?" And the
13 Claimant's own testimony was, "I knew I wasn't
14 supposed to go out there".

15 **COMMISSIONER HUFFSTETLER:** Can I ask a
16 question? I understand the frustration, and I
17 understand the equity argument, "Why should we be
18 held accountable for something we told somebody
19 repeatedly not to do and they did it anyway?" I
20 understand that. If this were a production
21 employee in a factory, and their supervisor told
22 them, "Do not take the guard off this machine,
23 it's dangerous", and the machine has jammed, and
24 they take the guard off and they get hurt on it.
25 How is that different? How would you distinguish

1 that from what happened here, because I haven't
2 heard an argument that -- the argument -- what I
3 hear from claimant's counsel is, he was going down
4 these steps for a reason related to work, even if
5 it's the Comfort Doctrine that -- his real
6 argument is not outside the sphere of the
7 employment. So, how is it different if you told
8 that person repeatedly, "Don't take that guard
9 off", and they told this guy, "Don't go down the
10 steps", if they're in the course of their
11 employment?

12 **MR. HUFF:** All right. In the course of
13 this time and place -- Commissioner, you've been
14 on the Commission for many years, and you know
15 that -- the difference is the following. He may
16 have taken the guard off, because "By taking the
17 guard off, I can do the work faster". I've had a
18 case where a man put his hand into the press
19 machine, and he was supposed to be using these
20 rods to move the parts out, and it slows down his
21 production, and he has a quota. So, he doesn't
22 use the rods, he put his hands in, and both of
23 this man's hands Husqvarna were cut off. That's
24 the conduct of the work, how he's performing the
25 work.

1 portion of the leased premises were taken out of
2 his work area and environment, "You have no
3 reason to be there". That's what it says if you
4 look at those pages. "You're not supposed to go
5 in that area. It is a dangerous area. As your
6 employer, I'm trying to limit injuries. I don't
7 want you in that area. You have no reason to be
8 in that area. You cannot perform any job duties
9 in that area. You can't even take your Personal
10 Comfort Doctrine break in that area."

11 **COMMISSIONER ROCHE:** Is there a dispute
12 about what -- because he testified, from what I
13 understand, that he went out to take a smoke
14 break, but the other cook or chef or whatever was
15 leaving, and so he went down the stairs to hear
16 him better about what he was saying he had prepped
17 for that day. So, he was getting information
18 about -- is there any dispute that that's what the
19 conversation was about?

20 **MR. HUFF:** I think that testimony is
21 undisputed, Commissioner Roche. I don't think
22 that's in dispute. The question is, as it says in
23 the Wright case, "Whether the Claimant in Wright
24 stepped out the scope of his employment by
25 violating a store's rule regarding shoplifters",

1 in this situation, did this Claimant, Mr. Marrs,
2 step outside the scope of his employment when he
3 was told, "You have no reason, you have no
4 authority to go in that area", and like they said,
5 they put tape up on repeated occasions to block
6 the passage so these employees cannot go in that
7 area because it was so dangerous. There's already
8 two employees. This is the third employee within
9 a two to three week period that had fallen. And
10 this employee is doing everything -- even the
11 landlord has told Mr. Marrs who is renting the
12 property, "I've got to repair these steps. I
13 don't want any of your employee in that area
14 because of lawsuits against me. I don't want you
15 down there." But the man went down there anyway.
16 When the tape was removed, they put the tape back
17 again to try to keep people from going into an
18 area where they could be hurt.

19 As a matter of fact, I even asked Mr. Marrs
20 a hypothetical question, "I want you to assume
21 that you are the owner of the restaurant, that
22 you're leasing these premises, and you had two
23 employees that have gotten hurt, would you warn
24 and direct your employees ..." -- not a warning,
25 this was an actual directive -- "... would you

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1 direct your employees not to go in that area and
2 prohibit them to go in that area", and he said,
3 "Yes, I would tell them not to go in that area. I
4 would instruct them not to go in that area
5 myself." And I even asked, "Do you think it's
6 reasonable to do that, to protect your employees
7 from getting hurt on the job", "Yes, I think
8 that's reasonable". I said, "Do you think Mr.
9 Cook is a reasonable man", and he said, "I think
10 Mr. Cook is a reasonable man".

11 If you'll look at the pages that I put where
12 there's instructions not to use the steps, I think
13 it was clear, this was an instruction not as to
14 conduct in the scope of employment, but this was
15 an instruction, a prohibition that limited the
16 scope of this man's employment.

17 Why did Bi-Lo want the hourly employees not
18 to chase shoplifters, because they could get
19 injured. They could be hurt on the job.. I don't
20 think any employer is going to put an employee
21 into a situation where they could get hurt. I
22 think that would be foolish on an employer's part,
23 and that's exactly what Mr. Cook -- and Mr. Cook
24 said, "I did it. I wanted to pound it into their
25 heads, and I did the line meeting every day."

1 That was at Page 76, 77 and 78. At Page 78, "For
2 two to three weeks, I did it to pound it into
3 their heads". Thank you.

4 **MR. HEWITT:** Just a couple things very
5 quickly. I want to take issue with the notion
6 that Mr. Marrs didn't have any work duties sort of
7 outside the back of the kitchen. Mr. Marrs was
8 given permission to go on the back stoop for a
9 smoke break. So, he's in the scope and course of
10 his employment when he's out on the top of that
11 back stoop. And that's where they remove trash
12 from the kitchen. That's where food deliveries
13 were handled. So, he certainly had work related
14 duties that took him outside into this general
15 area.

16 **COMMISSIONER HUFFSTETLER:** The stronger
17 argument is what's in the order that he was down
18 there talking to the other chef about what he had
19 prepped ...

20 **MR. HEWITT:** I think that's exactly ---

21 **COMMISSIONER HUFFSTETLER:** I don't think
22 there's really an argument about what he was going
23 to do is what he said he was doing. I haven't
24 heard that.

25 **MR. HEWITT:** I'm sorry. Could you make

1 that last point again?

2 **COMMISSIONER HUFFSTETLER:** Commissioner
3 Roche asked this earlier whether there was a
4 dispute about whether he was doing what he said he
5 was doing. There doesn't seem to be a dispute on
6 that. This whole argument seems to be about
7 whether when a person is told in strong terms, "Do
8 not do this", whether that takes them outside the
9 scope of their employment.

10 **MR. HEWITT:** I think that's exactly
11 correct, Commissioner Huffstetler, and that's one
12 of the things that I think is so important here.
13 This case is a lot closer to the Johnson case than
14 it is to the Wright case, because this is a guy
15 who was acting within the course and scope of his
16 work when he was injured. The question -- I mean,
17 the point I'm trying to make is, in what he was
18 doing.

19 **COMMISSIONER HUFFSTETLER:** Do you know
20 what year the Johnson case was?

21 **MR. HEWITT:** I think it was 1957, and
22 that was a manufacturing case.

23 **COMMISSIONER ROCHE:** And I believe there
24 was some testimony that they couldn't lock that
25 back door because of the fire code. Now, had

1 there been a fire and everybody had to go down the
2 back stairs, would they have been allowed to do it
3 then? Was there any testimony along that line?

4 **MR. HEWITT:** There's not any testimony
5 along those lines. I think if you take Mr. Huff's
6 argument for what it is, the answer to that
7 question has to be, "No, I don't think that passes
8 the Snell Test". Thank you.

9 **COMMISSIONER ROCHE:** Thank y'all. That
10 concludes the hearing.

11 (Whereupon, the Full Panel Hearing concluded at
12 10:53 o'clock a.m.)

STATE OF SOUTH CAROLINA)

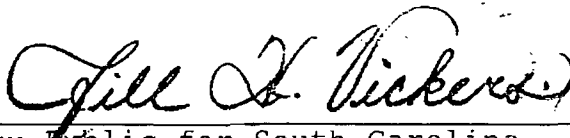
: C-E-R-T-I-F-I-C-A-T-E

COUNTY OF RICHLAND)

I, Jill H. Vickers, Certified Court Reporter and Notary Public, certify that I did have the Full Commission Panel Hearing before me at 10:30 a.m., on Tuesday, April 19th, 2011, at the South Carolina Workers' Compensation Commission, 1333 Main Street, 5th Floor, Columbia, South Carolina; that the foregoing pages constitute a true and accurate transcript of the proceedings held at that time and place.

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

IN WITNESS WHEREOF I have hereunto set my hand and seal this 11th day of May, 2012.



Notary Public for South Carolina.
My commission expires July 5th, 2016.

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BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1003812

ANDREW MARRS,	)	
	)	
CLAIMANT,	)	HEARING
	)	BEFORE COMMISSIONER
v.	)	ANDREA C. ROCHE
	)	
1751, LLC d/b/a SALUDA'S	)	<u>TRANSCRIPT</u>
	)	
EMPLOYER,	)	
AND	)	
	)	
UNINSURED,	)	
	)	
DEFENDANT.	)	
_____	)	

 **COPY**

THE WORKERS' COMPENSATION HEARING, TAKEN BEFORE
CORA ELLIS BRUTON, A NOTARY PUBLIC IN AND FOR THE
STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF
11:05 A.M., MONDAY, NOVEMBER 21, 2011, SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION, 1333 MAIN STREET,
COLUMBIA, SOUTH CAROLINA 29202.

**CORA ELLIS BRUTON
COURT REPORTER
131 BROWNING COURT
LEXINGTON, SOUTH CAROLINA 29073
803-397-0189**

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REPORTED BY

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 803-397-0189

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EXHIBITS

(No Exhibits Proffered)

1 THE COURT: Today's date is November the 21st,
2 2011. This is WCC File Number 1003812. This is the
3 case of the Claimant, Andrew Marrs, represented by
4 Attorney Allison P. Sullivan, versus the Employer
5 1751, LLC d/b/a Saluda's; represented by Attorney E.
6 Ros Huff, Jr.

7 There is no Carrier on the case and Lisa C.
8 Glover is here on behalf of the UEF.

9 We're here today on Remand from the Full
10 Commission.

11 We have a date of accident of March 3rd, 2010.

12 Average weekly wage and comp rate, I assume have
13 been --

14 MR. HUFF: We're going to stipulate by Order on
15 page 9 of the Full Commission Order, \$265 dollars
16 average weekly wage with a compensation rate of
17 \$176.67.

18 THE COURT: Are there any objections to APAs,
19 jurisdiction, venue, or any other items?

20 MS. SULLIVAN: And Commissioner, I neglected to
21 hand up my APAs prior to any objections to those.

22 MR. HUFF: We would object to several of them,
23 Commissioner.

24 THE COURT: Okay. What are the objections?

25 MR. HUFF: We would object to the Exhibits K

1 and L. As to K, since they're -- they're exhibits
2 they're not really -- I don't think they're
3 Administrative Procedure Act Submissions. We do not
4 believe that they would come in under 67-613, I
5 believe that's the one. I'll turn to it, please. No,
6 67-612 in that they are not medical reports. They're
7 -- it contains unsworn testimony. They contain
8 self-serving declarations by the Claimant. They're
9 not subject to cross examination which we are allowed
10 to under the Administrative Procedures Act. As to
11 Number L, L seems to be emails involving Mr. Andrew's
12 WIS Job Link and other individuals who are not here
13 subject to be cross examined. They also have
14 narratives from him communicating with other people
15 which is unsworn testimony; it's hearsay. So we would
16 object to those coming in.

17 THE COURT: All right. Allison?

18 MS. SULLIVAN: Commissioner, under the Coleman
19 case the Claimant is allowed to provide evidence of
20 what work he has sought since the time of the last
21 hearing since he's been unable to work for the
22 Employer. I believe it's very relevant from that
23 standpoint; it's just evidence of what efforts he has
24 made to look for additional work. With respect to the
25 comments or the -- that Mr. Marrs may have made in

1 those emails, he will be under oath. Mr. Huff will
2 have an opportunity to cross examine him on his
3 statements.

4 THE COURT: I'm going to let them in for the sole
5 purpose of showing what efforts he's made in order to
6 find employment at this point, so I'm going to
7 overrule the objection.

8 Without objection the Commission's file becomes a
9 part of the record with the exception of self-serving
10 declarations and unstipulated medical reports.

11 Before going on the record we did have a
12 pre-hearing conference.

13 This case has been tried before. It was found to
14 not be compensable by the single Commissioner; the
15 Full Commission reversed the single Commissioner,
16 found a compensable injury and remanded it for
17 determination of benefits. I think it went up to the
18 Court of Appeals; it found it was interlocutory so
19 we're back here today for determination of benefits.

20 It's the position of the Claimant that he would
21 be entitled to his past causally related medical
22 treatment. That he's not reached maximum medical
23 improvement and he is in need of additional medical
24 treatment; and that he would be entitled to TTD from
25 March 3rd, 2010 through November 7th, 2011.

1 It is the position of 1751, LLC that the Claimant
2 would not be entitled to temporary total disability
3 benefits. It would be their position the medicals
4 would speak for themselves.

5 The Claimant did ask me to designate Dr. Guy as
6 the authorized treating physician since the case has
7 been denied.

8 It's the Defendant's position that there's been
9 nothing to divest them of the right to choose the
10 treating physician.

11 It's the position of the Uninsured Employers Fund
12 they echo the position of the uninsured Employer.

13 Is there anything any of you would like to add?

14 MS. SULLIVAN: No, Commissioner.

15 MS. GLOVER: Nothing from the Fund.

16 MR. HUFF: That's it.

17 THE COURT: We did have a discussion that we're
18 going to rely mainly on all the evidence that was
19 entered at the last hearing. We're going to have some
20 brief testimony today about TTD since that time.

21 I understand Mr. Marrs is your first witness?

22 MS. SULLIVAN: That's correct.

23 THE COURT: Please raise your right hand. Do you
24 swear to tell the truth, the whole truth and nothing
25 but the truth?

1 THE WITNESS: I do.

2 THE COURT: Please state your full name for the
3 record.

4 THE WITNESS: Andrew Richard Marrs.

5 THE COURT: Ms. Sullivan.

6 Andrew Richard Marrs,

7 Having first been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. SULLIVAN:

10 Q Andrew, if you don't mind just telling us
11 your age and date of birth.

12 A I'm 30 years old; my date of birth is August
13 4th, 1981.

14 Q Okay. And do you have any dependents
15 currently dependent upon you for financial support?

16 A No.

17 Q All right. Andrew, if you don't mind
18 telling us, when did you last work?

19 A I last worked -- actually I just started a
20 new job on the 7th of this month at the American Red
21 Cross.

22 Q And prior to that job where did you last
23 work?

24 A Prior to that I worked for Saluda's
25 Restaurant, the last date I believe is March 3rd.

1 Q Do you remember of what year?

2 A Of the previous year.

3 Q Of 2010?

4 A Yes.

5 Q All right. Can you explain for us why you
6 were out of the workforce between March 3rd, 2010 and
7 November 7th, 2011?

8 A I was injured on March 3rd in -- which has
9 been covered, I believe, but I was injured while at
10 work. My knee -- I sprained my knee at work and when
11 I went to the doctor he released me to light duty.
12 When I returned to work I requested that I have, you
13 know, I could come back and do whatever I could do to
14 the limits of the doctor. And I was told that they
15 didn't have any light duty work.

16 Q And who is they?

17 A I'm sorry. Saluda's Restaurant -- I was
18 told by Saluda's Restaurant that they didn't have any
19 light duty work so we -- that's why we're here today.
20 And --

21 Q Okay. Tell us what you've done since that
22 time through today?

23 A Oh, I've -- I've gone out to try to find
24 jobs. I've put in applications. I have worked with
25 the workers -- sorry, unemployed workers

1 commission. I'm trying to remember the exact term for
2 that, but --

3 Q Would that be vocational rehab?

4 A Well, I've worked with vocational rehab but
5 also with the WIS program, the -- also through the
6 work -- One Stop, I've worked with the One Stop in
7 applying for jobs through there.

8 Q Okay. Tell us what One Stop is?

9 A One Stop is a -- is a job bank run by the --
10 I'm trying to remember. It's a state run job bank and
11 they have different positions available and they
12 attempt to assist people with finding -- in finding
13 work.

14 Q Okay. Were those efforts successful with
15 One Stop?

16 A No. I applied for several jobs but never
17 heard anything back on the jobs. I --

18 Q And let me stop you right there.

19 A I'm sorry.

20 Q Let's go back and talk about the WIS
21 program. Tell us a little bit about that program.

22 A Oh, that's the -- I'm sorry, that's the
23 state program. I'm -- I was confusing types.

24 Q So that's with One Stop?

25 A Yeah.

1 Q All right. Sorry. Didn't mean to
2 interrupt.

3 A No, that's fine.

4 Q All right. Moving on. What else did you do
5 besides try WIS and One Stop?

6 A I worked through the -- with the Richland
7 County Public Library Job Center they have in the
8 Assembly -- Assembly Street facility.

9 Q And were those efforts successful in helping
10 you obtain employment?

11 A No, not to obtain employment; they assisted
12 me with -- with finding work and working on my resume'
13 and applying to jobs, but were unsuccessful.

14 Q Okay. Anything else?

15 A There was the work with the -- with the --
16 sorry -- the vocational rehabilitation program.

17 Q What did they do for you?

18 A They did an evaluation period of about a
19 month, which did an assessment of -- of skills and
20 they also looked for positions in different areas that
21 accommodated my -- my injury. But I applied to
22 several of their positions and was unsuccessful in
23 finding employment.

24 Q And did voc rehab do anything else for you?

25 A They've provided some physical therapy

1 and some counseling services as far as the job search.

2 Q And did you pursue those services that they
3 offered you?

4 A Yes.

5 Q Okay. Were those services beneficial?

6 A Yes, they were beneficial, but they were
7 unsuccessful in securing employment.

8 Q All right. Anything else?

9 A Let's see. I applied to several positions
10 on my own; AT&T, Sprint, several sales positions,
11 several clerical positions. I applied to several --
12 attended several job fairs with WIS; again with the --
13 the state facility for jobs, applied -- went to
14 several of their job fairs handing out resumes for
15 jobs. I applied to several of the temp agencies that
16 attended there.

17 Q Okay. You testified that you applied for
18 positions with AT&T and Verizon?

19 A And Verizon --

20 Q Any other employers that you recall?

21 A Richland County Public Library, I know I
22 applied with them. I applied with Apple One Temp
23 Service, I think its Roper Temp Service, Kelly Temp
24 Service. I can't recall the other ones offhand.

25 Q And you testified that you are

1 currently working somewhere?

2 A Yes, I'm currently working for the American
3 Red Cross.

4 Q And tell us how you came about that job?

5 A One of the temp services that I applied to
6 said that I didn't have enough experience in clerical
7 or in administrative position and that they couldn't
8 provide me with work for it. So what I decided was in
9 order to get -- gain that experience I would volunteer
10 in an office setting or in a clerical setting in order
11 to gain that experience to make myself more able to
12 work for -- well, I would be able to work because --
13 because of the injury. So I went to volunteer there;
14 began in December, I believe it was either the 10th or
15 the 12th; I'm not exactly sure of the start date when
16 I began volunteering there. I volunteered there from
17 December all the way through until I was hired on --
18 on the 7th of this month.

19 Q And that was December 10th or 12th of what
20 year?

21 A Of 2010.

22 Q Tell us what kind of things you were doing
23 when you were volunteering at the Red Cross.

24 A I was providing customer service, providing
25 clerical work, answering phone calls, working on their

1 registration there, what they call the health and
2 safety -- Health and Safety Services Division, which
3 is basically their first aid and CPR training wing of
4 the American Red Cross and basically providing the
5 first contact for -- for them in their training
6 services.

7 Q In your opinion would you have gotten a full
8 time position on November 7th, 2011 but for the
9 volunteer services?

10 A No.

11 Q The position that you have now, is that a
12 full time or a part time position?

13 A It's a full time position.

14 Q And what is the job title of that position?

15 A It's Administrative Coordinator for the --
16 I'm sorry. Administrative Coordinator for the PHSS
17 which is the territory -- I'm trying to remember the
18 exact title here. It is an Administrative Coordinator
19 position; it's just the -- the territory coordinator
20 within the division, which is basically all of South
21 Carolina and Western North Carolina.

22 Q Do you feel like there was anything else you
23 could have done to find a job that you didn't do?

24 A No. No.

25 Q Please answer any questions that Mr. Huff

1 or Ms. Glover may have for you.

2 THE COURT: All right. Mr. Huff?

3 MR. HUFF: Thank you, Commissioner.

4 CROSS EXAMINATION

5 BY MR. HUFF:

6 Q What is your salary at the American Red
7 Cross?

8 A It's hourly based, but it's \$13 dollars per
9 hour which comes out to, I believe, \$27,500 yearly.

10 Q How many hours a week are you working?

11 A 40.

12 Q What time do you come in?

13 A At 8:30.

14 Q What time do you get off?

15 A 6:30. I'm sorry, that's incorrect. 5:30,
16 not 6:30.

17 Q Could you tell me; are you a high school
18 graduate?

19 A Yes, sir.

20 Q Are you a college graduate?

21 A Yes, sir.

22 Q What is your degree in?

23 A Religion.

24 Q What year did you graduate?

25 A 2004.

1 Q All right. Have you got any education after
2 college?

3 A No, sir.

4 Q Can you read and write?

5 A Yes, sir.

6 Q Do you have any learning disabilities?

7 A Not that I know of, sir.

8 Q And the injury that you had on March 3rd,
9 2010 was to your left knee?

10 A Yes, sir.

11 Q Any other body part injured?

12 A No, sir, just the left knee.

13 Q The places that you sought employment, the
14 WISTV program, the One Stop program, South Carolina
15 Vocational Rehabilitation; I think you mentioned
16 Sprint and AT&T and other locations, sales jobs,
17 clerical jobs; did you subpoena anybody to come here
18 today that could verify your job search?

19 A No, sir.

20 Q You didn't bring anybody with you?

21 A No, sir.

22 Q All right. Didn't bring anybody here today
23 to give any testimony as to why you did not get these
24 jobs?

25 A No, sir, I submitted the -- the only thing

1 I submitted was the paperwork. The only one that
2 would indicate why I didn't get it would be the Apple
3 One that I submitted -- I believe was submitted with
4 the paperwork. In that -- that would have been the
5 temp position that referred to the experience or lack
6 -- or lack thereof that precluded me from receiving
7 employment with them.

8 Q So in answer to my question you didn't bring
9 anybody today that could verify why you --

10 A Oh, I'm sorry. I --

11 Q -- didn't get a job?

12 A -- so you're saying did I bring anybody?

13 Q Yeah, did you bring anybody today that could
14 testify why you did not get the job?

15 A No, sir, I did not bring anybody, no.

16 Q All right.

17 A If that was the question.

18 Q And other than this one piece of paper that
19 I've objected to that the Commissioner has overruled
20 my objection --

21 A Uh-huh.

22 Q -- do you have any evidence to submit today
23 from any person that would say why you did not get the
24 job?

25 A No, sir.

1 Q Do you have any evidence from any person
2 that would say you did not get the job because of your
3 left knee?

4 A No, sir, I -- actually that's not a -- a
5 question that can be asked as a part of someone who's
6 injured. That's -- it was never brought up and -- and
7 I don't bring it up in applications in order to
8 facilitate that, so it would be hard for me to answer
9 that question saying -- stating that they told me that
10 I couldn't work because of an injury if I -- if the
11 injury was never discussed.

12 Q It's not your testimony today that some
13 applications that you filed at different employers
14 have questions that will ask you about your physical
15 ability to do essential job functions?

16 A No, it's not my testimony.

17 Q So that is asked sometimes?

18 A That is asked sometimes, but then again like
19 I said, sir, I can't -- can't speak for all of the
20 employers like you asked.

21 Q All right. Sometimes on applications
22 they'll ask you if you've ever had a work related
23 injury too; is that correct?

24 A That's a possibility.

25 Q I did notice, again subject to my

1 objection, that these exhibits that are contained in L
2 said, "Andrew Marrs to Kathleen Suggs" and it's dated
3 November 1st. Who is Kathleen Suggs?

4 A She is a -- I believe a paralegal for my --
5 my lawyer.

6 Q And this same notation that you did on
7 November 1st of 2011, correct?

8 A This was the gathering of all the evidence.

9 Q The gathering of this information?

10 A Yes, sir.

11 Q Okay. And then as far as the voc rehab,
12 this was done, and it looks like it's Exhibit K with
13 an evaluation date being done back in May of 2011,
14 correct?

15 A That would have been the evaluation period,
16 yes, sir.

17 Q Do you know when this information was given
18 to your attorney?

19 A I do not, sir. That was -- that was
20 requested through my -- through my attorney, so.

21 Q Okay. Don't tell me anything that your
22 attorney may have said. And you're saying that you
23 volunteered at American Red Cross beginning in
24 December of 2010 and you did that through November of
25 2011, up until the time that you were hired full time?

1 A Yes, sir.

2 Q And each day as a volunteer did you get up
3 at 8:30 -- go into work at 8:30 and get off at 5:30?

4 A Not every day, because it was -- I can't say
5 every day because again, I was working with the
6 vocational rehab so I had meetings with them. I've
7 been working with vocational rehab with physical
8 therapy and muscle -- muscular development since the
9 evaluation period. So that's since May I've been
10 going out there and working with them as well, so I've
11 been working and volunteering for them since that
12 time, but not for 40 hours a week. I was working for
13 them -- volunteering with them rather for 40 hours a
14 week leading up to the evaluation period. But once
15 that physical therapy became available I started
16 taking advantage of the physical therapy that was
17 available.

18 Q All right. And when did that physical
19 therapy begin?

20 A That would have begun with the evaluation
21 period.

22 Q In May?

23 A Yes.

24 Q So in December of 2010 were you working --
25 were you volunteering 40 hours a week?

1 A Yes, sir.

2 Q In January of 2011 were you volunteering 40
3 hours a week?

4 A Thereabout, yes, sir.

5 Q How about in February of 2011, were you
6 volunteering 40 hours a week?

7 A I was trying, yes, sir.

8 Q How about in March of 2011, were you
9 volunteering 40 hours a week?

10 A Can we just cover up until May, sir?

11 Q No, we can do it my way because I get to ask
12 the questions.

13 A Okay. Yes, in March I was.

14 Q Yeah. I'm just trying to make a record.

15 A No, I understand.

16 Q I'm not trying to be rude to you in any way,
17 now. Okay? I wasn't trying to be rude to you.

18 A Okay.

19 Q In April you were working volunteering 40
20 hours a week?

21 A Yes, sir.

22 Q And then you started physical therapy in
23 May?

24 A At the beginning of May I began physical --
25 did the evaluation period which included physical

1 therapy and then once I was done with physical -- done
2 with the evaluation period I've been attending twice a
3 week on Tuesdays and Thursdays, so I was volunteering
4 at the Red Cross on Monday -- Monday, Wednesday and
5 Friday. On Tuesdays and Thursdays I was doing
6 physical therapy in the muscular development center.

7 Q Did you -- did you go in at all on Tuesdays
8 and Thursdays once you finished your physical therapy?

9 A No, sir, because the transportation to the
10 rehab center does -- precludes me from being able to
11 go into work.

12 Q When did the physical therapy end?

13 A It ended with my full time employment. I
14 don't have the time to go out there because of
15 transportation issues.

16 Q Did you have the physical capacity to --
17 when you were volunteering in December of 2010,
18 January of 2011, February of 2011, March of 2011 and
19 April of 2011, did you have the capacity to do that
20 volunteer work? Were you able to do it?

21 A Was I able to do the clerical and
22 administrative work in the volunteer service? Yes,
23 sir.

24 Q So you had the -- you had the capacity to
25 physically do that job, correct?

1 A Yes, sir.

2 Q Now, would you also agree that there are
3 some people that were doing work -- the same type of
4 work that you were doing and not doing it in a
5 voluntary capacity but were doing it in a capacity
6 that earned wages?

7 A Are you speaking personally? I'm sorry.
8 That's a broad statement.

9 Q When you were at American Red Cross, there
10 were other people doing clerical work out there, were
11 they not, that were actually getting paid to do it,
12 correct?

13 A It's a possibility. I'm not -- I'm not sure
14 of everybody's employment status, sir.

15 Q You think everybody out -- I'm not trying to
16 be rude to you -- you think everybody out there --

17 A No, I understand. I'm making a clear
18 statement. I am not aware of their employment status.
19 I can't state that everybody out there is --

20 Q I didn't say everybody, now.

21 A Right.

22 Q There are people out there doing clerical
23 work at American Red Cross that are getting paid for
24 it like you were volunteering doing work --

25 A There's a possibility of that. I

1 can't state that for certain, sir.

2 Q Okay. That's fine. That's fine. But you
3 had the physical capacity to do a job for which people
4 do get paid to do? People do clerical work, do they
5 not?

6 A Yes, they do do clerical work.

7 Q And people get paid to do clerical work, do
8 they not?

9 A Yes, sir.

10 Q Okay. And you had the physical capacity to
11 do that physical job that people get paid for, but you
12 were not getting paid for it; is that correct?

13 A Correct.

14 Q Okay. So you had earning capacity in
15 December of 2010 didn't you? You had the capacity to
16 earn? I'm not saying you were earning, but you had
17 the capacity to earn; did you not?

18 A I mean that's a conclusion you could draw
19 from your assumption.

20 Q I'm asking you. Did you have the capacity
21 to do a job for which people get paid?

22 A As a volunteer, yes.

23 Q So you had the capacity to do a job that
24 people got paid? Okay. Thank you.

25 MR. HUFF: I have nothing further. Thank you.

1 THE COURT: All right. Ms. Glover?

2 MS. GLOVER: I don't have any questions.

3 THE COURT: Ms. Sullivan?

4 REDIRECT EXAMINATION

5 BY MS. SULLIVAN:

6 Q Andrew, did anyone ever offer to pay you for
7 work of any kind between March 3rd, 2010 and November
8 7th, 2011?

9 MR. HUFF: I object. I object. That's hearsay.
10 Anything he's going to testify to now is what somebody
11 told him. Your Honor, --

12 THE COURT: That he received work, no. She asked
13 him if he had received pay for work.

14 MR. HUFF: No. She asked him has anybody offered
15 you to pay you. That's --

16 THE COURT: Rephrase the question.

17 BY MS. SULLIVAN:

18 Q Have you earned any money between March 2010
19 -- March 3rd, 2010 and November 7th, 2011 for work?

20 A No, ma'am.

21 Q Did you ever turn down any offers for work?

22 A No, ma'am.

23 MR. HUFF: I object again. He's talking about
24 what's been said --

25 THE COURT: I'll sustain it.

1 BY MS. SULLIVAN:

2 Q Did Saluda's ever offer you any type of work
3 within your restrictions?

4 A No, ma'am.

5 Q To this day have they offered you any work
6 with your restrictions?

7 A No, ma'am.

8 Q At the prior hearing, Andrew, you testified
9 that for the four years prior to your March 3rd, 2010
10 injury that you primarily performed work in the food
11 service industry; --

12 A Yes, ma'am.

13 Q -- is that correct? Specifically what type
14 of job were you doing --

15 A I was a --

16 Q -- if you could tell us?

17 A -- I was working as a cook. I had worked --
18 I worked previously as a cook for short order in fine
19 dining restaurants and fast food restaurants and
20 several different restaurants over that time period.

21 Q Did you seek work within the food industry
22 -- the food service industry for those types of jobs
23 that you performed previously after March 3rd, 2010?

24 A No, ma'am.

25 Q Why not?

1 A Because I was unable to perform the work.

2 Q And why were you unable to perform the work?

3 A Because of the injury that I sustained and
4 the limitation that I was put under.

5 MS. SULLIVAN: No further questions.

6 THE COURT: Mr. Huff?

7 MR. HUFF: Maybe one or two. I just want to
8 clarify this.

9 RE-CROSS EXAMINATION

10 BY MR. HUFF:

11 Q After I asked you some questions your
12 attorney asked you more questions. And her question
13 dealt with from March of 2010 to November of 2011, you
14 answered her and you said during that period of time,
15 March of 2010 to November of 2011 you earned no wages;
16 is that what you said?

17 A No, wages, no, sir.

18 Q All right. You earned no wages, correct?

19 A Correct, sir.

20 Q But you do agree that we know at least in
21 December when you started volunteering that you did
22 retain the capacity to earn wages? I'm not asking you
23 if you earned wages, but you had the capacity to earn?

24 A I mean the capacity to earn, could you -- I
25 mean that's why -- I'm -- I'm confused by that

1 statement, sir. I can't -- the capacity to earn
2 wages, basically you're saying that I would be able to
3 work any -- anywhere to do --

4 Q Some kind of job. Not -- maybe not in the
5 food service, but you had the capacity to earn some
6 type of a wage because you were volunteering doing
7 work for which people got paid; is that not true?

8 A Again, I -- I'm hard -- I'm struggling to
9 quantify your statement of capacity. That's the --

10 Q We'll just -- I've got all the time -- let's
11 clarify it.

12 A Sure.

13 Q People --

14 MR. HUFF: Commissioner, I concede.

15 THE COURT: Mr. Marrs, you have to admit that
16 other people were getting paid for doing the kind of
17 work you did?

18 THE WITNESS: Right.

19 THE COURT: Okay.

20 MR. HUFF: I have nothing further. Thank you.

21 MS. GLOVER: I don't have anything.

22 THE COURT: Ms. Sullivan?

23 MS. SULLIVAN: No further questions.

24 THE COURT: Any witnesses for the Defendants?

25 MR. HUFF: Oh, no.

1 THE COURT: All right. That concludes the
2 hearing.

3 (The hearing concluded at 11:41 a.m.).
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STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON) CERTIFICATE

BE IT KNOWN THAT I TOOK THE FOREGOING
 WORKERS' COMPENSATION HEARING;

THAT I WAS THEN AND THERE A NOTARY PUBLIC IN
 AND FOR THE STATE OF SOUTH CAROLINA-AT-LARGE;

THE FOREGOING TRANSCRIPT CONSISTING OF 28
 TYPEWRITTEN PAGES REPRESENTS A TRUE, ACCURATE AND
 COMPLETE TRANSCRIPTION OF THE TESTIMONY SO GIVEN AT
 THE TIME AND PLACE AFORESAID TO THE BEST OF MY SKILL
 AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF
 ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE
 OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES
 HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

WITNESS MY HAND AND SEAL THIS 18TH DAY OF
 JANUARY, 2012.

 CORA ELLIS BRUTON
 NOTARY PUBLIC FOR SOUTH CAROLINA
 MY COMMISSION EXPIRES JANUARY 18, 2015

State of South Carolina

1333 Main Street, Suite 500
P.O. Box 1715
Columbia, S.C. 29202-1715



TEL: (803) 737-5700
FAX: (803) 737-5768

Workers' Compensation Commission

April 16, 2010

Allison P. Sullivan
Attorney at Law
P.O. Box 7965
Columbia, SC 29202

RE: **Claim file:**
Andrew Marrs vs. 1751, LLC d/b/a Saluda's
WCC File No. **To be assigned**
Date of accident: 3/3/10

Investigation file:
Andrew Marrs vs. 1751, LLC d/b/a Saluda's
WCC File No. x100506

Dear Ms. Sullivan,

The opinion of the Compliance Division is that your client's employer, **1751, LLC d/b/a Saluda's**, was, on the date of your client's accident, subject to the SC Workers' Compensation Act and uninsured.

Since you have requested a hearing, I am sending your client's claim to the Judicial Department to be placed on the 50/51 hearing docket. When the claim is called on the 50/51 hearing docket, the issue of liability will be determined at that hearing. In the event the issue of liability were to be resolved prior to then by Consent Agreement or Order, the claim file would be updated to reflect that.

If the claim is called first on the 50/51 docket, it will be necessary to prove the employer was subject to the Act before the merits of your client's claim can heard. I believe the evidence in the claim file already reflects that adequately, but if you need assistance in proving that at the hearing, please let me know.

You will be provided a new claim number shortly. Please use it on all correspondence.

If you have not served the SC Uninsured Employers' Fund with your Form 50 requesting a hearing, please do so promptly and forward the certificate of service to the Judicial Department. The Fund's address for service is as follows:

SC Uninsured Employers' Fund
100 Executive Center Drive, Suite 101
Santee Bldg.
Columbia, SC 29210

Telephone: 703-798-2722

Also, please be sure to serve the uninsured employer as well.

If you have questions or comments related to the above, please call me directly at 803-737-5711.

Sincerely,



Michael Felton, Compliance Officer
Compliance Division

MF:f

cc:

SC Uninsured Employers' Fund
100 Executive Center Drive, Suite 101
Santee Bldg.
Columbia, SC 29210

ANDREW MARRS VS. 1751, LLC a/k/a SALUDA'S
WCC FILE NO.: 1003812
CLAIMANT'S APA SUBMISSIONS AND EXHIBITS
DATE OF HEARING: AUGUST 19, 2010 at 11:00 A.M.

Tab	Physician	Date(s)	Page Numbers
1	Doctor's Care	03/08/10 - 05/15/10	1-6
2	Progressive Physical Therapy (no treatment rendered)	03/08/10 & 03/12/10	7-8
3	Palmetto Imaging	05/12/10	9-10
4	Dr. Jeffrey Guy	06/17/10	11-12

Tab	Exhibit	Date(s)
A	Medical Bill of Doctor's Care \$372.00	03/08/10 - 03/15/10
B	Medical Bill of Palmetto Imaging \$460.00	05/12/10
C	Medical Bill of Dr. Jeffrey Guy \$430.00	06/17/10
D	Medical Bill of DJO, LLC \$475.00 (Brace)	06/17/10
E	Subpoena directed to 1751, LLC a/k/a Saludas	06/03/10
F	Claimant's Motion to Compel	07/22/10
G	Affidavit of Melinda Hoffman	07/29/10
H	SC Secretary of State business listing for 1751, LLC	07/30/10
I	Copy of unclaimed mail envelope addressed to 1751, LLC, a/k/a Saluda's that contained Claimant's Form 50. The original mail date was 03/24/10	03/24/10
J	Copy of unclaimed mail envelope addressed to 1751, LLC, a/k/a Saluda's that contained Claimant's Subpoena to employer for employee information	06/03/10

EXAM ROOM TIME

6:50

DOCTORS CARE

CHECKOUT TIME

7:49

TICKET NO.

ACCOUNT NUMBER

DATE

TIME

399705

03/08/10

06:36pm

DC BELTLINE.

1566718

NAME & ADDRESS

MONDAY

MARRS, ANDREW

1279 ROCKWOOD RD

DOB: 08/04/1981 (28 years)

GENDER: M

COLUMBIA, SC 29209

803-767-8152

WRK:

INSURED: MARRS, ANDREW

INS: WC/SALUDAS RESTAURANT

REASON: HURT KNEE (L)

NICKNAME:

IBG:

CELL:

RELATION: OTHER

COPAY: WC

INSURANCE

BALANCE \$0.00

ACCOUNT

BALANCE \$0.00

CURRENT

CHARGES

AMOUNT

PAID

NEW

BALANCE

CASH

CHECK

M.O.

C.

HISTORY: (- or +, or details)

Personal Hx

Family Hx

Social Hx

IM

DM

Alcohol

ITN

HTN

Tobacco

V

MI<50

Drugs

A

CVA

Reg. Exer.

urg

CA

Occup.

rev. chart rev., no sig chg

Above Hx reviewed

ROS (I or O)

Fever, Chills
N, V, D Constip.
SOB, CP
Headache, Fatigue
UTI Sx: Compl.

PREVENTIVE (year of last)

Circle recommendations

Tetanus OTD Women
Cholesterol LMP
Colonoscopy PAP
Flu Shot Mamm
Pneumovax BMD DEXA

Allergies:

NKDA

Medications:

all

VGT

BP 110/70

Pulse

Resp

Temp

233

70

60

16

98.5

PHYSICAL: (see reverse) Omit if N/A

✓ If nml., O If abnml. & give details)

General

Neck

Nodes

Lungs

CV

Abd

Back

Ext

GU

Neuro

Skin/Breasts

Tests/Labs: (in-house)

CBC

Strep

Mono

U/A

FLU TEST

Labs - sent out

H-Pylori

FBS

U Preg

Heme

Chief Complaint:

pt was walking down the stairs at work on wed and twisted his knee when a stair tread gave way causing him to fall. The swelling has improved but pt continues to have pain at the medial aspect of knee and a "grinding" sensation with ext. bending.

HPI (4 items):

Microalbumin

HbA1c

KOHQ IV

Wet Prep

EKG

X-Ray

Inject / Rx

60

ASSESSMENT / DIAGNOSIS/ES:

① ④ Knee Swain (? Internal Derangement)

844.9-8493

Patient Care Instructions Discussed:

Lifestyle Modification

Date to Return:

If worse:

If not better:

For Follow-Up:

Go to ER if:

Off Work / School

Restrictions:

Outside tests are ordered, we will call with results, positive or negative. If you haven't heard from us in 5-7 days after the test, please call us.

Patient or Authorized Person's Signature:

Date:

I voluntarily consent to any and all health care treatment and diagnostic procedures provided by Doctor's Care and its associated physicians, clinicians and other personnel. I am aware that the practice of medicine and other health care professions is not an exact science and I further state that I understand that no guarantee has been or can be made as to the results of the treatments or examinations at Doctor's Care.

I consent to the use and disclosure of my/this patient's protected health information for purposes of obtaining payment for services rendered to me/the patient, treatment and health care operations consistent with the Doctor's Care Notice of Privacy Practices.

I authorize payment of medical benefits to Doctor's Care physicians or their designee for services rendered.

Patient or Authorized Person's Signature:

Date:

Workers Compensation patients: I hereby authorize Doctor's Care to speak to a rehabilitation specialist, my employer, my insurance carrier or other professionals involved in my care or rehabilitation, regarding my medical records and the treatment I have received or will receive.

2-8-10

1



Return To Work Form

☐ 850 Aiken Mall Drive, Aiken, SC 2980 (803) 648-1464
☐ 511 Beltline Blvd., Columbia, SC 29205 (803) 782-4051
☐ 1060 Highway 1, South Lugoff, SC 29078 (803) 438-9759
☐ 977 Knox Abbott Drive, Cayce, SC 29033 (803) 794-0476
☐ 7653 Garners Ferry Road, Columbia, SC 29209 (803) 783-2661
☐ 1736 St. Matthews Road, Orangeburg, SC 29116 (803) 536-0613

☐ 441 Drive, Suite A, Columbia, SC 29206 (803) 738-9522
☐ 247 Avenue, Lexington, SC 29072 (803) 359-5533
☐ 1029 Street NE, Aiken, SC 29801 (803) 648-4119
☐ 110 Atrium Way, Columbia, SC 29223 (803) 788-1153
☐ 4214 Hardscrabble Road, Columbia, SC 29223 (803) 736-8955
☐ 100 Jimmy Love Lane, Columbia, SC 29212 (803) 772-5030
☐ 2475 Broad Street, Sumter, SC 29150 (803) 778-6555
☐ 2836 Augusta Road, W. Columbia, SC 29170 (803) 939-0545
☐ 3240 Sunset Blvd., West Columbia, SC 29169 (803) 796-4251
☐ 1520 Knox Avenue, N. Augusta, SC 29841 (803) 279-4120

Name: Andrew Mann Arrival Time: _____ Discharge Time: _____
Date: 3-8-10 Company Name: 1751 LLC Faluda's Restaurant

WORK STATUS: (Check Appropriate Boxes)

- ☐ 1. May perform full duty activities as of _____ without accommodations.
- ☐ 2. Off duty due to work-related condition.
Estimated return to work date with modified duty: _____
Estimated return to work date for full duty: _____

RETURN FOR RE-EVALUATION AT THIS LOCATION ON _____ Time: _____

- ☒ 3. May work with the following accommodations as of: 3/8/10
- ☐ No lifting more than _____ lbs.
- ☐ No operation of hazardous or fast-moving machinery, no driving.
- ☒ Ground level work only, no ladders or heights.
- ☒ No repetitive bending, stooping, squatting, pushing, jerking, twisting, or bouncing.
- ☒ No continuous standing ~~and/or sitting~~.
- ☒ Minimal walking or climbing (including stairs)
- ☐ Limited use of _____
- ☐ No overhead lifting.
- ☐ No high repetitive hand activities for extended periods of time.
- ☐ No use of _____

- ☐ 4. Has reached Maximum Medical Improvement (MMI)
- ☒ 5. Return for re-evaluation at this office on 3/15/10 Time: _____

Additional Comments: _____

PATIENT DISCHARGE INSTRUCTIONS:

Diagnosis: Chronic Knee Sprain Medications: ☐ as directed ☐ as needed
Wound or Injury Care: ☐ keep dry and clean ☐ do not remove dressing ☐ elevate extremity ☐ warm soaks
☒ Ice every as directed ☐ apply heat every _____ ☐ wear elastic support/immobilizer/keep taped
☐ home exercise instructions given ☐ follow instructions sheet given ☐ bed rest for _____

REFERRAL: If a referral is made for physical therapy, or to another physician, please complete this section:

To: MR. of Knee & Date: _____ Time: _____
cc: Physical Therapy
Address: _____

I understand the above instructions and what to do for my follow-up care. I have received a copy of these instructions for myself and for my employer.

Employee Signature: [Signature] 189 Date: 3-8-10

Provider Signature: _____ Date: _____

FSA P

Doctors Care

DOCTORS CARE BELTLINE
511 BELTLINE BLVD.
COLUMBIA, SC 29205
(803) 782-4051
FAX: (803) 790-6612

Location: _____

Phone: _____

FAX: _____

DIAGNOSTIC & REFERRAL PRESCRIPTION

Patient: Andrew Morris

Date: 3-8-10

Home phone: 803-767-8152 Cell phone: N/A

DOB: 08/04/1981 Insurance: W.C. / Saludas Restaurant

Doctors Care provider: Hanne Oliver

ROUTINE (7-14 days)

ASAP (48-96 hours)

TODAY

Cardiology Dermatology Endocrine ENT GI OB/GYN Heme/Onc

Nephrology Neurology Optumology Orthopedics Psychiatry Psychology

Pulmonology Rheumatology Surgery Urology Other: _____

Preferred provider or specialist office: _____

Preferred time or date: _____

DIAGNOSTIC PROCEDURES

CT CTA MRI MRA US Doppler (arterial/venous) Mammogram DEXA Nuclear

Head Sinus C-Spine T-Spine L-Spine Neck Carotids Thyroid Chest Abdomen

GB Liver Pelvis Kidney Kidney stone Sleep study Other: _____

Diagnosis: ④ knee sprain

Provider signature: Hanne Oliver (2)

Appointment information

Date: _____ Time: _____

Practice name/Doctor: _____

Address: _____

Phone: _____

FAX: _____

190

Chart faxed date: _____

Patient notified date: _____

3-9-10
called pt's
manager he
said he did
have that inf
& he'd have
it today after
4pm

3/10/10

EXAM ROOM TIME

DOCTORS CARE

CHECK OUT TIME

TICKET NO.

COUNT NUMBER

DATE

TIME

29705

03/15/10

0:56am

DC BELTLINE,

1677294

NAME & ADDRESS

MONDAY

MARRS, ANDREW

DOB: 08/04/1981

(28 years)

1279 ROCKWOOD RD

GENDER: M

COLUMBIA, SC 29209

IBG:

803-767-8152

CELL:

WRK:

2nd # 803-422-9524

INSURED: MARRS, ANDREW

RELATION: OTHER

INST: WC/SALUDAS RESTAURANT

REASON: -FOLLOW UP

NICKNAME:

COPAY: WC

INSURANCE

BALANCE \$259.00

ACCOUNT

BALANCE \$259.00

CURRENT

CHARGES

AMOUNT

PAID

NEW

BALANCE

CASH

CHECK

M.O.

C.C.

Lt Knee

HISTORY: (- or +, or details)

Personal Hx

Family Hx

Social Hx

DM -

DM -

Alcohol OCC

HTN -

HTN -

Tobacco +

CV -

MI <50 -

Drugs -

CA -

CVA -

Reg. Exer. +

Surg +

CA -

Occup. -

Prev. chart rev., no sig chg

Above Hx reviewed

ROS (/ or O)

Fever, Chills

N, V, D Constip.

SOB, CP

Headache, Fatigue

UTI Sx. ☒ Compl.

PREVENTIVE (year of last)

Circle recommendations:

Tetanus ☒ Upd

Cholesterol -

Colonoscopy -

Flu Shot -

Pneumovax -

Women

LMP ☒PAP ☒

Mamm

BMD/DEXA

Men

PSA -

Rectal

Allergies:

NKDA

Medications:

None

WGT

BP

Pulse

Resp

Temp

234

120/80

64

16

98.7

PHYSICAL: (see reverse) Omit If N/A

✓ If nmnl., O if abnml. & give details)

eral

NT

J K

J Nodes

J Lungs

J CV

J Abd.

J Back

J Ext

J GU

J Neuro

J Skin/Breasts

ests/Labs: (In-house)

J CBC

J Strep

J Mono

J U/A

Trace effusion @ knee
 from i crepitation
 since tenderness along the
 medial CL.

± mc. Mucous @ knee

☐ Labs - sent out @ blackman

☐ H-Pylori

☐ FBS

☐ U Preg

☐ Heme

Chief Complaint:

Rt reports some improvement

HPI (4 items):

in his @ knee pain and

swelling but he continues

to have a feeling of weakness

at the knee. He is using

crutches. But not bearing on

knee leads to a sensation of

giving way. He also

has a catch when

fully extended?

ASSESSMENT / DIAGNOSIS/ES:

① @ Knee Sprain (Suspicious for Meniscal Tear)

844.9/E849.3

1 Patient Care Instructions Discussed:

Referrals, Tests, Treatments

Prescriptions / OTC Meds

PSR Notes:

1 Lifestyle Modification

Side Effects Discussed

late to Return:

1 If worse:

1 If not better:

For Follow-Up: Tues 3/29/10

id to ER If:

off Work / School

restrictions:

outside tests are ordered, we will call with results, positive or negative. If you haven't heard from us in 5-7 days after the test, please call us.

Simmons

I only consent to any and all health care treatment and diagnostic procedures provided by Doctor's Care and its associated physicians, clinicians and other personnel. I am aware that the practice of medicine and other health care

professions is not an exact science and I further state that I understand that no guarantee has been or can be made as to the results of the treatments or examinations at Doctor's Care.

I consent to the use and disclosure of my/the patient's protected health information for purposes of obtaining payment for services rendered to me/the patient, treatment and health care operations consistent with the Doctor's Care Notice

Privacy Practices.

I authorize payment of medical benefits to Doctor's Care physicians or their designee for services rendered.

atient or Authorized Person's Signature:

Date:

Workers Compensation patients: I hereby authorize Doctor's Care to speak to a rehabilitation specialist, my employer, my insurance carrier or other professionals involved in my care or rehabilitation, regarding my medical records

of the treatment I have received or will receive.



Return to Work Form

- ☐ 856 all Drive, Aiken, SC 2980 (803) 648-1464
☒ 511 Lelune Blvd., Columbia, SC 29205 (803) 782-4051
☐ 1060 Highway 1, South Lugoff, SC 29078 (803) 438-9759
☐ 977 Knox Abbott Drive, Cayce, SC 29033 (803) 794-0476
☐ 7653 Gamers Ferry Road, Columbia, SC 29209 (803) 783-2661
☐ 1736 St. Matthews Road, Orangeburg, SC 29116 (803) 536-0613

- ☐ Forest Drive, Suite A, Columbia, SC 29206 (803) 738-9522
☐ Columbia Avenue, Lexington, SC 29072 (803) 359-5533
☐ York Street NE, Aiken, SC 29801 (803) 648-4119
☐ Atrium Way, Columbia, SC 29223 (803) 788-1153
☐ 4214 Hardscrabble Road, Columbia, SC 29223 (803) 736-8955
☐ 100 Jimmy Love Lane, Columbia, SC 29212 (803) 772-5030
☐ 2475 Broad Street, Sumter, SC 29150 (803) 778-6555
☐ 2836 Augusta Road, W. Columbia, SC 29170 (803) 939-0545
☐ 3240 Sunset Blvd., West Columbia, SC 29169 (803) 796-4251
☐ 1520 Knox Avenue, N. Augusta, SC 29841 (803) 279-1120

Name: Morris Andrew

Arrival Time: @11:01

Discharge Time: 12:49

Date: 03/15/10

Company Name: WC Saluda Restaurants

WORK STATUS: (Check Appropriate Boxes)

- ☐ 1. May perform full duty activities as of _____ without accommodations.
☐ 2. Off duty due to work-related condition.

Estimated return to work date with modified duty: _____

Estimated return to work date for full duty: _____

RETURN FOR RE-EVALUATION AT THIS LOCATION ON _____

Time: _____

- ☒ 3. May work with the following accommodations as of: 3/15/10

- ☐ No lifting more than _____ lbs.
☐ No operation of hazardous or fast-moving machinery, no driving.
☒ Ground level work only, no ladders or heights.
☒ No repetitive bending, stooping, squatting, pushing, jerking, twisting, or bouncing.
☒ No continuous standing and/or sitting.
☒ Minimal walking or climbing (including stairs)
☐ Limited use of _____
☐ No overhead lifting.
☐ No high repetitive hand activities for extended periods of time.
☐ No use of _____

- ☐ 4. Has reached Maximum Medical Improvement (MMI)

- ☒ 5. Return for re-evaluation at this office on 3/24/10

Time: _____

Additional Comments: _____

PATIENT DISCHARGE INSTRUCTIONS:

Diagnosis: ① Knee Sprain

Medications: ☐ as directed

☒ as needed

Wound or Injury Care:

☐ keep dry and clean

☐ do not remove dressing

☐ elevate extremity

☐ warm soaks

☒ ice every as directed

☐ apply heat every _____

☒ wear elastic support/immobilizer/keep taped

☐ home exercise instructions given

☐ follow instructions sheet given

☐ bed rest for _____

REFERRAL: If a referral is made for physical therapy, or to another physician, please complete this section:

To: MRI and Physical Therapy

Time: _____

For: _____

Address: _____

I understand the above instructions and what to do for my follow-up care. I have received a copy of these instructions for myself and for my employer.

Employee Signature: _____

Date: 3/15/10

Provider Signature: _____

Date: 3/15/10



Return To Work Form

- ☒ 650 Aiken Mall Drive, Aiken, SC 2980 (803) 648-1464
☒ 511 Bellline Blvd., Columbia, SC 29205 (803) 782-4051
☒ 1060 Highway 1, South Lugoff, SC 29078 (803) 438-9759
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☒ 7653 Garners Ferry Road, Columbia, SC 29209 (803) 783-2661
☒ 1736 St. Matthews Road, Orangeburg, SC 29116 (803) 536-0613

- ☐ 441 East Drive, Suite A, Columbia, SC 29206 (803) 738-9522
☐ 247 Columbia Avenue, Lexington, SC 29072 (803) 359-5533
☐ 1029 York Street NE, Aiken, SC 29801 (803) 648-4119
☐ 110 Atrium Way, Columbia, SC 29223 (803) 786-1153
☐ 4214 Hardscrabble Road, Columbia, SC 29223 (803) 736-8955
☐ 100 Jimmy Love Lane, Columbia, SC 29212 (803) 772-5030
☐ 2475 Broad Street, Sumter, SC 29150 (803) 778-6555
☐ 2836 Augusta Road, W. Columbia, SC 29170 (803) 939-0545
☐ 3240 Sunset Blvd., West Columbia, SC 29169 (803) 796-4251
☐ 1520 Knox Avenue, N. Augusta, SC 29841 (803) 279-4120

Name: Mans, Andrew

Arrival Time: @2:53

Discharge Time: _____

Date: 05/15/10

Company Name: WCC/SC Second Injury Fund

WORK STATUS: (Check Appropriate Boxes)

☐ 1. May perform full duty activities as of _____ without accommodations.

☐ 2. Off duty due to work-related condition.

Estimated return to work date with modified duty: _____

Estimated return to work date for full duty: _____

RETURN FOR RE-EVALUATION AT THIS LOCATION ON _____

Time: _____

☒ 3. May work with the following accommodations as of: 5:15-10 Saturday

☐ No lifting more than _____ lbs.

☐ No operation of hazardous or fast-moving machinery, no driving.

☐ Ground level work only, no ladders or heights.

☐ No repetitive bending, stooping, squatting, pushing, jerking, twisting, or bouncing.

☐ No continuous standing and/or sitting.

☒ Minimal walking or climbing (including stairs) use crutches for ambulation

☐ Limited use of _____

☐ No overhead lifting.

☐ No high repetitive hand activities for extended periods of time.

☐ No use of _____

☐ 4. Has reached Maximum Medical Improvement (MMI)

☒ 5. Return for re-evaluation at this office on: pm

Time: _____

Additional Comments:

Suited for work sitting down only at this time.

PATIENT DISCHARGE INSTRUCTIONS:

Diagnosis: Complete ACL tear, medial meniscus tear, loose body @ knee

Wound or Injury Care: ☐ keep dry and clean ☐ do not remove dressing ☐ elevate extremity ☐ warm soaks

☐ ice every _____ ☐ apply heat every _____ ☐ wear elastic support/immobilizer/keep taped

☐ home exercise instructions given ☐ follow instructions sheet given ☐ bed rest for _____

REFERRAL: If a referral is made for physical therapy, or to another physician, please complete this section:

To: Orthopedic Surgeon

Date: _____

Time: _____

Address: _____

I understand the above instructions and what to do for my follow-up care. I have received a copy of these instructions for myself and for my employer.

Employee Signature: _____

193

Date: 5-15-10

Progressive Physical Therapy

Patient Name Andrew Murrs

Diagnosis/ICD 9 Code (4) Knee Sprain

☒ **EVALUATE AND TREAT**

☐ **EXERCISE**

- ☐ Active Exercise
- ☐ Passive Exercise
- ☐ Fitness Assessment
- ☐ Low Back Rehab
- ☐ Home Exercise Program

☐ **MODALITIES**

- ☐ T.E.N.S./I.F.C.
- ☐ Electrical Muscle Stimulation
- ☐ Iontophoresis
- ☐ Phonophoresis
- ☐ Cold Laser

☐ **HEAT/COLD**

- ☐ Hot Packs/Cold Packs
- ☐ Ultrasound
- ☐ Paraffin Bath

☐ **MANUAL THERAPY**

- ☐ Joint Mobilization
- ☐ Trigger Point Dry Needling

☐ **COMPREHENSIVE CERVICAL EVALUATION (MCU)**

☐ **FUNCTIONAL TRAINING**

- ☐ Back School
- ☐ Ambulation Training
- ☐ Postural Training/Balance

☐ **Progressive SPORTS**
PHYSICAL THERAPY

- ☐ Orthopaedic Sports Rehabilitation
- ☐ Occupational/Hand Therapy
- ☐ Strength Training
- ☐ Dewatered Ambulatory Therapy
- ☐ Acoustic Wave Therapy For
 - Epicondylitis
 - Plantar Fasciitis
 - Frozen Shoulder

☐ **INDUSTRIAL REHABILITATION**

- ☐ Job Site Analysis
- ☐ Functional Capacity Evaluation
- ☐ Work Hardening/Conditioning

☐ **FOOT ORTHOTICS**

☒ **SUBSTITUTION BY THERAPIST IS PERMITTED**

☐ **OTHER** _____

TREATMENT OBJECTIVES/GOALS/COMMENTS:

PHYSICAL THERAPY

Frequency ☐ 2x / wk ☒ 3x / wk ☐ 4x / wk
 Duration ☐ 2 weeks ☒ 3 weeks ☐ 4 weeks

Physician Name (please print) Harold Oliver MD

Physician Signature Harold Oliver MD

Physician Number 903-782-7057

3-3-10

Progressive Physical Therapy

DOS
03/08/10

Patient Attendance Status Report

Patient Name: Andrew Marrs DOB: 8/4/81Referring Physician: Oliver

We have been unable to treat him/her due to the following reason(s):

- ☐ We have been unable to obtain authorization from the Insurance Co./WKC carrier.
- ☐ We are not a particular provider for _____
- ☐ We have been unable to formally contact patient via appropriate communication (phone and/or mail).
- ☐ Patient has refused physical therapy at this time.

X Other: I spoke with Mr. Marks employer & he stated
that workers comp was not covering this injury.
I tried to call the employee and his
phone has been disconnected.

We are working to provide the best service and follow up possible. Please do not hesitate to call our office if you have any questions or concerns regarding this patient. Thank you for this referral.

Staff Signature: AME Date: 3/12/10

1 Monckton Boulevard
Columbia, SC 29206
803-787-3143 Ph
803-782-4436 Fax





1331 Lady Street
Columbia, South Carolina 29201
(803) 256-7646 p
(803) 256-8046 f

PATIENT: Marrs, Andrew
MRN: 692109
DATE OF BIRTH: 8/4/1981
REF PHYSICIAN: Hance Oliver, MD
DATE OF EXAM: 5/12/2010
PATIENT PH#: 803-422-9524

EXAM: MRI OF THE LEFT KNEE

HISTORY: Fall at work.

TECHNIQUE: The following sequences were performed on a 1.5 Tesla GE Echospeed magnet: Axial proton density utilizing fat saturation, oblique sagittal proton density and gradient recall, and coronal T1 and STIR.

FINDINGS: The biceps femoris, iliotibial band and popliteus are intact. There is severe chondral loss of the lateral compartment with cysts and marrow edema. There is no lateral meniscal tear. The femoral insertion of the ACL is discontinuous. There are no associated bone contusion suggesting that this is a chronically ACL deficient knee. There is irregular chondral loss of the medial compartment. There is a large defect in the central insertion of the posterior horn of the medial meniscus. There is no parameniscal cyst. The PCL is intact. There is a large 6mm loose body seen anterior to the anterior horn of the lateral meniscus with an adjacent smaller loose body. The MCL is intact. There is some marrow edema in the posterior aspect of the medial tibial plateau consistent with bone contusion. The patellar retinacula are intact. The articular cartilage of the facets of the patella appear normal.

IMPRESSION:

1. ACL deficient knee.
2. Irregular chondral loss of the weight-bearing surface of the lateral femoral condyle and the medial femoral condyle.
3. Bone contusion medial tibial plateau.
4. Posterior horn medial meniscal tear.
5. Large loose body.

Robin Daum-Kowalski, MD
RD/bl

DD: 5/13/2010
DT: 5/13/2010
Job: 10529454

This document has been electronically reviewed and signed.

A handwritten signature in black ink, appearing to read "RD/bl", written over a horizontal line.





UNIVERSITY OF SOUTH CAROLINA
SCHOOL OF MEDICINE
UNIVERSITY SPECIALTY CLINICS®

JUNE 17, 2010

RE: ANDREW MARRS #88136

CHIEF COMPLAINT: Left knee pain.

HISTORY: This is a 28-year-old white male that was working at _____ in March of 2010 where he was going up some steps and the step broke or he was walking and felt his left knee buckle at the time. He did not hear a pop but he had instant pain. It became swollen overnight. He tried to ice it and elevate it, however, the pain continued until he presented to Doctor's Care and saw Dr. Oliver. He was diagnosed with a sprain and eventually had an MRI which demonstrated an ACL tear. He was given a prescription for physical therapy, however, he was unable to fill this and comes to Dr. Guy for a second opinion referred to him by Allison Sullivan.

The history and was reviewed and signed on the chart for Past Medical, Past Surgical, Medications, Allergies, Social History, Family History and Review of Systems.

PHYSICAL EXAMINATION: This is a well-developed, well-nourished white male. He has obvious atrophy over his vastus medialis compared to his right knee. Strength of the quad is 4/5 compared to 5/5 on the right. His extension is from 5-120 degrees. He is tender along the medial joint line. He is nontender along the lateral joint line or fibula head. He has a positive Lachman, negative posterior drawer. He has a negative McMurray's exam. He has normal sensation in the L1-S1 distribution. He has 2+ dorsalis pedis pulse. He has a warm foot. Hamstring strength is also 5/5 bilaterally.

RADIOGRAPHS: Three views of the left knee demonstrate calcified structure in the lateral joint line.

MRI: MRI revealed an ACL tear. There is also a _____ calcified loose body in the lateral aspect of the knee. There is also a bony contusion on the medial tibial plateau and what looks to be a small posterior horn tear of the medial meniscus.

IMPRESSION: This is a 28-year-old white male with left knee pain, left ACL tear, chondral lesion in the lateral femoral condyle as well as a loose body within the joint space.

PLAN: 1) We will begin to work on preoperative rehab focusing on his quadriceps and hamstrings. 2) We will prescribe him Naprosyn 500 mg 1 p.o. b.i.d. 3) We will see him in follow-up in four weeks in preparation for a left ACL reconstruction.

CONTINUED



UNIVERSITY OF SOUTH CAROLINA
SCHOOL OF MEDICINE
UNIVERSITY SPECIALTY CLINICS®

JUNE 17, 2010
RE: ANDREW MARRS #88136
PAGE 2

This case was discussed with Dr. Guy who was present and available at the time of the consultation.

Dictated by Will Whiteside, M.D.

DRAFT

Jeffrey A. Guy, M.D.
JAG:jfg

DOCTORS CARE MIDLANDS
PO BOX 890790
CHARLOTTE, NC 28289
803-782-6561

PRINTED 02:31:30pm 26 Mar 2010
BY: DCSC.AR CAGIBSON
PAGE 1
TAX ID# 57-0769093

ANDREW MARRS (399705)
1279 ROCKWOOD RD
COLUMBIA, SC 29209
803-767-8152

NOTICE, THIS IS LISTED FROM MOST RECENT TO THE OLDEST

Date.... Name... Code.... Description..... Link... Dr.. Fcl Amount.... Dx

----- (current) -----
BALANCE 372.00
03/19/10 98 ins PPRWCSA 77294.1 0.00
03/15/10 ANDREW 99214 OFFICE OUTPATIENT 77294.1 1160 6 113.00 844.9
03/15/10 98 ins PPRWCSA 67317.1 0.00
03/12/10 98 ins PPRWCSA 66718.1 0.00
03/09/10 ANDREW 73560-26 X-RAY EXAM OF KNE 67317.1 1001 6 40.00 844.9
03/08/10 ANDREW E0114-NU CRTCHES UNARM OT 66718.3 1160 6 47.00 844.9
03/08/10 ANDREW 73560 X-RAY EXAM OF KNE 66718.2 1160 6 40.00 844.9
03/08/10 ANDREW 99203 OFFICE OUTPATIENT 66718.1 1160 6 132.00 844.9

DOCTOR..... TAX-ID..... FINANCIAL CLASS

01 D MICHAEL STOUT, MD 570769093 6 WKC / WORKMENS COMP
1160 HANCE OLIVER, MD 570769093

PATIENT NO. 399705 ANDREW MARRS DOB: 08/04/1981 SEX: M 251-69-7105
Insurance Company Group Id Number Insured
WC/SALUDAS RESTUAR 251697105 WC/SALUDAS RESTAURANT, 751
PATIENT NO. DOB: SEX:

Pay to:

Palmetto Imaging Inc
PO Box 933548
Atlanta, GA 31193-3548
(877) 527-9375

Patient Receipt

Wednesday, June 16, 2010

Amount Due	Amount Paid
\$460.00	\$460.00

Andrew Marrs
1001 Maxcy Street
Columbia, SC 29201

Employer ID
Provider ID

Date	Description	Check #	Fee	Units	Insurance	Patient
	Andrew Marrs(692108)/Robin Daumkowalski MD/PAL087580					
	Referring Physician: Hance H Oliver MD					
	Tear of medial cartilage or meniscus of knee, current (836.0)					
	Contusion of knee (924.11)					
05/12/2010	MR-Lower Extremity Joint Without Contrast (73721 LT)		\$1,650.00	1.0	\$1,190.00	\$460.00
05/12/2010	Patient Discount Adjustment from Uninsured Discount				(\$1,190.00)	\$0.00
05/13/2010	Payment at Time of Service from Marrs, Andrew	14058			\$0.00	(\$460.00)
	Balance:				\$0.00	\$0.00

Wepd. BMTD

Thank you for your payment. Have a nice day!

Deposit	0-30	31-60	61-90	91-120	Over 120	Total Balance	Ins. Balance	Pat. Balance
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Palmetto Imaging Inc * 1331 Lady St * Columbia, SC 29201-3319 * (866) 402-7375

B

1500

BLUESTEIN & NICHOLS 0012
PO BOX 7965

HEALTH INSURANCE CLAIM FORM

COLUMBIA

SC 29202

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE 08/05

PICA

1. MEDICARE ☐ (Medicare #)		MEDICAID ☐ (Medicaid #)		TRICARE CHAMPUS (Sponsor's SSN) ☐		CHAMPVA (Member ID#) ☐		GROUP HEALTH PLAN (SSN or ID) ☐		FECA BLK LUNG (SSN) ☐		OTHER ☒ (ID)		1a. INSURED'S I.D. NUMBER (For Program in Item 1) 251697103											
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) MARRS ANDREW								3. PATIENT'S BIRTH DATE MM DD YY 08 04 1981 M ☒ F ☐				4. INSURED'S NAME (Last Name, First Name, Middle Initial) MARRS ANDREW													
5. PATIENT'S ADDRESS (No., Street) 1279 ROCKWOOD RD								6. PATIENT RELATIONSHIP TO INSURED Self ☒ Spouse ☐ Child ☐ Other ☐				7. INSURED'S ADDRESS (No., Street) 1279 ROCKWOOD RD													
CITY COLUMBIA				STATE SC				8. PATIENT STATUS Single ☐ Married ☐ Other ☐				CITY COLUMBIA				STATE SC									
ZIP CODE 29209				TELEPHONE (Include Area Code) (803) 767 8152				Employed ☐ Full-Time Student ☐ Part-Time Student ☐				ZIP CODE 29209				TELEPHONE (Include Area Code) (803) 767 8152									
9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)								10. IS PATIENT'S CONDITION RELATED TO: a. EMPLOYMENT? (Current or Previous) ☐ YES ☒ NO b. AUTO ACCIDENT? ☐ YES ☒ NO c. OTHER ACCIDENT? ☐ YES ☒ NO				11. INSURED'S POLICY GROUP OR FECA NUMBER DOI 3/3/10				11. INSURED'S DATE OF BIRTH MM DD YY M ☐ F ☐									
a. OTHER INSURED'S POLICY OR GROUP NUMBER								b. AUTO ACCIDENT? PLACE (State)				b. EMPLOYER'S NAME OR SCHOOL NAME NOT APPLICABLE				b. EMPLOYER'S NAME OR SCHOOL NAME									
b. OTHER INSURED'S DATE OF BIRTH MM DD YY M ☐ F ☐								c. OTHER ACCIDENT?				c. INSURANCE PLAN NAME OR PROGRAM NAME BLUESTEIN & NICHOLS LLC				c. INSURANCE PLAN NAME OR PROGRAM NAME									
c. EMPLOYER'S NAME OR SCHOOL NAME								10d. RESERVED FOR LOCAL USE				d. IS THERE ANOTHER HEALTH BENEFIT PLAN? ☐ YES ☒ NO If yes, return to and complete item 9 a-d.				d. IS THERE ANOTHER HEALTH BENEFIT PLAN?									
d. INSURANCE PLAN NAME OR PROGRAM NAME NO OTHER COVERAGE								12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier for services described below. SIGNATURE ON FILE 06 18 2010				13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier for services described below. SIGNATURE ON FILE				13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier for services described below.									
SIGNED _____ DATE _____								14. READ BACK OF FORM BEFORE COMPLETING & SIGNING THIS FORM. I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below. SIGNATURE ON FILE 06 18 2010				SIGNED _____				SIGNED _____									
DATE OF CURRENT: MM DD YY				ILLNESS (First symptom) OR INJURY (Accident) OR PREGNANCY (LMP)				15. IF PATIENT HAS HAD SAME OR SIMILAR ILLNESS. GIVE FIRST DATE MM DD YY				16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION FROM MM DD YY TO MM DD YY				16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION FROM MM DD YY TO MM DD YY									
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE								17a. _____				18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM DD YY TO MM DD YY				18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM MM DD YY TO MM DD YY									
17b. NPI _____								20. OUTSIDE LAB? ☐ YES ☒ NO				22. MEDICAID RESUBMISSION CODE _____ ORIGINAL REF. NO. _____				22. MEDICAID RESUBMISSION CODE _____ ORIGINAL REF. NO. _____									
19. RESERVED FOR LOCAL USE								21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY (Relate Items 1, 2, 3 or 4 to Item 24 by Line) 1. 719 46 2. 7-1-10 seg 3. #3134.0 4. _____				23. PRIOR AUTHORIZATION NUMBER				23. PRIOR AUTHORIZATION NUMBER									
24. A. DATE(S) OF SERVICE From MM DD YY To MM DD YY				B. PLACE OF SERVICE		C. EMG		D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) CPT/HCPCS MODIFIER				E. DIAGNOSIS POINTER		F. \$ CHARGES		G. DAYS OR UNITS		H. EPSDT Family Plan		I. ID. QUAL.		J. RENDERING PROVIDER ID. #			
1 06172010				11		99456						1		350 00		1		1C		G879932488					
2 06172010				11		73562		LT				1		80 00		1		1C		G879932488					
3																		NPI							
4																		NPI							
5																		NPI							
6																		NPI							
25. FEDERAL TAX I.D. NUMBER 70962467				SSN EIN ☒		26. PATIENT'S ACCOUNT NO. 1255681				27. ACCEPT ASSIGNMENT? ☒ YES ☐ NO				28. TOTAL CHARGE \$ 430 00				29. AMOUNT PAID \$ 0 00				30. BALANCE DUE \$ 430 00			
SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.) JEFFREY A GUY MD SIGNED 06 18 2010 DATE								32. SERVICE FACILITY LOCATION INFORMATION USC SPORTS MEDICINE CENTER 2 MEDICAL PARK LL COLUMBIA SC 29203 a. 1215969688 b. 209								33. BILLING PROVIDER INFO & PH# (803) 434 6812 UNIVERSITY SPECIALTY CLINICS O PO BOX 198880 ATLANTA GA 30384-7775 a. 1215969688 b.									



DJO, LLC
PO BOX 515471
LOS ANGELES CA 90051-6771

STATEMENT ENCLOSED

(888) 225-4398

Save a stamp! Pay this bill online at: www.PayforHealth.com/DJO >>>

Statement ID: 9883803
Password: ptyUJk

PLEASE DETACH AND RETURN TOP PORTION WITH YOUR PAYMENT



BLUESTEIN & NICHOLS LLC
PO BOX 7965
COLUMBIA, SC 29202-7965

DJO, LLC
PO BOX 515471
LOS ANGELES CA 90051-6771

PLEASE CHECK OUR ADDRESS & INFORMATION OF INTEREST
Information has changed and is not correct. Or please call.

STATEMENT

PLEASE DETACH AND RETURN TOP PORTION WITH YOUR PAYMENT

PATIENT: ANDREW MARRS		PRESCRIBING PHYSICIAN: Jeffrey A Guy					
Date	HCPC Billing/Diagnosis Code	Charges	Receipts	Medicare Receipts	Insurance Receipts	Patient Receipts	Adjustment
06/17/10	L1832 719.46	475.00	.00	.00	.00	.00	.00
	PLAYMAKER,POP L						
							475.00

CHARGES MARKED WITH AN "*" ARE INSURANCE PENDING
PLEASE RETAIN THIS STATEMENT FOR YOUR RECORDS

Statement Date	Account No.
06/28/10	478479

ACCOUNT BALANCE	\$475.00
PENDING INSURANCE	\$0.00
PLEASE PAY THIS AMOUNT	\$475.00

ATTORNEYS AT LAW

Margaret Mitez Elusstein
John Shannon Nichols
Stacy Elizabeth Thompson
John Dennis Degado
Allison Paige Sullivan
Ashley Trout Thompson
Blake Alexander Hewitt

Reply: Columbia Office

O. Eugene Powell, Jr.

June 3, 2010

VIA CERTIFIED MAIL, RETURN RECEIPT
1751, LLC a/k/a Saluda's
751 Saluda Avenue
Columbia, SC 29205

RE: Andrew Marrs v. 1751, LLC a/k/a Saluda's
WCC File No: 1003812

To Whom it May Concern:

Enclosed herewith and served upon you please find a subpoena in regard to the above matter. If you have any questions regarding this subpoena, please do not hesitate to call me or my paralegal, Kathleen Suggs, at (803) 779-7599.

With kind regards, I am

Yours truly,

Allison P. Sullivan

APS/kcs
Enclosures
cc: Palmer Freeman, Esquire
Andrew Marrs
Lisa Glover, Esquire, SC Uninsured Employer's Fund

U.S. Postal Service™	
CERTIFIED MAIL™ RECEIPT	
(Domestic Mail Only, No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Postmark Here	
Sent To	
Street, Apt. No., or PO Box No.	
City, State, ZIP+4	
PS Form 3800, August 2006	
See Reverse for Instructions	

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

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

WCC File # 1003812
Carrier File # _____
Carrier Code # _____
Employer FEIN _____

Andrew Marrs				1751, LLC a/k/a Saluda's			
Claimant's Name				Employer's Name			
1001 Maxcy Street	Columbia,	SC	29201	751 Saluda Avenue,	Columbia	SC	29205
Address	City	State	Zip	Address	City	State	Zip
(803)767-8152				SC Uninsured Employer's Fund			
Home Phone #				Insurance Carrier			
Allison P. Sullivan, Esquire, P.O. Box 7965, Columbia, SC 29202				(803) 779-7599			
Preparer's Name				Address			
				Phone #			

TO: 1751, LLC a/k/a Saluda's, Attn: Human Resources, 751 Saluda Avenue, Columbia, SC 29205

[] YOU ARE COMMANDED to appear before the above named Commission at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY: _____ ROOM: _____
DATE AND TIME: _____

[] YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION: _____ DATE AND TIME: _____

[X] YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

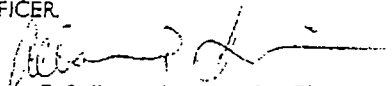
The names of any and all employees who worked at Saluda's on March 3, 2010; along with any last known contact information for each person identified and whether those identified are still employed by Saluda's.

PLACE: 1614 Taylor Street, Columbia, SC 29201 DATE AND TIME: June 21, 2010 BY 2:00 p.m.

[] YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES: _____ DATE AND TIME: _____

THIS SUBPOENA SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED PERMISSION TO DEPART BY THE COMMISSIONER OR AN OFFICER ACTING ON BEHALF OF THE COMMISSIONER. QUESTIONS CONCERNING THIS SUBPOENA SHOULD BE ADDRESSED TO THE ISSUING OFFICER.


Allison P. Sullivan, Attorney for Claimant
ISSUING OFFICER'S SIGNATURE AND TITLE

(803) 779-7599
PHONE #

6/3/10
DATE

Serve this form according to R.67-212B. Refer to R.67-212 and R.67-214 for additional information. Procedural questions may be addressed to the Judicial Department (803/737-5675).

214





BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW

Margaret Miles Bluestein
John Shannon Nichols
Stacy Elizabeth Thompson
John Dennis Delgado
Allison Palge Sullivan
Ashley Trout Thompson

Please Reply to Columbia

July 22, 2010

Virginia L. Crocker, Judicial Director
SC Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

RE: Andrew Marrs v. 1751, LLC a/k/a Saluda's
WCC File No.: 1003812

Dear Ms. Crocker:

Enclosed please find a Motion to Compel, along with a filing fee check of \$25.00, in the above matter. By copy of this letter, I am serving this motion on 1751, LLC a/k/a Saluda's and Lisa C. Glover, Esquire, attorney for the Defendants.

If you have any questions concerning this letter, do not hesitate to contact me or my paralegal Sandy C. Greenaway.

Yours truly,

Allison P. Sullivan

APS/scg
Enclosure

cc: Andrew Marrs
1751, LLC a/k/a Saluda's
Lisa C. Glover, Esquire

**BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1003812**

Andrew Marrs,

Claimant,

vs.

1751, LLC a/k/a Saluda's,

Employer,

and

SC Uninsured Employer's Fund,

Carrier,

Defendants.

MOTION TO COMPEL

**TO: JUDICIAL DIRECTOR VIRGINIA L. CROCKER, SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION; 1751, LLC A/K/A SALUDA'S
AND LISA C. GLOVER, ESQUIRE, ATTORNEY FOR THE DEFENDANTS:**

YOU WILL PLEASE TAKE NOTE that the Employee, Andrew Marrs, will move before the Commission, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an Order compelling the Employer/Carrier to provide the names, addresses, and telephone numbers of all individuals who were employed by 1751, LLC a/k/a Saluda's on March 3, 2010. The Undersigned issued a subpoena on June 3, 2010, requesting that the Employer produce the names of any and all employees who worked at Saluda's on March 3, 2010, along with the last known contact information for each person identified and whether those identified are still employed by Saluda's. The subpoena required a response by June 21, 2010. As of today, the Employer has not provided the requested information as required by S.C. Code

Ann.§42-3-150. A hearing is currently scheduled for August 19, 2010. Therefore the Plaintiff would request a hearing on this matter as soon as possible.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Allison Sullivan', written over a horizontal line.

ALLISON SULLIVAN
BLUESTEIN, NICHOLS, THOMPSON & DELGADO, LLC
Post Office Box 7965
Columbia, SC 29202
Attorney for Claimant

Columbia, South Carolina
July 2 2010

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Andrew Marrs,

Claimant,

vs.

1751, LLC a/k/a Saluda's,

Employer,

and

WC Uninsured Employer's Fund,

Carrier,

Defendants.

W.C.C. File No.: 1003812

CERTIFICATE OF SERVICE

I, the undersigned, of the law office of Bluestein, Nichols, Thompson, Delgado, LLC, attorney for Claimant do hereby certify that I have served a Form 50 (Hearing Request) on this 22 day of April, 2010, by depositing in a U.S. Postal Box, to the address(es) clearly shown, postage prepaid, to the following individual(s) at the following address(es):

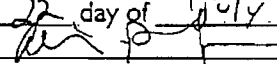
Lisa C. Glover, Esquire
100 Executive Center Drive, Suite 101
Santee Building
Columbia, SC 29210

VIA CERTIFIED MAIL

1751, LLC a/k/a Saluda's
751 Saluda Avenue
Columbia, SC 29205


Sandra C. Greenaway

SWORN and subscribed to before me

this 22 day of July, 20 10
 (L.S.)

NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires 6-6-11

Affidavit of Melinda Hoffman
Page 2 of 2

for the 2nd quarter of 2009 from Pridestaff, Inc. There were no wages reported by
1751, LLC or Saluda's.

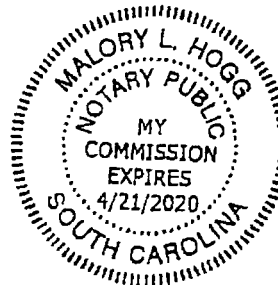
Further affiant sayeth not.

Signed this 29th day of July, 2010

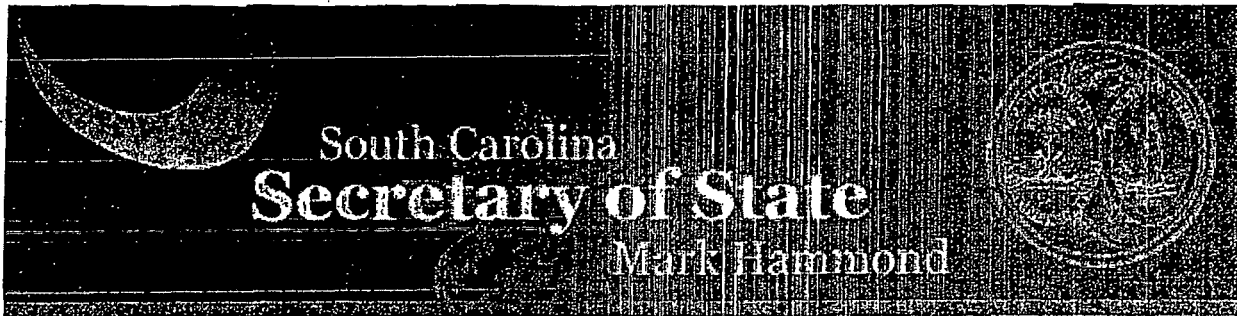
Melinda B. Hoffman
Melinda Hoffman

SWORN and subscribed to before me

this 29 day of July, 2010
Malory L. Hogg (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires 4/21/2020





**1751, LLC**

*Note: This online database was last updated on 7/29/2010 6:01:57 PM.
See our Disclaimer.*

DOMESTIC / FOREIGN:	Domestic
STATUS:	Good Standing
STATE OF INCORPORATION / ORGANIZATION:	SOUTH CAROLINA Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:	STEVEN COOK
ADDRESS:	751 SALUDA AVENUE
CITY:	COLUMBIA
STATE:	SC
ZIP:	29205
SECOND ADDRESS:	

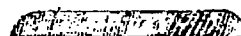
FILE DATE:	08/28/2006
EFFECTIVE DATE:	08/28/2006
DISSOLVED DATE:	//

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Domestic LLC	08/28/2006	AT WILL	

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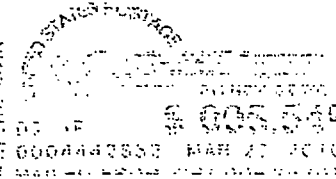
JESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW
1614 Taylor Street | PO Box 7965 | Columbia, SC 29202

CERTIFIED MAIL



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APR 17 2010



1751, LLC a/k/a Saluda's
751 Saluda Avenue
Columbia, SC 29205

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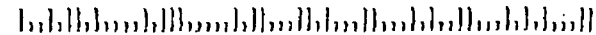
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NIXIE . 292 4E 1 75 04/12/10

RETURN TO SENDER
UNCLAIMED
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BC: 29202796565 *2580-05675-12-35

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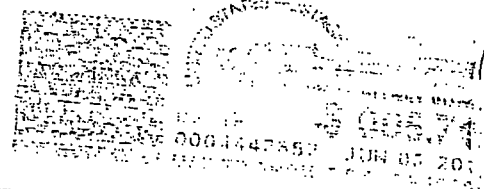
DESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW
1614 Taylor Street | PO Box 7965 | Columbia, SC 29202

JUN 20 2010

CERTIFIED MAIL



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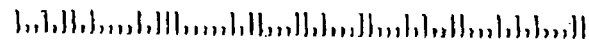
1751, LLC a/k/a Saluda's
1751 Saluda Avenue
Columbia, SC 29205

NIXIE 292 DE 1 75 06/25/10

RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

BC: 29202796365 *2480-03026-25-36

29202796365



4



Claimant's Name: Andrew Marrs Employer's Name: Saluda's
Address: 1279 Rockwood Road Address: 751 Saluda Avenue
City: Columbia State: SC Zip: 29209 City: Columbia State: SC Zip: 29205
Home Phone: 803-767-8152 Work Phone: () Carrier: UEF
Preparer's Name: E. Ros Huff, Jr. Preparer's Phone #: (803) 252-2232

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: _____ 2. AWW: _____ Date of Injury: 03/03/10
3. Type of injury and body part(s): left knee, left leg, left foot
4. Facts in controversy: Whether the claimant sustained a compensable injury by accident arising out of and in the course of his employment; whether the claimant is entitled temporary disability benefits; Whether the claimant is entitled to payment of medical care; Compensation Rate.
5. Legal issues involved: See No. 4, 42-1-160 (Accident), 42-9-10 (TTD), 42-15-60 (Medical), 42-1-40 (average weekly wage), 67-1603 (compensation rate)
6. Unusual aspects: _____
Witnesses (designate if expert):* The following may be called to testify: Steve Cook, Rob Helvey, Richard Burts, Blake Faries, A Representative(s) of the Employer, The Claimant; Any witness listed by the Claimant. The Employer reserves the right to cross examine any expert submitted by the claimant pursuant to 1-23-330(3). The Employer reserves the right to amend their PHB upon receipt of additional information.
8. Exhibits: Claimant's deposition for impeachment
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): Defendants will rely on medical evidence submitted by Claimant.
10. Name, address, and specialty, if any, of the treating physician: none
11. Impairment rating(s); body part(s); physician and date of opinion: none
12. I am amending my Form 50/51 in the following manner: _____

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

Signature: E. Ros Huff, Jr. Email: roshuff@colalaw.com

Date of hearing: September 23, 2010 Time needed for hearing: 30 minutes

On behalf of ☐ Claimant ☒ Employer

Sign this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. Commissioners reserve the right to admit expert witnesses at hearings.

2	Progressive Physical Therapy (no treatment rendered)	03/08/10 & 03/12/10	7-8
3	Palmetto Imaging	05/12/10	9-10
4	Dr. Jeffrey Guy	06/17/10	11-12

Tab	Exhibit	Date(s)
A	Medical Bill of Doctor's Care \$372.00	03/08/10 - 03/15/10
B	Medical Bill of Palmetto Imaging \$460.00	05/12/10
C	Medical Bill of Dr. Jeffrey Guy \$430.00	06/17/10
D	Medical Bill of DJO, LLC \$475.00 (Brace)	06/17/10
E	Subpoena directed to 1751, LLC a/k/a Saludas	06/03/10
F	Claimant's Motion to Compel	07/22/10
G	Affidavit of Melinda Hoffman	07/29/10
H	SC Secretary of State business listing for 1751, LLC	07/30/10
I	Copy of unclaimed mail envelope addressed to 1751, LLC, a/k/a Saluda's that contained Claimant's Form 50. The original mail date was 03/24/10	03/24/10
J	Copy of unclaimed mail envelope addressed to 1751, LLC, a/k/a Saluda's that contained Claimant's Subpoena to employer for employee information	06/03/10

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

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

YOU ARE FURTHER NOTIFIED that the witness to be called on behalf of the claimant will be the claimant.



Allison P. Sullivan
BLUESTEIN & NICHOLS, LLC
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599
Attorney for Employee

Dated: 7-30-10
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	WORKERS' COMPENSATION
COUNTY OF RICHLAND	)	COMMISSION
	)	
Andrew Marrs,	)	WCC FILE NO. 1003812
	)	
Claimant,	)	
	)	NOTICE OF WITNESSES AND
vs.	)	WRITTEN REPORT(S)/PHYSICIAN
	)	OR OTHER EVIDENCE TO BE
Saluda's,	)	INTRODUCED ON BEHALF OF
	)	THE EMPLOYER
Employer,	)	
	)	
and	)	
	)	
Uninsured Employers Fund,	)	
	)	
	)	
Carrier.	)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION, ALLISON SULLIVAN, ESQUIRE, ATTORNEY FOR CLAIMANT, LISA C. GLOVER, ESQUIRE, ATTORNEY FOR UEF:

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

Medical Provider	Date	Page No.
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Defendants will rely on medical evidence submitted by Claimant

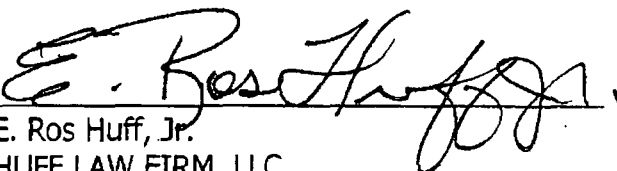
YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith

schedule the deposition(s) of any of the physicians or other person(s), whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER HEREBY NOTIFIED that a copy of said reports are served on the opposing counsel/party herewith on behalf of the Employer.

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

Steve Cook
Rob Helvey
Richard Burts
Blake Faries
Claimant's supervisor
Any Other Representative(s) of the Employer
The Claimant
Any witness listed by the Claimant



E. Ros Huff, Jr.
HUFF LAW FIRM, LLC
Post Office Box 1935
7244 Woodrow Street
Irmo, South Carolina 29063
(803) 252-2232

Attorneys for Employer

September 10, 2010

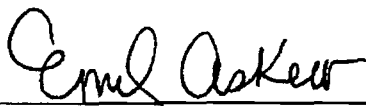
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Prehearing Brief, Notice of Witnesses and medical records have been served upon the following named individuals indicated below by mailing a copy of the same in the United States mail, with sufficient postage affixed thereto and return address clearly marked on 09-10, 2010.

Commissioner T. Scott Beck
S.C. Workers' Compensation Commission
PO Box 1715
Columbia, South Carolina 29202

Allison Sullivan, Esquire
Bluestein, Nichols, Thompson & Delgado, LLC
PO Box 7965
1614 Taylor Street
Columbia, SC 29202

Lisa C. Glover, Esquire
SC Second Injury Fund
Santee Building, Suite 101
100 Executive Center Drive
Columbia, SC 29210



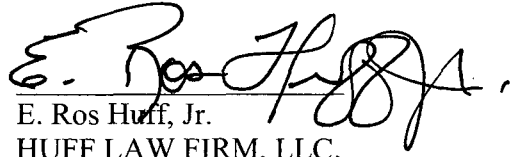
Emily Askew
Paralegal to E. Ros Huff, Jr.
HUFF LAW FIRM, LLC
Post Office Box 1935
7244 Woodrow Street
Irmo, South Carolina 29063
(803) 252-2232

Attorneys for Employer

Certificate of Counsel

In compliance with Rule 210, the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

November 30, 2012



E. Ros Huff, Jr.
HUFF LAW FIRM, LLC.
Post Office Box 1935
Irmo, South Carolina 29063
(803) 252-2232

Attorney for the Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE WORKERS COMPENSATION COMMISSION

David W. Huffstetler, Commissioner
Andrea C. Roche, Commissioner
Avery B. Wilkerson, Jr., Commissioner

WCC File No. 1003812

Andrew Marrs,..... Respondent,

v.

1751, LLC d/b/a Saludas and
The South Carolina Uninsured Employer's Fund,..... Defendants,
Of Whom

1751, LLC d/b/a Saludas is the Appellant.

PROOF OF SERVICE

I certify that I have served the Record on Appeal by depositing a copy of the same in the United States Mail, postage prepaid, on November 30, 2012 to the following parties, and or their representatives:

**Blake A. Hewitt, Esquire and Allison Sullivan, Esquire
Bluestein, Nichols, Thompson and Delgado, LLC,
PO Box 7965**

Columbia, SC 29202

Attorneys for Andrew Marrs

**Virginia Crocker , Judicial Director
S.C. Workers' Compensation Commission**

Post Office Box 1715

Columbia, SC 29202

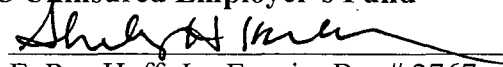
Lisa Glover, Esquire

100 Executive Center, Drive, Santee Building Suite 101

Columbia, SC 29210

Attorney for SC Uninsured Employer's Fund

November ^{30th}, 2012


E. Ros Huff, Jr., Esquire Bar # 2767
Shelby H. Kellahan, Esquire Bar # 74731
HUFF LAW FIRM, LLC, Attorneys for Appellant.
Post Office Box 1935, 7244 Woodrow Street
Irmo, South Carolina 29063
(803) 252-2232