

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

The Honorable T. Scott Beck, Commissioner

RECEIVED
APR 22 2020
SC Court of Appeals

W.C.C. File No. 1112328
Appellate Case No. 2019-001357

Samuel Rose, Claimant.....Respondent,

v.

JJS Trucking, LLC, Uninsured Employer, and Chris Thompson
Services, Upstream Employer, and Bridgefield Casualty Ins. Co.,
Carrier for Chris Thompson Services, and The State Accident
Fund,.....Appellants.

RECORD ON APPEAL
VOLUME 2 OF 2

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Attorney for South Carolina
Uninsured Employer's Fund

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and Bridgefield Casualty Ins. Co.

Unrepresented:
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JJS Trucking, LLC
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(843) 270-4031

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Certificate of Counsel543

Eric Campbell

From: Smith, Renee <rgsmith@wcc.sc.gov>
Sent: Tuesday, April 23, 2019 2:37 PM
To: Katherine Carter; Joyce Deatrick; Joseph Fisher
Cc: Isabel Manning; Linda Sanchez; Kirsten Barr; amy@cofieldlaw.com; ami@cofieldlaw.com; Lisa Glover; lcurtis@trask-howell.com; Chrystal Chassereau; Taylor Sebring; BAKERY@STEINBERGLAWFIRM.COM; 'Lori Dodge'; Stephen Samuels
Subject: RE: [External] Re: Samuel Rose # 1112328

Okay, thanks!

Renee' Smith
Assistant to Comm. Aisha Taylor
803-737-5692
rgsmith@wcc.sc.gov

From: Katherine Carter [mailto:Katherine@samuelslawfirm.net]
Sent: Tuesday, April 23, 2019 2:34 PM
To: Smith, Renee <rgsmith@wcc.sc.gov>; Joyce Deatrick <jdeatrick@saf.sc.gov>; Joseph Fisher <JFisher@SinkLaw.Com>
Cc: Isabel Manning <imanning@trask-howell.com>; Linda Sanchez <lsanchez@trask-howell.com>; Kirsten Barr <kbarr@trask-howell.com>; amy@cofieldlaw.com; ami@cofieldlaw.com; Lisa Glover <lglover@saf.sc.gov>; lcurtis@trask-howell.com; Chrystal Chassereau <cchassereau@trask-howell.com>; Taylor Sebring <tsebring@trask-howell.com>; BAKERY@STEINBERGLAWFIRM.COM; 'Lori Dodge' <ldodge@steinberglawfirm.com>; Stephen Samuels <stephen@samuelslawfirm.net>
Subject: RE: [External] Re: Samuel Rose # 1112328

Renee:

Mr. Samuels is available.

Regards,

Katherine R. Carter
Paralegal to Stephen Samuels
Samuels Law Firm, LLC
1320 Richland Street
Columbia, SC 29201
(803) 779-4000 Telephone
(803) 779-4004 Facsimile

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From: Smith, Renee <rgsmith@wcc.sc.gov>
Sent: Tuesday, April 23, 2019 2:23 PM
To: Joyce Deatrick <jdeatrick@saf.sc.gov>; Joseph Fisher <JFisher@SinkLaw.Com>; Katherine Carter <Katherine@samuelslawfirm.net>
Cc: Isabel Manning <imanning@trask-howell.com>; Linda Sanchez <lsanchez@trask-howell.com>; Kirsten Barr <kbarr@trask-howell.com>; amy@cofieldlaw.com; ami@cofieldlaw.com; Lisa Glover <lglover@saf.sc.gov>; lcurtis@trask-howell.com; Chrystal Chassereau <cchassereau@trask-howell.com>; Taylor Sebring <tsebring@trask-howell.com>; BAKERY@STEINBERGLAWFIRM.COM; 'Lori Dodge' <ldodge@steinberglawfirm.com>; Stephen Samuels <stephen@samuelslawfirm.net>
Subject: RE: [External] Re: Samuel Rose # 1112328

Is everyone available Thursday at 9:15 am?

Renee' Smith
Assistant to Comm. Aisha Taylor
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From: Joyce Deatrick [<mailto:jdeatrick@saf.sc.gov>]
Sent: Tuesday, April 23, 2019 2:09 PM
To: Smith, Renee <rgsmith@wcc.sc.gov>; Joseph Fisher <JFisher@SinkLaw.Com>; Katherine Carter <Katherine@samuelslawfirm.net>
Cc: Isabel Manning <imanning@trask-howell.com>; Linda Sanchez <lsanchez@trask-howell.com>; Kirsten Barr <kbarr@trask-howell.com>; amy@cofieldlaw.com; ami@cofieldlaw.com; Lisa Glover <lglover@saf.sc.gov>; lcurtis@trask-howell.com; Chrystal Chassereau <cchassereau@trask-howell.com>; Taylor Sebring <tsebring@trask-howell.com>; BAKERY@STEINBERGLAWFIRM.COM; 'Lori Dodge' <ldodge@steinberglawfirm.com>; Stephen Samuels <stephen@samuelslawfirm.net>
Subject: RE: [External] Re: Samuel Rose # 1112328

Amy is not available in the am, but could do it in the afternoon.

From: Smith, Renee [<mailto:rgsmith@wcc.sc.gov>]
Sent: Tuesday, April 23, 2019 1:29 PM
To: Joseph Fisher <JFisher@SinkLaw.Com>; Katherine Carter <Katherine@samuelslawfirm.net>
Cc: Isabel Manning <imanning@trask-howell.com>; Linda Sanchez <lsanchez@trask-howell.com>; Kirsten Barr <kbarr@trask-howell.com>; amy@cofieldlaw.com; ami@cofieldlaw.com; Lisa Glover <lglover@saf.sc.gov>; Joyce Deatrick <jdeatrick@saf.sc.gov>; lcurtis@trask-howell.com; Chrystal Chassereau <cchassereau@trask-howell.com>; Taylor Sebring <tsebring@trask-howell.com>; BAKERY@STEINBERGLAWFIRM.COM; 'Lori Dodge' <ldodge@steinberglawfirm.com>; Stephen Samuels <stephen@samuelslawfirm.net>
Subject: RE: [External] Re: Samuel Rose # 1112328

Okay, thanks

Renee' Smith
Assistant to Comm. Aisha Taylor
803-737-5692
rgsmith@wcc.sc.gov

From: Joseph Fisher [<mailto:JFisher@SinkLaw.Com>]
Sent: Tuesday, April 23, 2019 1:27 PM

To: Smith, Renee <rgsmith@wcc.sc.gov>; Katherine Carter <Katherine@samuelslawfirm.net>
Cc: Isabel Manning <imanning@trask-howell.com>; Linda Sanchez <lsanchez@trask-howell.com>; Kirsten Barr <kbarr@trask-howell.com>; amy@cofieldlaw.com; ami@cofieldlaw.com; Lisa Glover (lglover@saf.sc.gov) <lglover@saf.sc.gov>; Joyce Deatrick (jdeatrick@saf.sc.gov) <jdeatrick@saf.sc.gov>; lcurtis@trask-howell.com; Chrystal Chassereau <cchassereau@trask-howell.com>; Taylor Sebring <tsebring@trask-howell.com>; BAKERY@STEINBERGLAWFIRM.COM; 'Lori Dodge' <ldodge@steinberglawfirm.com>; Stephen Samuels <stephen@samuelslawfirm.net>

Subject: RE: [External] Re: Samuel Rose # 1112328

I have a mediation at that time in Myrtle Beach and defer to Mr. Samuels.

From: Smith, Renee <rgsmith@wcc.sc.gov>

Sent: Tuesday, April 23, 2019 1:22 PM

To: Katherine Carter <Katherine@samuelslawfirm.net>

Cc: Isabel Manning <imanning@trask-howell.com>; Linda Sanchez <lsanchez@trask-howell.com>; Kirsten Barr <kbarr@trask-howell.com>; amy@cofieldlaw.com; ami@cofieldlaw.com; Lisa Glover (lglover@saf.sc.gov) <lglover@saf.sc.gov>; Joyce Deatrick (jdeatrick@saf.sc.gov) <jdeatrick@saf.sc.gov>; lcurtis@trask-howell.com; Chrystal Chassereau <cchassereau@trask-howell.com>; Taylor Sebring <tsebring@trask-howell.com>; Joseph Fisher <JFisher@SinkLaw.Com>; BAKERY@STEINBERGLAWFIRM.COM; 'Lori Dodge' <ldodge@steinberglawfirm.com>; Stephen Samuels <stephen@samuelslawfirm.net>

Subject: RE: [External] Re: Samuel Rose # 1112328

[CAUTION: This email originated from outside of the organization.]

Okay, thanks

Renee' Smith

Assistant to Comm. Aisha Taylor

803-737-5692

rgsmith@wcc.sc.gov

From: Katherine Carter [<mailto:Katherine@samuelslawfirm.net>]

Sent: Tuesday, April 23, 2019 1:19 PM

To: Smith, Renee <rgsmith@wcc.sc.gov>

Cc: Isabel Manning <imanning@trask-howell.com>; Linda Sanchez <lsanchez@trask-howell.com>; Kirsten Barr <kbarr@trask-howell.com>; amy@cofieldlaw.com; ami@cofieldlaw.com; Lisa Glover (lglover@saf.sc.gov) <lglover@saf.sc.gov>; Joyce Deatrick (jdeatrick@saf.sc.gov) <jdeatrick@saf.sc.gov>; lcurtis@trask-howell.com; Chrystal Chassereau <cchassereau@trask-howell.com>; Taylor Sebring <tsebring@trask-howell.com>; JFISHER@SINKLAW.COM; BAKERY@STEINBERGLAWFIRM.COM; 'Lori Dodge' <ldodge@steinberglawfirm.com>; Stephen Samuels <stephen@samuelslawfirm.net>

Subject: RE: [External] Re: Samuel Rose # 1112328

Renee:

Mr. Samuels is available tomorrow morning at 10:00 AM or 10:30 AM.

Thanks!

Katherine R. Carter

Paralegal to Stephen Samuels

Samuels Law Firm, LLC

1320 Richland Street

Columbia, SC 29201
(803) 779-4000 Telephone
(803) 779-4004 Facsimile

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From: Smith, Renee <rgsmith@wcc.sc.gov>
Sent: Tuesday, April 23, 2019 1:17 PM
To: Kirsten Barr <kbarr@trask-howell.com>; amy@cofieldlaw.com; ami@cofieldlaw.com; Lisa Glover (lglover@saf.sc.gov) <lglover@saf.sc.gov>; Joyce Deatrick (jdeatrick@saf.sc.gov) <jdeatrick@saf.sc.gov>; lcurtis@trask-howell.com; Chrystal Chassereau <cchassereau@trask-howell.com>; Taylor Sebring <tsebring@trask-howell.com>; JFISHER@SINKLAW.COM; BAKERY@STEINBERGLAWFIRM.COM; 'Lori Dodge' <ldodge@steinberglawfirm.com>; Stephen Samuels <stephen@samuelslawfirm.net>; Katherine Carter <Katherine@samuelslawfirm.net>; Angi Samuels <angi@samuelslawfirm.net>
Cc: Isabel Manning <imanning@trask-howell.com>; Linda Sanchez <lsanchez@trask-howell.com>
Subject: RE: [External] Re: Samuel Rose # 1112328

Hello Everyone,
Commissioner needs a conference call on this claim. Is everyone available about 10 or 10:30 am tomorrow morning?
Thanks for your help.

Renee' Smith
Assistant to Comm. Aisha Taylor
803-737-5692
rgsmith@wcc.sc.gov

From: Kirsten Barr [<mailto:kbarr@trask-howell.com>]
Sent: Tuesday, April 23, 2019 12:33 PM
To: Smith, Renee <rgsmith@wcc.sc.gov>; amy@cofieldlaw.com; ami@cofieldlaw.com; Lisa Glover (lglover@saf.sc.gov) <lglover@saf.sc.gov>; Joyce Deatrick (jdeatrick@saf.sc.gov) <jdeatrick@saf.sc.gov>; lcurtis@trask-howell.com; Chrystal Chassereau <cchassereau@trask-howell.com>; Taylor Sebring <tsebring@trask-howell.com>; JFISHER@SINKLAW.COM; BAKERY@STEINBERGLAWFIRM.COM; 'Lori Dodge' <ldodge@steinberglawfirm.com>; Stephen Samuels <stephen@samuelslawfirm.net>; Katherine Carter <Katherine@samuelslawfirm.net>; angi@samuelslawfirm.net
Cc: Isabel Manning <imanning@trask-howell.com>; Linda Sanchez <lsanchez@trask-howell.com>
Subject: Re: [External] Re: Samuel Rose # 1112328

Hi Renee, hope you had a wonderful Easter.

I just wanted to circle back to see if Commissioner Taylor was going to consider this claim on the existing record, or whether she expected updated briefs, APAs and additional testimony.

Thanks!

Kirsten

From: Smith, Renee <rgsmith@wcc.sc.gov>
Sent: Monday, April 15, 2019 11:33:35 AM
To: Kirsten Barr; amy@cofieldlaw.com; ami@cofieldlaw.com; Lisa Glover (lglover@saf.sc.gov); Joyce Deatrick (jdeatrick@saf.sc.gov); lcurtis@trask-howell.com; Chrystal Chassereau; Taylor Sebring; JFISHER@SINKLAW.COM; BAKERY@STEINBERGLAWFIRM.COM; 'Lori Dodge'; Stephen Samuels; Katherine Carter; angi@samuelslawfirm.net
Cc: Isabel Manning; Linda Sanchez
Subject: RE: [External] Re: Samuel Rose # 1112328

Good Morning,
Commissioner is not available until next week but if I should hear from her, I'll let you know.
Thanks

Renee' Smith
Assistant to Comm. Aisha Taylor
803-737-5692
rgsmith@wcc.sc.gov

From: Kirsten Barr [<mailto:kbarr@trask-howell.com>]
Sent: Monday, April 15, 2019 11:26 AM
To: Smith, Renee <rgsmith@wcc.sc.gov>; amy@cofieldlaw.com; ami@cofieldlaw.com; Lisa Glover (lglover@saf.sc.gov) <lglover@saf.sc.gov>; Joyce Deatrick (jdeatrick@saf.sc.gov) <jdeatrick@saf.sc.gov>; lcurtis@trask-howell.com; Chrystal Chassereau <cchassereau@trask-howell.com>; Taylor Sebring <tsebring@trask-howell.com>; JFISHER@SINKLAW.COM; BAKERY@STEINBERGLAWFIRM.COM; 'Lori Dodge' <ldodge@steinberglawfirm.com>; Stephen Samuels <stephen@samuelslawfirm.net>; Katherine Carter <Katherine@samuelslawfirm.net>; angi@samuelslawfirm.net
Cc: Isabel Manning <imanning@trask-howell.com>; Linda Sanchez <lsanchez@trask-howell.com>
Subject: RE: [External] Re: Samuel Rose # 1112328

Renee,
Can you please advise whether the Commissioner intends to have a new evidentiary hearing, or are we simply meeting to discuss the existing record?
Thanks,
Kirsten

From: Smith, Renee <rgsmith@wcc.sc.gov>
Sent: Monday, April 15, 2019 10:38 AM
To: Kirsten Barr <kbarr@trask-howell.com>; amy@cofieldlaw.com; ami@cofieldlaw.com; Lisa Glover (lglover@saf.sc.gov) <lglover@saf.sc.gov>; Joyce Deatrick (jdeatrick@saf.sc.gov) <jdeatrick@saf.sc.gov>; lcurtis@trask-howell.com; Chrystal Chassereau <cchassereau@trask-howell.com>; Taylor Sebring <tsebring@trask-howell.com>; JFISHER@SINKLAW.COM; BAKERY@STEINBERGLAWFIRM.COM; 'Lori Dodge' <ldodge@steinberglawfirm.com>; Stephen Samuels <stephen@samuelslawfirm.net>; Katherine Carter <Katherine@samuelslawfirm.net>; angi@samuelslawfirm.net
Cc: Isabel Manning <imanning@trask-howell.com>; Linda Sanchez <lsanchez@trask-howell.com>
Subject: RE: [External] Re: Samuel Rose # 1112328
Importance: High

Good morning,

I don't think I've heard from Ms. Glover or Ms. Cofield.
Are you available on May 8th for this hearing?
Thanks for your help.

Renee' Smith
Assistant to Comm. Aisha Taylor
803-737-5692
rgsmith@wcc.sc.gov

From: Kirsten Barr [<mailto:kbarr@trask-howell.com>]
Sent: Wednesday, April 10, 2019 3:47 PM
To: Smith, Renee <rgsmith@wcc.sc.gov>; amy@cofieldlaw.com; ami@cofieldlaw.com; Lisa Glover (lglover@saf.sc.gov) <lglover@saf.sc.gov>; Joyce Deatrick (jdeatrick@saf.sc.gov) <jdeatrick@saf.sc.gov>; lcurtis@trask-howell.com; Chrystal Chassereau <cchassereau@trask-howell.com>; Taylor Sebring <tsebring@trask-howell.com>; JFISHER@SINKLAW.COM; BAKERY@STEINBERGLAWFIRM.COM; 'Lori Dodge' <ldodge@steinberglawfirm.com>; Stephen Samuels <stephen@samuelslawfirm.net>; Katherine Carter <Katherine@samuelslawfirm.net>; angi@samuelslawfirm.net
Cc: Isabel Manning <imanning@trask-howell.com>; Linda Sanchez <lsanchez@trask-howell.com>
Subject: [External] Re: Samuel Rose # 1112328

Yes ma'am. Thank you. Kirsten

From: Smith, Renee <rgsmith@wcc.sc.gov>
Sent: Wednesday, April 10, 2019 3:44 PM
To: amy@cofieldlaw.com; ami@cofieldlaw.com; Lisa Glover (lglover@saf.sc.gov); Joyce Deatrick (jdeatrick@saf.sc.gov); Kirsten Barr; lcurtis@trask-howell.com; Chrystal Chassereau; Taylor Sebring; JFISHER@SINKLAW.COM; BAKERY@STEINBERGLAWFIRM.COM; 'Lori Dodge'; Stephen Samuels; Katherine Carter; angi@samuelslawfirm.net
Subject: Samuel Rose # 1112328

Good Afternoon,
I'm trying to schedule this Remand hearing in Richland. Is everyone available to come to Richland on May 8th?
Thanks for your help.

Renee' Smith
Assistant to Comm. Aisha Taylor
803-737-5692
rgsmith@wcc.sc.gov

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South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1112328
Carrier File #: 943450
April 29, 2019

NOTICE OF HEARING
POSTPONEMENT

SAMUEL ROSE v. CHRIS THOMPSON SERVICES, LLC, et al

Subject: Remand on issues as set forth by Full Commission Order.
Date: May 8, 2019 at 10:00 AM
Location: SC Workers' Compensation Commission, 1333 Main Street, Suite 500, Hearing Room A
Columbia, SC 29202

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Aisha Taylor
803-737-5692, rgsmith@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Renee G Smith, SC Workers' Compensation, April 29, 2019

Party

Employee: SAMUEL ROSE

Employee: SAMUEL ROSE

Employee: SAMUEL ROSE

Attorney

Stephen B. Samuels
stephen@samuelslawfirm.net
803-779-4000

Joseph B. Fisher
jfisher@sinklaw.com
843-315-1848

Benjamin W. Akery
bakery@steinberglawfirm.com
843-572-0700

Party

Carrier: SC Workers Compensation Uninsured Employers
Fund

Carrier: SC Workers Compensation Uninsured Employers
Fund

Employer: CHRIS THOMPSON SERVICES, LLC
Carrier: Bridgefield Casualty Insurance Company

Employer: JIS TRUCKING, LLC
137-A GORDON STREET
CHARLESTON, SC 29403

Attorney

Amy V. Cofield
amy@cofieldlaw.com
803-951-0389

Lisa C. Glover
lglover@saf.sc.gov
803-896-5898

Kirsten L. Barr
kbarr@trask-howell.com
843-881-4228

From: Taylor, Aisha <ataylor@wcc.sc.gov>
Sent: Monday, April 29, 2019 1:29 PM
To: 'stephen@samuelslawfirm.net' <stephen@samuelslawfirm.net>; Kirsten Barr <kbarr@trask-howell.com>; acofield@saf.sc.gov; jekaufmannesq@gmail.com
Cc: Smith, Renee <rgsmith@wcc.sc.gov>; Bracy, Amy <abracy@wcc.sc.gov>
Subject: Samuel Rose v. JJS Trucking, et al. WCC File No.: 1112328
Importance: High

Good Afternoon!

I am granting Mr. Samuels' Motion for Recusal. This will take it out of my jurisdiction. In light of the Supreme Court's recent direction in Russell 4/3/19, this should have stayed at the Full Commission level upon remand, anyway. As such, a Panel will address the Remand from the Court of Appeals. Luckily, we are in Full Commission this week, so I can get everything turned back over to Judicial today.

This actually saves the parties time because it avoids a whole level of appeal, which was the clear directive from the Court. The reassignment will not add any delay.

Please let me know if you have any questions.

Thanks,

Commissioner Aisha Taylor

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**BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION**

Samuel A. Rose,)
)
Employee,)
)
-vs-)
)
JJS Trucking, LLC/SCUEF and Chris)
Thompson Services, LLC/Bridgefield)
Casualty Insurance Company,)
)
Employer,)
)
-and-)
)
Bridgefield Casualty Insurance Co.,)
)
Carrier,)
)
Defendants.)

W.C.C. FILE NO. 1112328

MOTION FOR RECONSIDERATION

TO: South Carolina Workers' Compensation Commission and Stephen B. Samuels, Esq.,
attorney for the Claimant:

PLEASE TAKE NOTICE that the above-named Defendants hereby move the South
Carolina Workers' Compensation Commission pursuant to S.C. Code Reg. 67-215(B)¹ to

¹ Regulation 67-215 permits motions to reconsider "if the purpose of the motion is not an attempt to reargue the merits of the dispute." In the case *sub judice*, the Appellate Panel addressed issues which were not before it on appeal, as they were not raised in Claimant's Form 30 or in his Brief to the Appellate Panel, and improperly awarded benefits *sua sponte*. Therefore, the Defendants have never been given any opportunity to argue "the merits of the dispute" to the Appellate Panel. While the Defendants have a statutory and constitutional right of notice and opportunity to be heard on these issues, this motion is proper because it focuses not on the "merits" of the dispute, but on the fact that the Appellate Panel does not have the authority or jurisdiction to even address the dispute.

Reconsider the Appellate Panel's Order dated June 17, 2019². The grounds for said Motion are as follows:

1. This matter came before Commissioner Taylor for a hearing on September 23, 2013 pursuant to the Defendants' Form 21 dated June 13, 2013.
2. By Order dated September 2, 2014, Commissioner Taylor concluded that the Claimant failed to satisfy the requirements of S.C. Code Ann. § 42-1-560. In addition, Commissioner Taylor ruled that the Defendants were entitled to terminate temporary disability pursuant to S.C. Code Ann. § 42-9-260 and § 42-9-210; that the Claimant is not entitled to any additional medical treatment under S.C. Code Ann. § 42-15-60; and that the Claimant is not entitled any benefits under S.C. Code Ann. §§ 42-9-10, 42-9-20, and 42-9-30.
3. The Claimant appealed Hearing Commissioner Taylor's conclusion regarding the application of S.C. Code Ann. § 42-1-560 to the Commission's Appellate Panel. However, the Claimant's Form 30 dated September 14, 2014 raises no argument with respect to S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30 and raises no exception to the Hearing Commissioner's conclusions about the application of these statutes. Therefore, no argument under S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30 is preserved for appeal. Jones v.

² Note that the Defendants have not been served with page 12 of the June 17, 2019 Appellate Panel Order and have notified the Commission of this deficiency. The Defendants reserve the right to amend this Motion upon receipt of the Appellate Panel's Order in its entirety.

Anderson Cotton Mills, 205 S.C. 247, 31 S.E.2d 447 (1944) (holding that general exceptions, such as “the commission erred in making an award,” are too ambiguous to fulfill the notice requirements of due process and do not preserve an issue for review); *see also* S.C. Code Reg. 67-701 (requiring that “[t]he grounds for appeal must be set out in detail on the Form 30 in the form of questions presented...Each question presented must be concise and concern one finding of fact, conclusion of law, or other proposition the appellant believes is in error.”)

4. Furthermore, the Claimant does not make any argument with respect to §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30 in his November 14, 2014 Brief to the Appellate Panel³. Of course, mere “conclusory statements unaccompanied by argument and citation to authority are insufficient to preserve an issue for appellate review.” State v. Crocker, 366 S.C. 394, 621 S.E.2d 890 (Ct. App. 2005) (citing Fields v. Melrose Ltd. P’ship, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993 (holding that failure to provide argument or supporting authority for an issue renders it abandoned))).
5. Therefore, the Hearing Commissioner’s rulings regarding S.C. Code Ann.

³ The Claimant’s November 14, 2014 Brief to the Appellate Panel raises only 2 arguments on appeal, both of which deal solely with the application of S.C. Code Ann. § 42-1-560. In addition, according to the “Conclusion” of the Claimant’s November 14, 2014 brief, relief sought by the Claimant did not involve the application of S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30. The Claimant’s Brief simply does not argue the merits of, or evidentiary support for, any claim for medical or compensation benefits and does not request that the Appellate Panel award benefits under these statutes.

§§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30 are the law of the case and cannot be disturbed by the Appellate Panel or any reviewing court on appeal. (See S.C. Code Ann. § 42-17-50; Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (holding that "an unappealed ruling, right or wrong, is the law of the case" and citing Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 160-61, 177 S.E.2d 544 (1970); Creech v. Ducane Co., 320 S.C. 559, 476 S.E.2d 114, *rehr 'g denied, cert. denied* (Ct. App. 1995) (holding that S.C. Code Ann. § 42-17-50 provides the procedure for appealing a Hearing Commissioner's Order; however, "only issues within the application are preserved for the full Commission"); Ham v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2s 712 (1940) (holding that all findings of fact and law by the Hearing Commissioner "become and are the law of the case, except only those within the scope of the exception").

6. Because the Hearing Commissioner's rulings regarding S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30 are the law of the case, the Appellate Panel has no jurisdiction to address any issue with respect to S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30. Allison v. W.L. Gore & Assoc., 394 S.C. 185, 714 S.E.2d 547 (2011) (holding that the question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction the Commission lacks the authority or jurisdiction to extend the fourteen days permitted for the perfecting of an appeal).

7. Considering the fact that the Appellate Panel has no jurisdiction to address any issue with respect to S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30, the Defendants respectfully contend that the Appellate Panel erred as a matter of law in awarding benefits under S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30, or in otherwise disturbing the Hearing Commissioner's unappealed conclusions with regard to these statutes in its June 17, 2019 Order, which should be reconsidered and withdrawn.
8. While the Appellate Panel's June 17, 2019 Order vaguely concludes that it has jurisdiction by virtue of the Remittitur from the Court of Appeals, the Order of the Court of Appeals does not, and cannot, extend the Appellate Panel's jurisdiction to address any unappealed rulings under S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30. Allison v. W.L. Gore & Assoc., *supra*; *see also Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (holding that "an unappealed ruling, right or wrong, is the law of the case" and citing Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 160-61, 177 S.E.2d 544 (1970)).
9. In fact, the April 18, 2018 Order from the Court of Appeals says nothing of awarding the Claimant medical or compensation benefits and does not purport to expand the Appellate Panel's jurisdiction vested by virtue of S.C. Code Ann. § 42-17-50 and the Claimant's Form 30, but merely states, "[w]e reverse the Appellate Panel's order and remand for further proceedings

consistent with this opinion.” Of course, that opinion dealt solely with the application of S.C. Code Ann. § 42-1-560, as the Claimant similarly made no argument with regard to his entitlement to benefits under S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30 to the Court of Appeals. Therefore, like the Appellate Panel, the Court of Appeals had no jurisdiction to disturb the Hearing Commissioner’s conclusions with regard to S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30. See Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (“It is axiomatic that an issue cannot be raised for the first time on appeal,” but must have been first raised and ruled upon by the lower tribunal).

10. As such, the Remand and Remittitur merely returned the claim to the Appellate Panel to address the issues actually raised in the Claimant’s November 14, 2014 Brief to the Appellate Panel, consistent with the Court’s analysis of S.C. Code Ann. § 42-1-560, and consistent with the Appellate Panel’s jurisdiction under S.C. Code Ann. § 42-17-50. To accomplish this task, the Appellate Panel was only empowered to amend its February 8, 2016 Order as follows:
 - a. To make an additional Finding of Fact (#3), consistent with the Order of the Court of Appeals, to reflect that the Claimant’s civil action against the at-fault third party was voluntarily dismissed pursuant to a stipulation of dismissal filed in the Court of Common Pleas on December 5, 2013.

- b. To amend the second sentence of Conclusion of Law (#3), consistent with the Order of the Court of Appeals, to state that because the Claimant has taken a voluntary dismissal of his third-party suit, S.C. Code Ann. § “42-1-560 is not applicable. As a result, there is no violation of [section] 42-1-560.”
11. In addition, because the Appellate Panel does not have power, authority, or jurisdiction to disturb the Hearing Commissioner’s conclusions of law with respect to S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30 by virtue of S.C. Code Ann. § 42-17-50, the Appellate Panel should reconsider and withdraw the following findings of fact⁴:
- a. Finding of Fact #11 addresses the Defendants’ provision of medical treatment with Dr. Greg Jones; however, neither the Claimant’s Form 30, nor his November 14, 2014 Brief to the Appellate Panel, makes any argument with respect to the provision of medical treatment or the opinions of Dr. Jones. Therefore, the Appellate Panel has no authority or jurisdiction to address these issues on remand. Creech v. Ducane Co., 320 S.C. 559, 476 S.E.2d 114, *reh’g denied, cert. denied* (Ct. App. 1995).
- b. Finding of Fact #12 addresses the opinions of the Claimant’s family physician, Dr. Abel, regarding physical therapy and an EMG; however, neither the Claimant’s Form 30, nor his November 14, 2014 Brief to the

⁴ The Defendants reserve the right to amend and supplement these argument upon receipt of page 12 of the Appellate Panel’s June 17, 2012 Order, which has not yet been served upon the Defendants.

Appellate Panel, makes any argument with respect to the opinions of Dr. Abel, or his entitlement to physical therapy or and EMG. Therefore, the Appellate Panel has no authority or jurisdiction to address these issues on remand. Green v. City of Columbia, 311 S.C. 78, 427 S.E.2d 685 (Ct.App.1993) (holding the Full Commission does not have authority to address an issue not raised in a Form 30, Application for Review).

- c. Finding of Fact #13 addresses the opinions of Dr. Poletti, who performed a one-time independent medical evaluation at the request of the Claimant's attorney, regarding the Claimant's alleged need for additional medical treatment. However, neither the Claimant's Form 30, nor his November 14, 2014 Brief to the Appellate Panel, makes any argument with respect to the opinions of Dr. Poletti, or his entitlement to additional medical treatment generally. Therefore, the Appellate Panel has no authority or jurisdiction to address these issues on remand. *See* Creech v. Ducane Co. and Green v. City of Columbia, *supra*.
- d. Finding of Fact #14 addresses whether the Claimant is at maximum medical improvement; however, neither the Claimant's Form 30, nor his November 14, 2014 Brief to the Appellate Panel, makes any argument with respect to the issue of maximum medical improvement. Therefore, the Appellate Panel has no authority or jurisdiction to address this issues on remand. *See* Creech v. Ducane Co. and Green v. City of Columbia, *supra*.

- e. Finding of Fact #14 further addresses the weight and credibility of the medical evidence regarding the issue of additional medical treatment. However, however, neither the Claimant's Form 30, nor his November 14, 2014 Brief to the Appellate Panel, makes any argument with respect to the weight or credibility of the evidence on the issue of additional medical treatment. Therefore, the Appellate Panel has no authority or jurisdiction to address this issue on remand. See Creech v. Duane Co. and Green v. City of Columbia, *supra*.
- f. Finding of Fact #15, also addresses the weight and credibility of the medical evidence and contains a legal conclusion regarding the need for additional medical treatment, including surgery. However, neither the Claimant's Form 30, nor his November 14, 2014 Brief to the Appellate Panel, makes any argument with respect to the weight or credibility of the evidence on the issue of additional medical treatment, or his entitlement to additional medical treatment, including surgery. Furthermore, the Claimant did not appeal the Appellate Panel's previous (February 8, 2016) legal conclusion (#13) that pursuant to S.C. Code Ann. § 42-15-60, "the Defendants shall have no liability for any additional medical care or treatment under the Workers' Compensation Act" to the Court of Appeals, making this conclusion, which was originally entered by the Hearing Commissioner and thereafter unappealed, the law of the case. See Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (holding

that "an unappealed ruling, right or wrong, is the law of the case" and citing Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 160-61, 177 S.E.2d 544 (1970)). Therefore, the Appellate Panel has no authority or jurisdiction to address these issues on remand, to award additional medical benefits, or to disturb the previously unappealed legal conclusion with regard to additional medical treatment. See Creech v. Ducane Co. and Green v. City of Columbia, *supra*.

- g. Finding of Fact #16, which is also a legal conclusion, addresses the Claimant's right to direct and control the provision of medical treatment and the appointment of Dr. Poletti as the authorized treating physician. However, neither the Claimant's Form 30, nor his November 14, 2014 Brief to the Appellate Panel, makes any argument with respect to his right to direct or control the provision of medical treatment or the appointment of Dr. Poletti as the authorized treating physician. In fact, the Claimant did not even request that the Hearing Commissioner appoint Dr. Poletti as the authorized treating physician. Neither the Claimant's Form 58, Pre-Hearing Brief, dated August 5, 2013, nor his arguments at the September 23, 2013 Hearing (see Hrg. T. pp.10-11), makes even the slightest suggestion that the Defendants should be deprived of their statutory rights under S.C. Code Ann. § 42-15-60 and § 42-15-80. Furthermore, the Claimant did not appeal the Appellate Panel's previous (February 8, 2016) legal conclusion (#13) that pursuant to S.C. Code Ann. § 42-15-60, "the Defendants shall have no liability for

any additional medical care or treatment under the Workers' Compensation Act," making this conclusion, which was originally entered by the Hearing Commissioner and thereafter unappealed, the law of the case. See Atl. Coast Builders & Contractors, LLC v. Lewis, supra. Therefore, the Appellate Panel has no authority or jurisdiction to address this issue on remand, or to order a change in the authorized treating physician, or to appoint Dr. Poletti as the authorized treating physician, or to otherwise disturb the previously unappealed legal conclusion with regard to additional medical treatment. See Creech v. Ducane Co. and Green v. City of Columbia, supra; see also Wilder Corp. v. Wilke, supra.

- h. Finding of Fact #17, which is also actually a legal conclusion, addresses the Claimant's entitlement to an evaluation with an orthopaedic surgeon "to obtain updated MRI scans and an assessment of Claimant's continued complaints of pain in his right knee." Not only is there no medical evidence in the record that the Claimant requires "updated MRI scans" of his right knee, but there is no evidence that the Claimant "continues" to complain of pain in his right knee because the Claimant has not given testimony in this case since September 23, 2013 – 5 years and 9 months ago. Moreover, neither the Claimant's Form 30, nor his November 14, 2014 Brief to the Appellate Panel, makes any argument with respect to his right knee, makes no request for an MRI of his right knee, and makes no request for additional treatment for his right knee.

Therefore, the Appellate Panel has no authority or jurisdiction to address these issues on remand. See Creech v. Ducane Co. and Green v. City of Columbia, *supra*. Furthermore, the Appellate Panel has no authority or jurisdiction to speculate as to the current condition of the Claimant's right knee or any need for medical treatment or diagnostic studies at the present time. See Sola v. Sunny Slope Farms, 244 S.C. 6, 10 (1964) (holding that claimants who assert their right to compensation must establish by the preponderance of the evidence the facts that will entitle them to an award under the Workmen's Compensation Act and such award must not be based on surmise, conjecture or speculation). In addition, the Appellate Panel is without authority or jurisdiction to disturb the unappealed legal conclusion that, pursuant to S.C. Code Ann. § 42-15-60, "the Defendants shall have no liability for any additional medical care or treatment under the Workers' Compensation Act." This conclusion, which was originally entered by the Hearing Commissioner and thereafter unappealed to either the Appellate Panel or the Court of Appeals, is the law of the case. See Atl. Coast Builders & Contractors, LLC v. Lewis, *supra*.

- i. The June 17, 2019 Appellate Panel Order acknowledges that "the Claimant testified that he fell down a flight of stairs at his mother's house in November 2011 and again in January of 2012 and re-injured his back and neck on both occasions. (Hrg. Transcript p. 34, ll.2-7)." While the Defendants maintain that the fact of these two intervening accidents

breaking the chain of causation are moot given the conclusive nature of Hearing Commissioner Taylor's denial of benefits S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30, the Defendants would respectfully argue that if the Appellate Panel is going to address benefits under these statutes, it is incumbent upon the Appellate Panel to address this issue. Based upon the Claimant's own admission, the proximate cause of the Claimant's neck and low back problems are 2 falls wholly unrelated to his employment, but are due to falls down a flight of stairs at home in November 2011 and again in January of 2012.

- j. Conclusion of Law #4 address the issue of maximum medical improvement; however, neither the Claimant's Form 30, nor his November 14, 2014 Brief to the Appellate Panel, makes any argument with respect to the issue of maximum medical improvement. Therefore, the Appellate Panel has no authority or jurisdiction to address these issues on remand. See Creech v. Ducane Co. and Green v. City of Columbia, supra.
- k. Conclusion of Law #5 addresses the Claimant's right to direct and control the provision of medical treatment and the appointment of Dr. Poletti as the authorized treating physician. However, neither the Claimant's Form 30, nor his November 14, 2014 Brief to the Appellate Panel, makes any argument with respect to his right to direct or control the provision of medical treatment or the appointment of Dr. Poletti as

the authorized treating physician. In fact, the Claimant did not even request that the Hearing Commissioner address this issue or appoint Dr. Poletti as the authorized treating physician. Neither the Claimant's Form 58, Pre-Hearing Brief, dated August 5, 2013, nor his arguments at the September 23, 2013 Hearing (*see* Hrg. T. pp.10–11), makes even the slightest suggestion that the Defendants should be deprived of their statutory rights under S.C. Code Ann. § 42-15-60 and § 42-15-80. Furthermore, the Claimant did not appeal the Appellate Panel's previous (February 8, 2016) legal conclusion (#13) that pursuant to S.C. Code Ann. § 42-15-60, "the Defendants shall have no liability for any additional medical care or treatment under the Workers' Compensation Act," making this conclusion, which was originally entered by the Hearing Commissioner and thereafter unappealed, the law of the case. *See Atl. Coast Builders & Contractors, LLC v. Lewis, supra.* Therefore, the Appellate Panel has no authority or jurisdiction to address this issue on remand, or to order a change in the authorized treating physician, to appoint Dr. Poletti as the authorized treating physician, or to otherwise disturb the previously unappealed legal conclusion with regard to additional medical treatment. *See Creech v. Ducane Co. and Green v. City of Columbia, supra; see also Wilder Corp. v. Wilke, supra.*

1. Conclusion of Law #5 further addresses the Claimant's entitlement to additional medical treatment, including surgery. However, neither the Claimant's Form 30, nor his November 14, 2014 Brief to the Appellate

Panel, makes any argument with respect to his alleged entitlement to additional medical treatment, including surgery. Furthermore, the Claimant did not appeal the Appellate Panel's previous (February 8, 2016) legal conclusion (#13) that pursuant to S.C. Code Ann. § 42-15-60, "the Defendants shall have no liability for any additional medical care or treatment under the Workers' Compensation Act," making this conclusion, which was originally entered by the Hearing Commissioner and thereafter unappealed, the law of the case. *See Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (holding that "an unappealed ruling, right or wrong, is the law of the case" and citing *Buckner v. Preferred Mut. Ins. Co.*, 255 S.C. 159, 160-61, 177 S.E.2d 544 (1970)). Therefore, the Appellate Panel has no authority or jurisdiction to award additional medical treatment, including surgery, on remand, or disturb the previously unappealed legal conclusion with regard to additional medical treatment. *See Creech v. Ducane Co.* and *Green v. City of Columbia*, *supra*.

- m. Conclusion of Law #5 further also purports to make a blanket award of future medical treatment that has not even been recommended, which is plain legal error. Even if the Appellate Panel had jurisdiction to award future medical benefits, the Appellate Panel has no authority to make a blanket award of benefits that includes vague entitlement to "any referral made by Dr. Poletti." The Commission's authority is clearly prescribed by S.C. Code Ann. § 42-15-60 and limited to awards of

medical treatment that have actually been proved to “lessen the period of disability” with actual expert medical evidence “stated to a reasonable degree of medical certainty.” There is no statutory authority for an award of speculative future treatment or referrals for which no recommendation has even been made.

- n. Conclusion of Law #5 also addresses the Claimant’s entitlement to additional medical treatment for his right knee.” Not only is there no medical evidence in the record stated to the requisite “reasonable degree of medical certainty” that the Claimant requires any additional medical treatment for his right knee to lessen any alleged period of disability, but neither the Claimant’s Form 30, nor his November 14, 2014 Brief to the Appellate Panel, makes any argument with respect to his right knee and makes no request for additional treatment for his right knee. Therefore, the Appellate Panel has no authority or jurisdiction to address these issues on remand. See Creech v. Ducane Co. and Green v. City of Columbia, supra. Furthermore, the Appellate Panel is without authority or jurisdiction to disturb the unappealed legal conclusion that, pursuant to S.C. Code Ann. § 42-15-60, “the Defendants shall have no liability for any additional medical care or treatment under the Workers’ Compensation Act.” This conclusion, which was originally entered by the Hearing Commissioner and thereafter unappealed to either the Appellate Panel or the Court of Appeals, is the law of the case. See Atl. Coast Builders & Contractors, LLC v. Lewis, supra.

o. Conclusion of Law #6 awards the Claimant “temporary total disability benefits from August 11, 2011 through the present and continuing” and further awards the Claimant “a lump-sum payment of any back-owed TTD accrued during litigation. The Appellate Panel was without authority or jurisdiction to make this award, which is otherwise premised on impermissible surmise, conjecture, and speculation, and premised upon an error of law. Furthermore, neither the Claimant’s Form 30, nor his November 14, 2014 Brief to the Appellate Panel, makes any argument with respect to temporary disability compensation or a lump sum payment of (what was then) future temporary disability compensation through June 2019. Therefore, the Appellate Panel has no authority or jurisdiction to address these issues on appeal or even on remand. *See Creech v. Ducane Co.* and *Green v. City of Columbia, supra*. In addition, the Appellate Panel has no authority or jurisdiction to speculate as to whether the Claimant is presently totally disabled, whether he has been consistently disabled since last hearing from the Claimant in September 2013, whether any alleged disability after September 2013 is causally-related to the accident, or even whether the Claimant has earned wages since September 2013. *See Sola v. Sunny Slope Farms*, 244 S.C. 6, 10 (1964) (holding that claimants who assert their right to compensation must establish by the preponderance of the evidence the facts that will entitle them to an award under the Workmen's Compensation Act and such award must not be based on

surmise, conjecture or speculation). The issue of whether the Claimant has been totally disabled since September 2013 is simply not before the Commission and the record contains no evidence upon this issue that could support such an award. In addition, the Appellate Panel is without authority or jurisdiction to disturb the unappealed legal conclusion that, pursuant to S.C. Code Ann. § 42-9-260, "the Defendants are entitled to terminate temporary disability compensation effective...September 23, 2013." This conclusion, which was originally entered by the Hearing Commissioner and thereafter unappealed to either the Appellate Panel or the Court of Appeals, is the law of the case and cannot lawfully be disturbed at this juncture.⁵ See Atl. Coast Builders & Contractors, LLC v. Lewis, *supra*. Moreover, no request for a "lump sum" of benefits has ever been made by the Claimant and; therefore, the Appellate Panel's *sua sponte* award violates the Defendants' statutory and constitutional right to Due Process. By awarding a lump sum of benefits for period after this matter was tried before the Hearing Commissioner and the record was closed, the

⁵ Even assuming, *arguendo*, that the Appellate Panel has the authority or jurisdiction to address the Claimant's entitlement to temporary disability benefits for the period after September 23, 2013, the Appellate Panel could only properly address whether the Defendants were permitted to terminate benefits as of the date of the hearing. There is no authority by which the Commission can award a lump sum of future disability benefits absent proof of permanent disability under S.C. Code Ann. §§ 42-9-10, 42-9-20, or 42-9-30. Of course, the Claimant did not appeal the Hearing Commissioner's denial of benefits under S.C. Code Ann. §§ 42-9-10, 42-9-20, or 42-9-30, so the Appellate Panel has no authority to award benefits under these statutes.

Appellate Panel not only violates the Defendants' Due Process Rights, but also forestalls any future argument (should the June 17, 2019 Order be affirmed on appeal) with regard to the Claimant's entitlement to benefits, or the Defendants' right to a credit for overpayment of benefits, for the period after September 23, 2013, based upon actual evidence.

WHEREFORE, the Defendants respectfully request that the Appellate Panel reconsider and vacate its Order dated June 17, 2019 on the basis that the Appellate Panel has made new findings of fact and conclusions of law upon issues over which it has no jurisdiction and where contrary conclusions of the Hearing Commissioner are the final and binding law of the case. The Defendants request that the Appellate Panel enter a new Order, affirming the previous Order of the Appellate Panel dated February 8, 2016 with such necessary amendments to conform to the remand instructions of the Court of Appeal, to wit:

- a. Enter an additional Finding of Fact (#3) to reflect that the Claimant's civil action against the at-fault third party was voluntarily dismissed pursuant to a stipulation of dismissal filed in the Court of Common Pleas on December 5, 2013; and
- b. Amend the second sentence of Conclusion of Law (#3) to state that because the Claimant has taken a voluntary dismissal of his third-party suit, S.C. Code Ann. § "42-1-560 is not applicable. As a result, there is no violation of [section] 42-1-560."

Any further amendment of the February 8, 2016 Appellate Panel Order (or the Hearing Commissioner's Order of September 2, 2014) would exceed the Appellate Panel's jurisdiction and authority on remand, which is prescribed, not only by the Court's remand instructions, but by S.C. Code Ann. § 42-17-50, as well as the Claimant's Form 30 dated September 11, 2014 and the Claimant's Brief to the Appellate Panel dated November 14, 2014, by which he failed to preserve any argument with respect to his entitlement to benefits under S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30.

Should the Appellate Panel insist on exercising jurisdiction in excess of that prescribed by S.C. Code Ann. § 42-17-50, the Claimant's Form 30 dated September 11, 2014, and the Claimant's Brief to the Appellate Panel dated November 14, 2014, the Defendants respectfully request that the Appellate Panel reconsider its speculative and impermissibly vague awards of medical and compensation benefits for the period after September 23, 2013 for which there is no evidence in the record and for which the Defendants have not been afforded their statutory and constitutional right to notice and opportunity to be heard.

WE HEREBY SO MOVE.

TRASK & HOWELL, L.L.C.
P. O. Box 2167
Mt. Pleasant, SC 29465

By Kirsten L. Barr
Kirsten L. Barr
Attorney for the Defendants

June 21, 2019

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of June 2019, I have caused a true and correct copy of the Motion for Reconsideration to be mailed postage prepaid to the parties addressed as follows:

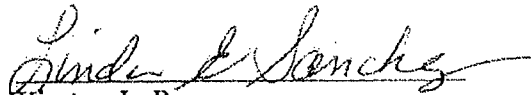
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for Kirsten L. Barr

118\133\motion for reconsideration

**BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION**

Samuel A. Rose,)
)
Employee,)
)
-vs-)
)
JJS Trucking, LLC/SCUEF and Chris)
Thompson Services, LLC/Bridgefield)
Casualty Insurance Company,)
)
Employer,)
)
-and-)
)
Bridgefield Casualty Insurance Co.,)
)
Carrier,)
)
Defendants.)
_____)

W.C.C. FILE NO. 1112328

**MOTION FOR RECONSIDERATION
OF THE APPELLATE PANEL'S
ORDER DATED JUNE 24, 2017**

TO: South Carolina Workers' Compensation Commission and Stephen B. Samuels, Esq.,
attorney for the Claimant:

PLEASE TAKE NOTICE that the above-named Defendants hereby move the South
Carolina Workers' Compensation Commission pursuant to S.C. Code Reg. 67-215(B)¹ to

¹ Regulation 67-215 permits motions to reconsider "if the purpose of the motion is not an attempt to reargue the merits of the dispute." In the case *sub judice*, the Appellate Panel addressed issues which were not before it on appeal, as they were not raised in Claimant's Form 30 or in his Brief to the Appellate Panel, and improperly awarded benefits *sua sponte*, without any notice to the Defendants. Therefore, the Defendants have never been given any opportunity to argue "the merits of the dispute" to the Appellate Panel and their due process rights have been violated. Ross v. Med. Univ. of S.C., 328 S.C. 51, 68, 492 S.E.2d 62, 71 (1997) (citing Stono River Env'tl. Prot. Ass'n v. S.C. Dep't of Health & Env'tl. Control, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991)); accord Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) (holding the "fundamental requirements of due process include

Reconsider the Appellate Panel's Order dated June 24, 2019². The grounds for said Motion are as follows:

1. This matter came before Commissioner Taylor for a hearing on September 23, 2013 pursuant to the Defendants' Form 21 dated June 13, 2013.
2. By Order dated September 2, 2014, Commissioner Taylor concluded that the Claimant failed to satisfy the requirements of S.C. Code Ann. § 42-1-560. In addition, Commissioner Taylor specifically ruled that the Defendants were entitled to terminate temporary disability pursuant to S.C. Code Ann. § 42-9-260 and § 42-9-210; that the Claimant is not entitled to any additional medical treatment under S.C. Code Ann. § 42-15-60; and that the Claimant is not entitled any benefits under S.C. Code Ann. §§ 42-9-10, 42-9-20, and 42-9-30.
3. The Claimant appealed Hearing Commissioner Taylor's conclusion regarding the application of S.C. Code Ann. § 42-1-560 to the Commission's

notice, an opportunity to be heard in a meaningful way, and judicial review.""). While the Defendants have a statutory and constitutional right of notice and opportunity to be heard on these issues, this motion is proper because it focuses not on the "merits" of the dispute, but on the fact that the Appellate Panel does not have the authority or jurisdiction to even address the dispute.

² Note that the Appellate Panel originally issued an Order dated June 17, 2019; but this June 17, 2019 Order did not include a page 12 when served upon the Defendants. The Defendants notified the Commission of this deficiency in the June 17, 2019 Order, but did not receive the missing page 12 for one week. During this time, the Defendants were forced to file a Motion for Reconsideration of the June 17, 2019 Order, which is currently pending. The Appellate Panel has now issued an Order dated June 24, 2019, which makes no mention of the June 17, 2019 Order, making it unclear whether it has been withdrawn, vacated, or is still in effect.

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Appellate Panel. However, the Claimant's Form 30 dated September 14, 2014 raises no argument with respect to S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30 and elucidates no question as to the Hearing Commissioner's application of these statutes. Therefore, the Claimant did not comply with the requirements of S.C. Code Ann. § 42-17-50 or S.C. Code Reg. 67-701 and, as such, no argument under S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30 is preserved for review by the Appellate Panel. S.C. Code Reg. 67-701(A)(3)(a) (requiring that "[t]he grounds for appeal must be set out in detail on the Form 30 in the form of questions presented...Each question presented must be concise and concern one finding of fact, conclusion of law, or other proposition the appellant believes is in error."); S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 301-302, 641 S.E.2d 903, 907 (2007) (holding that to preserve an issue for appeal, it must be raised by the appellant in a timely manner and with sufficient specificity (citing Jean Hofer Toal et al., Appellate Practice in South Carolina 57 (2d ed. 2002)); Jones v. Anderson Cotton Mills, 205 S.C. 247, 31 S.E.2d 447 (1944) (holding that general exceptions, such as "the commission erred in making an award," are too ambiguous to fulfill the notice requirements of due process and do not preserve an issue for review).

4. Furthermore, the Claimant does not make any argument with respect to S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-

30 in his November 14, 2014 Brief to the Appellate Panel³. Of course, mere "conclusory statements unaccompanied by argument and citation to authority are insufficient to preserve an issue for appellate review." State v. Crocker, 366 S.C. 394, 621 S.E.2d 890 (Ct. App. 2005) (citing Fields v. Melrose Ltd. P'ship, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993 (holding that failure to provide argument or supporting authority for an issue renders it abandoned))). Therefore, even if the Claimant had properly raised any argument regarding S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30 in his Form 30, he clearly abandoned those issues in his November 14, 2014 Brief, such that the Appellate Panel has no jurisdiction or authority to disturb the Hearing Commissioner's conclusions regarding these statutes.

5. Of course, the Appellate Panel, in reviewing the Hearing Commissioner's September 2, 2014 Decision and Order in the first instance, could have made its own findings and conclusions regarding S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30 had they actually been preserved for appeal and argued to the Appellate Panel. Green v. Raybestos-Manhattan, Inc., 250 S.C. 58, 156 S.E.2d 318 (1967); S.C. Code

³ The Claimant's November 14, 2014 Brief to the Appellate Panel raises only 2 arguments, both of which deal solely with the application of S.C. Code Ann. § 42-1-560. In addition, according to the "Conclusion" of the Claimant's November 14, 2014 brief, relief sought by the Claimant did not involve the application of S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30. The Claimant's Brief simply does not argue the merits of, or evidentiary support for, any claim for medical or compensation benefits and does not request that the Appellate Panel award benefits under these statutes.

Ann. § 42-17-50. However, the Claimant did not make any argument with regarding S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30 in his Form 30 or his Brief to the Appellate Panel; therefore, arguments regarding the application of these statutes cannot now be raised on remand, or at any time in the future. See Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995) (holding that a party cannot raise that issue for the first time in a post-trial motion if the issue could have been initially presented to the trier of fact (citing generally C.A.H. v. L.H., 315 S.C. 389, 434 S.E.2d 268 (1993); Hickman v. Hickman, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990)). Indeed, the right to argue the propriety of the Hearing Commissioner's conclusions regarding S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30 was forever relinquished in 2014 with the filing of a Form 30 and a Brief to the Appellate Panel that was silent on these issues. Wall v. CY Thomason Co., 232 S.C. 153, 101 S.E.2d 286 (1957) (holding that an award unappealed from is conclusive not only of the issues actually decided, but also of those that might have been raised before the Commission). Because the "adjudications and awards of compensation boards or commissions...in proceedings for the recovery of compensation, are generally held to be conclusive upon the parties and their privies, as to the matters involved or justiciable therein, so as to preclude, under the doctrine of *res judicata*, the relitigation thereof in subsequent proceedings," the Appellate Panel erred as a matter of law in addressing any issue with respect to S.C. Code

Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30 on remand. *Id.* (citing 58 Am. Jur., Workmen's Compensation, Section 493, p. 886; Trigg v. Industrial Commission, 1936, 364 Ill. 581, 5 N.E. (2d) 394, 108 A.L.R. 153; and 122 A.L.R. at pp. 550 *et seq.*)

6. Therefore, the Hearing Commissioner's rulings regarding S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30 are the law of the case and neither the appellate courts, nor the Appellate Panel, have any authority to address these statutes on appeal or on remand. (See S.C. Code Ann. § 42-17-50; Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (holding that "an unappealed ruling, right or wrong, is the law of the case" and citing Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 160-61, 177 S.E.2d 544 (1970); Creech v. Ducane Co., 320 S.C. 559, 476 S.E.2d 114, *rehr 'g denied, cert. denied* (Ct. App. 1995) (holding that S.C. Code Ann. § 42-17-50 provides the procedure for appealing a Hearing Commissioner's Order; however, "only issues within the application are preserved for the full Commission"); Ham v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2s 712 (1940) (holding that all findings of fact and law by the Hearing Commissioner "become and are the law of the case, except only those within the scope of the exception").
7. In addition, because the Hearing Commissioner's rulings regarding S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30 are the law of the case, neither the appellate courts, nor the Appellate

Panel have jurisdiction to address any issue with respect to S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30. Allison v. W.L. Gore & Assoc., 394 S.C. 185, 714 S.E.2d 547 (2011) (holding that the question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction the Commission lacks the authority or jurisdiction to extend the fourteen days permitted for the perfecting of an appeal).

8. Considering the fact that the Appellate Panel has no authority and no jurisdiction to address any issue with respect to S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30, the Defendants respectfully contend that the Appellate Panel acted arbitrarily and erred as a matter of law in awarding benefits under S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30, or in otherwise disturbing the Hearing Commissioner's unappealed conclusions with regard to these statutes in its June 17, 2019 Order, which should be reconsidered and withdrawn. See Ex parte Morris, 367 S.C. 56, 624 S.E.2d 649 (2006) (holding that although the family court erred in rejecting Custodian's request for an evidentiary hearing, the Custodian failed to appeal the family court's ruling that the Custodian "is dismissed as a party," rendering that ruling the law of the case and requiring affirmation of the family court's order).
9. While the Appellate Panel's June 17, 2019 Order vaguely concludes that it has jurisdiction by virtue of the Remittitur from the Court of Appeals, the Order of the Court of Appeals does not, and cannot, extend the Appellate

Panel's jurisdiction to address any unappealed rulings under S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30. Allison v. W.L. Gore & Assoc., *supra*; *see also* Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (holding that "an unappealed ruling, right or wrong, is the law of the case" and citing Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 160-61, 177 S.E.2d 544 (1970)); *see also* Bailey v. Covil Corp., 291 S.C. 417, 354 S.E.2d 35 (1987) (holding that the Supreme Court could not address issues that were not argued before the lower appellate tribunal).

10. In fact, the April 18, 2018 Order from the Court of Appeals says nothing of awarding the Claimant medical or compensation benefits and does not purport to expand the Appellate Panel's jurisdiction vested by virtue of S.C. Code Ann. § 42-17-50 and the Claimant's Form 30, but merely states, "[w]e reverse the Appellate Panel's order and remand for further proceedings consistent with this opinion." Of course, that opinion dealt solely with the application of S.C. Code Ann. § 42-1-560, as the Claimant similarly made no argument with regard to his entitlement to benefits under S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30 to the Court of Appeals. Therefore, because the Court of Appeals had no authority or jurisdiction to disturb the Hearing Commissioner's conclusions with regard to S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30, the Appellate Panel should not assume that it remanded any issue with regard to these statutes to the Appellate Panel. *See* Wilder Corp.

v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal," but must have been first raised and ruled upon by the lower appellate tribunal); Talley v. S.C. Higher Education, 28 S.C. 483, 487 (1986) (citing American Hardware Supply Co., Inc. v. Whitmire, 278 S.C. 607, 300 S.E.2d 289 (1983) for the proposition that it "is an axiomatic rule of law that issues may not be raised for the first time on appeal" to a higher appellate court, when not raised by the lower reviewing court).

11. As such, the Remand and Remittitur from the Court of Appeals merely returned the claim to the Appellate Panel to address the issues actually raised in the Claimant's November 14, 2014 Brief to the Appellate Panel, consistent with the Court's analysis of S.C. Code Ann. § 42-1-560, and consistent with the Appellate Panel's jurisdiction under S.C. Code Ann. § 42-17-50. To accomplish this task, the Appellate Panel was only empowered to amend its February 8, 2016 Order as follows:
 - a. To make an additional Finding of Fact (#3), consistent with the Order of the Court of Appeals, to reflect that the Claimant's civil action against the at-fault third party was voluntarily dismissed pursuant to a stipulation of dismissal filed in the Court of Common Pleas on December 5, 2013.
 - b. To amend the second sentence of Conclusion of Law (#3), consistent with the Order of the Court of Appeals, to state that because the Claimant has taken a voluntary dismissal of his third-party suit, S.C.

Code Ann. § “42-1-560 is not applicable. As a result, there is no violation of [section] 42-1-560.”

12. The Defendants respectfully contend that, not only does the Appellate Panel’s June 24, 2019 Order exceed the Commission’s authority and jurisdiction, but the Order also constitutes an abuse of discretion by the Commission and otherwise violates the Defendant’s right to due process and equal protection under the law, including their right to notice and opportunity to be heard on the issues addressed, *sua sponte*, and without notice by the Appellate Panel, regarding the application of S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30. These issues were not preserved for appeal by the Claimant in his Form 30 or his 2014 Brief to the Appellate Panel and were not addressed by the Court of Appeals; therefore, the Defendants did not and could not have had an opportunity to address these issues on appeal in the first instance, much less on remand, and the Defendants were not given any notice that the Appellate Panel intended to address these issues *sua sponte* in June 2019. The Constitution of the United States of America and the Constitution of the State of South Carolina guarantee due process and equal protection rights to all parties. See U.S. Const. amend. V; U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3 & § 22. The South Carolina Constitution provides:

“The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due

process of law, nor shall any person be denied the equal protection of the laws.” S.C. Const. art. I, § 3.

Our state Constitution additionally assures:

“No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.” S.C. Const. art. I, § 22.

The South Carolina Supreme Court has interpreted this provision to provide “persons the right to notice and an opportunity to be heard by an administrative agency.” Ross v. Med. Univ. of S.C., 328 S.C. 51, 68, 492 S.E.2d 62, 71 (1997) (citing Stono River Env'tl. Prot. Ass'n v. S.C. Dep't of Health & Env'tl. Control, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991)); accord Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) (holding the “fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.”). At a minimum, due process requires adequate notice and adequate opportunity for a hearing. Clear Channel Outdoor v. City of Myrtle Beach, 372 S.C. 230, 235, 642 S.E.2d

565, 567 (2007) (citing In re Vora, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003)); accord Dangerfield v. State, 376 S.C. 176, 179, 656 S.E.2d 353, 354 (2008). Importantly, an interested party must be given notice “reasonably calculated under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Blanton v. Stathos, 351 S.C. 534, 542, 570 S.E.2d 565, 569 (2002) (citing Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950); Murdock v. Murdock, 338 S.C. 322, 334, 526 S.E.2d 241, 248 (Ct. App. 1999)). Here, the Appellate Panel wholly failed to apprise the Defendants of their intent to address arguments regarding the application of S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30, which were not preserved for appeal and which were not even briefed⁴ or argued before the Appellate Panel at the initial review hearing in 2015. Therefore, the Defendants have been denied due process and the Appellate Panel’s Order of June 24, 2019 should be reconsidered and vacated. Leventis v. S.C. Dep’t of Health & Env’tl. Control, 340 S.C. 118, 131-132, 530 S.E.2d 643, 650 (Ct. App. 2000) (holding that to “prove the denial of due process in an administrative proceeding, a party must show that it was substantially prejudiced by the administrative process”)(quoting Ogburn-Matthews v. Loblolly Partners, 332 S.C. 551,

⁴ The Claimant raised no argument with regard to regarding the application of S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30 in his brief; however, the Defendants did argue to the Appellate Panel that the Hearing Commissioner’s conclusions about these statutes are the law of the case.

561, 505 S.E.2d 598, 603 (Ct. App. 1998), overruled on other grounds by Brown v. S.C. Dep't of Health & Envtl. Control, 348 S.C. 507, 560 S.E.2d 410 (2002)). The Defendants' right of equal protection has likewise been infringed by the Appellate Panel's failure to adhere to the statutory mandates of S.C. Code Ann. § 42-17-50 and to confine its inquiry and its order to those matters properly before it.

13. In addition, because the Appellate Panel does not have power, authority, or jurisdiction to disturb the Hearing Commissioner's conclusions of law with respect to S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30 by virtue of S.C. Code Ann. § 42-17-50, and because the Appellate Panel's award of benefits under these statutes violates the Defendants' right to due process and equal protection, the Appellate Panel should reconsider and withdraw the following findings of fact:
 - a. Finding of Fact #11 addresses the Defendants' provision of medical treatment with Dr. Greg Jones; however, neither the Claimant's Form 30, nor his November 14, 2014 Brief to the Appellate Panel, makes any argument with respect to the provision of medical treatment or the opinions of Dr. Jones. Therefore, the Appellate Panel has no authority or jurisdiction to address these issues on remand and, in so doing, violated the Defendants' right to due process and equal protection under the law. Creech v. Dukanè Co., 320 S.C. 559, 476 S.E.2d 114, *rehr 'g denied, cert. denied* (Ct. App. 1995); Ross v. Med. Univ. of S.C., 328 S.C. 51, 68, 492 S.E.2d 62, 71 (1997).

- b. Finding of Fact #12 addresses the opinions of the Claimant's family physician, Dr. Abel, regarding physical therapy and an EMG; however, neither the Claimant's Form 30, nor his November 14, 2014 Brief to the Appellate Panel, makes any argument with respect to the opinions of Dr. Abel, or his entitlement to physical therapy or and EMG. Therefore, the Appellate Panel has no authority or jurisdiction to address these issues on remand. Green v. City of Columbia, 311 S.C. 78, 427 S.E.2d 685 (Ct.App.1993) (holding the Full Commission does not have authority to address an issue not raised in a Form 30, Application for Review). Furthermore, by addressing these issues on remand, without notice to the Defendants, or allowing the Defendants any opportunity to address these issues on appeal, the Appellate Panel violated the Defendants' right to due process and equal protection. Blanton v. Stathos, 351 S.C. 534, 542, 570 S.E.2d 565, 569 (2002).
- c. Finding of Fact #13 addresses the opinions of Dr. Poletti, who performed a one-time independent medical evaluation at the request of the Claimant's attorney, regarding the Claimant's alleged need for additional medical treatment. However, neither the Claimant's Form 30, nor his November 14, 2014 Brief to the Appellate Panel, makes any argument with respect to the opinions of Dr. Poletti, or his entitlement to additional medical treatment generally. Therefore, the Appellate Panel has no authority or jurisdiction to address these issues on remand and, in so doing, violated the Defendants' right to due process and equal protection

under the law. See Creech v. Ducane Co. and Green v. City of Columbia, *supra.*; Ross v. Med. Univ. of S.C., *supra.*

- d. Finding of Fact #14 addresses whether the Claimant is at maximum medical improvement; however, neither the Claimant's Form 30, nor his November 14, 2014 Brief to the Appellate Panel, makes any argument with respect to the issue of maximum medical improvement. Therefore, the Appellate Panel has no authority or jurisdiction to address these issues on remand and, in so doing, violated the Defendants' right to due process and equal protection under the law. See Creech v. Ducane Co. and Green v. City of Columbia, *supra.*; Ross v. Med. Univ. of S.C., *supra.*
- e. Finding of Fact #14 further addresses the weight and credibility of the medical evidence regarding the issue of additional medical treatment. However, however, neither the Claimant's Form 30, nor his November 14, 2014 Brief to the Appellate Panel, makes any argument with respect to the weight or credibility of the evidence on the issue of additional medical treatment. Therefore, the Appellate Panel has no authority or jurisdiction to address these issues on remand and, in so doing, violated the Defendants' right to due process and equal protection under the law. See Creech v. Ducane Co. and Green v. City of Columbia, *supra.*; Ross v. Med. Univ. of S.C., *supra.*
- f. Finding of Fact #15, also addresses the weight and credibility of the medical evidence and contains a legal conclusion regarding the need for

additional medical treatment, including surgery. However, neither the Claimant's Form 30, nor his November 14, 2014 Brief to the Appellate Panel, makes any argument with respect to the weight or credibility of the evidence on the issue of additional medical treatment, or his entitlement to additional medical treatment, including surgery. Furthermore, the Claimant did not appeal the Appellate Panel's previous (February 8, 2016) legal conclusion (#13) that pursuant to S.C. Code Ann. § 42-15-60, "the Defendants shall have no liability for any additional medical care or treatment under the Workers' Compensation Act" to the Court of Appeals, making this conclusion, which was originally entered by the Hearing Commissioner and thereafter unappealed, the law of the case. See Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (holding that "an unappealed ruling, right or wrong, is the law of the case" and citing Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 160-61, 177 S.E.2d 544 (1970)); see also Ex parte Morris, 367 S.C. 56, 624 S.E.2d 649 (2006). Therefore, the Appellate Panel has no authority or jurisdiction to address these issues on remand, to award additional medical benefits, or to disturb the previously unappealed legal conclusion with regard to additional medical treatment. See Creech v. Ducane Co. and Green v. City of Columbia, *supra*. Furthermore, by addressing these issues on remand, without notice to the Defendants, or allowing the Defendants any opportunity to address these issues on appeal, the

Appellate Panel violated the Defendants' right to due process and equal protection under the law. Blanton v. Stathos, 351 S.C. 534, 542, 570 S.E.2d 565, 569 (2002).

- g. Finding of Fact #16, which is also a legal conclusion, addresses the Claimant's right to direct and control the provision of medical treatment and the appointment of Dr. Poletti as the authorized treating physician. However, neither the Claimant's Form 30, nor his November 14, 2014 Brief to the Appellate Panel, makes any argument with respect to his right to direct or control the provision of medical treatment or the appointment of Dr. Poletti as the authorized treating physician. In fact, **the Claimant did not even request that the Hearing Commissioner appoint Dr. Poletti** as the authorized treating physician and the Hearing Commissioner; therefore, did not address this issue (because it was not an issue.) Moreover, neither the Claimant's Form 58, Pre-Hearing Brief, dated August 5, 2013, nor his arguments at the September 23, 2013 Hearing (*see* Hrg. T. pp.10—11), makes even the slightest suggestion that the Defendants should be deprived of their statutory rights under S.C. Code Ann. § 42-15-60 and § 42-15-80 and; therefore, this issue was not preserved for review by the Appellate Panel in the first instance and is certainly not properly before the Appellate Panel on remand. *See Pratt v. Morris Roofing, Inc.*, 353 S.C. 339, 577 S.E.2d 475 (Ct. App. 2003) (holding the Claimant "did not raise this issue before the Single Commissioner or in his Request for Commission

Review of the Single Commissioner's order. The issue was not ruled upon by the Commissioner, the Full Commission, or the Circuit Court. Concomitantly, the issue is not preserved for our review")(rehearing denied, cert. granted, affirmed as modified 357 S.C. 619, 594 S.E.2d 272).

Furthermore, the Claimant did not appeal the Appellate Panel's previous (February 8, 2016) legal conclusion (#13) that pursuant to S.C. Code Ann. § 42-15-60, "the Defendants shall have no liability for any additional medical care or treatment under the Workers' Compensation Act," making this conclusion, which was originally entered by the Hearing Commissioner and thereafter unappealed, the law of the case. See Atl. Coast Builders & Contractors, LLC v. Lewis, *supra*. Therefore, the Appellate Panel has no authority or jurisdiction to address the issue of additional medical treatment on remand, or to order a change in the authorized treating physician, or to appoint Dr. Poletti as the authorized treating physician, or to otherwise disturb the previously unappealed legal conclusion with regard to additional medical treatment. See Creech v. Ducane Co. and Green v. City of Columbia, *supra*; see also Wilder Corp. v. Wilke, *supra*. Additionally, by addressing this argument, *sua sponte*, on appeal, despite the binding legal conclusions of the Hearing Commissioner, and without notice or opportunity for the Defendants to ever address this issue, violates the Defendants' statutory and constitutional rights to due process and equal protection under the law. Ross v. Med. Univ. of S.C., 328 S.C. 51, 68, 492 S.E.2d 62, 71 (1997).

h. Finding of Fact #17, which is also actually a legal conclusion, addresses the Claimant's entitlement to an evaluation with an orthopaedic surgeon "to obtain updated MRI scans and an assessment of Claimant's continued complaints of pain in his right knee." Not only is there no medical evidence in the record that the Claimant requires "updated MRI scans" of his right knee, but there is no evidence that the Claimant "continues" to complain of pain in his right knee because the Claimant has not given testimony in this case since September 23, 2013 - 5 years and 9 months ago. Moreover, neither the Claimant's Form 30, nor his November 14, 2014 Brief to the Appellate Panel, makes any argument with respect to his right knee, makes no request for an MRI of his right knee, and makes no request for additional treatment for his right knee. Therefore, the Appellate Panel has no authority or jurisdiction to address these issues on remand and, in so doing, violated the Defendants' right to due process and equal protection under the law. See Creech v. Ducane Co. and Green v. City of Columbia, supra.; Ross v. Med. Univ. of S.C., supra. Furthermore, the Appellate Panel has no authority or jurisdiction to speculate as to the current condition of the Claimant's right knee or any need for medical treatment or diagnostic studies at the present time. See Sola v. Sunny Slope Farms, 244 S.C. 6, 10 (1964) (holding that claimants who assert their right to compensation must establish by the preponderance of the evidence the facts that will entitle them to an award under the Workmen's Compensation Act and

such award must not be based on surmise, conjecture or speculation). In addition, the Appellate Panel is without authority or jurisdiction to disturb the unappealed legal conclusion that, pursuant to S.C. Code Ann. § 42-15-60, “the Defendants shall have no liability for any additional medical care or treatment under the Workers’ Compensation Act.” This conclusion, which was originally entered by the Hearing Commissioner and thereafter unappealed to either the Appellate Panel or the Court of Appeals, is the law of the case. *See Atl. Coast Builders & Contractors, LLC v. Lewis, supra*. Even if the issue of additional medical treatment for the right knee were properly before the Appellate Panel, any award of medical treatment for the right knee must be predicated upon a factual finding, based upon actual evidence, that the proposed treatment would “tend to lessen the period of disability,” as plainly required by S.C. Code Ann. § 42-15-60; however, here the Appellate could not and did not make any such factual finding, which is plain legal error. *See Shealy v. Algernon Blair, Inc.*, 250 S.C. 106, 110, 156 S.E.2d 646, 658 (1967)., (holding that “awards without such specific findings do not comply with the requirements of the [workers’ compensation] act and are illegal”).

- i. Finding of Fact #18, which is also actually a legal conclusion, addresses the Claimant’s entitlement to temporary disability compensation “to the present and continuing” and “to a lump-sum award of any back payment of temporary disability benefits due.” Not only did the Appellate Panel

fail to make and predicate finding of current, causally-related loss of wage-earning capacity, but there is no evidence in the record to support a finding that the Claimant is disabled at “present and continuing” because the record in this case was closed in September 2013. See Airco, Inc. v. Hollington, 269 S.C. 152, 160, 236 S.E.2d 804, 808 (1977) (finding that the commission has a statutory duty to make a finding of fact for all “essential factual issues.”). More importantly, neither the Claimant’s Form 30, nor his November 14, 2014 Brief to the Appellate Panel, makes any argument with respect to temporary disability compensation or a lump sum payment, therefore, the Appellate Panel has no authority or jurisdiction to address these issues on remand. See Creech v. Ducane Co. and Green v. City of Columbia, *supra*. Furthermore, the Appellate Panel has no authority or jurisdiction to speculate as to the Claimant’s current ability to earn wages, or his ability to do so at any time since September 2013. See Sola v. Sunny Slope Farms, 244 S.C. 6, 10 (1964) (holding that claimants who assert their right to compensation must establish by the preponderance of the evidence the facts that will entitle them to an award under the Workmen’s Compensation Act and such award must not be based on surmise, conjecture or speculation). In addition, the Appellate Panel is without authority or jurisdiction to disturb the unappealed legal conclusion that, pursuant to “S.C. Code Ann. Sec. 42-9-260, the Defendants are entitled to terminate temporary disability compensation effective...September 23, 2013.” This

conclusion, which was originally entered by the Hearing Commissioner and thereafter unappealed to either the Appellate Panel or the Court of Appeals, is the law of the case. See Atl. Coast Builders & Contractors, LLC v. Lewis, *supra*. Finally, by addressing this issue, *sua sponte*, on appeal, despite the binding legal conclusions of the Hearing Commissioner, and without notice or opportunity to make any arguments on appeal or on remand, violates the Defendants' statutory and constitutional rights to due process and equal protection. Ross v. Med. Univ. of S.C., 328 S.C. 51, 68, 492 S.E.2d 62, 71 (1997).

- j. The June 24, 2019 Appellate Panel Order acknowledges that “the Claimant testified that he fell down a flight of stairs at his mother’s house in November 2011 and again in January of 2012 and re-injured his back and neck on both occasions. (Hrg. Transcript p. 34, ll.2–7).” While the Defendants maintain that the fact of these two intervening accidents breaking the chain of causation are moot given the conclusive nature of Hearing Commissioner Taylor’s denial of benefits S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30, the Defendants would respectfully argue that if the Appellate Panel is going to address benefits under these statutes, it is incumbent upon the Appellate Panel to address the fact of these intervening, non-work-related accidents. Based upon the Claimant’s own admission, the proximate cause of the Claimant’s neck and low back problems is not work-related, but instead his problems are due to falls down a flight of

stairs at home in November 2011 and again in January of 2012.

Conclusion of Law #3 acknowledges that an “intervening cause” can break the chain of causation, but fails to apply this law to the facts of the case, making the conclusion improper, and impermissibly vague.

- k. Conclusion of Law #4 address the issue of maximum medical improvement; however, neither the Claimant’s Form 30, nor his November 14, 2014 Brief to the Appellate Panel, makes any argument with respect to the issue of maximum medical improvement. Therefore, the Appellate Panel has no authority or jurisdiction to address this issue on remand and, in so doing, violated the Defendants’ right to due process and equal protection under the law. See Creech v. Ducane Co. and Green v. City of Columbia, supra.; Ross v. Med. Univ. of S.C., supra
- l. Conclusion of Law #5 addresses the Claimant’s right to direct and control the provision of medical treatment and the appointment of Dr. Poletti as the authorized treating physician. However, neither the Claimant’s Form 30, nor his November 14, 2014 Brief to the Appellate Panel, makes any argument with respect to his right to direct or control the provision of medical treatment or the appointment of Dr. Poletti as the authorized treating physician. In fact, the **Claimant did not even request that the Hearing Commissioner address this issue** or appoint Dr. Poletti as the authorized treating physician. Neither the Claimant’s Form 58, Pre-Hearing Brief, dated August 5, 2013, nor his arguments at the September 23, 2013 Hearing (see Hrg. T. pp.10–11), makes even the

slightest suggestion that the Defendants should be deprived of their statutory rights under S.C. Code Ann. § 42-15-60 and § 42-15-80. Furthermore, the Claimant did not appeal the Appellate Panel's previous (February 8, 2016) legal conclusion (#13) that pursuant to S.C. Code Ann. § 42-15-60, "the Defendants shall have no liability for any additional medical care or treatment under the Workers' Compensation Act," making this conclusion, which was originally entered by the Hearing Commissioner and thereafter unappealed, the law of the case. See Atl. Coast Builders & Contractors, LLC v. Lewis, *supra*. Therefore, the Appellate Panel has no authority or jurisdiction to address this issue on remand, or to order a change in the authorized treating physician, to appoint Dr. Poletti as the authorized treating physician, or to otherwise disturb the previously unappealed legal conclusion with regard to additional medical treatment. See Creech v. Ducane Co. and Green v. City of Columbia, *supra*; see also Wilder Corp. v. Wilke, *supra*. Lastly, by addressing this argument, *sua sponte*, on appeal, despite the binding legal conclusions of the Hearing Commissioner, and without notice or opportunity to ever address the appointment of Dr. Poletti, violates the Defendants' statutory and constitutional rights to due process and equal protection under the law. Ross v. Med. Univ. of S.C., 328 S.C. 51, 68, 492 S.E.2d 62, 71 (1997).

- m. Conclusion of Law #5 further addresses the Claimant's entitlement to additional medical treatment, including surgery. However, neither the

Claimant's Form 30, nor his November 14, 2014 Brief to the Appellate Panel, makes any argument with respect to his alleged entitlement to additional medical treatment, including surgery. Furthermore, the Claimant did not appeal the Appellate Panel's previous (February 8, 2016) legal conclusion (#13) that pursuant to S.C. Code Ann. § 42-15-60, "the Defendants shall have no liability for any additional medical care or treatment under the Workers' Compensation Act," making this conclusion, which was originally entered by the Hearing Commissioner and thereafter unappealed, the law of the case. See Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (holding that "an unappealed ruling, right or wrong, is the law of the case" and citing Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 160-61, 177 S.E.2d 544 (1970)). Therefore, the Appellate Panel has no authority or jurisdiction to award additional medical treatment, including surgery, on remand, or disturb the previously unappealed legal conclusion with regard to additional medical treatment. See Creech v. Ducane Co. and Green v. City of Columbia, *supra*. In addition, by addressing this issue, *sua sponte*, on appeal, despite the binding legal conclusions of the Hearing Commissioner, and without notice or opportunity to address this issue on appeal or on remand, violates the Defendants' statutory and constitutional rights to due process and equal protection under the law. Ross v. Med. Univ. of S.C., 328 S.C. 51, 68, 492 S.E.2d 62, 71 (1997).

- n. Conclusion of Law #5 further also purports to make a blanket award of future medical treatment that has not even been recommended, which is plain legal error. Even if the Appellate Panel had jurisdiction to award future medical benefits, the Appellate Panel has no authority to make a blanket award of benefits that includes vague entitlement to “any referral made by Dr. Poletti.” The Commission’s authority is clearly prescribed by S.C. Code Ann. § 42-15-60 and limited to awards of medical treatment that have actually been proved to “lessen the period of disability” with actual expert medical evidence “stated to a reasonable degree of medical certainty.” There is no statutory authority for an award of speculative future treatment or referrals for which no recommendation has even been made.
- o. Conclusion of Law #5 also addresses the Claimant’s entitlement to additional medical treatment for his right knee.” Not only is there no medical evidence in the record stated to the requisite “reasonable degree of medical certainty” that the Claimant requires any additional medical treatment for his right knee to lessen any alleged period of disability, but neither the Claimant’s Form 30, nor his November 14, 2014 Brief to the Appellate Panel, makes any argument with respect to his right knee and makes no request for additional treatment for his right knee. Therefore, the Appellate Panel has no authority or jurisdiction to address these issues on remand and, in so doing, violated the Defendants’ right to due process and equal protection under the law. *See Creech v. Ducane Co.*

and Green v. City of Columbia, supra.; Ross v. Med. Univ. of S.C., supra. Furthermore, the Appellate Panel is without authority or jurisdiction to disturb the unappealed legal conclusion that, pursuant to S.C. Code Ann. § 42-15-60, “the Defendants shall have no liability for any additional medical care or treatment under the Workers’ Compensation Act.” This conclusion, which was originally entered by the Hearing Commissioner and thereafter unappealed to either the Appellate Panel or the Court of Appeals, is the law of the case. See Atl. Coast Builders & Contractors, LLC v. Lewis, supra.

- p. Conclusion of Law #6 awards the Claimant “temporary total disability benefits from August 11, 2011 through the present and continuing” and further awards the Claimant “a lump-sum payment of any back-owed TTD accrued during litigation. The Appellate Panel was without authority or jurisdiction to make this award, which is otherwise premised on impermissible surmise, conjecture, and speculation, and premised upon an error of law. Furthermore, neither the Claimant’s Form 30, nor his November 14, 2014 Brief to the Appellate Panel, makes any argument with respect to temporary disability compensation or a lump sum payment of (what was then) future temporary disability compensation through June 2019. Therefore, the Appellate Panel has no authority or jurisdiction to address these issues on remand and, in so doing, violated the Defendants’ right to due process and equal protection under the law. See Creech v. Ducane Co. and Green v. City of Columbia, supra.; Ross v. Med. Univ. of

S.C., *supra*. In addition, the Appellate Panel has no authority or jurisdiction to speculate as to whether the Claimant is presently totally disabled, whether he has been consistently disabled since last hearing from the Claimant in September 2013, whether any alleged disability after September 2013 is causally-related to the accident, or even whether the Claimant has earned wages since September 2013. See Sola v. Sunny Slope Farms, 244 S.C. 6, 10 (1964) (holding that claimants who assert their right to compensation must establish by the preponderance of the evidence the facts that will entitle them to an award under the Workmen's Compensation Act and such award must not be based on surmise, conjecture or speculation). The issue of whether the Claimant has been totally disabled since September 2013 is simply not before the Commission and the record contains no evidence upon this issue that could support such an award. In addition, the Appellate Panel is without authority or jurisdiction to disturb the unappealed legal conclusion that, pursuant to S.C. Code Ann. § 42-9-260, "the Defendants are entitled to terminate temporary disability compensation effective...September 23, 2013." This conclusion, which was originally entered by the Hearing Commissioner and thereafter unappealed to either the Appellate Panel or the Court of Appeals, is the law of the case and cannot lawfully be disturbed at this juncture.⁵ See Atl. Coast

⁵ Even assuming, *arguendo*, that the Appellate Panel has the authority or jurisdiction to address the Claimant's entitlement to temporary disability benefits for the period after September 23, 2013, the Appellate Panel could only properly address whether the Defendants were permitted to terminate benefits as of the date of the hearing. There is

Builders & Contractors, LLC v. Lewis, *supra*. Moreover, by awarding a lump sum of benefits for period after this matter was tried before the Hearing Commissioner and the record was closed, the Appellate Panel not only violates the Defendants' due process and equal protection right, but also forestalls any future argument (should the June 24, 2019 Order be affirmed on appeal) with regard to the Claimant's entitlement to benefits, or the Defendants' right to a credit for overpayment of benefits, for the period after September 23, 2013, based upon actual evidence after notice and opportunity to be heard.

WHEREFORE, the Defendants respectfully request that the Appellate Panel reconsider and vacate its Order dated June 24, 2019 on the basis that the Appellate Panel has made new findings of fact and conclusions of law upon issues over which it has no authority or jurisdiction and where contrary conclusions of the Hearing Commissioner are the final and binding law of the case. The Defendants request that the Appellate Panel enter a new Order, affirming the previous Order of the Appellate Panel dated February 8, 2016 with such necessary amendments to conform to the remand instructions of the Court of Appeal, to wit:

no authority by which the Commission can award a lump sum of future disability benefits absent proof of permanent disability under S.C. Code Ann. §§ 42-9-10, 42-9-20, or 42-9-30. Of course, the Claimant did not appeal the Hearing Commissioner's denial of benefits under S.C. Code Ann. §§ 42-9-10, 42-9-20, or 42-9-30, so the Appellate Panel has no authority to award benefits under these statutes.

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- a. Enter an additional Finding of Fact (#3) to reflect that the Claimant's civil action against the at-fault third party was voluntarily dismissed pursuant to a stipulation of dismissal filed in the Court of Common Pleas on December 5, 2013; and
- b. Amend the second sentence of Conclusion of Law (#3) to state that because the Claimant has taken a voluntary dismissal of his third-party suit, S.C. Code Ann. § "42-1-560 is not applicable. As a result, there is no violation of [section] 42-1-560."

Any further amendment of the February 8, 2016 Appellate Panel Order (or the Hearing Commissioner's Order of September 2, 2014) would exceed the Appellate Panel's authority and jurisdiction on remand, which is prescribed, not only by the Court's remand instructions, but by S.C. Code Ann. § 42-17-50, as well as the Claimant's Form 30 dated September 11, 2014 and the Claimant's Brief to the Appellate Panel dated November 14, 2014, by which he failed to preserve any argument with respect to his entitlement to benefits under S.C. Code Ann. §§ 42-9-210, 42-9-260, 42-15-60, 42-9-10, 42-9-20, or 42-9-30. Any further amendment of the February 8, 2016 Appellate Panel Order (or the Hearing Commissioner's Order of September 2, 2014) would also serve to violate the Defendants' right to due process and equal protection under the law, as the Appellate Panel failed to give the Defendants any notice or opportunity to be heard on remand regarding issues that were long-since abandoned by the Claimant and the Appellate Panel otherwise failed to properly exercise their statutory authority and jurisdiction in entering its June 24, 2019 Order.

Should the Appellate Panel insist on exercising jurisdiction and authority in excess of that prescribed by S.C. Code Ann. § 42-17-50, the Claimant's Form 30 dated September 11, 2014, and the Claimant's Brief to the Appellate Panel dated November 14, 2014, the Defendants respectfully request that the Appellate Panel reconsider its speculative and impermissibly vague awards of medical and compensation benefits for the period after September 23, 2013 for which there is no evidence in the record and for which the Defendants have not been afforded their statutory and constitutional right to notice and opportunity to be heard.

WE HEREBY SO MOVE.

TRASK & HOWELL, L.L.C.
P. O. Box 2167
Mt. Pleasant, SC 29465

By Kirsten L. Barr
Kirsten L. Barr
Attorney for the Defendants

June 28, 2019

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of June 2019, I have caused a true and correct copy of the Motion for Reconsideration of the Appellate Panel's Order dated June 24, 2019 to be mailed postage prepaid to the parties addressed as follows:

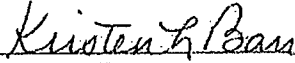
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118\133\motion for reconsideration-appellate panel d&o 6.24.19

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BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1112328

Samuel Rose,)
) Claimant,)
vs.))
Chris Thompson Services, LLC,)
and JJS Trucking, LLC,)
) Employer,)
and)
Bridgefield Casualty Insurance)
Company, UFF, Travelers)
Indemnity, Carrier,)
) Defendants.)

TRANSCRIPT OF PROCEEDINGS
May 15, 2012

This hearing was held before Commissioner George McCaskill, reported by Kimberly T. Power, Court Reporter and Notary Public in and for the State of South Carolina; said proceedings were held at the South Carolina Workers' Compensation Commission, 500 North Main Street, County Council Conference Room, Summerville, South Carolina, on Tuesday, May 15, 2012.

Kimberly T. Power, Court Reporter

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THE COURT: Today's date is May 15, 2012. This is the case of Samuel Rose vs. Chris Thompson Services, LLC and JJS Trucking, LLC. The Workers' Compensation Commission File Number is 1112328. The claimant is represented by Joseph B. Fisher. The defendants are -- Amy V. Cofield is here on behalf of the UFF, Reid Warder is on behalf of Travelers Indemnity Company, and Kirsten Barr is representing Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company. The date of the accident is August 10, 2011. We have an average weekly wage of \$650 and a comp rate of \$433. This is an admitted case. Are there any objections to jurisdiction, venue, or any APA submissions?

MR. FISHER: The only objection that I would raise, sir, my client has got some criminal history that was attached to Ms. Barr's brief and there's some misdemeanor charges on there and I would ask that the misdemeanor charges be struck from the record. I don't believe that they meet the standards to which they should be taken into consideration. I don't think they affect his credibility in any way, and I don't believe the misdemeanor charges were punishable by over a year in jail or a fine of \$1500.

THE COURT: Ms. Barr, do you want to speak to

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1 that?

2 MS. BARR: Yes, Your Honor. We did include

3 the SLED report, it's APA No. 1, in part due to the fact

4 that the delay in this matter was due in part to

5 Mr. Rose's recent incarceration, but there's also

6 contained in that arrest record crimes of moral turpitude

7 which we believe would affect claimant's credibility. I

8 don't have a problem redacting some of the minor

9 offenses, but I believe it's within the discretion of

10 you, Your Honor, to weigh and accord it the way you feel

11 it is appropriate.

12 THE COURT: Okay. And that is -- that's what

13 I'm going to do. I'm going to weigh it and give it

14 whatever weight it's due.

15 MR. FISHER: Yes.

16 THE COURT: Any other objections?

17 MS. BARR: Yes, Your Honor. There is one late

18 APA submission from the claimant. It is a medical report

19 from Dr. Wildstein dated 12/14/11. I'm not sure how he's

20 included it in his APA submission or what page number

21 he's given it, but this was only served on the parties --

22 I received it on Friday. So we don't believe it meets

23 the statutory -- the regulatory requirement of 67-6-12

24 because we weren't afforded the 15 day's notice of that

25 report.

Kimberly T. Power, Court Reporter

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1 THE COURT: Mr. Fisher?

2 MR. FISHER: We didn't receive that report

3 until late. We submitted it when we received it. I

4 don't think it prejudiced any one in any way because

5 Dr. Wildstein has other records that are part of this

6 case. But all we're asking for, again, is a finding of

7 compensability and, you know, treatment. But I don't

8 think it prejudice any one in any way because they're

9 aware that Dr. Wildstein has treated Mr. Rose in the past

10 and I don't think it affects them in any way adversely.

11 MS. BARR: Your Honor, prior to Friday, the

12 most recent record from Dr. Wildstein that had been

13 submitted by the claimant is APA Page 44 and said, "I

14 don't think he's currently a reasonable surgical

15 candidate as most of his complaints are rather

16 non-specific and out of proportion with his physical exam

17 findings." The late APA submission says something quite

18 different and recommends potentially surgical treatment.

19 It does drastically change the nature of his opinions and

20 would have been something we would have responded to if

21 afforded the opportunity under the regulation.

22 THE COURT: Okay. Anything else from

23 Ms. Cofield?

24 MS. COFIELD: Not on the APAs. No, sir.

25 THE COURT: Mr. Warder, anything else?

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1 MR. WARDER: No, sir.

2 THE COURT: Where is that medical report?

3 MR. FISHER: Just one second, sir.

4 MS. BARR: Is it Page 56?

5 MR. FISHER: It's 56 and 57.

6 THE COURT: Mr. Fisher, do you disagree with

7 Ms. Barr's assessment that it suggests something

8 different than the earlier medical report?

9 MR. FISHER: Oh, yes, sir, I do. I do agree

10 with her assessment, that it -- that it does. My client

11 has been denied medical treatment by both of these

12 parties ever since we started. We did the best we could

13 with regard to getting him the treatment that we could

14 get him. He hasn't had any money since we started this

15 proceeding back in August. And I admit that that -- that

16 it's late and it does change. But if the claim is found

17 to be compensable, that's all we're asking for. We're

18 not asking for a determination with regard to you

19 ordering the surgery today. We're not asking for a

20 determination with regard to anything other than, you

21 know, a compensable claim right now. So if you want to

22 remove that, I don't think -- I don't think that would

23 prejudice us in any way.

24 THE COURT: Okay. Well, it's not timely, so

25 it's out. All right. Anything else?

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1 (No response.)

2 THE COURT: All right. The Commission file

3 becomes part of the record with the exception of

4 self-serving declarations and unstipulated medical

5 reports.

6 Mr. Fisher, would you please state your

7 client's position for the record?

8 MR. FISHER: Yes, sir. Samuel Rose was

9 injured on August 10, 2011. He was an employee of JJS

10 Trucking. JJS Trucking was a subcontractor to Chris

11 Thompson Services. On August 10, 2011, he picked up a

12 load of woodchips. He was taking the woodchips from a

13 sawmill in Summerville to a paper mill in North

14 Charleston. On his way there, another Chris Thompson

15 truck that was behind him hit him, knocked him into a

16 wall. Both vehicles burned up. They were totaled.

17 My client was injured. He was taken to MUSC.

18 He was hospitalized for a period of time following the

19 accident. He filed a workers' compensation claim

20 alleging injuries to his head, knee, leg, back, the neck.

21 We filed that with JJS Service -- JJS Trucking. Excuse

22 me. We found out JJS Trucking didn't have any insurance,

23 so we went upstream to Chris Thompson asking for them to

24 pay his benefits. Benefits were denied.

25 My client started -- he's received \$75 a week

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1 benefits since going back to the day he was hurt. His
 2 comp rate is \$433.34 or \$433. His medical bills from
 3 MUSC haven't been paid. None of his medical bills have
 4 been paid.

5 We're just set -- we're here today asking for
 6 you to find this to be a compensable claim award. His
 7 entitlement to medical treatment, payment of any medical
 8 bills that he's incurred as a result of this accident.

9 We're asking for him to be compensated \$433 a week back
 10 to the day that he got hurt because he hasn't worked
 11 since this accident occurred. And, of course, they would
 12 be entitled to a \$75 a week credit for what they've paid.

13 We're just looking for, again, you to find this
 14 compensable and award him the benefits that he deserves
 15 in accordance with the Act. Thank you, sir.

16 THE COURT: Thank you. Ms. Barr.

17 MS. BARR: Thank you, Your Honor, and thank
 18 you for your patience in allowing to get our positions on
 19 the record. It is true the claimant was a direct
 20 employee of JJS Trucking which is Chris Thompson
 21 Services, my client's subcontractor. We don't dispute
 22 that there was an accident as alleged on August 10 of
 23 2011, although we do dispute the severity or permanency
 24 of those injuries and the need for future treatment.

25 But most importantly our position here today
 Kimberly T. Power, Court Reporter

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1 is that we believe we would be entitled to transfer
 2 liability to the South Carolina Uninsured Employers Fund
 3 under Statute 42-1-415 because JJS Trucking and its
 4 principal, Mr. Cedric Smalls, represented -- represented
 5 himself to Chris Thompson as having workers' comp
 6 insurance at the time he was initially engaged to perform
 7 work for and Chris Thompson Services and, thereafter,
 8 updated the Certificate of Insurance and that
 9 representation of coverage on an annual basis. On
 10 October 18, 2010, Chris Thompson Services obtained an
 11 ACORD Form 25 Certificate of Insurance showing that JJS
 12 Trucking was covered by a contract with workers'
 13 compensation issued by Travelers Insurance for the period
 14 from October 8, 2010 to October 8, 2011. And that's Page
 15 39 of our APA submissions.

16 At no time prior to Mr. Rose's accident did
 17 JJS Trucking, Cedric Smalls, the Swamp Fox Insurance
 18 Agency which was the producer of this policy, Travelers
 19 or any other person or entity notify Chris Thompson
 20 Services that his coverage had changed or lapsed. And as
 21 required by Section 42-1-415, Chris Thompson Services and
 22 his insurance carrier, Bridgefield, have paid temporary
 23 total disability benefits since the date of accident and
 24 request as a part of their petition to transfer liability
 25 that the UEF reimburse these benefits to us. We believe
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1 that UEF has unreasonably denied the request and has
 2 submitted a return to the petition.

3 Now, the petition was originally filed back in
 4 January and the issues raised back as early as our Form
 5 50 and again on a pre-hearing brief in November of 2010.

6 But on a more recent return to our petition, the UEF
 7 claims that the statute places some obligation on Chris
 8 Thompson to -- to -- to update a representation of
 9 coverage because it does not contain a policy number, but
 10 simply lists that there is a binding insurance contract.

11 We believe that the details of the coverage, including
 12 the coverage period, the coverage limits, the name of the
 13 insurer were all accurate representations of the coverage
 14 that was in fact written by Travelers. I believe
 15 Travelers -- and I'll ask Mr. Warder to speak to this,
 16 but that Travelers would stipulate that it insured JJS as
 17 of October 18, 2010, the date the Certificate of
 18 Insurance, due to a contract that initially covered the
 19 period from October 8, 2010 to October 8, 2011.

20 Therefore the representations contained in that
 21 Certificate of Insurance at the time it was issued were
 22 correct despite the fact the policy later lapsed.

23 Would Travelers be in a position to stipulate
 24 to that fact?

25 MR. WARDER: The -- certainly Travelers gave
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1 the authority to Swamp Fox Agency to write insurance on
 2 their behalf. And at the time that the policy was
 3 created and inbound initially and a deposit was made, it
 4 was fully in effect and it was a valid policy. And
 5 therefore later on afterwards, due to non-payment, it was
 6 cancelled later on. But, yes, otherwise we would have no
 7 cancellation of anything or a policy in existence. They
 8 certainly had the authority of Travelers to write
 9 policies on their behalf because they're an insurance
 10 agent.

11 MS. BARR: For these reasons we believe that
 12 the certificate that we rely upon is a valid
 13 representation of insurance as required by 42-1-415.

14 The second argument the UEF raises is that the
 15 Certificate of Insurance is not proper documentation of
 16 insurance because it doesn't contain a description of
 17 operations. They cite the Hopper case and Regulation
 18 67-4-15. Now, Hopper, which I believe you now have a
 19 copy of, has an important distinction that makes it not
 20 applicable to this case. And you will see that the court
 21 noted that this certificate, the certificate at play in
 22 Hopper, contained no information regarding the policy --
 23 the coverage that the policy provided. And, in fact, the
 24 Certificate of Insurance we rely upon does contain a
 25 detailed description of the policy terms including the
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1 policy period and policy limits and, therefore, we
 2 believe it is distinguishable.
 3 Furthermore, Hopper dealt with an out-of-state
 4 employer or multi-state employer and the regulations add
 5 additional burdens for Certificate of Insurance for an
 6 out-of-state employer under 67-415, and the description
 7 of operations is required for an out-of-state employer.
 8 That's not an issue here. Mr. Cedric Smalls, JJS
 9 Trucking, is right here in North Charleston, South
 10 Carolina and -- and -- and has no multi-state operations.
 11 So we believe that that alleged deficiency does not
 12 defeat our ability to transfer.
 13 The third issue they raise is that the
 14 Certificate of Insurance is invalid because they contest
 15 the authority of David Hayes. But as you've heard from
 16 Travelers's attorney, they don't dispute the authority of
 17 Swamp Fox Agency, the principal of which is David Hayes,
 18 to issue a Certificate of Insurance on their behalf.
 19 Furthermore, there's no requirement under the
 20 statute or the regulations that we investigate the
 21 authority of the signator. We simply can rely on a
 22 reasonable representation of insurance and that's what we
 23 did. On the face of that Certificate of Insurance, it
 24 raises no red flag about the authority of the signator.
 25 We even took an extra step because my client didn't
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1 obtain the certificate directly from JJS Trucking. They
 2 had it faxed to them directly from the producer of that
 3 policy, the Swamp Fox Agency, and you'll see at the top
 4 of the certificate the fax number there and that will be
 5 borne out by the testimony of my client.
 6 The UEF also argues that we are not entitled
 7 to transfer of liability because they question the timing
 8 of the presentation of our Certificate of Insurance.
 9 42-415 says that the certificate is to be turned over at
 10 the time a claim is filed. The claim was filed and we
 11 filed a Form 50 raising 42-1-415 as a defense. We
 12 served the certificate on November 4th of 2011, six and a
 13 half months ago. It was served again when we initially
 14 filed our petition to transfer liability in January and
 15 again when we had to renew our motion due to some recent
 16 scheduling difficulties.
 17 The claim has yet to be adjudicated. The
 18 claim filed by Cedric Smalls is still pending. We
 19 haven't even determined that claim yet. So we believe
 20 that the certificate that's turned over six and a half
 21 months before the claim is even adjudicated for the first
 22 time is timely under the statute. The UEF seems to
 23 suggest that we need to show up at the Commission at the
 24 time that Form 50 was delivered in order to meet our
 25 burden, and I don't believe that's a justified
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1 interpretation.
 2 The UEF, their sixth claim is that we should
 3 have obtained a new Certificate of Insurance each time
 4 JJS pulled a load on behalf of Chris Thompson Services.
 5 This is certainly belied by the statutory interpretation
 6 of this case -- of this statute. JJS only performed one
 7 service for JJS, was engaged a single time to do a single
 8 service, and that's to go back and forth between two
 9 mills. The terms of this engagement never changed, and
 10 for that reason we did not need to continually update the
 11 certificate each time he pulled a load.
 12 We believe that we have met all the
 13 requirements and we appreciate your consideration.
 14 THE COURT: All right. Ms. Cofield.
 15 MS. COFIELD: Yes, Your Honor. It's been a
 16 long established policy that a statutory employer bears
 17 the absolute liability to injured workers. Section
 18 42-1-415 was a narrow exception whereas the employer
 19 could pass liability to the UEF. It must, therefore, be
 20 construed strictly. Recent case law that -- that we have
 21 discussed and that we've presented -- I have presented in
 22 my return has described further what some of these
 23 necessities to meet the statutory requirements are. One
 24 of those cases is Barton vs. Hicks, 674 Southeastern 2nd
 25 145. In this case the only thing wrong with the
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1 certificate was that it lacked a signature. One box was
 2 empty. Supreme Court ruled that that was not an
 3 acceptable form because there was no signature on it.
 4 The Court has taken the position that an employer cannot
 5 pass liability to the UEF by simply accepting a piece of
 6 paper without reviewing it and checking to make sure it's
 7 accurate thereby ignoring the information that appears on
 8 the certificate.
 9 That in this case has been ignored in several
 10 ways. One, the description of operations box is blank.
 11 The Hopper case stands for the proposition that you can't
 12 have blanks on your certificate. Barton had a blank
 13 signature. This one has a description of operations
 14 that's blank. That case in nowhere stands for the
 15 proposition that that only applies to out-of-state
 16 employers. In that case there was an out-of-state
 17 employer, but that was not what the court relied on to
 18 rule that the certificate was invalid. They ruled upon
 19 the fact that it had not been filled out and the fact
 20 that the employer had failed to read it and see that it
 21 had not been filled out and to take proper steps to
 22 verify the information on the certificate.
 23 Another problem with the certificate is it
 24 doesn't say anywhere that they have procured a policy.
 25 The only thing the certificate says is there's a binder.
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<p style="text-align: right;">Page 17</p> <p>1 A binder is only a temporary piece of coverage until a 2 policy is issued. A binder cannot be expected to last 3 for ten months into the period stated on here. As far as 4 we know, the -- he never received another certificate 5 that ever indicated that there was a policy of insurance. 6 We did raise the question about David Hayes's 7 signature on this certificate. There has been no 8 evidence presented until today, and all we have today 9 really is that Swamp Fox Agency was authorized to issue 10 the certificate. Normally what is required is that some 11 evidence be given that David Hayes was a -- she called 12 him a principal of Swamp Fox. I don't know that. I 13 don't know who David Hayes is. There's nothing in the 14 record and nothing in evidence to show David Hayes was an 15 authorized agent to sign the certificate. 16 There is a problem with the timing of the 17 presentation of the certificate because 42-1-415 18 provides, "Documentation must be turned over to the 19 Commission at the time a claim is filed by the injured 20 employee." I would say that turning a certificate over 21 months later to the Commission is not at the same time. 22 Also raised is the question of whether or not 23 they have met the requirements of 42-1-415(A) which says 24 the upstream contractor must pay all the benefits due 25 before requesting that liability be transferred. There Kimberly T. Power, Court Reporter</p>	<p style="text-align: right;">Page 19</p> <p>1 THE COURT: All right. Ms. Barr, anything 2 else? 3 MS. BARR: No, thank you, Your Honor. 4 THE COURT: Ms. Coffield? 5 MS. COFIELD: No, sir. 6 THE COURT: All right. Mr. Fisher, do you 7 want to call your witness? 8 MR. FISHER: Yes, sir. 9 THE COURT: Mr. Rose, I'm going to swear you 10 in here in just a second, and then I'm going to ask you 11 to state and spell your full name for the record. I have 12 two requests for you. One, please speak loudly enough so 13 that the court reporter who is making a record of this 14 hearing, all of the attorneys and I can hear you. And 15 the second thing is if you are asked a yes or no 16 question, please respond with yes or no. Don't say 17 uh-huh or unh-unh. That can get confused in the record. 18 And please don't shake or nod your head because 19 especially in this dynamic it would be very difficult for 20 her to take down. Okay. 21 THE WITNESS: Yes, sir. 22 (SAMUEL ARCHIE DELL ROSE, being duly sworn to 23 tell the whole truth and nothing but the truth, testified 24 as follows:) 25 THE COURT: Would you state and spell your Kimberly T. Power, Court Reporter</p>
<p style="text-align: right;">Page 18</p> <p>1 has not been an order. That is true. An order would 2 establish all benefits due, then they should pay all 3 benefits due, and then at that time they may petition to 4 transfer liability. That issue makes this case premature 5 as far as the transfer of liability. 6 Commissioner, I would rely further on the 7 return that I have sent to you that outlines specifically 8 further the arguments and case law that support my 9 position. 10 THE COURT: All right. Mr. Warder. 11 MR. WARDER: Thank you, Commissioner. I'm 12 here today on behalf of Travelers Indemnity Company, and 13 we take the position that since the policy that was 14 issued to JJS Trucking was effectively cancelled on 15 February 5th of 2011, that we certainly have no liability 16 whatsoever for the date of injury in this matter which is 17 August 10th of 2011, over six months later. I don't 18 think anyone here is contending that we had an effective 19 policy at that time. As I pointed out in our pre-hearing 20 on Page 73 of my APA submissions, Swamp Fox Agency had 21 received a notice of cancellation January 18th of 2011. 22 Therefore, we would ask that we be released from this 23 matter. Thank you. 24 THE COURT: Mr. Fisher, anything else? 25 MR. FISHER: No, sir. Kimberly T. Power, Court Reporter</p>	<p style="text-align: right;">Page 20</p> <p>1 full name for the record, please? 2 THE WITNESS: Samuel Archie Dell Rose. 3 S-A-M-U-E-L, A-R-C-H-I-E, D-E-L-L, R-O-S-E. 4 THE COURT: All right. Mr. Fisher. 5 DIRECT EXAMINATION 6 BY MR. FISHER: 7 Q. Mr. Rose, please try and speak as loud as you 8 can. Where were you working on -- were you working on 9 August 10, 2011? 10 A. Yes. 11 Q. And where were you working at? 12 A. For JJS Trucking out of Summerville at 13 Keystone Lumber Mill. 14 THE COURT: Why don't you turn just a little 15 bit so they can see you, at least a profile. 16 BY MR. FISHER: 17 Q. Where were you working at? 18 A. For JJS Trucking out of Summerville. 19 Q. Okay. And who owns JJS Trucking? 20 A. Cedric. Cedric Smalls. 21 Q. And how long had you worked there before 22 August 10, 2011? 23 A. Between four and a half to five months. 24 Q. And what did you do at JJS Trucking? 25 A. Haul loads from Summerville to North Kimberly T. Power, Court Reporter</p>

<p style="text-align: right;">Page 21</p> <p>1 Charleston.</p> <p>2 Q. And was that -- and when you say from</p> <p>3 Summerville, where at -- where did you start your trip</p> <p>4 at?</p> <p>5 A. Keystone Lumber Mill to Westvaco in North</p> <p>6 Charleston.</p> <p>7 Q. Did you drive anywhere else?</p> <p>8 A. No.</p> <p>9 Q. That was the only route that you drove the</p> <p>10 whole time you worked there?</p> <p>11 A. Yes.</p> <p>12 MS. BARR: Your Honor, I apologize for</p> <p>13 interrupting. We haven't yet put Mr. Smalls on the</p> <p>14 record.</p> <p>15 THE COURT: This is true.</p> <p>16 MS. BARR: I'm sorry, Mr. Rose.</p> <p>17 MR. FISHER: We can go ahead and then we can</p> <p>18 go back if you would like.</p> <p>19 THE COURT: Let's do that. Mr. Smalls, do you</p> <p>20 have a statement for the record?</p> <p>21 MR. SMALLS: Yes, Your Honor. I wanted to</p> <p>22 state that as far as being properly --</p> <p>23 (CEDRIC SMALLS, being duly sworn to tell the</p> <p>24 whole truth and nothing but the truth, testified as</p> <p>25 follows.)</p> <p style="text-align: center;">Kimberly T. Power, Court Reporter</p>	<p style="text-align: right;">Page 23</p> <p>1 THE COURT: Any of y'all have questions for</p> <p>2 Mr. Smalls?</p> <p>3 MS. COFIELD: Not at this time. When we put</p> <p>4 him up to testify, we will.</p> <p>5 THE COURT: All right.</p> <p>6 MS. BARR: And, Your Honor, I believe</p> <p>7 Mr. Smalls, he previously gave a statement in his</p> <p>8 deposition that he was prepared to -- to appear on his</p> <p>9 own behalf without assistance of counsel.</p> <p>10 THE COURT: Yes. You do know you are entitled</p> <p>11 to a lawyer?</p> <p>12 MR. SMALLS: Yes, sir. I have been working on</p> <p>13 that matter. Yes, sir.</p> <p>14 THE COURT: But you are appearing today</p> <p>15 without counsel?</p> <p>16 MR. SMALLS: Yes, sir.</p> <p>17 THE COURT: All right.</p> <p>18 MR. SMALLS: Thank you, Your Honor.</p> <p>19 THE COURT: Anything else before we go back to</p> <p>20 Mr. Rose?</p> <p>21 (No response.)</p> <p>22 THE COURT: All right. Mr. Fisher.</p> <p>23 BY MR. FISHER:</p> <p>24 Q. Okay. Mr. Rose, now, how long did you drive</p> <p>25 for JJS Trucking before August 10, 2011?</p> <p style="text-align: center;">Kimberly T. Power, Court Reporter</p>
<p style="text-align: right;">Page 22</p> <p>1 THE COURT: Please state and spell your full</p> <p>2 name for the record.</p> <p>3 THE WITNESS: Cedric Smalls. C-E-D-R-I-C.</p> <p>4 Smalls, S-M-A-L-L-S.</p> <p>5 THE COURT: Go ahead, Mr. Smalls.</p> <p>6 STATEMENT ON THE RECORD</p> <p>7 MR. SMALLS: In regards of the matter on being</p> <p>8 properly notified of the lapse of insurance, I am stating</p> <p>9 that I was not properly notified. I also give in support</p> <p>10 of that that Mr. Chris Thompson is listed as additionally</p> <p>11 insured. From my understanding he was never notified of</p> <p>12 the lapse of insurance. There is a situation in my past</p> <p>13 to where one time my insurance was about to lapse and</p> <p>14 Swamp Fox had as Chris Thompson being -- knowing as</p> <p>15 additionally insured, contacted Mr. Chris. Mr. Chris</p> <p>16 contacted me immediately and the situation was rectified.</p> <p>17 In this particular case, nothing of that sort</p> <p>18 ever happened. Mr. -- Mr. Thompson would have never</p> <p>19 allowed me to actually work that long of a period without</p> <p>20 being notified. We both have the same -- the same agent,</p> <p>21 which is Swamp Fox. I clearly believe that there was a</p> <p>22 mistake made in the notification of lapse. And I just</p> <p>23 wanted to go on record as stating that as far as JJS is</p> <p>24 concerned, at -- at this point in time, I believe that we</p> <p>25 were not properly notified.</p> <p style="text-align: center;">Kimberly T. Power, Court Reporter</p>	<p style="text-align: right;">Page 24</p> <p>1 A. About four and a half to five months.</p> <p>2 Q. Okay. And your route was what?</p> <p>3 A. From Summerville to North Charleston. From</p> <p>4 Keystone Lumber Mill in Summerville to Westvaco in North</p> <p>5 Charleston.</p> <p>6 Q. And was that the only route that you ever</p> <p>7 drove for Cedric Smalls --</p> <p>8 A. Yes.</p> <p>9 Q. -- JJS Trucking?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And let me see. And what did you haul?</p> <p>12 A. Woodchips.</p> <p>13 Q. Okay. And what happened on August 10, 2011?</p> <p>14 A. As I was -- well, I was on my last run for the</p> <p>15 night from Summerville to Westvaco. I got on the</p> <p>16 interstate at Exit 199. I came up I-26. And as I</p> <p>17 approached Ashley Phosphate, I was rear-ended. The truck</p> <p>18 hit me -- well, I downshifted to go through the</p> <p>19 construction. There was construction going on at the</p> <p>20 time. I slowed up and I was rear-ended by a truck that</p> <p>21 was following me. I jackknifed. I hit the median wall.</p> <p>22 The trucks exploded and I passed out.</p> <p>23 Q. Okay. And at the -- what happened after the</p> <p>24 accident? Did you go to the doctor?</p> <p>25 A. I went to MUSC.</p> <p style="text-align: center;">Kimberly T. Power, Court Reporter</p>

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1 Q. And what were the problems you were
 2 experiencing physically whenever you went to MUSC?
 3 A. My right knee was fractured, lower back pains,
 4 my neck was injured, and dizziness and problems with my
 5 left hand.
 6 Q. Now, were you knocked unconscious as a result
 7 of this accident?
 8 A. Yes.
 9 Q. And after the accident did you report your
 10 accident and injuries to the supervisor?
 11 A. Yes.
 12 Q. And who is your supervisor?
 13 A. Cedric Smalls.
 14 Q. Okay. And after they sent you home from MUSC,
 15 did they -- did the doctors at MUSC make any appointments
 16 for you to continue treatment?
 17 A. Yes.
 18 Q. And where were those appointments made at?
 19 A. On my discharge from MUSC, I was scheduled to
 20 go see an orthopedic surgeon and there was another
 21 doctor. I'm not sure. But I'm assuming that it was a
 22 neurologist, but both appointments -- both appointments
 23 was cancelled.
 24 Q. Why were they cancelled?
 25 A. No insurance.
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1 Q. Okay. And did you tell them it was a
 2 work-related accident?
 3 A. Yes, I did.
 4 Q. And there was no workers' comp insurance that
 5 paid for that?
 6 A. They said they needed the policy and without
 7 the policy number or -- they couldn't do anything without
 8 a policy number or approval.
 9 Q. Okay. And nothing ever got approved?
 10 A. Nothing was ever approved.
 11 Q. After that, did you ever get any treatment
 12 after you left MUSC?
 13 A. Yes.
 14 Q. Where did you treat?
 15 A. I went to a general practitioner, Dr. Abel.
 16 And from there I went to Tri-County Spinal Care for pain
 17 management. And from there I went to Dr. Wildstein, an
 18 orthopedic surgeon.
 19 Q. Okay. And what did they treat you for,
 20 Dr. Abel, Dr. Wildstein, and the folks at Tri-County
 21 Spine?
 22 A. My neck, my lower back, and my knee.
 23 Q. And have you missed any time from work?
 24 A. Yes.
 25 Q. Have you worked since August 10, 2011?
 Kimberly T. Power, Court Reporter

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1 A. No.
 2 Q. And why is that?
 3 A. The nerve damage that I have in my -- from my
 4 neck, back problems that I continue to have, dizziness,
 5 and numbness in my arm.
 6 Q. Are you able to drive now? You drove a truck
 7 for a living. Are you able to drive now?
 8 A. As long as I'm not on medication, I can drive,
 9 but not a truck.
 10 Q. Okay. Do you have any idea how far you can
 11 drive now without having any physical problems?
 12 A. Not far.
 13 Q. Okay. Is there any way you could run the
 14 circuit that you used to run for Cedric Smalls in the
 15 condition you're in now?
 16 A. No. The vibrations from the truck will -- I
 17 was told that it's going to do a little bit more damage
 18 to my neck.
 19 Q. Okay. And what's the worst current problem
 20 that you have right now?
 21 A. Neck pain, numbness in my arm, and lower back
 22 pain.
 23 Q. Okay. How about your knee?
 24 A. My knee is the only thing that I was told
 25 that's healed -- that's healing fine.
 Kimberly T. Power, Court Reporter

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1 Q. Okay. And whenever your neck hurts, your back
 2 hurts, is there anything that alleviates the pain?
 3 A. Well, I'm on medication for pain, but that's
 4 not really working. What I try to do is just about
 5 anything that will get my mind off the pain whether it's
 6 walking or just anything.
 7 Q. Okay. And can you describe the pain that you
 8 feel in your neck to the Commissioner?
 9 A. The base of my skull is still swollen. It's a
 10 throbbing headache. My left arm is numb. I have
 11 numbness and I feel my fingers. My lower back. If I
 12 stand too fast, I get dizzy. If I move too fast, it just
 13 starts hurting. If I stay in one position and one place,
 14 it's fine.
 15 Q. Do you take any medication currently for your
 16 neck and your back pain?
 17 A. Yes.
 18 Q. And what do you take?
 19 A. I'm on Viracept, Flexeril, Neurontin, and
 20 Elavil, as well as ibuprofen.
 21 Q. And who is writing you these prescriptions for
 22 these medications?
 23 A. My latest prescriptions came from Dr. Abel.
 24 Q. Is it your understanding you're going to
 25 continue to take these medications into the near future?
 Kimberly T. Power, Court Reporter

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1 A. Yes.
 2 Q. What is your understanding about any future
 3 medical needs you might have?
 4 MS. BARR: Objection. Calls for hearsay.
 5 MR. FISHER: I'm just asking his
 6 understanding, not what anyone --
 7 THE COURT: What is your understanding?
 8 THE WITNESS: My understanding is that I
 9 need -- I need surgery on my neck. The doctor called
 10 it --
 11 MS. BARR: Objection. Hearsay.
 12 MR. FISHER: You can't say what the doctor
 13 called. I just want what is your understanding.
 14 THE COURT: What is your understanding.
 15 THE WITNESS: My understanding is that I have
 16 a herniated disc in my back and neck. That's my
 17 understanding.
 18 BY MR. FISHER:
 19 Q. Okay. Do you have any understanding with
 20 regard to any future medical treatment?
 21 A. Yes. My understanding is I need to see a
 22 neurologist, and I need the surgery on my neck to relieve
 23 the pain. And afterwards, then I'll get my back checked
 24 out.
 25 Q. How were you paid whenever you were hauling
 Kimberly T. Power, Court Reporter

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1 for Cedric Smalls?
 2 A. Weekly.
 3 Q. And were you paid by the hour?
 4 A. I was paid by the load.
 5 Q. And how much is a load?
 6 A. \$25 per load.
 7 Q. Okay. And who gave you the checks?
 8 A. Cedric Smalls.
 9 Q. Okay. Did Chris Thompson ever give you a
 10 check?
 11 A. No.
 12 Q. And do you have any understanding with regard
 13 to how Cedric Smalls was paid?
 14 A. Yes. Chris Thompson --
 15 Q. What is your understanding?
 16 A. Chris Thompson would pay Cedric Smalls and he
 17 would pay us.
 18 Q. And who was in -- you worked for Cedric
 19 Smalls, but who was in charge of the operation?
 20 A. Chris Thompson.
 21 Q. Okay. You said Chris Thompson?
 22 A. Yes.
 23 Q. And how do you know that?
 24 A. I was told by Cedric Smalls that he is the
 25 boss and we work for him.
 Kimberly T. Power, Court Reporter.

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1 Q. Did he tell Cedric what to do and what not to
 2 do?
 3 A. To my knowledge, yes.
 4 Q. Okay. Who serviced your truck?
 5 A. The tractor was serviced by Cedric Smalls.
 6 The trailer was serviced by Chris Thompson.
 7 Q. Okay. As you're sitting here today, do you
 8 think it would be in your best interest to have some more
 9 medical treatment?
 10 A. Yes.
 11 Q. And have you been -- what payment have you
 12 received since this accident?
 13 A. I've received \$75 per week from Bridgefield
 14 Casualty.
 15 Q. And our records indicate that an average
 16 weekly wage for you would be around \$650?
 17 A. Yes.
 18 Q. Does that sound about right?
 19 A. Yes.
 20 Q. Okay. And so your position you deserve TTD
 21 back to the day you got hurt minus the \$75 a week you've
 22 already --
 23 A. Yes.
 24 MR. FISHER: Thank you, sir. I don't have any
 25 other questions.
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1 THE COURT: Ms. Barr.
 2 MS. BARR: Thank you.
 3 CROSS-EXAMINATION
 4 BY MS. BARR:
 5 Q. Mr. Rose, we met before. But, again, my name
 6 is Kirsten Barr and I represent Chris Thompson Services
 7 and their insurance carrier. No doubt about it the night
 8 you got hurt, you were working for JJS Trucking, is that
 9 right?
 10 A. Yes.
 11 Q. And since that time, who have you worked for?
 12 A. No one.
 13 Q. Have you attempted to work for anybody?
 14 A. No, ma'am.
 15 Q. Have you driven a car or a truck anywhere?
 16 A. I have driven a car. And because of the
 17 medication I am taking, I have not driven a truck.
 18 Q. You haven't tried to drive a truck?
 19 A. I can't deal with the vibrations of a car, so
 20 I know I can't deal with the vibrations of a truck.
 21 Q. Have you surrendered your commercial driver's
 22 license then?
 23 A. No. I have my license, but my medical -- my
 24 DOT card, the doctor took that from me.
 25 Q. Which doctor?
 Kimberly T. Power, Court Reporter

<p style="text-align: right;">Page 33</p> <p>1 A. Dr. Abel.</p> <p>2 Q. Tell me Dr. Wildstein, this doctor you've gone</p> <p>3 to, how do you pay Dr. Wildstein?</p> <p>4 A. To my knowledge, he hasn't been paid yet.</p> <p>5 Q. So you've got an arrangement with</p> <p>6 Dr. Wildstein that you'll just pay him from whatever you</p> <p>7 can get out of this workers' comp claim?</p> <p>8 A. It's my understanding, yes.</p> <p>9 Q. And who sent you to Dr. Wildstein?</p> <p>10 A. My lawyer.</p> <p>11 Q. Do you recall that we had a hearing scheduled</p> <p>12 in your case a few weeks ago?</p> <p>13 A. Yes, ma'am.</p> <p>14 Q. And you were incarcerated at the time of that</p> <p>15 hearing?</p> <p>16 A. Yes, ma'am.</p> <p>17 Q. How long were you incarcerated?</p> <p>18 A. Three weeks.</p> <p>19 Q. And where were you incarcerated?</p> <p>20 A. St. George.</p> <p>21 Q. And why were you incarcerated in St. George</p> <p>22 for three weeks last month?</p> <p>23 A. I was accused of stealing a 32-inch</p> <p>24 television, some bar stools, and a laptop. The police</p> <p>25 said that a witness observed me running across a parking</p> <p style="text-align: right;">Kimberly T. Power, Court Reporter</p>	<p style="text-align: right;">Page 35</p> <p>1 testified that you only wear a neck brace when you were</p> <p>2 driving a car?</p> <p>3 A. Yes, ma'am.</p> <p>4 Q. Has your neck problem gotten worse since then?</p> <p>5 A. It's hurting. It's continuous. And I still</p> <p>6 wear my back brace. I still have it on now.</p> <p>7 Q. A back brace?</p> <p>8 A. Yes.</p> <p>9 Q. Why aren't you doing exercises and therapy</p> <p>10 instead of wearing a brace?</p> <p>11 A. The doctor told me the only exercise he wanted</p> <p>12 me to do was walking. Other than that, he told me to</p> <p>13 stay off my feet as much as possible.</p> <p>14 Q. The cane, did you just buy that at a drugstore</p> <p>15 or something?</p> <p>16 A. No.</p> <p>17 Q. You paid for it, right?</p> <p>18 A. Yes, I did. I was told by Dr. Abel to get it</p> <p>19 because of dizziness. And I fell once down the stairs.</p> <p>20 When I stood up, I use it for balance.</p> <p>21 Q. When did you fall down the stairs?</p> <p>22 A. Last year back in November and I fell again in</p> <p>23 January.</p> <p>24 Q. When you fell down the stairs in November,</p> <p>25 where were you?</p> <p style="text-align: right;">Kimberly T. Power, Court Reporter</p>
<p style="text-align: right;">Page 34</p> <p>1 lot running from an apartment across the street to my</p> <p>2 mom's car and putting it in the car. And the police said</p> <p>3 based on what their witness said that I did, that I was</p> <p>4 arrested.</p> <p>5 Q. And then you stayed in jail for three weeks as</p> <p>6 a result of those allegations?</p> <p>7 A. Yes. I was told that I could only be released</p> <p>8 by a circuit judge in St. George. I had to wait for the</p> <p>9 circuit judge to come.</p> <p>10 Q. Did you have any medical treatment while you</p> <p>11 were incarcerated?</p> <p>12 A. No.</p> <p>13 Q. And you were cleared to be in the general</p> <p>14 prison population?</p> <p>15 A. No, I was not cleared to be in the population.</p> <p>16 From the day that I got there, the nurse that I spoke</p> <p>17 with and she spoke to the doctors, they kept me in the</p> <p>18 front in the holding cell under 24 hour observation.</p> <p>19 Q. But you didn't receive any treatment?</p> <p>20 A. The only thing they gave me was pain</p> <p>21 management and they just kept me under observation. And</p> <p>22 they gave me a few of my medications, but they told me</p> <p>23 that I was not allowed to have narcotics while there.</p> <p>24 Q. You're wearing a neck brace here today. Back</p> <p>25 when you took your deposition several months ago, you</p> <p style="text-align: right;">Kimberly T. Power, Court Reporter</p>	<p style="text-align: right;">Page 36</p> <p>1 A. At my mother's house.</p> <p>2 Q. And how many stairs did you fall down?</p> <p>3 A. About five.</p> <p>4 Q. Five stairs. How did you land when you fell</p> <p>5 down the stairs in November?</p> <p>6 A. I landed on the ground.</p> <p>7 Q. I assume that hurt pretty bad?</p> <p>8 A. Yes, it did.</p> <p>9 Q. What did you injure when you fell down the</p> <p>10 stairs in November?</p> <p>11 A. My back and my neck was hurt. I went to</p> <p>12 Dr. Kellett out of Tri-County Spinal Care. He gave me an</p> <p>13 epidural injection and a cortisone injection in the base</p> <p>14 of my skull.</p> <p>15 Q. And he had to do that because you had fallen</p> <p>16 down the stairs?</p> <p>17 A. To help me manage the pain. Once he got it</p> <p>18 back under control, I just kept doing what I was told.</p> <p>19 Q. So the pain in your back and in your neck and</p> <p>20 in your arms was worse after you fell the down stairs at</p> <p>21 your mother's house in November of 2011?</p> <p>22 A. Yes, it was worse.</p> <p>23 Q. And you say you fell down a flight of stairs</p> <p>24 in January 2012 as well?</p> <p>25 A. Yes.</p> <p style="text-align: right;">Kimberly T. Power, Court Reporter</p>

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1 Q. Where were you when you fell down the stairs
 2 then?
 3 A. At my mother's house.
 4 Q. How many stairs did you fall down in January?
 5 A. About five or six.
 6 Q. And how did you land when you fell down the
 7 stairs in January?
 8 A. On the ground.
 9 Q. I mean, what part of your body hit the ground?
 10 A. My knee.
 11 Q. Which knee?
 12 A. Both my knees.
 13 Q. What did you injure when you fell down the
 14 stairs at your mother's house in January of this year?
 15 A. I irritated my back.
 16 Q. Your low back or your neck or both?
 17 A. Yes, both.
 18 Q. And did you have to get some medical treatment
 19 or some medication to deal with the injuries you
 20 sustained or the worsening of your symptoms as a result
 21 of that fall in January?
 22 A. I already had the medication. I told Dr. Abel
 23 about it. I took -- at the time was on Lortab and
 24 Oxycodone, and I took that at the time.
 25 Q. Your symptoms were worse after you fell that
 Kimberly T. Power, Court Reporter

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1 second time at your mother's house?
 2 A. It hurt as well.
 3 Q. Have you fallen down any other flights of
 4 stairs or fallen anywhere else?
 5 A. No, ma'am.
 6 Q. Have you had any other accidents or injuries
 7 since August of 2010?
 8 A. No, ma'am.
 9 Q. No. Just the two falls down the stairs at
 10 your mother's house?
 11 A. Yes.
 12 Q. Were those carpeted stairs or hardwood stairs
 13 or --
 14 A. Carpeted.
 15 Q. Were you wearing shoes when you fell either of
 16 those times?
 17 A. Slippers.
 18 Q. And as we're here today, I don't believe --
 19 you don't have a slip from any doctor excusing you from
 20 work at this point in time, do you?
 21 A. I have one from Dr. Abel. It said no work.
 22 Q. You don't have one here with you today --
 23 A. No.
 24 Q. -- saying you can't work at this time?
 25 A. I gave the slip to my lawyer.
 Kimberly T. Power, Court Reporter

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1 MS. BARR: Okay. That's all the questions I
 2 have for you, Mr. Rose. I appreciate it.
 3 THE COURT: Ms. Caffield.
 4 MS. BARR: It appeared Mr. Smalls -- I don't
 5 know if he had a question for Mr. Rose.
 6 THE COURT: Sure. Mr. Smalls, you're pro se.
 7 CROSS-EXAMINATION
 8 BY MR. SMALLS:
 9 Q. At the accident, how long were you passed out?
 10 A. I was told by the EMTs that I was in and out.
 11 I was awake long enough to notify you and I called my mom
 12 and that was afterwards.
 13 Q. I recall that at the scene, I gave the state
 14 troopers all the insurance information at the scene. I
 15 also came to the hospital to provide additional insurance
 16 information at the time. I recall you stated they
 17 wouldn't -- they wouldn't do any surgery on you at that
 18 time because of lack of insurance information?
 19 A. Right. They needed policy numbers.
 20 Q. When you were released from the hospital, did
 21 the hospital give you a time frame in which they felt
 22 that you would be able to perform your work tasks?
 23 A. They told me I needed to speak to -- well, I
 24 needed to go to an orthopedic surgeon and they scheduled
 25 the appointment to go to the orthopedic surgeon and that
 Kimberly T. Power, Court Reporter

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1 got cancelled twice. They gave me another appointment to
 2 see a neurologist, and that was cancelled as well. And
 3 then MUSC sent a physical therapist to the house, and
 4 that was cancelled by Dr. Abel.
 5 Q. Okay. So when you were released, they never
 6 gave you a time frame in which they felt like you would
 7 be able to go back to work?
 8 A. They told me not until the doctor releases me.
 9 Q. Were you hired from JJS Trucking as an
 10 employee or a subcontractor yourself?
 11 A. Contractor.
 12 Q. When it came time for you to take your loads,
 13 did Cedric Smalls tell you when to take your loads or did
 14 you contact the actual loader spreader and you would come
 15 into work based on work at the mill?
 16 A. I came based on my schedule at the mill in the
 17 afternoons, went to the loader spreader, got the loads,
 18 took the loads to North Charleston.
 19 Q. So -- so Cedric Smalls himself never told you
 20 when to go or start work?
 21 A. He only told -- well, Cedric Smalls only told
 22 me to work 12 hours from the time that I start and --
 23 just 12 hours from that time. No more.
 24 Q. Did you ever sign a document stating that you
 25 were a subcontractor, not an employee?
 Kimberly T. Power, Court Reporter

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1 A. The only documents I've signed was an
2 application.
3 MR. SMALLS: I don't know -- I don't know
4 procedure, Your Honor, but Mr. Samuel Rose signed an
5 owner driver obligation. And in that owner -- owner
6 obligation contract it states that he was to obtain his
7 own workers' comp if it was deemed necessary because he
8 was actually signed on from JJS Trucking as a
9 subcontractor. That's why he picked his own loads.
10 He -- he decided actually when he went to work, and I
11 just wanted that to be a matter of record.
12 MR. FISHER: I would object unless you have a
13 copy of that.
14 THE COURT: Do you have a copy of that?
15 MR. SMALLS: I do. It has his signature on it
16 as well. And I also gave this document at a hearing
17 previously.
18 THE COURT: Any other questions, Mr. Smalls?
19 MR. SMALLS: No, Your Honor.
20 THE COURT: All right. Ms. Cofield.
21 CROSS-EXAMINATION
22 BY MS. COFIELD:
23 Q. Mr. Rose, you testified a minute ago that you
24 thought of yourself as a subcontractor, not an employee;
25 is that correct?
Kimberly T. Power, Court Reporter

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1 A. A subcontractor for Chris Thompson working for
2 JJS.
3 Q. What was your relationship with JJS? Were you
4 a subcontractor for JJS or an employee?
5 A. I believe I was an employee. I worked for JJS
6 Trucking.
7 Q. Okay. And you were paid per load?
8 A. Yes, ma'am.
9 Q. And your loads varied each week; is that
10 correct?
11 A. Yes, ma'am.
12 Q. And no taxes were taken out of your check?
13 A. No, ma'am.
14 Q. And, in fact, you were given a 1099 at the end
15 of the year, correct?
16 A. I have not received a 1099.
17 Q. Okay. Did Mr. Thompson know you were getting
18 medical treatment?
19 A. Not -- I have never spoke with Mr. Thompson
20 about my -- any treatment.
21 Q. Okay. When your deposition was taken in
22 November of 2011, did you not testify that you were
23 getting medical treatment?
24 A. Yes. I testified that I was being treated by
25 Dr. Abel, Dr. Kellett, and Dr. Wildstein.
Kimberly T. Power, Court Reporter

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1 Q. Since that time has Bridgefield or
2 Mr. Thompson offered to pay any of your medical bills?
3 A. I have not spoken with Mr. Thompson.
4 Q. Have any of your medical bills been paid?
5 A. Nothing has been paid.
6 Q. Thank you.
7 MS. BARR: Your Honor, we would stipulate if
8 you found past medical bills casually-related to this
9 accident, Bridgefield would pay medical bills that you
10 believe are due and owing in an effort to expedite the
11 transfer of liability.
12 BY MS. COFIELD:
13 Q. Mr. Rose, when you were arrested last month on
14 April 12th, were you using your cane?
15 A. No, I didn't have my cane. No.
16 Q. Were you on your Oxycodone or other
17 medications?
18 A. Yes, ma'am.
19 Q. Did you get those medicines while you were in
20 jail?
21 A. They were brought to the jail, but I was told
22 that I couldn't have a Schedule III narcotic. They gave
23 me the Neurontin, the Viracept, the Flexeril, the
24 ibuprofen, and Tylenol.
25 Q. That's what you took in jail?
Kimberly T. Power, Court Reporter

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1 A. Yes, ma'am.
2 MS. COFIELD: Okay. That's all I have for
3 you.
4 THE COURT: All right. Mr. Warder.
5 MR. WARDER: I have no questions of this
6 witness at this time, Your Honor.
7 THE COURT: All right. Anything further?
8 MR. FISHER: Yes, sir.
9 REDIRECT EXAMINATION
10 BY MR. FISHER:
11 Q. Mr. Smalls stated that you had signed a
12 document and I just looked at it. Did he ever tell you
13 that you needed to buy your own workers' compensation
14 insurance?
15 A. No.
16 Q. Never told you that?
17 A. No.
18 MR. FISHER: Okay. Thank you.
19 THE COURT: Any other questions for this
20 witness, Mr. Smalls?
21 MR. SMALLS: No, Your Honor.
22 THE COURT: Ms. Barr?
23 MS. BARR: Your Honor, just briefly. The
24 document that was presented by Mr. Smalls, it's marked as
25 Exhibit No. 1?
Kimberly T. Power, Court Reporter

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1 THE COURT: It will be.
 2 MS. BARR: Or will be.
 3 RE-CROSS-EXAMINATION
 4 BY MS. BARR:
 5 Q. Mr. Rose, this is your signature on Page 2 of
 6 this owner driver contract?
 7 A. Yes, ma'am.
 8 Q. All right. And that's your signature dated
 9 April 28, 2011?
 10 A. Yes, ma'am.
 11 Q. That was prior to this accident that you were
 12 involved with. Right. And you agreed to the obligations
 13 as outlined of the driver's obligations under this
 14 contract?
 15 A. Yes, ma'am. I never made over -- I never made
 16 over a thousand. The minimum amount it says is 1,000 per
 17 week and I never made that.
 18 Q. Okay. And it says that you were responsible
 19 for keeping your truck in a responsible and clean manner?
 20 A. Yes, ma'am.
 21 Q. All right. And you were also responsible for
 22 any fines due to your own negligence?
 23 A. Yes, ma'am.
 24 Q. And you were responsible for all state and
 25 federal taxes?
 Kimberly T. Power, Court Reporter

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1 A. Yes, ma'am.
 2 Q. And you were also responsible for your
 3 workers' comp insurance when applicable?
 4 A. That's what it says. Yes, ma'am.
 5 Q. And this was the agreement you signed on April
 6 11th -- or April 28th of 2011?
 7 A. That's what it says.
 8 MS. BARR: Thank you.
 9 THE COURT: Anything further, Ms. Barr?
 10 MS. BARR: Nothing, Your Honor. Thank you.
 11 THE COURT: Ms. Cofield?
 12 MS. COFIELD: No, sir.
 13 THE COURT: Mr. Warder?
 14 MR. WARDER: No, Your Honor.
 15 THE COURT: All right, sir. You may step
 16 down. Before we go any further, several of you have
 17 referred to depositions taken of Mr. Rose and Mr. Smalls.
 18 I do not see either of those in the file. Should they be
 19 here?
 20 MS. BARR: Your Honor, I think both are
 21 contained in my APA submissions.
 22 MR. FISHER: This is the original of Cedric
 23 Smalls.
 24 MS. BARR: And here is Samuel Rose. That
 25 lightens my load.
 Kimberly T. Power, Court Reporter

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1 THE COURT: All right. Other witnesses,
 2 Mr. Fisher?
 3 MR. FISHER: No more witnesses, sir.
 4 THE COURT: All right. Ms. Barr?
 5 MS. BARR: Your Honor, I have one witness,
 6 Mr. Chris Thompson, and he's asked for a momentary
 7 adjournment if you would allow.
 8 THE COURT: Certainly.
 9 (Exhibit No. 1, Owner Driver Contract, was
 10 marked and entered into evidence.)
 11 (Off the record.)
 12 MS. BARR: Mr. Chris Thompson.
 13 THE COURT: I'm going to swear you in, and
 14 then please state and spell your full name for the
 15 record. Speak loudly enough so everyone can hear you.
 16 THE WITNESS: Christopher A. Thompson.
 17 THE COURT: Hold on, hold on. You're getting
 18 ahead of me. And then if you're asked a yes or no
 19 question, answer yes or no and not uh-huh or unh-unh.
 20 Don't shake or nod your head. Please say yes or no if
 21 it's a yes or no question.
 22 (CHRISTOPHER A. THOMPSON, being duly sworn to
 23 tell the whole truth and nothing but the truth, testified
 24 as follows:)
 25 THE COURT: Would you state and spell your
 Kimberly T. Power, Court Reporter

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1 full name for the record, please?
 2 THE WITNESS: Christopher A. Thompson.
 3 C-H-R-I-S-T-O-P-H-E-R, A, T-H-O-M-P-S-O-N.
 4 THE COURT: All right. Thank you. Ms. Barr.
 5 DIRECT EXAMINATION
 6 BY MS. BARR:
 7 Q. Thank you, Mr. Thompson. Tell us where you're
 8 employed, where you do business?
 9 A. My office is in Berkeley County, Summerville,
 10 South Carolina. We do business for a trucking company.
 11 We do business from Summerville to North Charleston.
 12 Q. All right. And what's the name of your
 13 business?
 14 A. Chris Thompson Services, LLC.
 15 Q. And what is your role at Chris Thompson
 16 Services, LLC?
 17 A. I reckon from CEO to janitor.
 18 Q. Okay. And back in August of 2011, was JJS
 19 Trucking a subcontractor for Chris Thompson Services?
 20 A. Yes, ma'am.
 21 Q. And what did you engage JJS Trucking to do for
 22 you?
 23 A. Aid in hauling the woodchips from Summerville
 24 Sawmill at SC-78 to North Charleston paper mill.
 25 Q. Did you ever engage JJS Trucking to perform
 Kimberly T. Power, Court Reporter

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1 any other subcontract work for you?
 2 A. No, ma'am.
 3 Q. Who owns JJS Trucking?
 4 A. Cedric Smalls.
 5 Q. Do you know how many employees or
 6 subcontractors JJS Trucking may have had?
 7 A. No, ma'am.
 8 Q. Do you know if they had more than one office?
 9 A. No, ma'am.
 10 Q. Do you believe they did have more than one
 11 office?
 12 A. No, ma'am.
 13 Q. And did, to your knowledge, JJS Trucking
 14 operate anywhere other than the State of South Carolina?
 15 A. No, ma'am, not to my knowledge.
 16 Q. When did JJS Trucking start doing work for
 17 Chris Thompson Services?
 18 A. Approximately around 2008.
 19 Q. Okay. And at the time you engaged JJS
 20 Trucking, did you inquire as to whether or not they had
 21 workers' compensation coverage for their employees?
 22 A. For their employees, no, ma'am. JJS -- Cedric
 23 Smalls provided Chris Thompson Services with a
 24 certificate of workman's comp. Now, did I check the
 25 depth of that policy or the parameters of that policy?
 Kimberly T. Power, Court Reporter

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1 No, ma'am, that's not something I was privileged to.
 2 Q. But at the time you first hired JJS Trucking,
 3 you were presented by JJS Trucking with a Certificate of
 4 Insurance showing that they had workers' compensation
 5 coverage?
 6 A. Yes, ma'am. JJS always provided workman's
 7 compensation coverage -- workman's compensation policy
 8 that JJS was covered.
 9 Q. And why did you get that certificate? Why --
 10 why did you have to get a Certificate of Insurance from
 11 JJS? Was that a policy of yours?
 12 A. Yes, ma'am. Because I also have workman's
 13 comp coverage and I'm required to verify that everyone
 14 else who works for me has workman's comp or I have to
 15 pay -- or I have to pay additional premiums to my
 16 workman's comp policy.
 17 Q. Now, did you -- after you first hired JJS
 18 Trucking or engaged them to work for you, did you ever
 19 request any updated documentation of their workers'
 20 compensation insurance coverage?
 21 A. Once a year.
 22 Q. And why did you do that once a year?
 23 A. Policy -- the existing policy would expire and
 24 we would have to issue a new policy.
 25 Q. We have submitted a document that's page -- in
 Kimberly T. Power, Court Reporter

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1 the APA of our submissions. We have submitted this
 2 document into evidence entitled, "Certificate of
 3 Liability Insurance." Are you familiar with that
 4 document? It's my 39.
 5 A. Yes, ma'am, I am.
 6 Q. And do you recall approximately when you
 7 received that document?
 8 A. Judging from the date on the document,
 9 October the 18th.
 10 Q. Of 2011?
 11 A. 2010.
 12 Q. 2010. And who is listed as the certificate
 13 holder for that Certificate of Insurance?
 14 A. JJS Trucking, LLC.
 15 Q. That's the insured or the certificate holder?
 16 A. Certificate holder is Chris Thompson Services,
 17 LLC.
 18 Q. Okay. And who -- from whom did you obtain
 19 this Certificate of Insurance?
 20 A. Come faxed from Swamp Fox Agency.
 21 Q. Had you done business with Swamp Fox yourself
 22 through Chris Thompson Services?
 23 A. Yes, ma'am, since about 2002.
 24 Q. So when you -- you knew that they were the
 25 agent for JJS Trucking?
 Kimberly T. Power, Court Reporter

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1 A. Yes, ma'am. And had been for quite a while.
 2 Q. Okay. And there's a signature at the bottom
 3 of that Certificate of Insurance. Who signed that
 4 Certificate of Insurance?
 5 A. Appears to be David Hayes.
 6 Q. And do you know who David Hayes is?
 7 A. Yes, ma'am. He owns Swamp Fox Insurance
 8 Agency.
 9 Q. Now, after you received the Certificate of
 10 Insurance from Swamp Fox Agency, did you take any further
 11 actions to verify the insurance coverage that's indicated
 12 on that form? Did you speak with anybody at Swamp Fox?
 13 A. Yes, ma'am. I spoke with Greg Hudson. That
 14 was my CSR. And I spoke with him and asked him just in
 15 conversation, you know, got the certificate, everything
 16 is good to go. He said everything is good to go, you're
 17 covered.
 18 Q. Did you have any reason after you had reviewed
 19 that certificate and spoken with folks at Swamp Fox to
 20 question whether or not JJS Trucking had workers'
 21 compensation insurance at the time you received that
 22 certificate? Did you have any reason to suspect that --
 23 A. No, ma'am. No, ma'am. I got a certificate
 24 which was good enough, and I verbally spoke with Greg
 25 Hudson and he told me that Cedric was good to go. Those
 Kimberly T. Power, Court Reporter

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1 were his exact words, good to go.
 2 Q. So after you reviewed that Certificate of
 3 Insurance, did you believe that JJS in fact had workers'
 4 compensation coverage through Travelers Insurance as of
 5 October 18, 2010?
 6 A. Yes, ma'am.
 7 Q. And what was the coverage period for that
 8 insurance through Travelers?
 9 A. October 8, 2010 until October 8, 2011.
 10 Q. Now, could you tell from that Certificate of
 11 Insurance what the policy limits were for that workers'
 12 comp policy?
 13 A. Yes, ma'am. \$500,000.
 14 Q. And could you tell who the company was who
 15 insured JJS Trucking for purposes of workers'
 16 compensation?
 17 A. Yes, ma'am. It would be Travelers Insurance.
 18 Q. At any time prior to Samuel Rose's accident in
 19 August of 2011, did anyone -- anyone with JJS or Swamp
 20 Fox or Travelers or anyone else at all ever give you any
 21 reason to believe that Mr. -- JJS Trucking did not have
 22 insurance coverage as described on that Certificate of
 23 Insurance?
 24 A. No, ma'am.
 25 Q. At any time prior to the accident in August of
 Kimberly T. Power, Court Reporter

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1 2011, did you -- were you given any reason to believe by
 2 any person at all that JJS Trucking's workers' comp
 3 insurance had lapsed?
 4 A. No, ma'am.
 5 Q. Now, it's my understanding that after the
 6 accident, you were informed by your own insurance company
 7 that there had been a lapse in JJS's policy; is that
 8 correct?
 9 A. Yes, ma'am. It took almost until middle of
 10 September, that's the best I can recall at the time,
 11 middle of September, maybe even beginning of October,
 12 before I was actually positively told that he didn't have
 13 insurance. The first hint of it I called Mr. Smalls and
 14 Mr. Smalls verified, yes, I do have it. I had
 15 documentation showing that he had it. We were both --
 16 and I believe I was the one that actually informed
 17 Mr. Smalls that -- that it was found that his policy had
 18 expired. It was a shock to both of us.
 19 Q. So you believe that Mr. Smalls at least
 20 sincerely believed that he had continuous workers'
 21 compensation coverage through the date of the accident?
 22 A. Yes, ma'am, I do.
 23 Q. But you now know that that's not -- that was
 24 not true, that the policy had in fact lapsed?
 25 A. I've been told the policy had lapsed. I still
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1 believe that Mr. Smalls did not know.
 2 Q. And after -- after you learned of the lapse in
 3 JJS Trucking's workers' compensation insurance, you said
 4 you spoke with him, but did you take any further action
 5 with regard to your relationship with JJS Trucking?
 6 A. Yes, ma'am. I stopped him immediately. I
 7 stopped him within the hour. I called him and told him I
 8 needed to meet with him immediately, not to haul -- not
 9 to load his trucks anymore under my -- my company. And
 10 he met with me and I explained to him what was going on.
 11 I verified and I can only do -- CTS can only do business
 12 with JJS Trucking until such time as he obtained proof of
 13 workman's comp coverage.
 14 MS. BARR: Thank you very much, Mr. Thompson.
 15 I'm sure that the other attorneys may have questions for
 16 you as may well the Commissioner.
 17 THE COURT: Mr. Smalls has a question. Are
 18 y'all comfortable with him asking him questions?
 19 MR. FISHER: Certainly.
 20 MS. COFIELD: That's fine.
 21 THE COURT: All right. Mr. Smalls.
 22 CROSS-EXAMINATION
 23 BY MR. SMALLS:
 24 Q. Mr. Chris Thompson, as being the certificate
 25 holder, can you think of a time in the past when an
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1 insurance company informed you of an -- let me make sure
 2 I say this right. You being a certificate holder, in the
 3 past was your company ever notified when a
 4 subcontractor's insurance might have been about to lapse?
 5 A. Yes, sir. I've been notified in the past at
 6 times that I've had other subcontractors that insurance
 7 had been cancelled and you've been notified immediately,
 8 and there's been times in the past where CTS doing
 9 business with JJS Trucking it got to a time where it was
 10 extremely close. I do not know the reasons or the
 11 circumstances behind it, but it was in danger of lapsing
 12 in a couple of days. Swamp Fox notified me, gave me
 13 ample notice. I in turn notified Cedric Smalls, and
 14 Cedric Smalls brought his insurance back into compliance
 15 before any lapse ever happened. So I felt very confident
 16 with Cedric because in the past when we have gotten into
 17 rocky cases, he has done the right thing.
 18 Q. The question is, procedure and notification.
 19 So you believe it is a procedure to be notified of a
 20 possible lapse of an insured?
 21 A. In the past how I've been notified -- I cannot
 22 state the South Carolina laws of notifications. But in
 23 the past the way I've been notified is an immediate fax
 24 from the insurance agency followed up by a registered
 25 letter coming certified mail.
 Kimberly T. Power, Court Reporter

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1 Q. Okay.

2 A. Neither one I received from JJS Trucking or

3 from Swamp Fox Agency nor from Travelers nor from anyone.

4 Had I received any notification, Mr. Smalls would not

5 have been pulling and he is fully aware of that. He

6 would not have been pulling for Chris Thompson Services

7 had any -- any hint of workman's comp been cancelled.

8 MR. SMALLS: Thank you.

9 THE COURT: That's it?

10 MR. SMALLS: Yes, Your Honor.

11 THE COURT: Okay. Ms. Coffield.

12 CROSS-EXAMINATION

13 BY MS. COFFIELD:

14 Q. I'm going to show you again it's that same

15 thing you have in front of you. It's the certificate

16 dated October 18, 2010. I'm going to be referring to

17 that in just a second. Okay?

18 A. Yes, ma'am.

19 Q. How many subs do you use in your business?

20 A. Now or in the past?

21 Q. Both.

22 A. Now, none.

23 Q. In the past?

24 A. In the past, I've had up to approximately four

25 or five at one time. The aggregate total has been

Kimberly T. Power, Court Reporter

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1 probably ten to 12, maybe 15.

2 Q. And I think it was your testimony that you

3 always require your subs to provide you a Certificate of

4 Insurance?

5 A. Yes, ma'am.

6 Q. And how long did JJS Trucking perform services

7 for you?

8 A. Best I can recall from 2008 until

9 approximately September/October of 2011.

10 Q. Okay. And it's your testimony I believe, too,

11 that he always provided you a Certificate of Insurance;

12 is that correct?

13 A. Yes, ma'am.

14 Q. Because if he hadn't, you wouldn't let him

15 work?

16 A. Yes, ma'am.

17 Q. Where do you keep your certificates?

18 A. In my file in my office at my house.

19 Q. Okay. So if I subpoenaed from you all the

20 certificates you have for JJS, would you have one for

21 each year he's performed services for you?

22 A. No, ma'am, probably not. We're not required

23 to keep them once the certificate gets outdated. It's no

24 longer a benefit. Generally it's purged.

25 Q. So when you get a new one, you purge the old

Kimberly T. Power, Court Reporter

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1 one?

2 A. Generally, yes, ma'am.

3 Q. Okay. Do you take an opportunity to look at

4 and read the certificates when you get one?

5 A. Yes, ma'am.

6 Q. Well, when you look at this certificate here

7 that you have there dated October 18th, is there any

8 description in the description of operations box?

9 A. No, ma'am, there's not.

10 Q. And when you look at the automobile liability

11 on here, it gives you a policy number, doesn't it?

12 A. Yes, ma'am, it sure does.

13 Q. When you look at the workers' comp section,

14 there is no policy number, is there?

15 A. No, ma'am. It says binder.

16 Q. It says binder.

17 MS. COFFIELD: I have another certificate that

18 was also in her brief, Your Honor, dated September 29,

19 2011. It's in there too, I believe, but you can look at

20 mine. Is that in your brief?

21 MS. BARR: No, it's not.

22 MS. COFFIELD: It's not?

23 MR. FISHER: What is it?

24 MS. COFFIELD: I'm going to mark this one.

25 THE COURT: Show it to Mr. Fisher.

Kimberly T. Power, Court Reporter

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1 (Exhibit No. 2, Certificate of Insurance, was

2 marked and entered into evidence.)

3 BY MS. COFFIELD:

4 Q. I'm going to show you what they've now marked

5 as Exhibit No. 2, a Certificate of Insurance whereas the

6 insured is JJS Tucking, LLC. Certificate holder is Chris

7 Thompson Services, LLC. Looks like it was faxed that

8 same day, September 29, 2011. You would agree with me

9 that September 29, 2011 is sometime after the claimant's

10 accident in this case?

11 A. Yes, ma'am.

12 Q. And you would agree that this certificate

13 shows an actual policy number?

14 A. Yes, ma'am.

15 Q. Okay. Why did you receive this -- this

16 certificate if you had already released JJS from your

17 services?

18 A. Personally I don't know exactly the date I

19 released him of his services. He might have still been

20 -- he might have still been at this time. I don't know.

21 I'd have to double check. I don't know the exact date of

22 the last time that he pulled a load for CTS. Down here

23 it says it's a revised certificate.

24 Q. Stop right there. Stop right there. You

25 testified as soon as you found out about the accident,

Kimberly T. Power, Court Reporter

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1 you found out there was no insurance and you let him go?
 2 MS. BARR: Objection.
 3 THE WITNESS: No, ma'am, I did not. That's
 4 incorrect.
 5 BY MS. COFIELD:
 6 Q. Well, tell me what you said.
 7 A. I said that at the time of the accident,
 8 everyone assumed -- everyone was under the belief -- or
 9 the assumption -- was fully belief we had workman's comp
 10 coverage. It took until sometime in -- sometime in
 11 September or October, I'm a little fuzzy on the time
 12 frame, for Bridgefield Casualty to tell me that Cedric
 13 Smalls's insurance -- and that was the first person that
 14 actually could positively tell me. I called Swamp Fox
 15 and I asked them. Swamp Fox said as far as they knew, it
 16 was in effect. Bridgefield Casualty is the first person
 17 to actually tell me, no, JJS Trucking's policy was not in
 18 effect.
 19 Q. So which of them did you rely on before you
 20 quit using JJS?
 21 A. The only person that could tell me -- the
 22 first time I was told by Bridgefield Casualty -- the
 23 first time I was told pointblank without any doubt that
 24 JJS workman's comp policy is not in effect. We have
 25 researched it. He does not have a valid policy. At that
 Kimberly T. Power, Court Reporter

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1 point when I hung up the phone, I immediately called
 2 Cedric Smalls's number and immediately stopped him from
 3 hauling at that point right then. That was the first
 4 time. Swamp Fox, everyone else I spoke to still said as
 5 far as we know, he has workman's comp, we'll have to look
 6 into it. And I -- and I -- as far my documentation
 7 showed that he had it. So until I got positive evidence
 8 that said that he didn't have it, everything I showed,
 9 showed that he had it.
 10 Q. So you kept using JJS for some weeks then
 11 after the accident?
 12 A. Yes, ma'am.
 13 Q. Okay. Why did you get this -- this
 14 certificate?
 15 A. I don't really know.
 16 Q. Okay. And you would agree with me that on the
 17 workers' comp section here, it at least gives a policy
 18 number this time, correct?
 19 A. Yes, ma'am, it does.
 20 Q. Okay. Do you know the difference between a
 21 binder and a policy?
 22 A. Yes, ma'am.
 23 Q. Tell me the difference.
 24 A. My understanding is the difference is when a
 25 policy is issued for workman's comp, that the policy is
 Kimberly T. Power, Court Reporter

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1 bound. It's a legally binding policy that you have
 2 workman's coverage is in effect and that it has not gone
 3 to the agent, been processed through the actual
 4 underwriter, and a policy number issued and sent back. I
 5 also know there's -- and I don't really understand how
 6 this works. Once again, I'm a truck driver, not an
 7 insurance agent. My understanding is that there's also a
 8 workman's comp pool that sometimes that have to get
 9 signed and I have had binders that I've had for six to
 10 eight weeks, nine, ten weeks before a policy has been
 11 issued.
 12 Q. Have you ever had one that lasted ten months?
 13 A. Yes, ma'am. That one right there.
 14 MS. COFIELD: Exactly. All right. Thank you.
 15 I have no more questions.
 16 THE COURT: All right. Mr. Warder?
 17 MR. WARDER: Your Honor, I really don't have
 18 any questions for this witness.
 19 THE COURT: All right. Mr. Fisher?
 20 MR. FISHER: No questions, sir.
 21 THE COURT: Anything else, Ms. Barr?
 22 MS. BARR: Just briefly.
 23 REDIRECT EXAMINATION
 24 BY MS. BARR:
 25 Q. Mr. Thompson, when you initially reviewed the
 Kimberly T. Power, Court Reporter

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1 Certificate of Insurance dated October 18, 2010, APA Page
 2 39, did you notice that it said binder instead of
 3 specifying a policy number?
 4 A. Yes, ma'am. Every -- every single workman's
 5 comp policy says binder when you first get it. There is
 6 a time lapse.
 7 Q. All right. You needed it quickly after this
 8 policy started. And what was the date of the -- the
 9 period of this coverage that's represented on the
 10 certificate?
 11 A. 10/08/2010.
 12 Q. And what was the date of the certificate?
 13 A. 10/18/2010.
 14 Q. So ten days later would you have expected or
 15 thought it unusual to not have an actual policy number?
 16 A. I would have thought it more unusual to have a
 17 policy number than to be binder. Binder is what should
 18 be expected on all new policies for workman's comp.
 19 Q. Simply because it says binder there instead of
 20 listing a series of letters and numbers, did that cause
 21 you to question whether or not Cedric -- JJS Trucking was
 22 covered for the purposes of workers' compensation as
 23 stated on this Certificate of Insurance?
 24 A. No, ma'am.
 25 Q. So you believed he was in fact covered?
 Kimberly T. Power, Court Reporter

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1 A. Absolutely.
 2 Q. And based on what you've heard here today, is
 3 it your understanding that Travelers actually did cover
 4 him for the purposes and as indicated on the Certificate
 5 of Insurance until the policy lapsed sometime in
 6 January or February of 2012?
 7 A. Yes, ma'am.
 8 Q. And, again, after you received this, not only
 9 did you review it, you actually called the Swamp Fox
 10 Agency, the producer of this policy?
 11 A. Yes, ma'am. Swamp Fox Agent Greg Hudson is my
 12 agent and is also Cedric Smalls's agent and a lot of
 13 things happened verbally, you know, conversations about
 14 insurance that CTS had. We have several different lines
 15 of insurance with them. I was on the phone with Greg
 16 Hudson. Did I call -- have any reason to call Greg
 17 Hudson and verify that certificate individually? No.
 18 While I was on the phone with him, I brought up Cedric
 19 Smalls, and he said Cedric Smalls is good to go. His
 20 insurance is great. And I believe -- I fully believe
 21 that if Swamp Fox had any knowledge, I certainly hope
 22 they would have notified Cedric Smalls and myself with a
 23 simple phone call.
 24 Q. And based on your work history with Mr. Smalls
 25 and his company, JJS Trucking, you've experienced him to
 Kimberly T. Power, Court Reporter

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1 be forthright in his representations to you in the past
 2 regarding his workers' comp insurance coverage?
 3 A. Yes, ma'am. And he's been put through the
 4 test because there's been times that he's gotten very
 5 close and he's been very honest with it.
 6 MS. BARR: Thank you very much, Mr. Thompson.
 7 THE COURT: Ms. Coffield?
 8 RE-CROSS-EXAMINATION
 9 BY MS. COFFIELD:
 10 Q. So it's your testimony that he did not
 11 purposely defraud you?
 12 A. I don't believe he defrauded me.
 13 Q. Okay. He did not purposely give you a false
 14 Certificate of Insurance, did he?
 15 A. It's my belief that -- my understanding and my
 16 belief is that Cedric Smalls fully believed until the
 17 time I told him -- Bridgefield Casualty told me and I
 18 immediately told him, I believe he thought he had -- was
 19 fully -- fully believed he had workman's comp coverage in
 20 effect.
 21 MS. COFFIELD: Okay. That's all I have.
 22 THE COURT: Mr. Warder?
 23 CROSS-EXAMINATION
 24 BY MR. WARDER:
 25 Q. Quick question, sir. This is my APA Page 73.
 Kimberly T. Power, Court Reporter

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1 This is a -- what appears to be -- it speaks for itself.
 2 Do you have any -- let me ask it this way: Is it a
 3 possibility that Swamp Fox Agency as indicated by this
 4 record here was notified of the cancellation of JJS
 5 Trucking's insurance and never informed you?
 6 A. I can't say it's possible or impossible. I
 7 don't know. There's certainly nothing on there from
 8 Swamp Fox Agency showing that that they received it.
 9 Q. There's not? What does it say here?
 10 A. It says received from Swamp Fox Agency. But
 11 I'm assuming --
 12 Q. What date, sir?
 13 A. Sir, I'm assuming it was sent by Travelers.
 14 And if Travelers sent it, how could Swamp Fox get on it
 15 and you get a copy back unless you got a signed copy sent
 16 back to you?
 17 Q. I am Travelers.
 18 A. Sir, I'm telling you that's between you and
 19 Swamp Fox and I'm not inclined to comment on it.
 20 Q. Okay. Understood. But is it possible that
 21 the notice of cancellation was mailed to both JJS
 22 Trucking who I don't represent, I represent Travelers,
 23 and it was also sent to Swamp Fox as indicated by their
 24 received date stamp here on the cancellation -- notice of
 25 cancellation?
 Kimberly T. Power, Court Reporter

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1 A. Sir, I -- I would -- I would not venture to
 2 say that. I have no knowledge what transpired between
 3 Travelers and JJS and Travelers and Swamp Fox and I would
 4 decline to comment on any -- any business y'all had.
 5 MR. WARDER: Understood.
 6 THE COURT: Anything else, Mr. Fisher?
 7 MR. FISHER: No, sir, I have nothing.
 8 THE COURT: Mr. Smalls?
 9 MR. SMALLS: Yes, Your Honor.
 10 MS. BARR: And, Your Honor, we don't take an
 11 issue with the cancellation at this point.
 12 RE-CROSS-EXAMINATION
 13 BY MR. SMALLS:
 14 Q. On the definition of defraud, has JJS Trucking
 15 ever forwarded you a Certificate of Insurance dealing
 16 with workers' comp or any type of insurance?
 17 A. No, sir. And in his defense, I would not have
 18 accepted anything directly from any -- any owner
 19 operator, any subcontractor. It all has to come directly
 20 from the insurance company or a fax with their --
 21 something indicating that they sent it.
 22 MR. SMALLS: Thank you.
 23 THE COURT: Anything else, Ms. Barr?
 24 MS. BARR: No, thank you, Your Honor. We
 25 appreciate your time.
 Kimberly T. Power, Court Reporter

1 THE COURT: Anything else from anyone?
 2 MS. COFIELD: No, sir.
 3 MR. WARDER: No, sir.
 4 THE COURT: All right, sir. You may step
 5 down. Other witnesses, Ms. Barr?
 6 MS. BARR: No, Your Honor. Thank you.
 7 THE COURT: Witnesses, Ms. Cofield?
 8 MS. COFIELD: We're going to rely on the
 9 deposition transcript of Mr. Smalls that's already been
 10 submitted. So, therefore, we won't have to call him
 11 today.
 12 THE COURT: Okay. Any witnesses, Mr. Warder?
 13 MR. WARDER: No, Your Honor.
 14 THE COURT: All right. Anything else from
 15 anyone?
 16 (No response.)
 17 THE COURT: All right. That concludes this
 18 hearing.
 19
 20
 21
 22
 23
 24
 25
 Kimberly T. Power, Court Reporter

1 CERTIFICATE OF REPORTER
 2
 3 I, Kimberly T. Power, Court Reporter and Notary
 4 Public for the State of South Carolina at Large, do
 5 hereby certify:
 6 That the foregoing transcript of proceedings was
 7 taken before me on the date and at the time and location
 8 stated on page 1 of this transcript; that the witness was
 9 duly sworn to testify to the truth, the whole truth, and
 10 nothing but the truth; that the testimony of the witness
 11 and all objections made at the time of the proceeding
 12 were recorded stenographically by me and were thereafter
 13 transcribed; that the foregoing transcript of proceedings
 14 as typed is a true, accurate and complete record of the
 15 testimony and of all objections made at the time to the
 16 best of my ability.
 17 I further certify that I am neither related to nor
 18 counsel for any party to the cause pending or interested
 19 in the events thereof.
 20 Witness my hand, I have hereunto affixed my
 21 official seal this 6th day of June, 2012, at Richland
 22 County, South Carolina.
 23
 24
 25
 Kimberly T. Power, Court Reporter
 Notary Public, State of South Carolina
 My Commission Expires: 07/22/2015
 Kimberly T. Power, Court Reporter

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1212678

EMPLOYEE/CLAIMANT: SAMUEL ROSE

EMPLOYER: CHRIS THOMPSON SERVICES, L.L.C.
J.J.S. TRUCKING, L.L.C.



COPY

INSURER: BRIDGEFIELD CASUALTY INSURANCE COMPANY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 23RD DAY OF
SEPTEMBER, 2013, COMMENCING AT THE HOUR OF 11:07 A.M., IN
ST. MATTHEWS, SOUTH CAROLINA, BEFORE THE HONORABLE AISHA TAYLOR,
ATTENDED BY COUNSEL AS FOLLOWS:

SALLYE DEANNE NELSON
VERBATIM REPORTER

JAN L. WHITWORTH
COURT REPORTING SERVICES
POST OFFICE BOX 551
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ALSO ATTENDING:

WILLENE H. ROSE
CEDRIC SMALLS
TONYA SMALLS

I N D E X

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CERTIFICATE OF NOTARY PUBLIC.....	58

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

5 * * * * * * * * * * * * * * * *

6 BY COMMISSIONER TAYLOR:

7 ALL RIGHT. TODAY IS SEPTEMBER 23, 2013. WE'RE
8 HERE ON WORKERS' COMP FILE NUMBER 1112328. THIS IS
9 THE CLAIM OF MR. SAMUEL ROSE WHO IS REPRESENTED
10 TODAY BY MR. BENJAMIN AKERY. THE EMPLOYER IS J.J.S.
11 TRUCKING, L.L.C., THE GENERAL CONTRACTOR IS CHRIS
12 THOMPSON SERVICES, L.L.C. I MIXED THAT UP. THE
13 CARRIER -- THE CARRIERS INVOLVED ARE BRIDGEFIELD
14 CASUALTY INSURANCE COMPANY WHO IS REPRESENTED BY MS.
15 KIRSTEN BARR. THE EMPLOYER, J.J.S. TRUCKING, L.L.C.
16 IS REPRESENTED TODAY BY MR. ERIC KAUFMANN. WE'RE
17 HERE ON THE BRIDGEFIELD'S FORM 21 REQUEST TO STOP OR
18 TERMINATE PAYMENT OF TEMPORARY TOTAL DISABILITY
19 BENEFITS AND DETERMINE WHETHER THE CLAIMANT IS
20 ENTITLED TO AN AWARD OF PERMANENCY PURSUANT TO
21 STATEMENTS OF MAXIMUM MEDICAL IMPROVEMENT.
22 BRIDGEFIELD CASUALTY IS ALSO REQUESTING CREDIT FOR
23 TEMPORARY TOTAL BENEFITS PAID IN EXCESS OF THE
24 AWARD. THE SOUTH CAROLINA UNINSURED EMPLOYERS FUND
25 IS ALSO PRESENT HERE TODAY REPRESENTED BY MS. AMY

1 COFIELD. THERE IS AN ISSUE REGARDING LIABILITY IN
2 THIS CLAIM; HOWEVER, THAT MATTER IS PENDING BEFORE
3 THE SOUTH CAROLINA COURT OF APPEALS. I HAVE A DATE
4 OF ACCIDENT OF AUGUST 10TH, 2011. CLAIMANT'S
5 AVERAGE WEEKLY WAGE IS \$650.00 YIELDING A
6 COMPENSATION RATE OF \$433.34. ARE THERE ANY
7 OBJECTIONS TO APAs, JURISDICTION, VENUE, OR ANY
8 OTHER ITEMS?

9 BY MS. BARR:

10 NO, YOUR HONOR.

11 BY COMMISSIONER TAYLOR:

12 THANK YOU. MR. AKERY?

13 BY MR. AKERY:

14 JUST AGAIN PREVIOUSLY PUT ON THE RECORD. THE
15 CLAIMANT OBJECTS TO THE DEFENDANT'S EXHIBIT NUMBER
16 SEVEN, A SLED REPORT, IT LOOKS LIKE IT'S DATED APRIL
17 30TH, 2012, APA PAGE NUMBERS 35 THROUGH 42.
18 CLAIMANT TAKES THE POSITION THAT THIS EVIDENCE IS
19 PREJUDICIAL AND OUTWEIGHS ANY PROBATIVE EVIDENTIARY
20 VALUE.

21 BY COMMISSIONER TAYLOR:

22 OKAY. MS. BARR.

23 BY MS. BARR:

24 YES, YOUR HONOR. AS WE NOTED IN THE PRETRIAL
25 CONFERENCE, TESTIMONY HAS ALREADY BEEN GIVEN IN THIS

1 CASE PRIOR HEARING ON MAY 15TH, 2012, REGARDING THAT
2 SLED REPORT. IT'S RELEVANT IN SO FAR AS IT DELAYED
3 ADJUDICATION OF THIS CLAIM BECAUSE THE CLAIMANT
4 ADMITS BEING INCARCERATED AT THE TIME OF THE
5 ORIGINAL HEARING FOR RUNNING ACROSS A PARKING LOT
6 FROM AN APARTMENT, CROSSED MY MOM'S CAR, PUTTING A
7 T.V. IN THE ---

8 BY MR. AKERY:

9 OBJECTION. AND WHAT IS THAT COMING FROM?

10 BY MS. COFIELD:

11 HERE.

12 BY MS. BARR:

13 THE CLAIMANT'S TESTIMONY PAGE 33 LINES 21 TO
14 PAGE 34 LINE 3 ---

15 BY MR. AKERY:

16 THANK YOU.

17 BY MS. BARR:

18 --- OF THE HEARING TRANSCRIPT. WE ALSO BELIEVE
19 THAT NOW THAT THE CLAIMANT ALLEGES TO BE PERMANENTLY
20 AND TOTALLY DISABLED, THE QUESTION OF -- OF HIS
21 EMPLOYABILITY AND HIS ABILITY TO -- TO GAIN
22 EMPLOYMENT IN THE FUTURE IS IMPACTED BY HIS CRIMINAL
23 RECORD, WHICH INCLUDES CRIMES OF MORAL TURPITUDE.

24 BY COMMISSIONER TAYLOR:

25 OKAY. THANK YOU. I WILL THE ALLOW THE SLED

1 REPORT INTO EVIDENCE AS A WHOLE. FURTHER OBJECTIONS
2 MAY BE RAISED LATER ON SHOULD THEY BECOME RELEVANT.
3 ANY OTHER OBJECTIONS? WITHOUT ANY FURTHER OBJECTION
4 THE COMMISSION FILE BECOMES A PART OF THE RECORD
5 WITH THE EXCEPTION OF SELF SERVING DECLARATIONS AND
6 UNSTIPULATED MEDICAL REPORTS. MS. BARR, YOUR
7 POSITION STATEMENT?

8 **BY MS. BARR:**

9 THANK YOU, YOUR HONOR. MY CLIENTS WERE ORDERED
10 TO PROVIDE, QUOTE, "AN EVALUATION TO DETERMINE THE
11 EXTENT OF THE CLAIMANT'S INJURIES AND HIS
12 ENTITLEMENT TO ONGOING MEDICAL TREATMENT AS
13 PRESCRIBED BY AN AUTHORIZED TREATING PHYSICIAN TO BE
14 SELECTED BY THE CARRIER." THAT'S PAGE 120 OF THE
15 RECORD, PAGE 8 OF COMMISSIONER HUFFSTETLER'S ORDER -
16 - OR EXCUSE ME A SEC -- COMMISSIONER -- I APOLOGIZE,
17 MCCASKILL'S ORDER. PURSUANT TO THAT ORDER, WE
18 PROVIDED AN EVALUATION WITH DR. GREG JONES WHO
19 PLACED THE CLAIMANT AT MAXIMUM MEDICAL IMPROVEMENT
20 AS OF MARCH 20, 2013, WITH IMPAIRMENT RATINGS OF
21 FIVE PERCENT OF THE CERVICOTHORACIC SPINE AND FIVE
22 PERCENT OF THE LUMBAR SPINE AND STATED NO SPECIFIC
23 RESTRICTIONS REGARDING VOCATIONAL OR AVOCATIONAL
24 PURSUITS. DR. JONES DID NOT RECOMMEND ANY
25 ADDITIONAL MEDICAL TREATMENT BECAUSE HE BELIEVED THE

1 CLAIMANT'S OBJECTIVE FINDINGS DID NOT SUPPORT HIS --
2 HIS SUBJECTIVE COMPLAINTS, AND ALL PRIOR TREATMENT
3 HAD BEEN FRUITLESS. THIS OPINION AS TO MAXIMUM
4 MEDICAL IMPROVEMENT IS IN FACT SUPPORTED BY THE
5 CLAIMANT'S OWN FAMILY PHYSICIAN WHO IS NOT AN
6 AUTHORIZED TREATING PHYSICIAN. YOU'LL SEE AT PAGE
7 70, DR. ABEL STATED ON MAY 29, 2013, "IT IS THIS
8 EXAMINER'S OPINION THAT THE PATIENT IS AT MAXIMUM
9 MEDICAL IMPROVEMENT, AND UNFORTUNATELY I AM NOT
10 OPTIMISTIC HE WILL IMPROVE TO ANY SIGNIFICANT DEGREE
11 IN THE FUTURE." I SEE NO STATEMENTS FROM DR. ABEL,
12 THE FAMILY PHYSICIAN, IN THE RECORD RECOMMENDING ANY
13 ADDITIONAL MEDICAL TREATMENT THAT WOULD TEND TO
14 LESSEN THE PERIOD OF DISABILITY TO A REASONABLE
15 DEGREE OF MEDICAL CERTAINTY. WE BELIEVE THAT THE
16 CLAIMANT IS AT MAXIMUM MEDICAL IMPROVEMENT, IS NOT
17 ENTITLED TO ANY ADDITIONAL MEDICAL TREATMENT FOR HIS
18 NECK, BACK, OR KNEE. THE KNEE IS AN ISSUE ACCORDING
19 TO THE FAMILY PHYSICIAN'S REPORTS AND THE CLAIMANT'S
20 OWN TESTIMONY THAT'S WAXED AND WANED. WE BELIEVE IT
21 WAS ADEQUATELY ASSESSED BY DR. HARTZOG IN THE
22 EMERGENCY ROOM FOLLOWING THE ACCIDENT WHO FOUND THAT
23 X-RAYS SHOWED NO ACUTE FRACTURE. IT WAS ALSO
24 SUPPORTED BY DR. WILDSTEIN, THE SURGEON THAT THE
25 CLAIMANT CHOSE FOR HIMSELF, AN UNAUTHORIZED SURGEON,

1 WHO STATED AT PAGE 96 THAT HE WOULD NOT BENEFIT FROM
2 KNEE SURGERY. DR. WILDSTEIN MADE THAT STATEMENT
3 HAVING BENEFIT OF BOTH THE X-RAY, THE HOSPITAL
4 RECORDS, AND THE M.R.I. REPORT WHICH HE INTERPRETED.
5 THERE IS AN OPINION FROM DR. POLETTI GIVING SOME
6 VAGUE OPINIONS ABOUT HIS NEED FOR FURTHER WORK UP,
7 BUT DR. POLETTI ADMITS THAT HE HAS NOT EVALUATED A -
8 - A -- ANY M.R.I. SCANS OR X-RAYS OR PRIOR RECORDS
9 REGARDING HIS KNEE, AND WE THEREFORE BELIEVE IT'S
10 ENTITLED TO LITTLE WEIGHT AND ASK THAT YOU FIND THAT
11 HE'S NOT ENTITLED TO ANY ADDITIONAL MEDICAL
12 TREATMENT FOR HIS KNEE. WE SEEK A CREDIT FOR
13 TEMPORARY TOTAL DISABILITY PAYMENTS PAID FOLLOWING
14 THE DATE OF MAXIMUM MEDICAL IMPROVEMENT, MARCH 20,
15 2013, AND A FINDING COMMENSURATE WITH THE IMPAIRMENT
16 RATINGS OF FIVE PERCENT TO THE NECK AND FIVE PERCENT
17 TO THE LUMBAR SPINE.

18 **BY COMMISSIONER TAYLOR:**

19 WHAT WAS THE HEARING DATE THAT WAS POSTPONED
20 ORIGINALLY DUE TO THE CLAIMANT'S INCARCERATION?

21 **BY MS. BARR:**

22 IT WAS ORIGINALLY SCHEDULED FOR APRIL 23, 2012.
23 IT WAS WITH COMMISSIONER BARDEN.

24 **BY COMMISSIONER TAYLOR:**

25 OKAY. MR. AKERY.

1 BY MR. AKERY:

2 MAY IT PLEASE THE COURT. IT'S THE CLAIMANT'S
3 POSITION THAT HE'S NOT AT MAXIMUM MEDICAL
4 IMPROVEMENT. HE SUFFERED INJURIES TO HIS HEAD,
5 KNEE, LEG, BACK, AND NECK ON AUGUST 10TH, 2011, IN A
6 SEVERE MOTOR VEHICLE ACCIDENT INVOLVING TWO TRACTOR
7 TRAILERS. HE HAD LOSS OF CONSCIOUSNESS AND HAD TO
8 BE REMOVED FROM HIS VEHICLE. HE HAD TREATMENT AT
9 M.U.S.C., WHICH SHOWED HE SUFFERED A TRAUMATIC BRAIN
10 INJURY WITH LOSS OF CONSCIOUSNESS AT THE SCENE, AS
11 WELL AS NECK, BACK, AND RIGHT LEG AND KNEE INJURIES.
12 HE HAD AN AUGUST 23RD, 2011, RIGHT KNEE M.R.I.,
13 WHICH SHOWED A FEMORAL CONDYLE IMPACTION FRACTURE;
14 THAT'S CLAIMANT'S APA PAGE 73. HE WAS REFERRED TO
15 FURTHER ORTHOPEDIC FOLLOW UP BY M.U.S.C., WHICH WAS
16 NEVER AUTHORIZED. ON NOVEMBER 9TH, 2011, HE HAD A
17 CERVICAL SPINE M.R.I., WHICH SHOWED DISC HERNIATION
18 C5/6, C6/7 WHICH IS CLAIMANT'S APA PAGE 91. HE WAS
19 TREATING WITH DR. ABEL WHO MADE MULTIPLE
20 RECOMMENDATIONS FOR FURTHER NEUROLOGICAL EVALUATION,
21 E.M.G. NEUROSURGICAL EVALUATION, ORTHOPEDIC FOLLOW
22 UP, NONE OF WHICH WERE PROVIDED. ADDITIONALLY, HE'S
23 SEEN TWO SURGEONS, A DR. WILDSTEIN ON DECEMBER 14TH,
24 2011, WHICH IS CLAIMANT'S APA PAGE 96, WHO
25 RECOMMENDED A C5/6 FUSION SURGERY. ALSO A DR.

1 POLETTI ON JULY 15TH OF 2013, WHICH IS CLAIMANT'S
2 APA PAGE 100, WHO AGREED WITH DR. WILDSTEIN AND FELT
3 THAT SURGICAL INTERVENTION IS INDICATED. DR.
4 POLETTI ALSO RECOMMENDED A LOW BACK M.R.I. AND
5 REFERRAL TO AN KNEE SURGEON FOR A FRACTURE AND
6 FURTHER ORTHOPEDIC FOLLOW UP FOR THE KNEE.
7 THEREFORE, WE TAKE THE POSITIONS THAT NEITHER
8 ORTHOPEDIC SURGEON AND THE ONLY TWO ORTHOPEDIC
9 SURGEONS THAT HAVE SEEN THE CLAIMANT HAVE PLACED HIM
10 AT MAXIMUM MEDICAL IMPROVEMENT AND HAVE BOTH
11 RECOMMENDED SURGICAL INTERVENTION.

12 BY COMMISSIONER TAYLOR:

13 OKAY. THANK YOU. MS. COFIELD.

14 BY MR. AKERY:

15 THAT'S -- THAT'S IT.

16 BY COMMISSIONER TAYLOR:

17 OKAY.

18 BY MS. COFIELD:

19 COMMISSIONER, IT'S OUR POSITION THAT -- WELL,
20 WE AGREE WITH THE POSITION SET FORTH BY MS. BARR,
21 THAT THE CLAIMANT HAS REACHED MAXIMUM MEDICAL
22 IMPROVEMENT AND THAT THE EMPLOYER HAS PROVIDED
23 EVERYTHING THAT THEY WERE ORDERED TO DO PREVIOUSLY.

24 BY COMMISSIONER TAYLOR:

25 MR. KAUFMANN.

1 **BY MR. KAUFMANN:**

2 THANK YOU, MADAM COMMISSIONER. AGAIN FOR
3 PURPOSES OF THE ISSUES BEFORE THE COMMISSION TODAY,
4 WE JOIN IN MS. BARR'S POSITION.

5 **BY COMMISSIONER TAYLOR:**

6 OKAY. THANK YOU.

7 **BY MR. AKERY:**

8 IF I MAY I HAVE ONE QUICK THING. IF -- IF --
9 IF THE CLAIMANT IS FOUND TO BE AT MAXIMUM MEDICAL
10 IMPROVEMENT, WE TAKE THE POSITION THAT HE IS
11 PERMANENTLY AND TOTALLY DISABLED AND UNABLE TO
12 RETURN TO WORK BASED UPON DR. ABEL'S DEPOSITION PAGE
13 26, LINE 8, AND THEN ALSO DR. POLETTI'S JULY 15TH,
14 2013, I.M.E., WHICH STATES THAT HE IS TO BE ON OFF-
15 DUTY STATUS. THAT'S ALL.

16 **BY MS. BARR:**

17 YOUR HONOR, WE WOULD DENY THAT THE CLAIMANT'S
18 ENTITLED TO ANY BENEFITS UNDER 42-9-10 AS A MATTER
19 OF LAW. IT'S A SINGLE SCHEDULED MEMBER CASE. HIS
20 PERMANENT IMPAIRMENT IMPACTS A SINGLE BODY MEMBER,
21 THE BACK, AT THIS TIME, AND THERE ARE NO IMPAIRMENT
22 RATINGS TO ANY OTHER BODY MEMBERS.

23 **BY COMMISSIONER TAYLOR:**

24 ALL RIGHT. MR. AKERY, YOU MAY CALL YOUR FIRST
25 WITNESS.

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BY MR. AKERY:

MR. ROSE.

BY COMMISSIONER TAYLOR:

MADAM COURT REPORTER, WILL YOU PLEASE SWEAR THE WITNESS.

BY THE COURT REPORTER:

RAISE YOUR RIGHT HAND, PLEASE.

* * * * * * * * * * * * * * * *

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

* * * * * * * * * * * * * * * *

SAMUEL ROSE

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

BY COMMISSIONER TAYLOR:

OKAY.

BY MS. BARR:

YOUR HONOR, BEG AN INDULGENCE FOR A MINUTE.

BY COMMISSIONER TAYLOR:

SURE.

(OFF THE RECORD)

BY COMMISSIONER TAYLOR:

ALL RIGHT. MR. AKERY.

DIRECT EXAMINATION BY MR. AKERY:

Q. CAN I HAVE YOUR FULL LEGAL NAME FOR THE RECORD?

1 A. SAMUEL ARCHITO ROSE.

2 Q. I'M GOING TO ASK YOU TO SPEAK UP. OKAY.

3 BY COMMISSIONER TAYLOR:

4 MR. ROSE, THIS IS THE COURT REPORTER, AND SHE
5 HAS TO RECORD EVERYTHING YOU SAY. SO YOU WANT TO
6 MAKE SURE YOU SPEAK UP SO SHE CAN HEAR YOU, OKAY?

7 BY THE WITNESS:

8 ALL RIGHT.

9 BY COMMISSIONER TAYLOR:

10 OKAY.

11 DIRECT EXAMINATION RESUMED BY MR. AKERY:

12 Q. AND, MR. ROSE, YOU WERE BORN [REDACTED]; THAT
13 MAKES YOU 43 YEARS OLD; IS THAT CORRECT?

14 A. YES.

15 Q. YOU CURRENTLY LIVE AT [REDACTED]
16 SOUTH CAROLINA, AND YOU LIVE WITH YOUR TWO COUSINS;
17 IS THAT CORRECT?

18 A. YES.

19 Q. YOU GREW UP OVERSEAS AND AT SEVERAL DIFFERENT STATES
20 BECAUSE YOUR MOTHER WAS IN THE AIR FORCE; IS THAT
21 CORRECT?

22 A. YES.

23 Q. YOU'RE CURRENTLY NOT MARRIED; YOU HAVE NO CHILDREN
24 AND NO DEPENDANTS; IS THAT CORRECT?

25 A. YES.

- 1 Q. LET'S TALK A LITTLE BIT ABOUT YOUR EDUCATION. YOU
2 RECEIVED A HIGH SCHOOL DIPLOMA FROM BURKE HIGH
3 SCHOOL IN 1985; IS THAT CORRECT?
- 4 A. YES.
- 5 Q. YOU DID THREE YEARS OF COLLEGE BUT RECEIVED NO
6 CERTIFICATES OR DEGREES; IS THAT CORRECT?
- 7 A. YES.
- 8 Q. YOU ALSO HAVE OBTAINED A C.D.L. IN 2009; IS THAT
9 CORRECT?
- 10 A. YES.
- 11 Q. HAVE YOU EVER HAD ANY PRIOR WORKERS' COMPENSATION
12 CLAIMS?
- 13 A. NO.
- 14 Q. LET'S TALK ABOUT YOUR WORK HISTORY APPROXIMATELY THE
15 LAST TEN YEARS OR SO. YOU WORKED FOR THE WAFFLE
16 HOUSE AS A COOK FOR APPROXIMATELY TWO YEARS; IS THAT
17 CORRECT?
- 18 A. YES.
- 19 Q. DESCRIBE TO ME YOUR DUTIES AT THAT JOB?
- 20 A. I WAS A SHORT ORDER COOK AND A SUPERVISOR OF THE
21 THIRD SHIFT.
- 22 Q. WHAT TYPE OF LIFTING DID YOU HAVE TO DO IF ANY
23 THERE?
- 24 A. LIFTING PRODUCE, STOCKING, AND JUST COOKING.
- 25 Q. HOW MUCH AMOUNT OF WEIGHT WERE YOU REQUIRED TO LIFT?

1 A. THE MOST IS LIKE 50 POUNDS.

2 BY MS. COFIELD:

3 CAN -- CAN HE SPEAK UP A LITTLE BIT. I CAN'T
4 EVEN HEAR HIM RIGHT NOW.

5 BY MR. AKERY:

6 OKAY.

7 BY MS. COFIELD:

8 I MEAN, SHE CAN'T HEAR YOU VERY GOOD.

9 BY COMMISSIONER TAYLOR:

10 YEAH, I'M TRYING TO READ HIS LIPS. JUST TRY TO
11 SPEAK AS LOUD AS YOU CAN.

12 BY MR. AKERY:

13 AND DON'T WORRY, YOU'RE NOT -- NOBODY IS GOING
14 GET UPSET IF YOU'RE YELLING.

15 BY COMMISSIONER TAYLOR:

16 YEAH.

17 BY MR. AKERY:

18 SO TALK AS LOUD AS YOU CAN, OKAY.

19 DIRECT EXAMINATION RESUMED BY MR. AKERY:

20 Q. HOW LONG WERE YOU ON YOUR FEET AT THAT JOB?

21 A. ALL DAY -- I MEAN ALL NIGHT.

22 Q. NEXT IT LOOKS LIKE YOU WORKED AT ALLSTATE LOGISTICS
23 ALSO KNOWN AS LEOPARD, INCORPORATED. WHAT WAS YOUR
24 JOB TITLE THERE?

25 A. I WAS A DRIVER AND A SUPERVISOR.

- 1 Q. AND HOW LONG WERE YOU THERE?
- 2 A. OFF AND ON FOR EIGHT -- EIGHT-AND-A-HALF, NINE
- 3 YEARS.
- 4 Q. WHAT WERE YOUR JOB DUTIES AS A DRIVER?
- 5 A. TO LOAD AND UNLOAD THE TRUCKS AND DELIVER TIRES.
- 6 Q. WHAT TYPE OF TIRES WERE YOU DELIVERING?
- 7 A. TRACTOR TRAILER TIRES.
- 8 Q. AND HOW MUCH DID THOSE TRACTOR TRAILER TIRES WEIGH?
- 9 A. ANYWHERE BETWEEN 90 AND 150, DEPENDING ON HOW MUCH
- 10 AIR WE PUT IN IT.
- 11 Q. AND DID YOU HAVE TO GET THOSE ON AND OFF THE TRUCKS?
- 12 A. YES.
- 13 Q. HOW FAR WERE YOU REQUIRED TO DRIVE AT THAT JOB?
- 14 A. THE FARTHEST I'VE DRIVEN WAS NEW JERSEY, I ---
- 15 Q. GENERALLY WHERE WERE YOU DRIVING?
- 16 A. LOCALLY, GEORGIA -- GEORGIA, FLORIDA, NORTH
- 17 CAROLINA.
- 18 Q. AND IT LOOKS LIKE YOU ALSO WORKED FOR A J.J.S.
- 19 TRUCKING?
- 20 A. YES.
- 21 Q. AND STARTED THERE APPROXIMATELY ON OR AROUND
- 22 FEBRUARY 2011; IS THAT CORRECT?
- 23 A. YES.
- 24 Q. AND YOU WORKED THERE UP UNTIL YOUR DATE OF INJURY ON
- 25 AUGUST 10TH, 2011?

- 1 A. YES.
- 2 Q. WHAT WERE YOUR JOB DUTIES AT -- AT THAT POSITION?
- 3 A. TO HAUL WOOD CHIPS FROM SUMMERVILLE TO NORTH
- 4 CHARLESTON.
- 5 Q. AND WERE YOU REQUIRED TO CLIMB AND GET UP ON THE
- 6 TRUCK?
- 7 A. YES.
- 8 Q. HOW OFTEN DID YOU HAVE TO DO THAT?
- 9 A. EVERY -- EVERY TIME I LOADED.
- 10 Q. OKAY. WHAT TYPES OF THINGS DID YOU HAVE TO DO TO
- 11 THE TRUCK TO KEEP IT IN RUNNING CONDITION?
- 12 A. INSPECT THE TRUCK, LOAD IT AND DRIVE IT.
- 13 Q. WERE YOU EVER REQUIRED TO CLIMB UNDER THE TRUCK?
- 14 A. YES.
- 15 Q. AND WHAT WOULD YOU DO WHEN YOU CLIMBED UNDER THE
- 16 TRUCK?
- 17 A. JUST INSPECT THE PRE-TRIP INSPECTION, THE POST-TRIP
- 18 INSPECTION AND THEN CLIMB ON THE TOP OF THE TRUCK TO
- 19 COVER THE CHIPS WITH THE TARP.
- 20 Q. OKAY. AND AGAIN, I'M GOING TO JUST ASK YOU TO SPEAK
- 21 UP IF YOU CAN. YOU SAID CLIMB UP ON TOP OF THE
- 22 TRUCK TO INSPECT THE CHIPS ON THE TARP?
- 23 A. TO COVER THE CHIPS WITH THE TARP.
- 24 Q. OKAY. AND WHAT KIND OF TARP WAS THIS?
- 25 A. A CLOTH TARP.

- 1 Q. OKAY. WAS IT A MANUAL TARP THAT YOU HAD TO PULL
2 OVER THE TOP OF THE TRUCK?
- 3 A. YES.
- 4 Q. HOW MUCH WEIGHT WERE YOU REQUIRED TO LIFT AT THAT
5 JOB?
- 6 A. IT IS JUST A MATTER -- WELL, UNCOVERING THE CHIPS,
7 IF IT GETS COVERED WITH -- IT THE TARP GETS COVERED
8 WITH THE CHIPS, THEN WE HAVE TO UNCOVER IT OR PULL
9 IT OUT SO WE CAN USE IT.
- 10 Q. APPROXIMATELY HOW MUCH WEIGHT WOULD THAT BE?
- 11 A. ABOUT 25, 30 POUNDS JUST PULLING IT OUT.
- 12 Q. AND HOW MANY HAULS A DAY DID YOU DO OF WOOD CHIPS?
- 13 A. ANYWHERE FROM FIVE TO EIGHT.
- 14 Q. AND YOU'D BE REQUIRED TO GET IN AND OUT OF THE --
15 THE TRUCK?
- 16 A. EACH TIME, YES.
- 17 Q. NOW, THIS IS AN ADMITTED ACCENT. SO BRIEFLY
18 DESCRIBE WHAT HAPPENED ON AUGUST 10TH, 2011.
- 19 A. I WAS ON MY LAST -- I WAS TAKING MY LAST LOAD FROM
20 SUMMERVILLE TO NORTH CHARLESTON. I LOADED UP IN
21 SUMMERVILLE AT THE LUMBER MILL, AND ON THE -- WHEN I
22 DROVE DOWN 52, GOT ON THE INTERSTATE, AND AS I WAS
23 GOING TO I-26 APPROACHING ASHLEY PHOSPHATE, THE
24 CONSTRUCTION ZONE AT THE TIME ---
- 25 BY MR. SMALLS:

1 HE HAD BEEN REAR ENDED.

2 BY THE WITNESS:

3 --- I WAS REAR ENDED.

4 BY MR. SMALLS:

5 YES, MA'AM, WE AGREE.

6 BY MR. AKERY:

7 YOU -- YOU CAN CONTINUE.

8 BY COMMISSIONER TAYLOR:

9 OKAY. I'M SORRY. YOU MAY CONTINUE.

10 THE WITNESS RESUMES ANSWER:

11 A. ON THE INTERSTATE, I WAS REAR-ENDED, AND WHILE I WAS
12 HIT FROM BEHIND, THE TRUCK JACK KNIFED. I HIT THE
13 CENTER MEDIAN, AND THE TRUCK BLEW UP.

14 DIRECT EXAMINATION RESUMED BY MR. AKERY:

15 Q. WHAT -- WHAT HAPPENED AFTER THE ACCIDENT? DO YOU
16 REMEMBER ANY OF THAT?

17 A. I WAS PULLED OUT OF THE TRUCK. SOME PEOPLE THREW ME
18 OVER THE MEDIAN, AND I WOKE UP IN THE HOSPITAL.

19 Q. WHAT PARTS OF YOUR BODY HURT WHEN YOU WOKE UP IN THE
20 HOSPITAL?

21 A. EVERYTHING, MAN.

22 Q. OKAY.

23 A. MY HEAD AND MY NECK, MY BACK, MY LEGS, EVERYTHING
24 HURTS.

25 BY MS. BARR:

1 YOUR HONOR, CAN I OBJECT. THIS TESTIMONY HAS
2 ALREADY BEEN GIVEN IN THE FIRST HEARING. I BELIEVE
3 THAT THE QUESTIONS WERE ALL ASKED AND ANSWERED.

4 BY COMMISSIONER TAYLOR:

5 I'M GOING TO OVERRULE THE OBJECTION, BUT JUST
6 LIMIT THE QUESTIONS SINCE THEY -- THEY'RE ALREADY IN
7 THE RECORD.

8 BY MR. AKERY:

9 OKAY. I'LL ---

10 BY COMMISSIONER TAYLOR:

11 YOU CAN -- YOU CAN FINISH THAT LAST ANSWER.

12 THE WITNESS RESUMES ANSWER:

13 A. OKAY. EVERYTHING ON ME HURT.

14 BY COMMISSIONER TAYLOR:

15 OKAY.

16 DIRECT EXAMINATION RESUMED BY MR. AKERY:

17 Q. NOW, BRIEFLY YOU -- YOU WENT AND YOU WERE KEPT AT
18 M.U.S.C. OVER NIGHT; IS THAT CORRECT?

19 A. YES.

20 Q. OKAY. WELL, WHAT TREATMENT DID THEY RECOMMEND FOR
21 YOU?

22 BY MS. BARR:

23 OBJECTION. THE MEDICAL RECORDS SPEAK FOR
24 THEMSELVES.

25 BY MR. AKERY:

1 THIS GOES TO WHETHER OR NOT THE TREATMENT WAS
2 AUTHORIZED, YOUR HONOR.

3 BY MS. BARR:

4 NO TREATMENT WAS AUTHORIZED AT THE TIME HE WAS
5 SEEN IN THE HOSPITAL. THE CLAIM HADN'T BEEN FILED.

6 BY COMMISSIONER TAYLOR:

7 I'M GOING TO SUSTAIN THE OBJECTION. I MEAN,
8 I'M SORRY; I'M GOING TO OVERRULE THE OBJECTION.

9 DIRECT EXAMINATION RESUMED BY MR. AKERY:

10 Q. AND WHAT TREATMENT WAS RECOMMEND IN M.U.S.C.?

11 A. THEY RECOMMENDED I SEE AN ORTHOPEDIC SURGEON, AND I
12 HAD A FOLLOW UP WITH DR. HARTZOG, WHICH WAS DENIED,
13 AND I HAVEN'T HAD ANY TREATMENT.

14 Q. NOW, WHO DID YOU GO NEXT TO FOR TREATMENT?

15 A. DR. ABEL.

16 Q. AND WHAT TREATMENT DID YOU OBTAIN OR -- OR GET FROM
17 DR. ABEL?

18 BY MS. BARR:

19 YOUR HONOR, THE SAME OBJECTION. THIS WAS
20 ALREADY GIVEN WITH THE TESTIMONY AT -- AT THE
21 REGIONAL HEARINGS CONTAINED IN THE TRANSCRIPT. I'D
22 HATE FOR US TO HAVE TO GO BACK THROUGH ALL THE
23 INCONSISTENCIES OF HIS TESTIMONY TODAY IN RESPONSE
24 TO THESE SAME QUESTIONS.

25 BY COMMISSIONER TAYLOR:

1 THEY'RE THE SAME QUESTIONS.

2 BY MR. AKERY:

3 YOUR HONOR, I -- I'D REPLY TO THAT THAT THERE
4 HAS BEEN SOME TREATMENT THAT'S BEEN RECOMMENDED
5 SINCE THAT.

6 BY MS. BARR:

7 AND, YOUR HONOR, I WOULD SAY ---

8 BY MS. COFIELD:

9 IT'S ALL IN THE MEDICAL RECORDS.

10 BY MS. BARR:

11 --- THE MEDICAL RECORDS WOULD SPEAK FOR
12 THEMSELVES.

13 BY MS. COFIELD:

14 THAT'S WHY YOU TURN THEM IN.

15 BY COMMISSIONER TAYLOR:

16 OKAY.

17 BY MR. AKERY:

18 AND I'LL BE BRIEF.

19 BY COMMISSIONER TAYLOR:

20 I'M GOING TO SUSTAIN THE OBJECTION. LET'S FAST
21 FORWARD TO WHATEVER IS NEW THAT WASN'T ADDRESSED
22 BEFORE.

23 BY MR. AKERY:

24 OKAY.

25 DIRECT EXAMINATION RESUMED BY MR. AKERY:

1 Q. NOW, YOU HAD ADDITIONALLY SEEN TWO SURGEONS A DR.
2 WILDSTEIN, WHAT DID HE RECOMMEND FOR YOU?

3 BY MS. BARR:

4 OBJECTION. SAME -- SAME OBJECTION. HE HAD
5 SEEN DR. WILDSTEIN PRIOR TO ---

6 BY COMMISSIONER TAYLOR:

7 AT THE TIME OF THE HEARING? YEAH, LET'S ---

8 BY MS. COFIELD:

9 WELL, NOT ONLY THAT, BUT ALL OF THE MEDICAL
10 RECORDS ARE HERE. SO IT'D BE HEARSAY FOR HIM TO SAY
11 WHAT DR. WILDSTEIN SAID. IT'S HERE IN THE MEDICAL
12 RECORDS.

13 BY MR. AKERY:

14 AND I'LL PHRASE IT THIS WAY, YOUR HONOR.

15 DIRECT EXAMINATION RESUMED BY MR. AKERY:

16 Q. DR. WILDSTEIN HAS RECOMMENDED A CERVICAL SPINE
17 SURGERY?

18 BY MS. BARR:

19 OBJECTION TO THE LEADING.

20 BY COMMISSIONER TAYLOR:

21 WELL, OKAY.

22 BY MR. AKERY:

23 OKAY.

24 BY COMMISSIONER TAYLOR:

25 I'M GOING TO SUSTAIN THE OBJECTION. YOU CAN

1 ASK HIM WHAT HIS UNDERSTANDING OF WHAT HIS ---

2 BY MR. AKERY:

3 OKAY.

4 BY COMMISSIONER TAYLOR:

5 --- WHAT HIS CURRENT STATUS IS BUT GENERALLY
6 SPEAKING ---

7 BY MR. AKERY:

8 OKAY.

9 BY COMMISSIONER TAYLOR:

10 --- BECAUSE THAT'S ALL HE CAN TESTIFY TO.

11 DIRECT EXAMINATION RESUMED BY MR. AKERY:

12 Q. AND, MR. ROSE, YOU'VE SEEN SEVERAL SURGEONS: A DR.
13 WILDSTEIN AND A -- A DR. POLETTI; IS THAT CORRECT?

14 A. YES.

15 Q. OKAY. AND WHAT'S YOUR UNDERSTANDING OF -- OF WHAT
16 YOUR CONDITION IS?

17 A. THEY TOLD ME I HAVE A HERNIA IN ---

18 BY MS. BARR:

19 OBJECTION TO THE HEARSAY.

20 DIRECT EXAMINATION RESUMED BY MR. AKERY:

21 Q. AND WHAT'S YOUR UNDERSTANDING? YOU DON'T HAVE TO
22 TELL ME WHAT THEY SAID.

23 A. OKAY. THAT I HAVE A HERNIA IN MY NECK AND IN MY
24 LOWER BACK.

25 Q. AND HAVE -- IS THERE ANYTHING THAT YOU'VE LIKE TO

1 HAVE DONE IN ORDER TO HELP THAT?

2 A. I'D LIKE TREATMENT. I HAVEN'T HAD ANY TREATMENT

3 YET.

4 Q. OKAY. AND AS FAR AS YOUR EVALUATION WITH DR.

5 WILDSTEIN, HOW MUCH TIME DID HE SPEND WITH YOU?

6 A. DR. WILDSTEIN SPENT ABOUT AN HOUR WITH ME.

7 Q. AND DID HE SEE YOU ON TWO SEPARATE VISITS?

8 A. YES, HE DID.

9 Q. HOW LONG DID HE SPEND WITH YOU ON EACH VISIT?

10 A. ABOUT THE SAME AMOUNT OF TIME WITH EVERYTHING AND

11 ALL ---

12 Q. ABOUT AN HOUR EACH TIME. HOW MUCH TIME DID DR.

13 POLETTI SPEND WITH YOU?

14 A. THIRTY TO FORTY-FIVE MINUTES.

15 Q. OKAY. NOW, YOU'VE SEEN ALSO A DR. JONES ON MARCH

16 THE 20TH, 2013, AND THIS IS APPROXIMATELY 19 MONTHS

17 AFTER THE WRECK. HOW MUCH TIME DID DR. JONES SPEND

18 WITH YOU?

19 A. LESS THAN TEN MINUTES.

20 Q. WHAT'S YOUR UNDERSTANDING OF THE RECOMMENDATIONS

21 THAT HE GAVE YOU?

22 A. WELL, HE TOLD US ONE THING AND ---

23 BY MS. BARR:

24 OBJECTION TO HEARSAY.

25 DIRECT EXAMINATION RESUMED BY MR. AKERY:

1 Q. AND -- AND -- AND AGAIN, SAMUEL, I JUST WANT TO KNOW
2 WHAT YOUR UNDERSTANDING IS OF THE RECOMMENDATIONS
3 THAT HE GAVE.

4 A. THAT I WOULD RECEIVE TREATMENT IS WHAT HE TOLD ME.

5 Q. WELL ---

6 BY MS. BARR:

7 OBJECTION TO HEARSAY, "WHAT HE TOLD ME," I MEAN
8 PRETTY CLASSIC.

9 BY COMMISSIONER TAYLOR:

10 IT'S SUSTAINED.

11 DIRECT EXAMINATION RESUMED BY MR. AKERY:

12 Q. AND, MR. ROSE; I'M GOING TO ASK YOU WHAT'S YOUR
13 UNDERSTANDING OF WHAT RECOMMENDATIONS WERE GIVEN;
14 WHAT DID YOU UNDERSTAND WAS GOING TO BE CARRIED OUT
15 AFTER THAT VISIT?

16 A. THAT I WOULD HAVE MY SURGERY.

17 Q. NOW, DR. POLETTI RECOMMENDED THREE THINGS IN HIS
18 REPORT ---

19 BY MS. BARR:

20 OBJECTION TO LEADING.

21 BY MR. AKERY:

22 OKAY.

23 BY COMMISSIONER TAYLOR:

24 SUSTAINED.

25 DIRECT EXAMINATION RESUMED BY MR. AKERY:

- 1 Q. AS FAR AS THE -- LET'S TALK ABOUT YOUR CURRENT
2 CONDITIONS, OKAY, MR. ROSE. I WANT TO ADDRESS THESE
3 ONE AT A TIME. OKAY. AS FAR YOUR NECK, HOW IS YOUR
4 NECK DOING RIGHT NOW?
- 5 A. IT HURTS, AND STIFFNESS ON THE SIDE, AND IT HURTS.
- 6 Q. AND -- AND JUST SPEAK UP A LITTLE BIT.
- 7 Q. CAN YOU DESCRIBE THE PAIN FOR US?
- 8 A. THROBBING AND JUST RADIATING PAIN, IT JUST HURTS.
- 9 Q. AND WHERE DOES IT RADIATE TO?
- 10 A. MY SHOULDERS, MY ARMS, MY HEAD.
- 11 Q. AND IS ONE ARM WORSE THAN THE OTHER?
- 12 A. YEAH.
- 13 Q. AND WHICH ARM?
- 14 A. THE LEFT SOMETIMES HURTS MORE THAN MY RIGHT. I CAN
15 FEEL THE NUMBNESS IN IT.
- 16 Q. AND WHERE DO YOU FEEL THE NUMBNESS?
- 17 A. LIKE MY ARM AND MY FINGERS.
- 18 Q. IS THAT NUMBNESS CAUSING ANY ISSUES WITH YOUR
19 ACTIVITIES OF DAILY LIVING?
- 20 A. WHEN I LIFT SOMETHING, I CAN'T HOLD IT FOR -- WELL -
21 - WELL, THE STANDARD PERIOD OF TIME. I JUST LOSE MY
22 GRIP ON IT.
- 23 Q. HOW MUCH WEIGHT CAN YOU LIFT WITH YOUR -- FIRST WITH
24 YOUR RIGHT ARM?
- 25 A. SOMETIMES I CAN LIFT LIKE 25 POUNDS.

- 1 Q. AND WITH YOUR LEFT ARM, HOW MUCH CAN YOU LIFT?
- 2 A. VERY LITTLE.
- 3 Q. NOW, THE NUMBNESS IN -- THAT YOU DESCRIBED IN -- IN
- 4 YOUR ARMS AND YOUR HANDS, HAS THAT GOTTEN BETTER,
- 5 STAYED THE SAME, OR -- OR GOTTEN WORSE?
- 6 A. IT'S GOTTEN WORSE.
- 7 Q. AND HAS THAT GOTTEN BETTER, STAYED THE SAME, OR
- 8 GOTTEN WORSE SINCE THE DATE OF INJURY?
- 9 A. IT'S GOTTEN WORSE. EVERYTHING'S GOTTEN WORSE.
- 10 Q. WHAT HELPS WITH YOUR CERVICAL OR YOUR NECK PAIN?
- 11 A. MEDICATION, JUST ---
- 12 Q. AND WHO ARE THOSE MEDICATIONS BEING PRESCRIBED BY?
- 13 A. DR. ABEL.
- 14 Q. HAS ANYBODY ELSE PRESCRIBED YOU ANY MEDICATIONS?
- 15 A. NO.
- 16 Q. ARE YOU WILLING TO UNDERGO THE CERVICAL SPINE
- 17 SURGERY THAT WAS RECOMMENDED FOR YOU?
- 18 A. YES.

19 **BY MS. BARR:**

20 OBJECTION, I -- THE MEDICAL RECORDS SPEAK FOR

21 THEMSELVES. THEY TALK OF BEING -- BEING A POTENTIAL

22 CANDIDATE. THERE'S NO RECOMMENDATION.

23 **BY COMMISSIONER TAYLOR:**

24 THIS TIME I'M GOING TO SUSTAIN THE OBJECTION AS

25 TO THE -- THE WORD, RECOMMENDATION; HOWEVER, I THINK

1 THE QUESTION IS IF -- IF SOMEONE OFFERED IT, WOULD
2 HE GO, AND HE ANSWERED THAT SO...

3 BY THE WITNESS:

4 YES.

5 DIRECT EXAMINATION RESUMED BY MR. AKERY:

6 Q. BEFORE AUGUST 10TH OF 2011, DID YOU EVER HAVE ANY
7 PRIOR INJURIES TO YOUR NECK OR ANY PROBLEMS WITH YOUR
8 NECK?

9 A. NO.

10 Q. LET'S TALK ABOUT YOUR LOW BACK. DESCRIBE YOUR LOW
11 BACK ISSUES AT THIS POINT.

12 A. IT HURTS. WHEN I MOVE TOO MUCH OR SIT TOO LONG,
13 IT'S -- IT JUST HURTS.

14 Q. AND WHERE IS THE PAIN AT? CAN YOU DESCRIBE
15 SPECIFICALLY IN YOUR LOWER BACK?

16 A. THE PAIN IS NEAR MY SPINE.

17 Q. AND WHAT TYPE OF PAIN IS IT?

18 A. IT'S JUST RADIATING, THROBBING, JUST ---

19 Q. HOW LONG CAN YOU SIT FOR BEFORE YOU START HAVING
20 PAIN?

21 A. NOT LONG, SOMETIMES ---

22 Q. AND I NEED YOU TO GIVE ME A SPECIFIC AMOUNT OF TIME?

23 A. FIVE, TEN MINUTES.

24 Q. OKAY. AND HOW LONG CAN YOU STAND FOR AND -- AND BE
25 IN ONE PLACE BEFORE YOU START HAVING PAIN?

- 1 A. TEN, FIFTEEN MINUTES.
- 2 Q. HOW LONG CAN YOU WALK FOR; IS THAT BETTER FOR YOU?
- 3 A. WALKING'S MUCH BETTER.
- 4 Q. AND HOW LONG CAN YOU WALK FOR?
- 5 A. AS LONG AS I'M MOVING, I MEAN, I'M FINE, BUT WHEN I
- 6 STOP, IT HURTS.
- 7 Q. AND IF FURTHER TREATMENT WAS OFFERED FOR YOUR LUMBAR
- 8 SPINE, IS THAT SOMETHING THAT YOU'D BE WILLING TO
- 9 UNDERGO?
- 10 A. YES.
- 11 Q. BEFORE AUGUST 10TH OF 2011, THE DATE OF THIS
- 12 ACCIDENT, WERE YOU HAVING ANY PROBLEMS WITH YOUR
- 13 LUMBAR SPINE?
- 14 A. NO.
- 15 Q. NOW, LET'S TALK ABOUT YOUR RIGHT KNEE. DESCRIBE THE
- 16 ISSUES YOU'RE HAVING WITH YOUR RIGHT KNEE RIGHT NOW.
- 17 A. MY LEG GIVES OUT ON ME. IT SWELLS UP, AND SOMETIMES
- 18 IT HURTS; SOMETIMES IT DOESN'T.
- 19 Q. PAIN LEVEL ZERO TO TEN, WHERE IS YOUR PAIN IN YOUR
- 20 KNEE REGULARLY?
- 21 A. ABOUT A THREE.
- 22 Q. IF FURTHER EVALUATION TREATMENT WAS OFFERED FOR YOUR
- 23 RIGHT KNEE, WOULD YOU LIKE TO UNDERGO THAT?
- 24 A. YES.
- 25 Q. BEFORE AUGUST 10TH OF 2011, HAD YOU EVER HAD ANY

- 1 CONDITIONS TO YOUR RIGHT KNEE BEFORE?
- 2 A. YES.
- 3 Q. AND WHAT WERE THEY?
- 4 A. AS A CHILD, I WAS DIAGNOSED WITH OSGOOD-SCHLATTER'S
- 5 DISEASE, BUT I -- OSGOOD-SCHLATTER'S DISEASE, AND I
- 6 GREW OUT OF IT.
- 7 Q. AND SINCE YOU WERE A CHILD UP UNTIL THE AUGUST 10TH,
- 8 2011, INJURY, WERE YOU HAVING ANY RIGHT KNEE
- 9 PROBLEMS OR INJURIES OR PAIN?
- 10 A. NO.
- 11 Q. NOW, LET'S TALK ABOUT YOUR HEAD. WHAT IF ANY
- 12 CONDITIONS ARE YOU HAVING WITH YOUR HEAD AT THIS
- 13 POINT?
- 14 A. THE BACK OF MY HEAD SWELLS UP. I CONSTANTLY HAVE
- 15 HEADACHES, DIZZINESS, BLURRED VISION.
- 16 Q. HOW OFTEN DO YOU HAVE HEADACHES?
- 17 A. EVERY DAY.
- 18 Q. AND HOW LONG DO THEY LAST?
- 19 A. SOMETIMES AN HOUR, SOMETIMES SEVERAL HOURS.
- 20 Q. WHAT HELPS?
- 21 A. JUST QUIET, PEACE, MEDICATION.
- 22 Q. AND IF NEUROLOGICAL TREATMENT WAS BEING OFFERED, IS
- 23 THAT SOMETHING YOU'D LIKE TO UNDERGO?
- 24 A. YES.
- 25 Q. NOW, WITHOUT GETTING THE TREATMENT THAT WE'VE TALKED

1 ABOUT, NECK SURGERY, NEUROLOGICAL TREATMENT,
2 REFERRAL TO A KNEE SPECIALIST, AND LUMBAR SPINE
3 TREATMENT, DO YOU FEEL WITHOUT THAT TREATMENT YOU
4 CAN CURRENTLY GO BACK TO WORK IN YOUR CONDITION?

5 A. NO.

6 Q. AND WHY IS THAT?

7 A. 'CAUSE I CAN'T -- I CAN'T DRIVE A TRUCK. I CAN'T
8 TAKE THE VIBRATIONS. I CAN'T DO THE PRE-TRIP, GO
9 UNDER THE TRUCK. I CAN'T -- CLIMBING INTO THE
10 TRUCK. JUST I CAN'T TAKE THE VIBRATIONS.

11 Q. ARE YOU ON ANY MEDICATIONS?

12 A. YES.

13 Q. WHAT ARE YOU ON?

14 A. ELAVIL, TYLENOL THREE, CYMBALTA, AND IBUPROFEN.

15 Q. DO THEY AFFECT -- AFFECT THE WAY YOU DRIVE?

16 A. THE TYLENOL THREE HAS CODEINE IN IT, AND THE
17 CYMBALTA IS A PAIN MANAGEMENT, AND ELAVIL IS A PAIN
18 MANAGEMENT IS WELL AS ---

19 BY MS. BARR:

20 OBJECTION TO THE CLAIMANT'S CHARACTERIZATION OF
21 -- OF ELAVIL AND CYMBALTA. I BELIEVE THOSE ARE
22 MEDICAL ISSUES AND ---

23 BY COMMISSIONER TAYLOR:

24 I'M GOING TO OVERRULE THE OBJECTION. HE CAN
25 TESTIFY AS TO WHAT HE THINKS IT IS.

1 BY MS. BARR:

2 ALL RIGHT. I WOULD ASK THAT THE -- THE
3 COMMISSION TAKE JUDICIAL NOTICE OF THE NATURE OF
4 THOSE MEDICATIONS.

5 BY COMMISSIONER TAYLOR:

6 THANK YOU.

7 DIRECT EXAMINATION RESUMED BY MR. AKERY:

8 Q. WHAT ARE YOUR PLANS AT THIS TIME?

9 A. JUST TO GET BETTER AND GO BACK TO WORK.

10 BY MR. AKERY:

11 I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

12 BY COMMISSIONER TAYLOR:

13 OKAY. THANK YOU. MS. BARR.

14 BY MS. BARR:

15 THANK YOU.

16 CROSS EXAMINATION BY MS. BARR:

17 Q. MR. ROSE, WE'VE MET BEFORE, BUT AGAIN I'M KIRSTEN
18 BARR, AND I REPRESENT CHRIS THOMPSON SERVICES AND
19 HIS INSURANCE CARRIER IN YOUR WORKERS' COMPENSATION
20 CLAIM. I NOTICE YOU'RE HERE WITH A CANE TODAY; IS
21 THAT RIGHT?

22 A. YES.

23 Q. ALL RIGHT. AND THAT WAS A CANE THAT DR. ABEL GAVE
24 YOU SOME -- AT SOME POINT IN TIME BECAUSE YOU WERE
25 FALLING DOWN THE STAIRS?

1 A. YES.

2 Q. OKAY. AND IN FACT, YOU TESTIFIED PREVIOUSLY THAT IN
3 NOVEMBER OF 2011 AND AGAIN IN JANUARY OF 2012, YOU
4 FELL DOWN A FLIGHT OF STAIRS AT YOUR MOTHER'S HOUSE
5 ON BOTH OCCASIONS AND RE-INJURED YOUR BACK AND NECK;
6 IS THAT RIGHT?

7 A. YES.

8 Q. HAVE YOU FALLEN DOWN STAIRS OR ANYWHERE ELSE TO
9 FURTHER INJURE YOU NECK AND BACK SINCE THAT TIME?

10 A. SLIPS, NOT FALLING, NOT RECENTLY.

11 Q. OKAY. BUT YOU ADMIT THAT YOU RE-INJURED YOUR BACK
12 AND NECK AFTER FALLING DOWN THE STAIRS AT HOME?

13 A. YES.

14 Q. OKAY. AND IS WAS AFTER THAT YOU FELL DOWN THE
15 STAIRS AT YOUR MOTHER'S HOUSE AND RE-INJURED YOUR
16 BACK AND NECK THAT YOU BEGAN TREATMENT WITH TRI-
17 COUNTY SPINAL CENTER; IS THAT RIGHT?

18 A. NO.

19 Q. NO. OKAY. WE -- WE HAVE THE RECORDS. YOU HAD
20 TESTIFIED ON -- ON DIRECT EXAMINATION THAT YOU'D
21 NEVER HAD ANY TREATMENT FOR YOUR NECK OR BACK?

22 A. RIGHT. I WENT TO TRI-COUNTY SPINAL CARE, AND THAT
23 WAS FOR PAIN MANAGEMENT.

24 Q. YEAH, AND ---

25 A. AND THEY GAVE ME EPIDURAL INJECTIONS AND CORTISONE

1 SHOTS, AND THEY RECOMMENDED I SEE A NEUROSURGEON,
2 AND I NEVER SEEN THEM.

3 Q. ALL RIGHT.

4 A. I JUST RECEIVED PILLS AND SHOTS, AND THAT'S IT,
5 NOTHING.

6 Q. ALL RIGHT. YOU SAID YOU HADN'T HAD ANY TREATMENTS,
7 BUT ARE SO YOU SAYING NOTHING CONSTITUTES EPIDURAL
8 INJECTIONS, A RADIOFREQUENCY ABLATION PROCEDURES ---

9 A. BY TREATMENT ---

10 Q. --- INJECTIONS, THERAPY?

11 A. BY TREATMENT, I MEAN, THEY -- THE SURGEONS
12 RECOMMENDED I HAVE SURGERY. I'VE NEVER HAD SURGERY.
13 THEY RECOMMENDED THAT I SEE A NEUROLOGIST. I'VE
14 NEVER SEEN A NEUROLOGIST. THEY RECOMMENDED THAT I
15 HAVE TESTS DONE. THE ONLY TEST I HAD DONE WAS
16 M.R.I.s, NOTHING ELSE. I HAVEN'T HAD TREATMENT.

17 Q. OKAY. EXCEPT FOR THE INJECTIONS, THE M.R.I.s, THE
18 X-RAYS, THE HOSPITAL TREATMENT?

19 A. YEAH, AND FOR PAIN. I'VE HAD STUFF FOR PAIN TO HELP
20 ME DEAL WITH PAIN, AND EVERYTHING WORKS marginally,
21 BUT I STILL HAVE PAIN.

22 Q. OKAY.

23 A. EVERY DAY I STILL HAVE PAIN.

24 Q. ALL RIGHT.

25 A. I STILL GET DIZZY. I STILL -- MY HEAD STILL SWELLS

1 UP. MY LEG STILL GIVES OUT ON ME.

2 Q. YOUR HEAD SWELLS UP?

3 A. YES, THE BACK OF MY HEAD SWELLS.

4 Q. ALL RIGHT. AND THAT'S NOT -- CAN YOU SHOW ME ANY

5 MEDICAL RECORDS WHERE A DOCTOR'S DOCUMENTED YOUR

6 HEAD SWELLING UP?

7 A. I HAVE TOLD THEM I HAD SWELLING BACK THERE. THEY'VE

8 FELT BACK THERE.

9 Q. ALL RIGHT.

10 A. I HAVE HAD ---

11 Q. IS THAT FROM FALLING DOWN THE STAIRS AT HOME?

12 A. NO. I DIDN'T BUMP MY HEAD WHEN I FELL DOWN.

13 Q. ALL RIGHT. WELL, YOU WERE ASKED EARLIER ABOUT WHAT

14 HURT WHEN YOU WENT TO THE HOSPITAL INITIALLY AFTER

15 THE ACCIDENT AND YOU ---

16 A. AND I TOLD THEM I HURT.

17 Q. WELL, YOU TESTIFIED TODAY ---

18 A. 'CAUSE I FEEL PAIN.

19 Q. YOU TESTIFIED TODAY THAT WHEN YOU WENT TO THE

20 HOSPITAL RIGHT AFTER THIS ACCIDENT, YOU WERE FEELING

21 PAIN EVERYWHERE?

22 A. YEAH.

23 Q. BUT WHEN YOU TESTIFIED AT THE HEARING BEFORE

24 COMMISSIONER MCCASKILL IN MAY OF 2012, ---

25 BY MS. BARR:

1 AND, COMMISSIONER, I'M LOOKING AT PAGE 26.

2 BY COMMISSIONER TAYLOR:

3 THANK YOU.

4 CROSS EXAMINATION RESUMED BY MS. BARR:

5 Q. YOU -- YOU SAID THAT YOU WERE HAVING PROBLEMS WITH
6 YOUR NECK, YOUR LOWER BACK, AND YOUR KNEE; IS THAT
7 RIGHT?

8 A. YES.

9 Q. OKAY. BUT NOW YOU SAY YOUR HEAD SWELLS?

10 A. THE BACK OF MY HEAD RIGHT HERE, IT -- IT SWELLS UP.
11 I MEAN, DR. ABEL COULD HAVE DOCUMENTED IT, DR.
12 KELLETT; I'VE TOLD ALL THE DOCTORS ABOUT IT.

13 Q. OKAY.

14 A. I DON'T -- I DON'T KNOW WHAT'S IN THEIR RECORD, BUT
15 I TOLD THEM, AND IT'S THERE; YOU CAN SEE IT.

16 Q. ALL RIGHT. NOW, SPEAKING OF DR. ABEL, WE TALKED
17 ABOUT THIS CANE YOU HAVE. YOU CARRY, AND WE WATCHED
18 YOU BEFORE THE HEARING WHEN YOU CAME IN, YOU -- YOU
19 CARRY THAT CANE IN YOUR RIGHT HAND; IS THAT CORRECT?

20 A. YES.

21 Q. BUT YOU CLAIM THAT IT'S YOUR RIGHT KNEE THAT'S
22 INJURED; IS THAT RIGHT?

23 A. YES.

24 Q. ALL RIGHT. AND EVEN DR. WILDSTEIN NOTED, PAGE 93 OF
25 THE APAs, THAT ---

- 1 A. HE STATED THAT ACTUALLY ---
- 2 Q. --- THAT THAT'S THE INCORRECT HAND TO CARRY A CANE
- 3 IN IF YOU ---
- 4 A. HE TOLD ME I SHOULD CARRY THE CANE IN MY LEFT HAND,
- 5 BUT I TOLD HIM IT HURTS. SO I CARRY IT THE WAY
- 6 THAT'S COMFORTABLE FOR ME. AND I'D BEEN TELL HIM I
- 7 CARRY IT TO WHAT'S COMFORTABLE.
- 8 Q. OKAY. BUT IT'S NOT NECESSARILY THERAPEUTIC FOR YOUR
- 9 KNEE OR WOULD HELP YOUR KNEE?
- 10 A. BUT IT HURTS, I TRY TO ALLEVIATE THE PAIN.
- 11 Q. ALL RIGHT. WHAT HURTS?
- 12 A. WHEN I CARRY IT IN MY LEFT HAND TOO MUCH, I CAN FEEL
- 13 THE PAIN IN MY NECK, AND I CAN FEEL IT IN MY
- 14 SHOULDERS. IT HURTS. SO I CARRIED IT IN MY RIGHT
- 15 HAND TO ALLEVIATE SOME OF THAT, AND THEN I SWITCH IT
- 16 BACK AND FORTH BECAUSE I HURT.
- 17 Q. OKAY. BUT I THOUGHT YOUR KNEE ONLY HURT SOMETIMES?
- 18 A. MY KNEE GIVES OUT. IT HURTS SOMETIMES, BUT THE REST
- 19 OF MY BODY HURTS. MY BACK HURTS. MY NECK HURTS. I
- 20 HURT.
- 21 Q. OKAY. DO YOU REMEMBER DR. WILDSTEIN TELLING YOU
- 22 THAT HE BELIEVED THAT YOUR COMPLAINTS WERE OUT OF
- 23 PROPORTION WITH WHAT HE COULD FIND ON YOUR PHYSICAL
- 24 EXAM?
- 25 A. NO, I DON'T.

1 BY MS. BARR:

2 THAT'S PAGE 94, COMMISSIONER.

3 BY COMMISSIONER TAYLOR:

4 THANKS.

5 THE WITNESS RESUMES ANSWERS:

6 A. AND I TOLD ALL THE DOCTORS I HURT; I JUST NEED
7 SOMETHING FOR PAIN. I HURT. I NEED SOMETHING DONE.

8 CROSS EXAMINATION RESUMED BY MS. BARR:

9 Q. BUT THE THINGS THAT THEY'VE GIVEN YOU FOR PAIN, YOU
10 SAY HAVEN'T HELPED?

11 A. THEY DIDN'T.

12 Q. OKAY.

13 A. THE EPIDURALS ONLY WORK FOR A FEW DAYS. THEY TOLD
14 ME IT SHOULD HAVE LASTED FOR A FEW WEEKS. IT
15 DIDN'T. AND THE PILLS, THEY WORKED FOR A LITTLE
16 WHILE, BUT THERE'S -- WHEN I NEEDED IT, IT'S NOT
17 THERE. I HURT.

18 Q. THE MEDICATIONS YOU GET NOW ARE FROM DR. ABEL, YOUR
19 FAMILY PHYSICIAN; IS THAT RIGHT?

20 A. YES.

21 Q. AND YOU REALIZE DR. ABEL SAID THAT HE DIDN'T THINK
22 THAT THERE WAS ANY TREATMENT THAT WOULD MAKE YOU ANY
23 BETTER?

24 A. OTHER THAN HAVING SURGERY, HE SAID SURGERY CAN HELP
25 ME, BUT I -- HE RECOMMENDED IT, BUT NOTHING'S

1 HAPPENING, NOTHING'S BEEN DONE.

2 Q. BUT YOU REALIZE THAT -- THAT DR. ABEL, THE LETTER HE
3 WROTE TO YOUR LAWYER ON MAY 29, 2013, HE SAID, "I'M
4 NOT OPTIMISTIC HE WILL IMPROVE TO ANY SIGNIFICANT
5 DEGREE IN THE FUTURE."

6 A. I'M NOT AWARE OF THAT.

7 Q. SO HE BASICALLY TOLD YOU YOU NEED TO LIVE WITH THIS?

8 A. HE SAYS I NEED TO LEARN TO LIVE WITH IT, THEN HE
9 RECOMMENDED THAT I GO TO A PAIN MANAGEMENT
10 SPECIALIST, AND I STILL HAVEN'T. EVER SINCE I SEEN
11 DR. KELLETT ---

12 Q. WELL, NOTHING THAT THE PAIN MANAGEMENT ---

13 A. I HAVEN'T SEEN A ---

14 Q. --- YOU SAID NOTHING WORKED THAT THEY TRIED AT PAIN
15 MANAGEMENT.

16 A. IT DON'T. THE SHOTS THAT THEY GAVE ME, THE
17 CORTISONE SHOTS, THE EPIDURALS, THEY LAST FOR A
18 LITTLE WHILE. AT NIGHT, I STILL CAN'T SLEEP. I
19 CAN'T RELAX. I CAN'T REST 'CAUSE I HURT. DEPENDING
20 ON WHAT POSITION I'M IN, I HURT.

21 Q. AND YOU HURT WORSE NOW BECAUSE YOU FELL DOWN THE
22 STAIRS THAN YOU DID ORIGINALLY AFTER THE ACCIDENT?

23 BY MR. AKERY:

24 OBJECTION.

25 THE WITNESS ANSWERS:

1 A. NO. I HURT WORSE NOW BECAUSE NOTHING'S EVER BEEN
2 DONE. IT'S BEEN OVER TWO YEARS AND NOTHING'S BEEN
3 DONE, NOTHING.

4 CROSS EXAMINATION RESUMED BY MS. BARR:

5 Q. BUT YOU ADMITTED THAT FALLING DOWN THE STAIRS TWICE
6 AT HOME INCREASED YOUR BACK AND NECK PAIN; IS THAT
7 RIGHT?

8 A. BACK THEN. YES, IT DID.

9 Q. OKAY. HAVE YOU APPLIED FOR ANY JOBS?

10 A. NO, I HAVEN'T.

11 Q. PUT IN AN APPLICATION ANYWHERE?

12 A. NO, I HAVEN'T.

13 Q. TRIED TO WORK ANYWHERE?

14 A. NO, I HAVEN'T.

15 Q. HAVE YOU APPLIED FOR SOCIAL SECURITY DISABILITY?

16 A. NO.

17 Q. HAVE YOU HAD ANY FURTHER INJURIES LIKE THE ONE
18 DESCRIBED FALLING DOWN THE STAIRS?

19 A. NO.

20 Q. JUST YOU SAY YOU'VE -- YOU'VE ALMOST FALLEN BUT
21 CAUGHT YOURSELF?

22 A. YEAH.

23 Q. HAVE YOU BEEN INCARCERATED SINCE THE TIME OF THE
24 LAST HEARING?

25 A. HAVE I BEEN SINCE THE TIME OF THE LAST HEARING?

- 1 Q. YES.
- 2 A. NO. 'CAUSE THAT HEARING WAS CANCELLED.
- 3 Q. RIGHT. BUT HAVE YOU BEEN INCARCERATED FOR ANY OTHER
- 4 REASON?
- 5 A. NOT SINCE THE LAST HEARING.
- 6 Q. ALL RIGHT. YOUR RIGHT KNEE, YOU HAVE OSGOOD-
- 7 SCHLATTER DISEASE?
- 8 A. I HAD IT, YES.
- 9 Q. IT WAS NEVER TREATED SURGICALLY, WAS IT?
- 10 A. IT DIDN'T REQUIRE SURGERY, BUT IT WAS TREATED.
- 11 Q. HOW WAS YOUR OSGOOD-SCHLATTER'S DISEASE TREATED?
- 12 A. WITH PHYSICAL THERAPY MOSTLY.
- 13 Q. DID YOU WEAR A BRACE?
- 14 A. YES, I DID. AND A CAST.
- 15 Q. DO YOU STILL HAVE THE BONEY PROMINENCE; CAN YOU SEE
- 16 IT, THE EVIDENCE OF THE OSGOOD-SCHLATTER ---
- 17 A. YES.
- 18 Q. --- DISEASE ON YOUR KNEE?
- 19 A. YES.
- 20 Q. ALL RIGHT. THE COMMISSIONER MAY NOT BE FAMILIAR,
- 21 BUT IT'S LIKE A BUMP BELOW YOUR KNEECAP; IS THAT
- 22 RIGHT?
- 23 A. YEAH.
- 24 Q. IT'S TENDER TO THE TOUCH?
- 25 A. YES. AND IT WAS EXACERBATED WHEN MY KNEE SHATTERED

1 THE STEERING COLUMN.

2 Q. AND OSGOOD-SCHLATTER DISEASE, AS I'M FAMILIAR WITH
3 IT, IT -- IT'S PAINFUL TO KNEEL WHEN YOU HAVE
4 OSGOOD-SCHLATTER'S DISEASE; IS THAT RIGHT?

5 A. YES, IT IS.

6 BY MS. BARR:

7 THAT'S ALL THE QUESTIONS I HAVE FOR YOU AT THIS
8 TIME.

9 BY COMMISSIONER TAYLOR:

10 OKAY. MS. COFIELD, ANY QUESTIONS.

11 BY MS. COFIELD:

12 YES, COMMISSIONER.

13 CROSS EXAMINATION BY MS. COFIELD:

14 Q. MR. ROSE, WHY DO USE THAT CANE?

15 A. FOR DIZZINESS, FOR BALANCE, AND TO HELP ME -- JUST
16 TO HELP ME WALK.

17 Q. OKAY. SO IT'S NOT BECAUSE YOUR KNEE IS HAVING
18 TROUBLE, IT'S ---

19 A. MY KNEE GIVES OUT ON ME SOMETIMES. I DON'T KNOW
20 WHEN IT'S GOING TO DO IT, BUT IT DOES IT, AND I DO
21 GET DIZZY A LOT.

22 Q. OKAY. AND -- AND YOU SAID IN YOUR LAST DEPOSITION
23 THAT YOU GOT THE CANE BECAUSE OF DIZZINESS?

24 A. YES.

25 Q. OKAY.

- 1 A. THERE'S NOTHING'S CHANGED.
- 2 Q. IS IT THE MEDICINE THAT'S MAKING YOU DIZZY?
- 3 A. NO, I DON'T THINK SO.
- 4 Q. WELL, WHAT DO YOU THINK MAKES YOU DIZZY?
- 5 A. JUST LIKE RIGHT NOW, MY -- I'M DIZZY. AND IT'S JUST
- 6 I CAN FEEL MY HEAD THROBBING, AND IF I MOVE TO FAST,
- 7 I GET DIZZY. IT'S JUST DOING CERTAIN THINGS. I
- 8 DON'T -- AND THAT'S WHY THEY RECOMMENDED I SEE A
- 9 NEUROSURGEON -- I MEAN A NEUROLOGIST, BUT I NEVER
- 10 SEEN ONE.
- 11 Q. BECAUSE OF YOUR HEAD?
- 12 A. I DON'T KNOW WHAT'S HAPPENING.
- 13 Q. BECAUSE OF YOU BEING DIZZY?
- 14 A. BECAUSE OF THE HEADACHES THAT WON'T GO AWAY BECAUSE
- 15 OF THE ---
- 16 Q. WHO -- WHO RECOMMENDED THAT?
- 17 A. DR. KELLETT, HE DID, DR. ABEL.
- 18 Q. BECAUSE OF YOUR HEADACHES?
- 19 A. I HAVE HEADACHES EVERY DAY, MISS. I HAVE HEADACHES
- 20 EVERY NIGHT. I HAVE HEADACHES SOMETIMES THAT JUST
- 21 WON'T GO AWAY.
- 22 Q. IS THAT YOUR MAIN PROBLEM?
- 23 A. NO. THAT'S ONE OF MY PROBLEMS.
- 24 Q. OKAY. A FEW MINUTES AGO, YOU TOLD -- TOLD MS. BARR
- 25 THAT NOTHING'S BEEN DONE FOR YOU?

1 A. IT HASN'T BEEN DONE.

2 Q. YOU'VE SEEN DR. ABEL ACCORDING TO HIS RECORD ON PAGE

3 105, 42 TIMES?

4 A. OKAY.

5 Q. IS THAT CORRECT?

6 A. YES, AND HE -- HE'S MADE PLENTY OF RECOMMENDATIONS

7 AND NOTHING'S BEEN DONE.

8 Q. YOU'VE SEEN HOW MANY OTHER DOCTORS?

9 A. I'VE SEEN DR. KELLETT, AND I'VE SEEN DR. WILDSTEIN,

10 DR. WILLS, DR. POLETTI, DR. JONES, AND NOBODY -- ANY

11 RECOMMENDATION THAT'S BEEN MADE HAS NOT BEEN

12 FOLLOWED THROUGH ON OR FOLLOWED UP ON.

13 Q. WELL, NOW WAIT A MINUTE?

14 A. WAIT A MINUTE FOR WHAT?

15 Q. YOU HAD INJECTIONS, DIDN'T YOU?

16 A. INJECTIONS FOR PAIN, TO HELP ME DEAL WITH PAIN.

17 Q. OKAY.

18 A. AND THE INJECTIONS WEREN'T WORKING.

19 Q. AND YOU HAD MEDICINE AS WELL, TOO, DIDN'T YOU?

20 A. PAIN MEDICINE.

21 Q. OKAY. SO YOU DID HAVE TREATMENT?

22 A. I WANT TO GET RID OF MY PAIN.

23 Q. OKAY.

24 A. THE TREATMENT HELPS ME GET RID OF THE PAIN, NOT TO

25 HELP ME DEAL WITH IT EVERY DAY. I WANT TO GET RID

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OF IT.

Q. WHAT -- WHAT DO YOU THINK IS GOING TO GET RID OF IT?

A. I DON'T KNOW. SURGERY MIGHT HELP.

Q. WHO TOLD YOU THAT?

A. THE DOCTORS.

Q. THEY TOLD YOU THAT; IT'S NOT IN THEIR RECORD.

A. I DON'T KNOW WHAT'S IN THE RECORDS. I HAVEN'T SEEN
THE RECORDS.

Q. NOBODY ---

A. ALL I KNOW IS I GO THROUGH PAIN. ALL I KNOW IS THEY
TELL ME I NEED SOME TYPE OF ---

Q. MR. ROSE, CAN I ASK A QUESTION, PLEASE?

A. GO AHEAD.

Q. NO DOCTOR HAS SAID TO YOU THAT IF YOU HAVE SURGERY
IT'S GOING TO ALLEVIATE YOUR PAIN, HAVE THEY?

BY MR. AKERY:

OBJECT TO FORM.

THE WITNESS ANSWERS:

A. HE SAID IT MAY -- IT MAY ALLEVIATE SOME OF MY PAIN.

BY MS. COFIELD:

OKAY. I DON'T HAVE ANYTHING ELSE.

BY COMMISSIONER TAYLOR:

OKAY. MR. KAUFMANN.

BY MR. KAUFMANN:

JUST A COUPLE.

CROSS EXAMINATION BY MR. KAUFMANN:

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Q. MR. ROSE, DID YOU MENTION THAT AMONG THE MEDICINES YOU'VE BEEN PRESCRIBED WERE ELAVIL AND CYMBALTA?

A. YES.

Q. WHEN WERE YOU FIRST PRESCRIBED ELAVIL?

A. I THINK ABOUT TWO YEARS AGO.

Q. AND WHO PRESCRIBED THAT FOR YOU?

A. DR. ABEL.

Q. AND HAS HE BEEN THE ONLY DOCTOR TO PRESCRIBE THAT FOR YOU?

A. YES.

Q. AND HAVE YOU BEEN TAKING THAT MEDICATION CONSISTENTLY THROUGHOUT THE ---

A. YES.

Q. --- THIS PERIOD OF TIME SINCE HE FIRST PRESCRIBED IT?

A. YES.

Q. AND THEN THE SAME QUESTION WITH CYMBALTA, HOW LONG HAVE YOU BEEN TAKING THAT?

A. SINCE THEY SENT -- SINCE I SAW DR. JONES; I DON'T REMEMBER THE DAY.

Q. BUT DR. JONES WAS THE DOCTOR WHO PRESCRIBED THAT FOR YOU INITIALLY?

A. NO. HE RECOMMENDED IT, AND HE GAVE ME A SAMPLE OF LYRICA TO TAKE BACK TO DR. ABEL, AND THEY CONSULTED,

- 1 AND THEN THEY PUT ME ON CYMBALTA.
- 2 Q. WHO WAS IT WHO ORIGINALLY PRESCRIBED THE CYMBALTA?
- 3 A. IT WAS RECOMMENDED BY DR. JONES, AND IT WAS
- 4 PRESCRIBED BY DR. ABEL.
- 5 Q. AND WAS THAT PRESCRIBED AROUND THE SAME TIME THAT
- 6 THE ELAVIL WAS PRESCRIBED?
- 7 A. NO.
- 8 Q. LATER OR -- OR EARLIER?
- 9 A. OVER A YEAR LATER.
- 10 Q. OH, OKAY. AND HAVE YOU BEEN TAKING THAT
- 11 CONTINUOUSLY SINCE YOU WERE PRESCRIBED ---
- 12 A. YES.
- 13 Q. --- CYMBALTA? OKAY. HAVE YOU EVER SEEN A
- 14 PSYCHIATRIST OR A PSYCHOLOGIST ---
- 15 A. NO.
- 16 Q. --- FOR ANY REASON?
- 17 A. NO.
- 18 BY MR. KAUFMANN:
- 19 THAT'S ALL I HAVE, COMMISSIONER.
- 20 BY COMMISSIONER TAYLOR:
- 21 OKAY. THANK YOU. MR. AKERY.
- 22 BY MR. AKERY:
- 23 A BRIEF FOLLOW UP.
- 24 RE-DIRECT EXAMINATION BY MR. AKERY:
- 25 Q. A LITTLE EARLIER YOU WERE ASKED THE QUESTION IF

1 ANYBODY HAD TOLD YOU THAT SURGERY WOULD HELP YOUR
2 PAIN, AND I'M LOOKING AT PAGE 96 HERE OF THE APAs.
3 IT SAYS "A ONE LEVEL C5/6 A.C.D.F., WHICH I FEEL
4 WOULD RELIABLY TAKE CARE OF THE PERISCAPULAR PAIN
5 AND NECK PAIN," AND THAT WAS FROM DR. WILDSTEIN. IS
6 THAT WHAT HE HAD INSTRUCTED YOU?

7 BY MS. BARR:

8 WHAT PAGE ARE YOU LOOKING AT?

9 BY MR. AKERY:

10 PAGE 96 OF THE APAs.

11 RE-DIRECT EXAMINATION RESUMED BY MR. AKERY:

12 Q. IS THAT WHAT HE ---

13 BY MS. BARR:

14 THE POTENTIAL BENEFIT PART? YOU KEEP LEAVING
15 OUT THE POTENTIAL.

16 BY MR. AKERY:

17 IT SAYS BENEFIT FROM A ONE LEVEL C5/6 ---

18 BY MS. BARR:

19 POTENTIALLY BENEFIT.

20 BY MR. AKERY:

21 HE'S -- NO, HE DOESN'T SAY POTENTIAL. IT SAYS
22 "I FEEL THAT HE CAN POTENTIALLY BENEFIT FROM ONE
23 LEVEL C5/6 A.C.D.F., WHICH I FEEL WOULD RELIABLE
24 TAKE CARE OF THE PERISCAPULAR PAIN AND NECK PAIN."

25 RE-DIRECT EXAMINATION RESUMED BY MR. AKERY:

1 Q. IS THAT WHAT HE DISCUSSED WITH YOU?

2 A. YES.

3 BY COMMISSIONER TAYLOR:

4 OKAY.

5 RE-DIRECT EXAMINATION RESUMED BY MR. AKERY:

6 Q. OKAY. ADDITIONALLY, DR. ABEL HAS BEEN TREATING YOU
7 WITH SOME PSYCHOTROPIC MEDICATIONS THAT HELP WITH
8 SOME MENTAL ISSUES; IS THAT CORRECT?

9 A. YES.

10 Q. AND WHAT MENTAL ISSUES ARE YOU HAVING RIGHT NOW?

11 A. DEPRESSION.

12 Q. AND DID YOU HAVE ANY DEPRESSION BEFORE THIS
13 ACCIDENT?

14 A. NO.

15 Q. WHAT IS CAUSING THE DEPRESSION?

16 A. THE FACT THAT NOTHING'S BEING DONE.

17 BY MS. BARR:

18 OBJECTION.

19 BY MR. AKERY:

20 WHAT'S THE OBJECTION?

21 BY MS. BARR:

22 HE'S A MEDICAL DOCTOR QUALIFIED TO TESTIFY AS
23 TO THE NATURE OF A DIAGNOSIS THAT HE MAY OR MAY NOT
24 HAVE THAT'S NOT MENTIONED IN THE MEDICAL RECORDS AND
25 THE CAUSE OF THAT CONDITION WHICH HE MAY OR MAY NOT

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HAVE.

BY MR. AKERY:

WHAT -- WHAT -- WHAT SYMPTOMS ---

BY MS. BARR:

I DON'T THINK HE'S QUALIFIED.

RE-DIRECT EXAMINATION RESUMED BY MR. AKERY:

Q. WHAT SYMPTOMS ARE YOU HAVING?

A. DEPRESSION.

Q. OKAY. AND CAN YOU DESCRIBE THIS?

A. IT'S JUST THE FEELINGS THAT I HAVE THAT -- WELL,
NOTHING'S BEING DONE.

BY MS. BARR:

OBJECTION. YOUR HONOR, I'D ALSO OBJECT ON THE
GROUNDS OF RELEVANCE. THERE'S NO FORM 50 ALLEGING
RELEVANCE; THERE WAS NO RESPONSE TO THE FORM 21
ALLEGING RELEVANCE. THE PRE-HEARING BRIEF DOESN'T
TALK ABOUT DEPRESSION. MENTAL INJURY IS SIMPLY NOT
SOMETHING THAT'S BEFORE THE COMMISSION.

BY MR. AKERY:

AND I'M GOING TO REFERENCE AN APA PAGE NUMBER,
IN WHICH THE PHYSICIAN ADDRESSES DEPRESSION. OKAY?

BY MS. BARR:

WELL, THAT'S GREAT THAT THERE'S AN APA HE IS
GOING TO POINT TO. THE FACT REMAINS THAT NO CLAIM
FOR DEPRESSION HAS EVER BEEN MADE. NO CLAIM FOR

1 MENTAL INJURY HAS NEVER BEEN MADE. IT'S NOT EVEN
2 RAISED ON HIS PRE-HEARING BRIEF.

3 BY MR. AKERY:

4 WELL, I'LL TELL YOU WHICH PAGE.

5 BY MS. BARR:

6 OF YOUR PRE-HEARING BRIEF, OF YOUR FORM 50, OF
7 YOUR RESPONSE TO FORM 21?

8 BY COMMISSIONER TAYLOR:

9 I'M GOING TO OVERRULE THE OBJECTION.

10 BY MR. AKERY:

11 AND -- AND I'M REFERENCING PAGE 69 OF THE APAs,
12 AND THIS IS WHERE DR. ABEL STATES ON HIS VISITS OF
13 MARCH 15TH, 2012, AND APRIL 12TH, 2012, "HIS
14 SYMPTOMS PERSISTED. I THOUGHT THERE WAS DEVELOPING
15 ANXIETY AND DEPRESSION AS A RESULT OF DELAY IN HIS
16 WORKERS' COMPENSATION DETERMINATION."

17 BY COMMISSIONER TAYLOR:

18 THAT'S FINE.

19 BY MR. AKERY:

20 OKAY.

21 BY COMMISSIONER TAYLOR:

22 I'M GOING OVERRULE THE OBJECTION. I'M GOING TO
23 -- AND HE'S NOT PLEADING IT AT THIS POINT IN TIME.
24 HE'S JUST TESTIFYING AS TO WHAT HE THINKS HE HAS.
25 IT'S EVIDENCE, THE WEIGHT TO BE CONSIDERED TO THE

1 ISSUES BEFORE ME, THAT'S A MATTER FOR ME TO DECIDE,
2 BUT HE -- I'LL LET HIM TESTIFY AS TO HOW HE FEELS.

3 BY MS. BARR:

4 CERTAINLY, AND WE -- SIMPLY WE WOULD OBJECT TO
5 ANY ATTEMPT TO CREATE A NEW CLAIM FOR INJURIES NOT
6 PREVIOUSLY PLED IN THE ATTEMPT TO CLAIM ENTITLEMENT
7 IN BENEFITS FOR THESE ALLEGED PROBLEMS.

8 BY MR. AKERY:

9 YOUR -- YOUR HONOR, THE TESTIMONY IS SOLICITED
10 MERELY SHOW THAT HE IS NOT REGULAR IN HIS CURRENT
11 STATE. HE'S FRUSTRATED. HE'S ANGRY. HE'S UPSET,
12 AND THAT MIGHT NOT BE THE WAY HE WAS BEFORE THIS
13 ACCIDENT. OKAY.

14 BY COMMISSIONER TAYLOR:

15 OKAY. AND I'LL ALLOW IT JUST TO -- TO GO TO
16 HIS STATE OF MIND; THAT'S FINE. YOU MAY CONTINUE,
17 MR. AKERY.

18 BY MR. AKERY:

19 ALL RIGHT. THAT'S ALL THE QUESTIONS I HAVE AT
20 THIS TIME.

21 BY COMMISSIONER TAYLOR:

22 OKAY. MS. BARR.

23 BY MS. BARR:

24 THANK YOU. JUST BRIEFLY OF -- OF ONE QUESTION.

25 RE-CROSS EXAMINATION BY MS. BARR:

1 Q. YOU TESTIFIED ABOUT WANTING TREATMENT AND WANTING
2 THE INSURANCE COMPANY AND YOUR EMPLOYER AND -- AND
3 CHRIS THOMPSON SERVICES TO AUTHORIZE TREATMENT
4 INCLUDING SURGERY. I NOTICE THAT THE MOST RECENT
5 RECOMMENDATION AT PAGE 71 FROM DR. ABEL WAS A
6 REFERRAL FOR HEPATITIS TESTING. ARE YOU CLAIMING
7 THAT ---

8 A. NO.

9 Q. --- WORKERS' COMPENSATION COULD -- SHOULD COVER THIS
10 HEPATITIS TESTING?

11 A. NO. WHAT HAPPENED WAS THAT -- TRY -- WHAT IT SAY --
12 DR. KELLETT'S OFFICE, THERE WAS A PATIENT THAT
13 TESTED POSITIVE FOR HEPATITIS. THE HEALTH
14 DEPARTMENT CAME AND CLOSED THE OFFICE DOWN AND
15 REPORTED THAT ALL PATIENTS BE TESTED FOR IT.

16 Q. ALL RIGHT. AND DR. KELLETT WAS SOMEBODY YOU SAW ON
17 YOUR OWN WITHOUT AUTHORIZATION FROM ANY OF YOUR
18 EMPLOYERS OR YOUR EMPLOYER OR THE INSURANCE COMPANY?

19 A. AND YEAH ---

20 Q. YOUR LAWYER SENT YOU TO DR. KELLETT; IS THAT RIGHT?

21 A. YEAH, THAT WAS TRI-COUNTY SPINAL CARE.

22 Q. OKAY. AND TRI-COUNTY SPINAL CARE IS SOMETHING THAT
23 -- THAT MR. FISHER OF THE GEORGE SINK LAW FIRM SENT
24 YOU TO DR. KELLETT?

25 A. RIGHT.

1 Q. HAVE YOU HAD THAT HEPATITIS TESTING?

2 A. AND I HAD THE TEST, BUT I TESTED NEGATIVE.

3 BY MS. BARR:

4 NO FURTHER QUESTIONS.

5 BY COMMISSIONER TAYLOR:

6 OKAY. MS. COFIELD.

7 BY MS. COFIELD:

8 NOTHING FURTHER.

9 BY COMMISSIONER TAYLOR:

10 OKAY. MR. KAUFMAN.

11 BY MR. KAUFMANN:

12 NOTHING FURTHER.

13 BY COMMISSIONER TAYLOR:

14 ALL RIGHT. THE WITNESS IS EXCUSED. DOES THE
15 CLAIMANT HAVE ANY OTHER WITNESSES?

16 BY MR. AKERY:

17 NONE, YOUR HONOR.

18 BY COMMISSIONER TAYLOR:

19 ALL RIGHT. DO THE DEFENDANTS HAVE ANY
20 WITNESSES?

21 BY MS. BARR:

22 NO, YOUR HONOR. WE'LL RELY ON THE MEDICAL
23 RECORDS.

24 BY COMMISSIONER TAYLOR:

25 ALL RIGHT. THANK YOU. THAT CONCLUDES THIS

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MATTER.
(THERE BEING NO FURTHER QUESTIONS, THE HEARING WAS
CONCLUDED AT THE HOUR OF 11:56 A.M.)

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1112328

EMPLOYEE/CLAIMANT: SAMUEL ROSE

EMPLOYER: CHRIS THOMPSON SERVICES, L.L.C.
J.J.S. TRUCKING, L.L.C.

INSURER: BRIDGEFIELD CASUALTY INSURANCE COMPANY

I, SALLYE DEANNE NELSON, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 57 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF SAMUEL ROSE TAKEN ON THE 23RD DAY OF SEPTEMBER, 2013.

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

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

IN WITNESS WHEREOF, I HAVE SET MY HAND THIS 18TH DAY OF OCTOBER, 2013.

SALLYE DEANNE NELSON
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 5-08-2022

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Samuel A. Rose,)
)
Claimant,)
)
-vs-)
)
JJS Trucking, LLC/SCUEF and)
Chris Thompson Services,)
LLC/Bridgefield Casualty Insurance)
Company,)
)
Employer,)
)
-and-)
)
Bridgefield Casualty Insurance Co.,)
)
Carrier)
)
Defendants)
)

BEFORE THE
SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 1112328

NOTICE OF WITNESSES AND
WRITTEN MEDICAL REPORTS
TO BE INTRODUCED AS DIRECT
EVIDENCE

TO: South Carolina Workers' Compensation Commission, Joseph B. Fisher, Esq., Benjamin W. Akery, Esq., attorneys of record for Samuel A. Rose, Amy V. Cofield, Esq., Esq., attorney of record for S.C. Unemployed Insurance Fund, and Sedrick Smalls, JJS Trucking, LLC,

YOU ARE HEREBY NOTIFIED THAT Kirsten L. Barr, pursuant to the provisions of the South Carolina Workers' Compensation Act, S. C. Code Ann. § 41-1-160, *et seq.* and the South Carolina Administrative Procedures Act, S. C. Code Ann. § 1-23-330, herewith submits the following evidence on behalf of the Defendants, to wit:

APA #	DESCRIPTION	DATES	PAGES
1	Gregory M. Jones, M.D. Charleston Spine & Physical Medicine	3/20/13 - 4/16/13	1-4

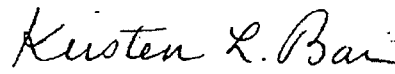
EXHIBITS # DESCRIPTION DATES PAGES

<u>EXHIBITS #</u>	<u>DESCRIPTION</u>	<u>DATES</u>	<u>PAGES</u>
2	JJS Trucking Certificate of Insurance	10/2/10 – 10/2/11	5
3	Deposition of Sedrick Smalls	11/14/11	6-17
4	Deposition of Samuel Rose	11/14/11	18-28
5	Petition to Transfer Liability	1/24/12 - 4/30/12	29-33
6	SCWCC Form 18	4/10/12	34
7	SLED	4/30/12	35-42

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians whose reports are submitted, for the purpose of cross-examination.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants:

Chris Thompson
And/or other representative of Chris Thompson Services, LLC



Kirsten L. Barr
Attorney for the Defendants

Date: September 9, 2013
118/133\nnotice5

PROOF OF SERVICE

I hereby certify that on this 9th day of September-2013, I served the foregoing Claimant, Samuel A. Rose, with copies of the attached Pre-Hearing Brief, Notice of Witnesses and Written Medical Reports and attached records which are being submitted to be made a part of the record in the case under the Administrative Procedures Act, by having mailed first class postage pre-paid, to the parties of record addressed as follows:

Joseph B. Fisher, Esq.
PO Box 63506
North Charleston, SC 29419

Benjamin W. Akery, Esq.
P.O. Box 1028
Goose Creek, SC 29445

Amy V. Cofield, Esq.
The Cofield Law Firm
809 South Lake Drive
Lexington, SC 29072

Sedrick Smalls
JJS Trucking, LLC
765 McDaniel Town Road
Ridgeville, SC 29472



Kirsten L. Barr
TRASK & HOWELL, L.L.C.
Attorneys for Defendants
Mt. Pleasant, South Carolina

118/133VPOS-PHB#5

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CHARLESTON SPINE

PAGE 02/05



**Charleston Spine &
Physical Medicine, PA**

Gregory M. Jones, M.D.
2093 Henry Tecklenburg Drive, Suite 310
Charleston, SC 29414

Office (843) 402-0111
FAX (843) 402-9010
Toll Free (800) 393-7008

ROSE, Samuel #9807

March 20, 2013

CHIEF COMPLAINT: Multifocal generalized pain.

HISTORY OF PRESENT ILLNESS: Patient is a 42 year old male who presents with multiple complaints of pain which he states began in neck, back, and right knee on 8/14/11 when he was involved in collision when his tractor-trailer was hit by another tractor-trailer truck. He states that he experienced initial neck pain and low back pain as well as right knee pain after MVA, which involved explosion, prior to and during which patient was physically "thrown" over guard rail to get him away from fire.

Patient states that he was told that he sustained a right knee fracture, not only by Dr. Abel, his primary physician, but also by Dr. Kelleff and an orthopedist at MUSC, although imaging 8/10/11 immediately post injury showed soft tissue swelling right knee anterior to tibial tuberosity and medially about knee joint with some fragmentation of tibial tuberosity consistent with contusion and/or reactivation of old preexistent Osgood-Schlatter's disease, with no acute fracture line identified. As for cervical symptoms, patient underwent extensive subsequent treatment, as he did for lumbar symptoms, all to no avail.

Patient states that he now experiences chronic neck and right predominant shoulder pain, average 6/10 to 8/10 severity, with similar pain of aching/throbbing and occasional stabbing nature across low back. Patient describes chronic aching pain right medial and lateral as well as anterior knee, where he states he believes his knee hit steering column while braking with right leg. Patient relates that his knee has intermittently "given out" on several occasions since MVA in August and November 2012, and he has developed chronic "cracking and creaking" with motion right knee, average pain 4/10 to 6/10 with flaring up to 8/10 on prolonged weight bearing or excessive walking. Patient experiences two to three flares weekly on average, usually lasting anywhere from two hours to remainder of day, dependent on activities including walking.

As for lumbar symptoms, patient notes that pain generally 6/10 on average, flaring up to 10/10 even now, in spite of previously undergoing three epidural blocks in low back with no change or improvement in symptomatology, accomplished in September, October, and November of 2011 by Dr. Kelleff. Patient relates no sciatica complaints either lower limb, but back and bilateral upper buttock pain persistent since injury 8/10/11. Patient states that low back pain "flares every day," typical duration "couple of hours" for flaring, and usually "moving around or getting off feet" tends to reduce symptoms, as does activities like walking. Prolonged sitting, lying supine, or side-lying all tend to increase back symptoms. He has recently continued using four-point cane for ambulation assist, states that this seems to "take pressure off back" and "seems to help some" in regard to back pain. He states that he has gone through physical therapy as recommended previously by Dr. Wildstein and other physicians in 2011, no benefit achieved with therapy.

For cervical symptoms, patient has also undergone multiple treatments to include epidural injection and trial right-sided cervical facet injection C3-4 level. Although neither of these procedures by Dr. Richard Kelleff helped neck symptoms or arm complaints for any length of time, patient did note decrease in neck pain from 9/10 down to 6/10 for several weeks after 9/5/11 initial epidural, but also apparently similar response after single right-sided cervical facet block C3-4 level, both accomplished by Dr. Kelleff. Block lasted for more than one to two weeks in regard to the estimated 25-30% improvement in neck and shoulder symptoms, and symptoms were largely recurrent and back to baseline/pre-block level within 10 to 14 days after each block procedure. Patient had already developed what he describes as right upper limb numbness and tingling primarily involving right deltoid and biceps region

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CHARLESTON SPINE

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ROSE, Samuel #9807

Page 2

March 20, 2013

HISTORY OF PRESENT ILLNESS (continued): with ROM deficits right shoulder subjectively, along with numbness and tingling and pins and needles sensation intermittently in all fingers of right hand. More recently, patient has occasionally experienced similar symptoms left upper limb. Patient was even considered for possible botulinum toxin injection for right shoulder and neck trigger points, but that was not accomplished by Dr. Kellett. He also discussed possibility of patient undergoing cervical facet radiofrequency ablation, but found patient did not tolerate even single level right-sided cervical facet block 10/11/11, and apparently this was not pursued due to lack of more significant or lasting benefit with the facet injection trial.

Patient states that all activities flare symptoms including prolonged sitting or standing, walking or driving, twisting or reaching, lying on back or stomach, coughing or sneezing, or bending neck and back backwards or forwards. Patient states that all medications have failed to help to any significant extent, including oral anti-inflammatories, Flaxil, and "pain spray" for fibromyalgia, and also notes that even Tylenol with codeine and other narcotic analgesics simply "take edge off" pain at best. Heating pad also used with at best temporary relief.

Patient was seen by Dr. Wildstein who suggested possible option of single level cervical fusion, but patient is concerned this would prove of little benefit as has all other treatments thus far.

PAST MEDICAL HISTORY: Significant for prior nephrolithiasis.

REVIEW OF SYSTEMS: Positive for hypertension, urinary system stones as indicated above, chronic alternating constipation and diarrhea, worsening over past year or more, chronic knee pain, and difficulty sleeping, otherwise noncontributory.

MEDICATIONS: Tylenol #3 and Flaxil as well as ibuprofen all given for pain by Dr. Abel. Also uses topical pain spray for myofascial pain and Ben Gay lotion prn.

ALLERGIES: No known drug allergies.

SOCIAL HISTORY: Patient is single, no children, had worked only a few months at his current job for Chris Thompson Services since April 2011 when he was injured 3/10/11. States that he cannot return to work, feels that he is unable to drive truck while taking pain medications, and states that pain is too severe to allow him to drive. Patient feels that he is disabled due to his chronic pain in various regions noted above. No tobacco or alcohol use. Previously participated in sports including football, basketball, and baseball.

FAMILY HISTORY: Noncontributory.

PHYSICAL EXAMINATION: Exam reveals a cooperative male, appears somewhat older than stated age, no acute distress, height 6' 2", weight 220 pounds, no antalgia to gait, although patient does appear to affect at times a steppage gait on right, mildly antalgic, not consistently seen. No difficulty getting onto or off of exam table. Lower extremity exam reveals GPS positional monitoring device in place on right ankle. There is focal tenderness noted medial and lateral joint line at right knee as well as over anterior tibial region right knee, with mild crepitus noted both knees at extreme ranging of motion for extension and flexion, dorsalis pedis and tibialis posterior pulses adequate bilaterally, no pedal or ankle edema, but with focal patchy non-dermatomal sensory hypesthesias to light touch noted anterior left thigh, medial right calf, and dorsal aspect left foot comparing side to side. Multifocal tender points and trigger points noted throughout hip girdle and gluteal regions bilaterally with most significant trigger points noted piriformis, gluteus maximus, gluteus medius, and gluteus minimus muscles as well as originating fibers quadratus lumborum muscles bilaterally. Multilevel lumbar multifidus tender points noted with tenderness also noted over essentially all lumbar facets to varying degrees bilaterally. No palpable step off lumbar spine, no CVA tenderness to percussion, no scapulohumeral motion deficits or scapular winging, no obvious scoliotic curvature. Marked tenderness noted over both SI joints and bilateral sciatic notches. Significant tenderness also noted over greater trochanteric bursal regions, with tenderness noted over tensor fascia latae tendon

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CHARLESTON SPINE

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ROSE, Samuel #9807

Page 3

March 20, 2013

PHYSICAL EXAMINATION (cont'd): sheaths and hamstring tightness noted bilaterally, with quadriceps tightness noted worse on right than left. No definite focal myotomal weakness noted, other than slight give-way weakness noted 5-/5 right quadriceps due to pain per patient. Although poor effort noted on manual muscle testing, lower extremities throughout, no focal weakness identified with retesting with distraction as allowed. Straight leg raise nonprovocative bilaterally for radicular symptoms, sciatic stretch nonprovocative bilaterally, no ischial bursal tenderness.

Upper extremity exam reveals increased hypesthesia to light touch in non-dermatomal distribution throughout entire right upper limb all regions tested comparing side to side, and there is decreased strength noted right supraspinatus and right deltoid as well as right biceps muscles 4-/5, as patient complains of pain on any abduction of right shoulder. Patient also complains of concordant right greater than left shoulder girdle pain without radicular symptoms on foraminal compression test to right and to slightly lesser extent to left side, and on Spurling's test to each side. Neither of these latter tests cause radicular symptoms past shoulder however. Slight hypesthesia to light touch also noted finger tips and dorsal aspect all fingers and thumb left hand comparing distal to proximal. Multifocal trigger points noted throughout shoulder girdle and lateral neck muscles including supraspinatus, levator scapulae, upper and middle trapezi, rhomboid major and minor muscles, scalene muscles, and splenius capitis as well as splenius cervicis muscles bilaterally. There is tenderness over greater occipital nerve routes bilaterally. No palpable step off cervical spine, but multilevel cervical and upper thoracic facet tenderness noted along with palpable tender points and trigger points throughout cervical and upper and middle thoracic paraspinal/multifidus muscles to varying degrees bilaterally, essentially all levels palpated. No focal myotomal wasting noted either shoulder girdle or distal upper limb comparing side to side. Reflexes 1+ and symmetric triceps, biceps, and brachioradialis.

IMAGING: Multiple imaging studies reviewed. Refer to detailed reports for findings. No additional findings or interpretations noted by this examiner, agree with all written interpretations of these various studies as previously published.

- IMPRESSION:**
1. Chronic cervicothoracic and right greater than left shoulder girdle myofascial pain, with underlying multilevel cervical spondylosis and facet hypertrophy with C5-6 and C6-7 preexistent degenerative disc-osteophyte complexes/stenoses, symptomatic chronically since MVA work-related 8/10/11 with right upper limb dysesthesias and numbness.
 2. Chronic lumbosacral myofascial and/or facet-generated pain due to chronic lumbosacral strain injury sustained in work-related 8/10/11 MVC, with underlying preexistent multilevel degenerative disc lesions and facet arthropathy L2-3 through L5-S1 levels with chronic bilateral sacroiliitis and preexistent SI joint osteoarthritis.
 3. History of right knee contusion with transient history of intermittent swelling S/P MVA 8/10/11, with preexistent Osgood-Schlatter's disease.

RECOMMENDATIONS/DISCUSSION: This patient has developed chronic primarily myofascial pain in cervicothoracic, right greater than left shoulder girdle, low back, and bilateral buttock regions relating to 8/10/11 MVA. Unfortunately, he had fairly severe underlying preexistent degenerative pathology in both cervical and lumbar spine present prior to MVA 8/10/11. This has likely contributed to chronicity of symptoms and lack of any significant response to prior extensive nonsurgical measures including various blocks, therapy, and medications. Please refer to narrative for answers and current opinions relating to specific questions posed in 3/12/13 Summit/Liberty Mutual accompanying letter for this IME.

This examination above carried out for purpose of IME only, and did not constitute forming doctor/patient relationship. No treatments were accomplished, and no medications prescribed. The nature of the IME, reasoning behind this interpretation/examination, and importance of patient questionnaire explained to examinee. Examinee informed to notify examiner of any pain, discomfort, numbness, or other symptomatology produced by any portion of exam or any answers accomplished during examination. If further information becomes available, such additional information may or may not change the opinion rendered in this evaluation. Opinions in this IME do not constitute recommendation for claims to be made.

Gregory M. Jones, MD

GMJ/bjl

04/18/2013 09:33

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CHARLESTON SPINE

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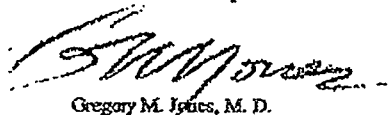
ROSE, Samuel
#9807

CHARLESTON SPINE & PHYSICAL MEDICINE

April 16, 2013 Narrative

There has been a request to address various issues in relation to this patient's IME of 3/20/13 in letter 3/12/13 from Heritage Summit Healthcare.

1. Refer to IME of 3/20/13 for current diagnoses.
2. It is my opinion that this patient would likely not benefit significantly from single level fusion C5-6. He does not have any evidence of definitive cervical radiculopathy, as his weakness about right shoulder girdle appears to be entirely pain related, and there is no atrophy present. Although patient may require surgical intervention at some point in future for most probably C5-6 and C6-7 disc levels due to the degenerative disc-osteophytic complexes, uncovertebral and facet hypertrophic changes, and neural impingement at both levels, this surgery would be necessitated only if patient develops cervical radiculopathy consistent with MRI findings and neural impingement previously identified, and it would indeed be related to preexisting conditions in this patient. It appears that most of patient's symptoms currently relate to myofascial pain in cervicothoracic spine musculature and particularly right shoulder girdle musculature, and this is primary explanation for patient's failure to respond to prior cervical epidural block and even cervical facet block trial in this examiner's opinion. Dr. Abel and other physicians have diagnosed this patient with myofascial pain and/or fibromyalgia, and had already begun treatment directed toward management of this chronic condition.
3. It does not appear that any future treatment would be warranted to help this patient achieve higher level of functional status or lessen his disability. He is likely at maximum medical improvement. All treatments accomplished thus far have largely been failures, patient is still complaining of 8/10 and up to 10/10 level intensity in all affected regions in spite of extensive prior treatment.
4. Mr. Rose has likely received maximum medical improvement with respect to 8/10/11 injury as of 3/20/13 IME date.
5. It is my opinion that patient has likely suffered DRE Category II, 5% cervicothoracic spine impairment and DRE Category II, 5% lumbar spine impairment per *AMA Guides to the Evaluation of Permanent Impairment, 5th edition*, relating to injuries sustained 8/10/11. This takes into account at least the myofascial and/or facet-generated pain present cervicothoracic and lumbosacral spine, chronic sacroiliitis, and significant trigger points noted throughout neck, interscapular and right greater than left shoulder girdle regions as well as low back and buttock regions bilaterally.
6. Mr. Rose is capable of working without restrictions based on current neurologic assessment and current understanding of his underlying multilevel degenerative preexistent pathology cervicothoracic and lumbar spine regions. Based on response, as stated previously, to prior therapeutic interventions (non-surgical), it does not appear that patient is suffering from significant discogenic/facet-generated pain in cervical or lumbar regions, and thus it is most likely that he has developed chronic myofascial pain in these regions. He could even be developing full-blown fibromyalgia, although this condition cannot be blamed on injury event 8/10/11, to a reasonable degree of medical certainty. Patient should be able to return to gainful employment at any job that he desires with no specific restrictions regarding vocational and/or avocational pursuits with relation to the myofascial injuries sustained 8/10/11 to these various regions. I see no need for continued use of narcotic analgesics in this patient with primarily myofascial pain; in fact, these types of drugs are contraindicated in myofascial pain as they are notoriously ineffective (as seen in this patient). Patient might want to seek more appropriate treatment through rheumatologist or primary physician at some point in future for myofascial pain through his primary health insurance.



Gregory M. Jones, M. D.

GMI/mjl



CERTIFICATE OF LIABILITY INSURANCE

CPID PT
J13TR0C

DATE (MM/DD/YYYY)
10/11/10

PRODUCER Swamp Fox Agency, Inc. P.O. Box 522 Pinopolis SC 29469 Phone: 843-761-3999 Fax: 843-761-6186	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED JIS TRUCKING, LLC 157-A Gordon St. Charleston SC 29403	INSURER A: Tower Ins. Co. of New York	
	INSURER B: Transloy PRIMA & AFFILIATES	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

DESCRIPTION OF POLICY	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER POLICY <input type="checkbox"/> PRO <input type="checkbox"/> AGG <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGES TO THIRD PARTIES (EX. OCCURRENCE) \$ MED EXP (INFLUENCE) \$ PERSONAL ADVISORY \$ GENERAL AGGREGATE \$ PRODUCTS-COMPOD AGG \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> UM/UM 75,000	BAEDF0280410	10/02/10	10/02/11	COMBINED SINGLE LIMIT (CA AGGREG) \$1,000,000 BODILY INJURY (PERSONS) \$ BODILY INJURY (PER PERSON) \$ PROPERTY DAMAGE (PER ACCIDENT) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY AGG \$
	EXCESS / UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE \$ <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
E3	WORKERS COMPENSATION AND EMPLOYERS LIABILITY <input checked="" type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/EMPLOYER EXCLUDED (Excluded by law) <input type="checkbox"/> SPECIAL PROVISIONS ONLY	BINDER	10/08/10	10/08/11	<input checked="" type="checkbox"/> WITH TOWERS <input type="checkbox"/> WITH TOWERS EL DISEASE - POLICY LIMIT \$500,000 EL DISEASE - EA EMPLOYEE \$500,000 EL DISEASE - POLICY LIMIT \$500,000
	OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER CHRIS THOMPSON SERVICES, LLC FAX: 688-5084 P.O. BOX 3377 SUNDERVILLE SC 29484	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE (HEREON, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE DAVID W. HAYES
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BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1112328

Samuel A. Rose,
Employee, Claimant,
vs.
JJS Trucking, LLC/SCUEF and Chris Thompson
Services, LLC/Bridgefield Casualty Insurance
Company,
Employer,
and
Bridgefield Casualty Insurance Co., Carrier,
Defendants.

DEPOSITION OF
SEDRICK SMALLS

November 14, 2011
11:00 a.m.

George Sink, P.A.
7011 Rivers Avenue
N. Charleston, South Carolina

Laci Bearden, Court Reporter and Notary Public



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<p style="text-align: center;">BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION WCC FILE NO. 1112328</p> <p>Samuel A. Rose, Employee, Claimant,</p> <p>-vs-</p> <p>JUS Trucking, LLC/SOEP and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company, Employer.</p> <p>-and-</p> <p>Bridgefield Casualty Insurance Co., Carrier, Defendants.</p> <p style="text-align: center;">The deposition of Sedrick Smalls, taken before Jaci Bearden, Court Reporter and Notary Public, at the George E. Holt, P.A., 7011 Rivers Avenue, N. Charleston, South Carolina on November 14th, 2011, commencing at 11:00 A.M.</p>	<p style="text-align: center;">INDEX.</p> <p>1</p> <p>2</p> <p>3 EXAMINATION BY MR. FISHER 4</p> <p>4 EXAMINATION BY MS. BARR 18</p> <p>5 EXAMINATION BY MR. KILLEN 22</p> <p>6 EXAMINATION BY MR. FISHER 38</p> <p>7 EXAMINATION BY MR. KILLEN 39</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p style="text-align: center;">EXHIBITS</p> <p>12</p> <p>13</p> <p>14 Plaintiffs Exhibit Number One 8</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p style="text-align: center;">APPEARANCES</p> <p>1</p> <p>2</p> <p>3</p> <p>4 For the Employer: George Sink, P.A. BY: Joseph B. Fisher 7011 Rivers Avenue Suite 105 N. Charleston, SC 29406 jfisher@sinkdaw.com</p> <p>5</p> <p>6</p> <p>7</p> <p>8 For the Carrier: Trask & Howell, LLC. BY: Kristen L. Barr 763 Johnnie Dodds Blvd. P.O. Box 2167 Mt. Pleasant, SC 29465 kbarr@trask-howell.com</p> <p>9</p> <p>10</p> <p>11 S.C. Uninsured Employers Fund BY: Timothy Killen, Esq. 100 Executive Center Drive, Suite 101 Columbia, SC 29210 TKillen@sif.sc.gov</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">SEDRICK SMALLS</p> <p>1 was sworn (affirmed) and testified as follows:</p> <p>2 EXAMINATION BY MR. FISHER:</p> <p>3 Q My name is Joe Fisher. I represent Samuel Rose with</p> <p>4 the worker's compensation claim that we filed arising out of</p> <p>5 an accident that occurred on August 10, 2011. I want to ask</p> <p>6 you some questions about your relationship with my client, a</p> <p>7 work relationship and your work relationship, business</p> <p>8 relationship with a gentleman named Chris Thompson and his</p> <p>9 company Chris Thompson Services, LLC, okay?</p> <p>10 A Yes, sir.</p> <p>11 Q Will you please state your name for the record?</p> <p>12 A Sedrick Smalls.</p> <p>13 Q Mr. Smalls, where do you live at?</p> <p>14 A [REDACTED]</p> <p>15 Q And are you familiar with the company called JUS</p> <p>16 Trucking?</p> <p>17 A Yes.</p> <p>18 Q And how are you familiar with that company?</p> <p>19 A I am the owner, president. I think that's it, the</p> <p>20 president.</p> <p>21 Q Are there any other owners, any other shareholders,</p> <p>22 anything like that in JUS Trucking?</p> <p>23 A No.</p> <p>24 Q You're solo proprietor?</p> <p>25</p>
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<p>5</p> <p>1 A Yes.</p> <p>2 Q Sole owner?</p> <p>3 A Yes, President, yes.</p> <p>4 Q And do you know a gentlemen named Samuel Fose?</p> <p>5 A Yes.</p> <p>6 Q How do you know Mr. Fose?</p> <p>7 A I employed him at JJS Trucking.</p> <p>8 Q Do you remember when he went to work for you?</p> <p>9 A I believe it was the fourth month.</p> <p>10 Q I think he testified earlier he went to work for you in</p> <p>11 April of 2011. Would that be about right?</p> <p>12 A Correct, correct.</p> <p>13 Q Was he working for you in August of 2011?</p> <p>14 A Yes.</p> <p>15 Q And JJS Trucking, you pays subcontract work for Chris</p> <p>16 Thompson Services; is that correct?</p> <p>17 A Correct.</p> <p>18 Q And how long have you had a relationship to work with</p> <p>19 Chris Thompson Services?</p> <p>20 A For over three plus years.</p> <p>21 Q And what is that relationship?</p> <p>22 A I'm a subcontractor. He -- I pull loads for him. He</p> <p>23 provides a trailer, and I provide my insurance coverage to</p> <p>24 him, and he pays me by the ton to carry each load.</p> <p>25 Q And where do these loads go to, and where do the loads</p>	<p>7</p> <p>1 A Yes.</p> <p>2 Q Take your time.</p> <p>3 A Here we go. If you want to make a copy of that.</p> <p>4 Q That would be great.</p> <p>5 A That's the same thing I provided to the insurance</p> <p>6 company.</p> <p>7 (Where upon an off the record</p> <p>8 discussion took place.)</p> <p>9 Q Sir, you provided us with what looks like a payroll</p> <p>10 log, is that what that is? What is that? And if show you</p> <p>11 a copy of it.</p> <p>12 A Exactly. This is what we call a load sheet and for</p> <p>13 each ticket number you see represents a load. For each load</p> <p>14 that's turned in, that's how he gets paid his \$25. It just</p> <p>15 verifies what he done that particular week.</p> <p>16 Q And for example on 7/12/2011, if you'll take a look at</p> <p>17 that.</p> <p>18 A Correct.</p> <p>19 Q Which is one, two, three, four, five, six, seven</p> <p>20 numbers; is that correct? One, two, three, four, five, six,</p> <p>21 seven numbers.</p> <p>22 A Correct.</p> <p>23 Q Does that mean he made seven loads that day?</p> <p>24 A Correct.</p> <p>25 Q And then on the 13th it shows one, two, three, four,</p>
<p>6</p> <p>1 come from?</p> <p>2 A They come from a lumber mill in Summerville, and then</p> <p>3 they go to a paper mill in Charleston, and the lumber mill</p> <p>4 is off of Highway 78 and they go to Virginia Avenue.</p> <p>5 Q And that's your exclusive contract with him?</p> <p>6 A Yes.</p> <p>7 Q You don't have anything else anywhere other than this</p> <p>8 route from Summerville to the paper mill; is that right?</p> <p>9 A Correct.</p> <p>10 Q And let me see, my client had started working for you</p> <p>11 in April of 2011. Did you pay my client?</p> <p>12 A Yes, I paid him. Yes.</p> <p>13 Q And how did you pay him?</p> <p>14 A I paid him as a subcontractor by the per load. For</p> <p>15 every load that he received, he got paid for each load.</p> <p>16 Q And how much did he get paid per load?</p> <p>17 A Twenty-five dollars per load.</p> <p>18 Q And how many loads would you say he could make on</p> <p>19 average in a day?</p> <p>20 A Fosse -- he would on average per day it was normally</p> <p>21 around five loads. Sometimes a little bit more, sometimes a</p> <p>22 little bit less, but on average for Mr. Samuel every week,</p> <p>23 he typically got 25 to 30 loads every week. I do have some</p> <p>24 documentation for that.</p> <p>25 Q You do. Could I see what you have?</p>	<p>8</p> <p>1 five numbers, so he made five loads that day; correct?</p> <p>2 A Correct.</p> <p>3 Q And I would assume it varies on traffic and other</p> <p>4 things; is that correct?</p> <p>5 A Correct.</p> <p>6 Q As to how many loads you could get a day. And what</p> <p>7 you've given us is from July 12, 2011, through August 9,</p> <p>8 2011; is that correct?</p> <p>9 A Correct. But I do have all of his since he was</p> <p>10 employed. I just thought it might be handy here today</p> <p>11 because that's for the insurance company. They just wanted</p> <p>12 "X" amount for representation so, but that's what you're</p> <p>13 looking at right there.</p> <p>14 Q I would like to mark this as Plaintiff's Exhibit</p> <p>15 One, please.</p> <p>16 (Plaintiff's Exhibit No. 1 was</p> <p>17 marked for identification.)</p> <p>18 Q Now, what was your arrangement with Chris Thompson</p> <p>19 Services, your business arrangement?</p> <p>20 A My arrangement was to -- and we only had a verbal</p> <p>21 agreement, but my arrangement was to haul loads, and I was</p> <p>22 to receive compensation for each load that I carried, and I</p> <p>23 would turn in my sheets at the end of the week, and then the</p> <p>24 following week he would relinquish me a check for what I did</p> <p>25 the previous week.</p>



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1 Q Were you paid by the ton?
 2 A Correct.
 3 Q And then he was also paid by the ton. "He" being Chris
 4 Thompson, did he get paid so much per ton as well?
 5 A I believe so, yes.
 6 Q Who paid Chris Thompson?
 7 A I would believe he got paid from Capstone because
 8 that's the -- maybe -- matter of fact, he might have got
 9 paid from the lumber mill. Actually, I really don't know,
 10 but I know that's where we delivered it to, Capstone.
 11 Q And Chris Thompson would cut a check JJS Trucking --
 12 A Correct.
 13 Q -- every week and then you would cut a check to your
 14 employees --
 15 A Yes.
 16 Q -- or is it the fellows who drove a truck for you --
 17 A Correct.
 18 Q -- and that's how that worked?
 19 A Correct.
 20 Q And how many trucks did you have working for you at the
 21 time of this accident?
 22 A Three.
 23 Q Three. And how many trucks do you own?
 24 A Four.
 25 Q Four trucks. Who all drove a truck for you?

10

1 A At that time of the incident, it was me, Samuel Rose,
 2 Shaun Thompson -- Shaun Thomas, and Reggie Washington.
 3 Reggie was really part time. He didn't run every day.
 4 Q Did you have a truck driver named Tom?
 5 A Yes, I did, but he was not employed with me at that
 6 time. He was a subcontractor for me at that time.
 7 Q Did you have a truck driver named Max?
 8 A Yes, I did at that time, but he was not working for me
 9 at that time.
 10 Q The deal with Chris Thompson was in order for you to
 11 work for him you had to provide him with copies of your
 12 certificates of insurance --
 13 A Correct.
 14 Q -- to cover your drivers and yourself for worker's
 15 compensations purposes; is that right?
 16 A Correct.
 17 Q And what would happen if you didn't provide those
 18 certificates of insurance to Chris Thompson?
 19 A I would be terminated.
 20 Q And who paid for the gas for the trucks that you drove?
 21 A I did.
 22 Q What about the tires?
 23 A I did. All maintenance to the vehicles, I was
 24 responsible for?
 25 Q But the trailers were owned by Chris Thompson?

11

1 A Exactly. But excluding the trailer. Everything on the
 2 trailer would be Chris Thompson's.
 3 Q How long have you had JJS Trucking?
 4 A -- If I'm not mistaken -- I know I got a date for when it
 5 was established, but I would say somewhere around seven
 6 years.
 7 Q Have you ever had any trouble with insurance like
 8 what's going on now?
 9 A No, sir.
 10 Q Now, you've provided and I believe your insurance
 11 agency provided some insurance certificates to us, and the
 12 state has concluded that your insurance had lapsed from
 13 February 5, 2011. Until September 23, 2011. Did you ever
 14 receive a letter from the state?
 15 MR. KILLEN: Let me just object to the form of
 16 that question.
 17 Q Well, if you could just answer that. Have you ever
 18 received a letter from the South Carolina Workman's
 19 Compensation Commission by a gentleman named Gary Smith?
 20 A Please repeat that question.
 21 Q Have you ever received a copy of this letter right
 22 here, I want to show you?
 23 A No, sir.
 24 Q It says it was mailed to [REDACTED].
 25 A Let's see, this is on October -- okay, October the

12

1 28th. Okay, Okay.
 2 Q Is this your address here, [REDACTED].
 3 A Yes. Well, what I want to say is I haven't actually
 4 seen it myself, but they have sent quite a bit of letters to
 5 me.
 6 Q And has any insurance company or anyone told you that
 7 your insurance had lapsed starting February 5, 2011, through
 8 September 23, 2011?
 9 A I had not received anything from my actual insurance
 10 carrier.
 11 Q But have you talked with anyone at the State of South
 12 Carolina Workman's Compensation Commission about that?
 13 A No, sir.
 14 Q And no one's discussed any sort of fine with you for
 15 not having it --
 16 A I did receive a letter saying that if I do not show
 17 that I had insurance over "X" amount of years that I would
 18 receive a fine.
 19 Q Now, are you aware that the insurance company -- your
 20 worker's compensation carriers has said that you didn't have
 21 insurance at the time of this accident?
 22 A I am aware that they said that.
 23 Q Have you talked to them about that since then?
 24 A Have I talked with them?
 25 Q Your insurance company?



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13

1 A I have, and they still stand by the fact that I do not
 2 have worker's compensation.
 3 Q And which company said that, is it Travelers, Zurich,
 4 do you remember?
 5 A Towers.
 6 Q After Mr. Rose was in the accident, when did you find
 7 out this accident happened?
 8 A I found out immediately. I mean, within an hour.
 9 Q Did you go to the hospital and see him?
 10 A Yes, I did.
 11 Q Did you ever talk to Chris Thompson about this
 12 accident?
 13 A Yes, I did.
 14 Q What did Chris Thompson and you discuss?
 15 A I informed him that at this time his driver hit my
 16 driver in the rear, that at the scene DOT and South Carolina
 17 State Troopers had faulted his driver at fault and that my
 18 driver was in no way - they called it not contributing. So
 19 I informed him of all of this.
 20 Q After this accident, did you and Chris Thompson ever
 21 discuss worker's compensation coverage?
 22 A We did later on once I found out that I was not being
 23 covered.
 24 Q What did Mr. Thompson tell you?
 25 A That when he informed me that --

14

1 MS. BARR: Object to the hearsay.
 2 Q Go ahead and answer the question.
 3 A He informed me that I can no longer work for him based
 4 on the fact that my insurance had lapsed at that time.
 5 That's what he said.
 6 Q Did he ever say anything about his insurance taking
 7 care of this claim with regard to Mr. Rose?
 8 A What he stated is that --
 9 MS. BARR: Same objection to hearsay.
 10 Q Go ahead.
 11 A What he stated was that Sedrick -- that I was
 12 responsible for keeping my worker's comp coverage current.
 13 He stated that he was not informed that my insurance had
 14 lapsed. Actually, I was looking for it here, but I don't
 15 have it. But I was going to ask you -- remember I faxed you
 16 two copies of -- he in turn said to me, Sedrick -- so the
 17 bottom line I was terminated. Later on, a week or so later
 18 he informed me that he did an investigation or he had come
 19 across the fact that my insurance had not lapsed, and he
 20 provided me with documents. I in turn called my insurance
 21 agent that happened to look into this because ever since I
 22 worked for Mr. Thompson, if my insurance was ever in
 23 jeopardy of lapsing, my insurance carrier always would
 24 inform him because he's listed down there, but all I can say
 25 is, he said, Sedrick, you know you can't be employed here,

15

1 but I don't know what's going on because if you look at
 2 those documents, it would state that you would have it, but
 3 again, if I don't I don't, but I was not aware that I did
 4 not.
 5 Q Is this the documents you were just asking me about?
 6 A Yes, sir.
 7 Q And one of them is dated 10/18/2010. Can you take a
 8 look at that? Number one it has Tower Insurance Company.
 9 Below it it has Travelers Insurance; is that correct?
 10 A Correct.
 11 Q And it shows the date covered 10/8/10 to 10/31/11?
 12 A I know on this policy, if I'm not mistaken, I had just
 13 renewed it after the accident because after I found out, I
 14 went to go get reinstated, you know, and so that's what
 15 we're looking at right here.
 16 Q And this was generated after the accident; is that
 17 what you're saying?
 18 A That's right, that's right.
 19 Q And where it says lapsed down there, what does that
 20 mean?
 21 A That means that I'm covered.
 22 Q That's your understanding that it means you're covered.
 23 Then I have this other one from Swap Fox Agency? Is this
 24 your agency?
 25 A No, No, No. We're looking at the wrong thing. It's

16

1 sorry. This is not what I'm looking at because this here
 2 says 10/2/2010 --
 3 Q Yes, sir.
 4 A -- through 10/2/2011.
 5 Q Yes, sir.
 6 A So therefore when I looked at this I would have been
 7 covered through -- because I received a couple of them now,
 8 so let me retract what I stated.
 9 Q This is another one that you -- no, this one's dated
 10 9/29/11.
 11 A Okay. There we go. This is the one probably I was
 12 referring to.
 13 Q And this one, the 10/8/10, that says -- does that say
 14 Travelers Insurance?
 15 A Yeah, that says Travelers Insurance; correct.
 16 Q And this 9/29/11, now whose insurance company picks up
 17 coverage at that point?
 18 A Zurich America Insurance Company.
 19 Q And that's good from August 24, 2010, it says, to
 20 August 24, 2011; is that correct?
 21 A Correct.
 22 Q But you didn't purchase it until 9/29/11; is that
 23 correct?
 24 A Actually -- the best thing I can say to you is --
 25 purchase -- I was under the impression that I didn't -- if



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1 this is 9/29/11 -- I wasn't the person -- that was not a
 2 purchase actual date because if that's a purchase date, why
 3 would it be 9/29/11 where it actually says here, you know,
 4 coverage 8/24/10 through 8/24/11. I --
 5 Q That's a good question.
 6 A I was under the impression that that's when probably
 7 someone actually sent it out verifying the date it was sent
 8 out but not the actual date of coverage. These -- from my
 9 interpretation -- these are the actual dates of coverage.
 10 Q Why would there have been one from August 24, 2010 for
 11 Zurich and one from October 8, 2010 from Travelers? I don't
 12 have any idea.
 13 A The only idea that I could have is maybe the insurance
 14 had lapsed and somebody else picked it up. I don't know.
 15 What I do is I make my payments to Swap Fox and -- but I
 16 don't know.
 17 Q Have you ever went and showed these and discussed these
 18 with anyone at Swap Fox?
 19 A We talked -- I sent it back to Swap Fox. I have not
 20 gotten a response back from Swap Fox, and that would be
 21 attention Gregg Hudson, I believe, operations manager via
 22 Swap Fox.
 23 Q When you hired Samuel Rose, his job was to haul
 24 woodchips from Summerville to the Capstone Plant; is that
 25 correct?

1 A Correct.
 2 Q And you furnished the truck; is that correct?
 3 A Correct.
 4 Q You paid for the gas; is that correct?
 5 A Correct.
 6 Q You paid for the maintenance on the truck; is that
 7 correct?
 8 A Correct.
 9 Q And really all he did was he was suppose to get in the
 10 truck and drive it safely to and from Summerville, dumped in
 11 Capstone, come back. His job was just to drive the truck?
 12 A His job was just to drive the truck; yes.
 13 Q And you told him where to go?
 14 A No, I did not.
 15 Q You didn't tell him where to go?
 16 A No, sir. At Summerville, we have a loader box and each
 17 driver has a shift, but you can start your shift earlier or
 18 later. I did not make that determination.
 19 Q Not when, but where? I mean, he had your truck. His
 20 job was to drive your truck from Summerville saw mill, to
 21 Capstone. He couldn't just take that truck if he wanted to
 22 haul chips to Savannah or something like that?
 23 A No, sir.
 24 Q Well, thank you, sir. I don't have any other
 25 questions. Appreciate it.

1 EXAMINATION BY MS. BARR:
 2 Q Mr. Smalls, my name is Kirsten Barr. We met briefly
 3 before we went on. I represent Chris Thompson and the
 4 insurance carrier. Do you recall making payments to Swap
 5 Fox or to anybody else for worker's comp insurance in 2011?
 6 A No, ma'am.
 7 Q Would you have written one check. I mean, do you
 8 recall making any payments toward the purchase of a worker's
 9 comp insurance policy in the year prior to the accident?
 10 A Yes, ma'am.
 11 Q Now, do you have business records showing -- would you
 12 write the check to Swap Fox then?
 13 A Sometimes I made them to Swap Fox and sometimes I --
 14 No, if I was close to being terminated, they would say,
 15 hey, just make it out to us and make sure it stays current.
 16 Q At any time in the months prior to this accident that
 17 happened in August of 2011, did you stop making your regular
 18 payment?
 19 A Focus: I'm not going to say that I didn't -- I might
 20 not have had some times when I might have been late. But
 21 what would happen is that my insurance agent would say,
 22 Smalls, well this is where you are and this is what you need
 23 to do. But, yes, ma'am -- and -- focus -- if my insurance
 24 had lapsed, I would have to go in and sign something saying
 25 that I didn't for that particular period that might have

1 just lapsed that I was not covered, so again, the best way I
 2 can put it is that I'm not going to say that I didn't have
 3 any issues, but at the time of this incident, I was under
 4 the impression that I was covered.
 5 Q Would you be able to put your hand on like the canceled
 6 checks or check stubs that you would have written to pay for
 7 your worker's compensation insurance in the months prior to
 8 Mr. Rose's accident?
 9 A I'm pretty sure I could go back and find documentations
 10 of payments.
 11 Q Do you recall ever getting a notice from Swap Fox or
 12 from the worker's comp insurance company saying that your
 13 policy had lapsed --
 14 A No.
 15 Q -- or that they were going to cancel it?
 16 A No, ma'am.
 17 Q You still got your insurance with Swap Fox?
 18 A As of now, I'm out of business pretty much. I'm
 19 exhausted.
 20 Q Were you running trucks for anybody other than --
 21 A No. No, ma'am.
 22 Q -- what you did for Chris Thompson?
 23 A Exactly. That was everything for me.
 24 Q And you have (our truck)?
 25 A Yes.



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21

1 Q Do you still have the four trucks?

2 A I still have -- yes, I still have them.

3 Q And where do you keep your trucks?

4 A I keep one of them at the shop that broke, but I have

5 three in a yard, what they call Red Top.

6 Q Is that something that you own or --

7 A It's a friend's property.

8 Q And where is Red Top is that?

9 A That's off of Charleston -- I think that's Old

10 Charleston Road.

11 Q And who owns the property where they're located?

12 A Rodney Doctor.

13 Q Doctor?

14 A Yes, ma'am.

15 Q And do you pay him rent to keep those trucks there, or

16 is he just a friend, or what's the arrangement?

17 A Oh; no, he's a friend.

18 Q And you say that you have not worked or done any kind

19 of work with JUS Trucking since you talked to Mr. Thompson

20 about the lapse in your worker's comp insurance?

21 A Yes, ma'am.

22 Q Just a quick question. We've marked this as Claimants

23 One, but I think you said this was a load sheet; is that

24 what you called it?

25 A Yeah. By definition, we call them load sheets, but

22

1 that's how we determine compensation.

2 Q And would this be something that an employee like Mr.

3 Rose would turn in to you each week?

4 A Yes. But technically he turned it in to the office.

5 He didn't really turn them in to me, but I look at it as

6 being turned in to me. Every week he would fill it out just

7 like I did and put it in a box, and then when the checks

8 came from Chris Thompson then it would come back to me.

9 Q So when you say he leaves it in a box, this was a box

10 at Capston?

11 A Correct.

12 Q But Chris Thompson didn't write a check to Samuel Rose.

13 He wrote you a check?

14 A Exactly. He wrote me a check. Yes, ma'am.

15 Q I think Mr. Killen probably has some questions for you.

16 That's all I have for you right now.

17 EXAMINATION BY MR. KILLEN:

18 Q Mr. Smalls, I'm Tim Killen. I represent South Carolina

19 Worker's Compensation Uninsured Employers Fund, and this

20 load sheet, this is filled out by Samuel Rose; is that

21 correct?

22 A Correct.

23 Q And did Mr. Rose do the calculations on this document?

24 A No. No. Chris Thompson did the calculations on the

25 sheet.

23

1 Q So Mr. Rose would leave this in a box for Chris

2 Thompson; is that correct?

3 A Correct.

4 Q And Chris Thompson or someone in his company would do

5 these calculations?

6 A Correct.

7 Q And then Mr. Thompson's company would pay you --

8 A Correct.

9 Q -- and send these sheets back?

10 A Correct.

11 Q And then you would have them for your records; is that

12 right?

13 A Correct.

14 Q So would you just then write a check to Samuel Rose for

15 the amount shown on the bottom of this load sheet?

16 A No. I would write a check to him for each load -- his

17 compensation was \$25.

18 Q That's right.

19 A I would count each load that was turned in to verify,

20 and I would cut him a check for those amount of loads.

21 Q Did Mr. Rose ever tell you how many trips he took in a

22 certain week?

23 A Sometimes we would discuss -- you know, he would say,

24 well, yes Smalls, I got 25 loads, or I got 30 loads and

25 then, so we would discuss it and then what would happen is

24

1 when this came back this was like double checking what the

2 verbal communication was.

3 Q The verbal communication was just informative; right?

4 A Correct.

5 Q This document, this load sheet, I mean, that's the holy

6 grail.

7 A Yes.

8 Q That's the document where everything is based off of;

9 right?

10 A Correct.

11 Q Let me ask you a few background questions. What's your

12 date of birth?

13 A [REDACTED]

14 Q And your social security number?

15 A [REDACTED]

16 Q And your driver's license number?

17 A [REDACTED]

18 Q And that's South Carolina?

19 A Correct, sir.

20 Q I know your home address, is that your business address

21 as well?

22 A Correct, sir.

23 Q Have you ever operated any other locations other than

24 the [REDACTED] location?

25 A No, sir.



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<p style="text-align: right;">25</p> <p>1 Q Where do you house your trucks?</p> <p>2 A Red Top or if I was --</p> <p>3 Q I'm sorry. Let me ask that a better way. When you</p> <p>4 were in business, where did you house your trucks?</p> <p>5 A In Summerville at the mill.</p> <p>6 Q And who owns that mill?</p> <p>7 A Well, Oyns the mill would be Capstone.</p> <p>8 Q And so you would park your trucks there, did you pay</p> <p>9 anyone for the space?</p> <p>10 A No, sir.</p> <p>11 Q Who did you negotiate that with?</p> <p>12 A Well, you use the word, "negotiate." I was just</p> <p>13 authorized by Mr. Chris Thompson to be able to park there.</p> <p>14 Q And you went into business with Chris Thompson about</p> <p>15 three and a half years ago, right?</p> <p>16 A Yes, sir.</p> <p>17 Q You never had a written contract with him?</p> <p>18 A No, sir.</p> <p>19 Q But you had a written contract with all your drivers?</p> <p>20 A Yes, sir, most of them.</p> <p>21 Q You're the only member of your LLC?</p> <p>22 A Yes, sir.</p> <p>23 Q How are you taxed?</p> <p>24 A When you say, how am I taxed?</p> <p>25 Q Are you taxed like a sole proprietor? Do you know?</p>	<p style="text-align: right;">27</p> <p>1 A Correct.</p> <p>2 Q Where do you bank?</p> <p>3 A First Citizens.</p> <p>4 Q Do you have personal accounts there?</p> <p>5 A I don't have a personal account.</p> <p>6 Q All your bank accounts there -- if there -- is there</p> <p>7 more than one?</p> <p>8 A No. It's just one, JJS Trucking.</p> <p>9 Q And it's just a checking account?</p> <p>10 A Yes.</p> <p>11 Q Do you have a mortgage on your house at Gordon Street?</p> <p>12 A I do.</p> <p>13 Q Is that in your name alone?</p> <p>14 A It is.</p> <p>15 Q How do you pay the mortgage?</p> <p>16 A By check.</p> <p>17 Q Out of your JJS Trucking, LLC account?</p> <p>18 A Most of time I would assume so, yes.</p> <p>19 Q You would assume so or yes or no?</p> <p>20 A I would say yes.</p> <p>21 Q So you use that JJS Trucking account for your personal</p> <p>22 needs?</p> <p>23 A I guess you can say it like that.</p> <p>24 Q Do you separate your money from your corporation with</p> <p>25 your personal money?</p>
<p style="text-align: right;">26</p> <p>1 It's okay if you don't know.</p> <p>2 A I mean, I got some tax documents, but I know there's</p> <p>3 different ways you can be taxed.</p> <p>4 Q Do you pay corporate taxes for your income through your</p> <p>5 LLC? If you don't know, it's okay?</p> <p>6 A Well, I know on my taxes my corporation is listed so.</p> <p>7 Q Okay. Your LLC?</p> <p>8 A Yes, sir.</p> <p>9 Q You pay personal income tax?</p> <p>10 A Can I make a call? Because my accountant might answer</p> <p>11 the phone.</p> <p>12 Q It's all right. Who's your accountant?</p> <p>13 A Liberty Tax. Warren -- Warren Fräzler.</p> <p>14 Q Where is he located?</p> <p>15 A Goose Creek.</p> <p>16 Q Do you own the property at Gordon Street?</p> <p>17 A Yes, I do.</p> <p>18 Q Personally?</p> <p>19 A Yes.</p> <p>20 Q Does your LLC own any property?</p> <p>21 A No, sir.</p> <p>22 Q Who owns those trucks?</p> <p>23 A My corporation.</p> <p>24 Q Their titled in the name of JJS Trucking, LLC; is that</p> <p>25 correct?</p>	<p style="text-align: right;">28</p> <p>1 A Oh, no, I see what you're saying. No, I do pull it</p> <p>2 out.</p> <p>3 Q How do you pull it out?</p> <p>4 A I write a check to myself.</p> <p>5 Q And then you cash it?</p> <p>6 A Correct.</p> <p>7 Q At First Citizens?</p> <p>8 A Correct.</p> <p>9 Q How do you pay your electric bill?</p> <p>10 A I would pay it off of my account.</p> <p>11 Q From your corporate account?</p> <p>12 A Correct.</p> <p>13 Q What about when you go get groceries?</p> <p>14 A I pay cash.</p> <p>15 Q Do you ever write a check for groceries?</p> <p>16 A No, sir.</p> <p>17 Q Do you own any automobiles personally?</p> <p>18 A Yes, sir.</p> <p>19 Q How do you get gas?</p> <p>20 A I pay for it with the cash.</p> <p>21 Q You pay cash for your gas at all times?</p> <p>22 A Correct.</p> <p>23 Q You never use your corporate account to pay for your</p> <p>24 personal vehicle's gas.</p> <p>25 A No, sir.</p>



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1 Q What kind of cars do you own personally?

2 A I got a Kia Sorento and a F250 true cab truck and a

3 F150 that's an older truck.

4 Q Any other automobiles or trucks?

5 A No, sir.

6 Q Does your wife own those vehicles as well?

7 A No.

8 Q Did you ever take money out of any of your drivers

9 checks to pay for worker's comp insurance?

10 A No.

11 Q Did Chris Thompson ever take money out of what he paid

12 you to pay for worker's compensation insurance?

13 A No.

14 Q Did the terms of your agreement with Chris Thompson

15 ever change at any time during the course of your

16 relationship?

17 A No.

18 Q So he took the same percentage out when you started us

19 he did from your last load?

20 A Same percentage out -- same percentage out. I would

21 say -- you say take the same percentage out. I would word

22 it as I was paid by the ton, but that would change based off

23 of fuel cost or what he was being compensated with because

24 it did go up and down. But I don't see it as -- you say

25 take something out.

30

1 Q So when it changed, how did you find out that it

2 changed?

3 A (saw it on the -- I mean, I got the load sheet -- the

4 statement).

5 Q When you got paid, that's when you learned?

6 A Correct.

7 Q There was no negotiating those factors?

8 A No, sir.

9 Q What Chris Thompson paid you, you got, is that correct?

10 A Correct.

11 Q And you didn't have any say so in that?

12 A No, sir.

13 Q And you said earlier your job was to provide insurance

14 coverage, and his job was to provide the trailer?

15 A Well, I mean, no. My job was to provide a truck and a

16 driver.

17 Q Okay?

18 A But under the terms, I was supposed to make sure I keep

19 my insurance, you know, current.

20 Q And that's your liability insurance and your worker's

21 comp insurance?

22 A Correct.

23 Q I believe Mr. Fisher showed you a certificate of

24 insurance earlier. I don't think we made it an exhibit.

25 There's one dated 10/18/2010.

31

1 (Where upon an off the record

2 discussion took place.)

3 Q Do you have a copy of that certificate dated 10/18/2010

4 or do you need --

5 A I got it.

6 Q Now, in October of 2010, did you get a new policy

7 through the Swap Fox Agency for worker's comp insurance?

8 A I'm sorry. Which one am I looking at?

9 Q Your looking at the one dated 10/18/2010.

10 A Okay.

11 Q That's the one that we're dealing with here. That's

12 the most important one, in my opinion.

13 Did you get a new policy of insurance that year in

14 October of 2010 for worker's comp, do you remember that?

15 A A new?

16 Q Yes.

17 A 10th, the 18th, 10/18/10, did I get a new?

18 Q Let me go through this certificate with you. This

19 purports to show that the document was created on

20 October 18, 2010 by someone at Swap Fox Agency, and it has

21 Insure B Travelers Insurance or Indemnity and Affiliates. I

22 can't read it and that's where your worker's comp policy

23 would be in effect. That Insure B up there at the top is

24 referencing this right here where it says binder and then

25 these dates of effective coverage down here, 10/8/10 through

32

1 10/8/11. Did you go get a new insurance policy around that

2 time?

3 A If that's the 10/18/10 -- I would -- are you saying

4 this is the time when I was renewing it?

5 Q I'm asking you. Did you renew a policy, or did you get

6 a new one or what?

7 A I renew it every year, so I'm renewing it every year

8 and it starts on the 10th, the 8th, the 10, 10th the 2nd and

9 than this date up here is -- I would have believed that this

10 is the beginning of a new policy.

11 Q It shows binder down there. Did you ever have an

12 actual policy issued to you from Travelers?

13 A I'm pretty sure I would have had to. I mean --

14 Q When did you make your payments to Swap Fox?

15 A Oh, wow, I mean, normally there would have been a

16 deposit made, and I would be making monthly payments.

17 Q So around the time, you either renewed or got a new

18 policy you make a deposit, is that correct?

19 A Correct.

20 Q And then from the rest of the year you make --

21 A -- Correct.

22 Q -- equal monthly installments, is that correct?

23 A Pretty much.

24 Q And there were times in the past where you would fall

25 behind?



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33

1 A Correct.

2 Q But someone from Swap Fox would contact you and let you

3 know and then you would catch up, correct?

4 A Correct.

5 Q Now, the worker's comp commission is showing a -- that

6 this policy was canceled sometime in February of 2011. Now,

7 between October of 2010 and February of 2011, were you

8 missing payments to Swap Fox or Travelers?

9 A Okay. Say that one more time, please.

10 Q Between October of 2010 and February of 2011, that's

11 about what, four months?

12 A Okay. Between October -- go ahead now.

13 Q Did you miss any of your payments?

14 A For my worker's comp, I'm going to say I really don't

15 recall missing any payments, but if worker's comp says --

16 well, not worker's comp but if they say my insurance lapsed

17 in January, I would have to say obviously I didn't make a

18 payment.

19 Q Are you telling me you know that you didn't make a

20 payment or just because this paperwork, which is not

21 binding, says it.

22 A Exactly.

23 Q Are you relying on these documents?

24 A Yeah, pretty much.

25 Q Solely for your recollection?

34

1 A Pretty much.

2 Q Are you telling me that it's possible you missed a

3 payment or two?

4 A I'm saying it is possible.

5 Q Is it probable?

6 A Probable? If that the same meaning as saying possible,

7 I'm going to say it's possible.

8 Q Did you ever get a call from anyone at Swap Fox during

9 that time?

10 A No, sir.

11 Q Did you ever get a letter from anyone at Swap Fox

12 during that time telling you your policy was getting ready

13 to lapse?

14 A No, sir.

15 Q Did you ever get a letter from Travelers during that

16 period of time telling you your policy was getting ready to

17 lapse and what you could do to cure that?

18 A I don't recall it, no, sir.

19 Q Did you ever get any of your premiums refunded to you?

20 A No, sir.

21 Q Neither Travelers nor Swap Fox ever wrote you a check

22 for any worker's compensation insurance you paid for, but

23 they weren't providing coverage for you?

24 A No, sir.

25 Q How frequently would you send certificates over to

35

1 Chris Thompson?

2 A I myself don't send certificates over to Chris

3 Thompson. My agent would send it over to Chris Thompson.

4 Q Did you ever ask your agent to do that?

5 A In the past I think one time I did. It wasn't in the

6 last year. I think one time before my -- he questioned me

7 on my insurance renewal date, and I called my agent and say

8 could you send over Chris Thompson a current, you know,

9 certificate of insurance, but that was -- that had probably

10 happened two years plus ago.

11 Q How long was your agreement with Chris Thompson

12 supposed to last?

13 A He never -- we never discussed a time frame for how

14 long it was supposed to last.

15 Q How long did it actually last?

16 A I'm going to say about three and a half years.

17 Q So for three and a half years, your two companies never

18 had a written agreement?

19 A No, sir.

20 Q Three and a half years your two companies, both of your

21 LLCs, never put anything on paper to show that you two had a

22 contract with each other?

23 A No, sir.

24 Q And nothing changed since three and a half years before

25 the contract terminated, as far as the terms of contract are

36

1 concerned, is that correct?

2 A Yes, sir, that's what I am saying.

3 Q After Chris Thompson terminated the contract with your

4 company, did your company receive full payment for the work

5 it had already performed?

6 A If you are saying if anything was owed to me from him,

7 did I receive it, then I would say, yes.

8 Q Was it effective immediately, or did you get a 30 day

9 grace period?

10 A Immediately.

11 Q And you would make your insurance payments to Swap Fox

12 Agency?

13 A Yes, sir, sometimes, yes.

14 Q Sometimes?

15 A Yes, sometimes.

16 Q Where would you make them if you weren't making them

17 directly to Swap Fox?

18 A If I'm not mistaken it would have been to like a

19 finance company maybe. I don't know if it was actually to

20 Travers or Zurich, but sometimes it would be like a finance

21 company that would be established, and I would pay them.

22 Q What is the last time you remember making payments to a

23 finance company?

24 A I would have to go and look at my records. Right this

25 second (--



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1 Q Just to the best of your recollection?

2 A I would - I would believe in this - in the early

3 portion of this year because like I said, I know I was

4 making payments.

5 Q So you were making payments in 2011?

6 A 2011.

7 Q It's 2011.

8 A Yes.

9 Q It is your testimony that you never received notice of

10 a cancellation?

11 A No, sir.

12 Q By notion of cancellation, I mean a letter from the

13 insurance company or the agent saying that they were getting

14 ready to cancel your policy unless you followed up with the

15 payment?

16 A It's a possibility they might have sent me something.

17 Also when I was aware of a possible lapse then, I would

18 bring it up. In this particular case here, I was not

19 aware that my insurance had lapsed, and any other time if my

20 insurance was about to lapse, Chris Thompson would have been

21 all over me because he did not want my insurance to lapse,

22 so I can't say I didn't make a mistake. What I can say is

23 that ever since I dealing with Swap Fox and ever since I've

24 been running for Chris, I never had this problem, and when

25 he brought it to my attention, I didn't have nothing to say.

38

1 Q "He" being who?

2 A Chris Thompson.

3 Q And he didn't know about this problem until after the

4 accident; is that correct?

5 A Correct.

6 Q That's all the questions I have.

7 EXAMINATION BY MR. FISHER:

8 Q Let me ask you one, Mr. Smalls: The finance company,

9 whenever you say sometimes you made insurance payments

10 through a finance company and not directly to Swap Fox, what

11 finance company would that be, and how did that work?

12 A The best way I can put it is Swap Fox was my insurance

13 agent. Normally, when I would go and establish a insurance

14 binder, I would have to put "X" amount of dollars down, and

15 then it would say, okay, well, to the balance on this - if

16 the policy was \$5,000, I might put down \$2,000. They might

17 finance 3,000. I would give Swap Fox a check and then what

18 would happen would be I would either make payments to a -

19 normally, I don't think it was the actual insurance, I think

20 it was to like a finance company. And then if I got in

21 trouble, you know, they would say, Hey, you know your

22 insurance is about to cancel. I would talk to my insurance

23 agent and say, Hey, what's the deal, well, you got "X"

24 amount of time. Sometimes I would just cut them a direct

25 check, you know, and they would deal with it however they

39

1 deal with my policy. They might have had a more faster,

2 efficient way of dealing with the situation.

3 Q Well, there's this note here - cancellations,

4 reinstatements, non renewals and it shows on 16/11 that

5 your policy was canceled, and it says by the request of the

6 finance company?

7 MR. KILLEN: Can you tell him where that is, Joe?

8 MR. FISHER: Yeah.

9 Q It says TOC inquiry on file with South Carolina. This

10 is something to show whether or not you had insurance. But

11 anyway, the finance company, if you don't make a payment to

12 the finance company, does your coverage lapse?

13 A I would say I'm sure it would lapse. I guess, that's

14 an answer.

15 Q Do you know what finance agency it was that you were

16 dealing with at this time?

17 A I would have to really go back and talk to my agent. I

18 can find that out.

19 Q It would be worth it for you to do that. Thank you,

20 sir. I don't have any other questions.

21 EXAMINATION BY MR. KILLEN:

22 Q Quick follow up. Did you ever sign a contract with the

23 finance agency?

24 A You know something, I have to go back and look at my

25 documents because like I said, normally when I start the

40

1 policy I would sign "X" amount of papers, and I'd have to go

2 back and try to start looking at all those things to verify

3 that.

4 MR. FISHER: Okay. Thank you. That's all.

5 (The deposition was concluded at

6 12:10 p.m. November, 14th,

7 2011.)

8

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Sedrick Smalls

November 14, 2011

<p>1 STATE OF SOUTH CAROLINA 2 : C-E-R-T-I-F-I-C-A-T-E 3 COUNTY OF DORCHESTER) 4 I, Laci B. Bearden, Court Reporter and Notary Public, 5 certify that I did have Sedrick Smalls appear before me at 6 11:00 a.m. on Monday, November 14th, 2011, at the law 7 offices of George Sink, P.A., 7011 Rivers Avenue, N. 8 Charleston, South Carolina; that the witness was sworn and 9 cautioned to tell the truth, the pages constitute a true and 10 accurate transcript of the testimony given at that time and 11 place. 12 I further certify that I am not of counsel or kin to 13 any of the parties to this cause of action, nor am I 14 interested in any manner in its outcome. 15 IN WITNESS WHEREOF, I have hereunto set my hand and 16 seal this 14th day of November, 2011. 17 18 19 _____ 20 Laci B. Bearden 21 Notary Public for South Carolina 22 My Commission Expires: September 29, 2021 23 24 25</p>	



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BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1112328

Samuel A. Rose,
Employee, Claimant,
vs.
JIS Trucking, LLC/SCUEF and Chris Thompson
Services, LLC/Bridgefield Casualty Insurance
Company,
Employer,
and
Bridgefield Causality Insurance Co., Carrier,
Defendants.

DEPOSITION OF

SAMUEL ROSE

November 14, 2011
9:45 a.m.

George Sink, P.A.
7011 Rivers Avenue
N. Charleston, South Carolina

Laci Bearden, Court Reporter and Notary Public



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<p style="text-align: center;">BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION WCC FILE NO. 1112178</p> <p>Samuel A. Rose, Employer, Claimant, -vs- JJS Trucking, LLC/SCUFZ and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company, Employer, -and- Bridgefield Casualty Insurance Co., Carrier, Defendants.</p> <p style="text-align: center;">The deposition of Samuel Rose, taken before Lael Behaden, Court Reporter and Notary Public, at the George Sink, P.A., 7011 Rivers Avenue, N. Charleston, South Carolina on November 14th, 2011, commencing at 9:45 a.m.</p>	<p style="text-align: center;">INDEX</p> <p>1 2 3 EXAMINATION BY MS. BARR 4 4 EXAMINATION BY MR. KILLÉN 28 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">EXHIBITS</p> <p>(No exhibits produced.)</p>
<p style="text-align: center;">APPEARANCES</p> <p>For the Employer: George Sink, P.A. BY: Joseph B. Fisher 7011 Rivers Avenue Suite 105 N. Charleston, SC 29406 jfisher@sinklaw.com</p> <p>For the Carrier: Trask & Howell, LLC. BY: Kirsten L. Barr 763 Johnnie Dodds Blvd. P.O. Box 2167 Mt. Pleasant, SC 29465 kbarr@trask-howell.com</p> <p>S.C. Uninsured Employers Fund BY: Timothy Killen, Esq. 100 Executive Center Drive, Suite 101 Columbia, SC 29210 tkillen@sil.sc.gov</p>	<p style="text-align: center;">SAMUEL ROSE</p> <p>1 was sworn (affirmed) and testified as follows: 2 3 EXAMINATION BY MS. BARR: 4 Q. Mr. Rose, my name is Kristen Barr and I represent a 5 company called Bridgefield Casualty Insurance Company, and 6 Chris Thompson Services regarding your worker's compensation 7 claim. And I'm sure Mr. Fisher's explained to you what 8 we're doing here today, but again, it's called a discovery 9 deposition, and it really is just what it sounds. It's my 10 chance to discover a little bit more about you as a person 11 and about the accident and your injuries and how you've been 12 doing since then. My questions are intended to be straight 13 forward, so if I ask something that is unclear or doesn't 14 make sense, please ask me to rephrase or repeat my question. 15 I'm happy to do that. Because otherwise, if you answer my 16 questions, number one, I'm going to assume you're answering 17 truthfully, and number two, that you understood the question 18 before you answered it, fair enough? 19 A. Okay. 20 Q. The other thing is the court reporter is going to take 21 down everything we say here today. This is the microphone, 22 so we just need to speak up and speak clearly. I 23 understand you if you nod your head here today, but she 24 can't take that down on paper very well, so we just need to 25 remember to say yes or no and just again, answer it to the</p>



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1 best of your ability.

2 If you would state your full name for the record?

3 A Samuel Archibald Rose.

4 Q Could you spell your middle name for me?

5 A A-R-C-H-I-B-A-L-D-R-O-S-E.

6 Q And Mr. Rose, what is your date of birth?

7 A [REDACTED]

8 Q And your social security number?

9 A [REDACTED]

10 Q And are you married, single, divorced?

11 A Single.

12 Q Have you ever been married?

13 A No.

14 Q Do you have any children?

15 A No.

16 Q And what is your current you address?

17 A [REDACTED]

18 Q And who do you live with at [REDACTED]?

19 A My cousin.

20 Q And how long have you lived there?

21 A I grew up there.

22 Q And it's just the two of you living there?

23 A Yes.

24 Q Anybody depending on you for support?

25 A No.

6

1 Q Tell me, if my understanding you were working for a

2 company called JJS Trucking at the time of this accident; is

3 that right?

4 A Yes.

5 Q And who did you work for at JJS Trucking?

6 A Sedrick Smalls.

7 Q And when did you start working for Sedrick Smalls at

8 JJS Trucking?

9 A Back in February or March.

10 Q Of 2011?

11 A Yes.

12 Q And what were you hired to do for JJS Trucking?

13 A To haul woodchips from Summerville to North Charleston.

14 Q And that was to North Charleston to the Capstone plant?

15 A Yes.

16 Q Did you have a set work schedule that you did?

17 A From 12:00 o'clock until 12 noon. Either 12 noon or

18 2:00 o'clock, and I worked a 10 to 12 hour shift.

19 Q And during your ten to 12 hour shift, I guess it would

20 be a ten hour shift if you started at 2:00 o'clock in the

21 afternoon?

22 A Yes -- well, no. From the time I started, I worked

23 either 10 to 12 hours, and I worked until the plant closed.

24 Q And to your knowledge, what time did the plant close?

25 A It's suppose to close at 3:30, but sometimes it closes

7

1 early.

2 Q And would you work until the North Charleston plant

3 closed or the saw mill up in Summerville closed?

4 A Summerville. North Charleston is open 24/7.

5 Q So you would begin and start your day at Summerville?

6 A Yes.

7 Q Did you keep the truck you used at your home or JJS

8 Trucking, how did your day start?

9 A It was parked in Summerville at the saw mill.

10 Q So would you drive your personal vehicle to the saw

11 mill then?

12 A Yes.

13 Q Did you have to punch a time card or anything like

14 that, or how did you keep track -- how would JJS keep track

15 of your time?

16 A Our daily logs.

17 Q What would you keep track of in your daily log?

18 A The time that I start work, the inspection of the

19 truck, and number of runs I made.

20 Q And would you also get receipts from either the saw

21 mill or from the mill in Charleston as far as what you

22 loaded or unloaded?

23 A Each load that we pick up we received a receipt. When

24 we got to Capstone we received another receipt.

25 Q And what would you do with these receipts?

8

1 A We turned them in at the end of the week.

2 Q And who did you turn the receipts in to?

3 A They went to Chris Thompson. He has a mailbox placed

4 at the saw mill in Summerville, and we fill out our work

5 sheet, and we put everything in the envelope for him.

6 Q And then how would you get paid?

7 A By check. Sedrick Smalls is the one that paid me.

8 Q And what was the basis of your pay? How did he

9 calculate how much you would earn per week?

10 A \$25 dollars per load.

11 Q So someone would add up all those receipts and there

12 would be \$25 even for each load that you would get paid?

13 A Yes.

14 Q And how many loads would you average per shift?

15 A Anywhere from six, seven loads per shift.

16 Q And how many days per week did you do this?

17 A Five.

18 Q Was it Monday through Friday?

19 A Yes. We worked on weekends as needed?

20 Q How frequently would you work weekends?

21 A Not often?

22 Q And how did it work? Would Mr. Smalls pay you in

23 check, or would he give that to you personally? Was it

24 mailed to you?

25 A It was given personally.



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9

1 Q By Mr. Smalls?

2 A Yes.

3 Q And what day of the week would he give you your check?

4 A Friday.

5 Q So every Friday you would get a check?

6 A Yes.

7 Q And how much was your average check that you were paid on Fridays by Mr. Smalls?

8 A It ranged from 650 to 750 depending on how many loads I ran for the week.

9 Q And so you would get the whole 650 to 750?

10 A Yes.

11 Q He didn't take out any taxes?

12 A He took out a hundred dollars for damages to the truck for an escrow account.

13 Q He took that out each week or just the beginning?

14 A Each week.

15 Q What is your job status with Mr. Smalls? Are you still employed by him?

16 A Yes, to my understanding.

17 Q Do you still have funds in that escrow account?

18 A I have no idea.

19 Q When was the last time you got a paycheck from Mr. Smalls?

20 A The week prior to the accident.

10

1 Q Have you spoken to Mr. Smalls since the accident?

2 A Once or twice.

3 Q Did he come see you in the hospital?

4 A Yes.

5 Q Has he done anything to help you with your lost wages or your medical bills?

6 A Nothing.

7 Q Have you discussed that?

8 A When I asked him about it, he told me about the insurance. When I contacted the insurance, nothing.

9 Q And what did he tell you about insurance?

10 A That he had insurance.

11 Q Did he tell you, like, auto insurance or worker's comp, or did he tell you what kind?

12 A He said he had "workers" comp insurance for us.

13 Q And he gave you the name of a company to call?

14 A Yeah. I gave that to the lawyer. I don't remember the name. He also said that he spoke with Chris Thompson, and Chris Thompson told him that he would cover the medical bills.

15 Q Did you ever speak with anybody at Mr. Smalls insurance company, or did you just pass that on to your attorney?

16 A They contacted me at first, after the accident. They sent me a card and then after that, nothing. I passed all that information on to my attorney.

11

1 Q As I understand it, you had legal representation pretty quickly after the accident; is that fair to say?

2 A Yes, I called him.

3 Q I mean, that was within like a day or two after the accident you had somebody working on your behalf?

4 A In two days.

5 Q Where did you work prior to JJS Trucking?

6 A Leopard, Incorporated.

7 Q Leopard?

8 A Yes.

9 Q What does Leopard, Incorporated do?

10 A It's a fire company. We distribute tractor-trailer tires.

11 Q How long did you work for Leopard?

12 A About seven years.

13 Q And where's Leopard located?

14 A It's headquartered out of New Jersey. Its local office is here in North Charleston.

15 Q You said that they distribute tractor-trailer tires. Were you doing long distance hauling, trucking?

16 A Both. My job required mostly local driving.

17 Q So local within South Carolina?

18 A No. South Carolina, North Carolina, Florida, Georgia.

19 Q And why did you leave Leopard, Incorporated?

20 A The work slowed down, and I needed money.

12

1 Q When did you last work for them?

2 A February, the latter part of February.

3 Q Of this year?

4 A Yes.

5 Q How much were you earning on average at Leopard?

6 A About 500 a week.

7 Q And is that the same you would earn from them say in 2010 or 2009?

8 A Yeah.

9 Q One of the things we have to do in worker's comp is try to get an idea of how much money you were making in the past year. So was there any other income from any sources other than Leopard, Incorporated or from Sedrick Smalls in this past year, 2011?

10 A Allstate Logistics.

11 Q What did you do for Allstate Logistics?

12 A Local runs. That's just to supplement my income.

13 Q When was the last time you worked for Allstate Logistics?

14 A Back in January. The company went out of business.

15 Q So around the time of this accident, say July or August of 2011, any other supplemental sources of income?

16 A No.

17 Q The checks that you would get from Sedrick Smalls, would it be on a JJS checking account?



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13

1 A Yes.

2 Q Would it always be the same looking check, or did you

3 ever get a check personally from Sedrick?

4 A Always from JIS Trucking.

5 Q And if we needed to try to track down how much those

6 checks were, would you have a habit of cashing them

7 somewhere or depositing them into a checking or saving

8 account?

9 A I always cashed it at First Citizens Bank.

10 Q Did you have an account there or was that where

11 Mr. Smalls did?

12 A That's where Mr. Smalls had his account.

13 Q Was there a particular branch that you used?

14 A Summerdale, Main Road.

15 Q Tell me, on the day of this accident, I believe it was

16 August 10, 2011, what were you doing before the accident

17 occurred or what were you in the process of doing when the

18 accident occurred?

19 A That was my last run for the night, and I was on my way

20 to Capstone to drop the load.

21 Q Did you ever turn in the receipts from that day to

22 Sedrick Smalls?

23 A No. The receipts were left inside the truck. My log

24 book and everything was left in the truck.

25 Q And tell me, as a result of the accident, what

14

1 happened. Did you stay inside the cab of truck, were you

2 thrown from the cab of the truck, what happened to you

3 specifically?

4 A After the accident, I was pulled out of the truck.

5 Some people stopped, and they pulled me out of the truck and

6 tossed me over the wall, the median of the highway.

7 Q Are there air bags in the truck or any other restraint

8 devices?

9 A Seatbelt.

10 Q Do you recall hitting in particular on the inside of

11 the cab, or did the seatbelt restrain you?

12 A My knee shattered the steering column. My head bounced

13 off the rear glass and steering wheel.

14 Q You said the rear glass?

15 A Yes, it was a day cab.

16 Q Anything else that you can really recall hitting?

17 A Just my right knee when it shattered the steering

18 column and just hitting -- I blacked out when I hit the

19 glass, but I do remember getting pulled from the cab, and

20 then they threw me over the wall before the truck blew up.

21 Q When you blacked out were you totally out cold, or did

22 things just kind of go hazy for you a little bit?

23 A I was told I was out cold.

24 Q It's my understanding you were taken to MUSC; is that

25 right?

15

1 A Yes.

2 Q How long did you stay at MUSC?

3 A A day and a half.

4 Q And when they released you from MUSC were you referred

5 to any particular doctors or what was your plan of care

6 after your release from MUSC?

7 A They scheduled me an appointment with the neurologist.

8 They gave me a physical therapist and told me I needed to

9 see an orthopedist as well.

10 Q Do you have a family physician?

11 A No, not at the time, no.

12 Q In the past, have you had a personal family doctor?

13 A No, I just use military doctors.

14 Q Did you serve in the military?

15 A No, my parents.

16 Q So when you were younger, you would just see VA

17 doctors?

18 A Yeah.

19 Q But you haven't seen anybody at the VA since this

20 accident?

21 A No.

22 Q And if you need to take a break, just let me know.

23 A I took pills before.

24 Q What sort of pills might have you taken today?

25 A Flexeril, Fioricet, Elavil, Risperidol.

16

1 Q Do those medications have any effects on you, side

2 effects? Do they make you drowsy or --

3 A Drowsy, dizzy but they are suppose to help me cope with

4 pain.

5 Q Now, after MUSC, did you -- you said that they

6 scheduled a appointment with a neurologist; is that right?

7 A Yes.

8 Q Did you see the neurologist?

9 A No, they kept canceling my appointment.

10 Q Have you seen a neurologist at all since the accident?

11 A I'm scheduled to see one next week.

12 Q Who are you scheduled to see next week?

13 A Dr. Weinstein(sic).

14 Q Doctor who?

15 A Weinstein.

16 Q Weinstein? Is this somebody that you're --

17 MR. FISH(E): Weinstein.

18 MS. BARR: Weinstein.

19 Q And you're to see Dr. Weinstein about your neck?

20 A My neck, my back, and my knee.

21 Q Now, I know MUSC had talked to you about seeing an

22 orthopedist about your knee. Did you see any of the

23 orthopedists at MUSC for your knee?

24 A No. They canceled the appointments as well.

25 Q There was talk about you seeing Dr. Harisock(sic). Did



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<p>17</p> <p>1 Q you ever see him? He's an orthopedist at MUSC?</p> <p>2 A He's the one that canceled the appointment. There was</p> <p>3 a problem with the insurance.</p> <p>4 Q You've seen Dr. Wildsteen already; is that right?</p> <p>5 A I've spoken with him, but I haven't went to his office</p> <p>6 yet.</p> <p>7 Q Have you seen any doctor since you were released from</p> <p>8 MUSC?</p> <p>9 A Yes.</p> <p>10 Q And who has treated you?</p> <p>11 A Dr. Able, Dr. Keller, Dr. Walls.</p> <p>12 Q Dr. Able, what kind of doctor is Dr. Able; do you know?</p> <p>13 A General practitioner.</p> <p>14 Q And how did you find Dr. Able?</p> <p>15 A Through my lawyer's office.</p> <p>16 Q And what has Dr. Able been doing for you?</p> <p>17 A He's the physical one that treated me for my neck, my</p> <p>18 back, and my knee. He's been --</p> <p>19 Q Giving you the medications?</p> <p>20 A Some of it. I'm just monitoring my treatment.</p> <p>21 Dr. Kelley(ph) is the pain specialist. He's the one -- he's</p> <p>22 been trying to help me cope with my pain. He's given me</p> <p>23 Oxycodone, Lortab, just things to help with the pain. I've</p> <p>24 taken two epidurals, cortisone shots.</p> <p>25 Q And were your epidurals for your neck or for your lower</p>	<p>19</p> <p>1 Q After -- I know you spent the night there but after</p> <p>2 your release did you ever go back to see any doctors at</p> <p>3 MUSC?</p> <p>4 A No, I went to my appointments but they kept getting</p> <p>5 canceled. And the also assigned me a physical therapist.</p> <p>6 And I forgot who that was.</p> <p>7 Q Did you get any therapy done there?</p> <p>8 A Three times.</p> <p>9 Q And I know you said you scheduled Dr. Wildsteen. Any</p> <p>10 other doctors appointment?</p> <p>11 A No, Doctor Able, yes.</p> <p>12 Q What sort of schedule to you have with Dr. Able? Do</p> <p>13 you see him like once a week or once a month?</p> <p>14 A Every two weeks.</p> <p>15 Q And the pain medicines you have now you said you get</p> <p>16 some from Dr. Able and then some from Dr. Kelley?</p> <p>17 A Yeah.</p> <p>18 Q Tell me a little bit about the pain you're feeling now,</p> <p>19 where you're feeling it, and help me understand how you</p> <p>20 describe it.</p> <p>21 A Dizziness.</p> <p>22 Q And how frequently are you dizzy?</p> <p>23 A Daily.</p> <p>24 Q Is it something that comes and goes?</p> <p>25 A If I move too fast then my head starts spinning. If I</p>
<p>18</p> <p>1 back?</p> <p>2 A My lower back. The cortisone shots were for my neck.</p> <p>3 And he referred me to Dr. Wildsteen.</p> <p>4 Q Have you seen anybody in Dr. Wildsteen's office.</p> <p>5 A No. I took an MRI already, and I'm waiting for my</p> <p>6 appointment.</p> <p>7 Q Where did you have the MRI done?</p> <p>8 A Trident County Radiology.</p> <p>9 Q And was that for your neck or for you or lower back?</p> <p>10 A My neck. I've had an MRI of my knee done at MUSC.</p> <p>11 Q All right. Do you have any appointments with any</p> <p>12 doctors that deal specifically with the knee problem or the</p> <p>13 main problem, your neck and your back at this point?</p> <p>14 A My neck and my back at this point.</p> <p>15 Q And you mentioned Dr. Willis; is that right?</p> <p>16 A Yes.</p> <p>17 Q What has Dr. Willis done for you?</p> <p>18 A Mostly it's just therapy, physical therapy and just to</p> <p>19 help me deal with the pain.</p> <p>20 Q Any doctors other than Dr. Able, Dr. Kelley,</p> <p>21 Dr. Willis?</p> <p>22 A No.</p> <p>23 Q And then of course you saw a number of doctors while</p> <p>24 you were a patient at MUSC.</p> <p>25 A Yes.</p>	<p>20</p> <p>1 get up, when I first stand up I have to orient myself.</p> <p>2 There's a throbbing in the back of my head that hurts. My</p> <p>3 neck, if I hold it up too long it starts hurting. My lower</p> <p>4 back is still in pain. And my knee, if I go for walks in</p> <p>5 the neighborhood to exercise, walking less than a block I</p> <p>6 just need help or need some rest just to get back on.</p> <p>7 Q And that's your right knee?</p> <p>8 A Yeah.</p> <p>9 Q Does it lock up or it just hurts?</p> <p>10 A It locks up and it hurts.</p> <p>11 Q Do you feel the pain anywhere else?</p> <p>12 A My whole back. My entire back.</p> <p>13 Q Is there anything that helps with the pain or improves</p> <p>14 it even a little bit as far as your back pain goes. A</p> <p>15 position or activity that helps?</p> <p>16 A Showers, warm Showers, Bengay.</p> <p>17 Q But you have been doing some exercises with the</p> <p>18 physical therapist?</p> <p>19 A Yes.</p> <p>20 Q Do they have you doing anything at home as far as</p> <p>21 exercising or stretching to help with your back?</p> <p>22 A Stretching helps my back and my neck.</p> <p>23 Q Are you good? Some people are better than others about</p> <p>24 actually doing the stretches and exercises. Do you do them?</p> <p>25 A I do some of them, but it hurts.</p>



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21

1 Q You mentioned that the medication that you've taken
2 before you came here today, do you take any other
3 medications say like at bedtime?
4 A Yeah.
5 Q What other medications do you take?
6 A Flexeril.
7 Q Your handing me a list and it look like --
8 A These are all the medication that I take.
9 Q So it's Flexeril, Amitriptyline, Fioricet, Elavil,
10 Ibuprofen, Lortab, the Ibuprofen, and you also have
11 Neurontin and Oxycodone?
12 A Right?
13 Q And the Oxycodone, is that something that you take when
14 the pain gets really bad?
15 A Yes.
16 Q And the Neurontin you take everyday?
17 A Yes.
18 Q Have you ever had surgery before?
19 A No.
20 Q Have you ever been hospitalized for any reason prior to
21 this accident?
22 A No.
23 Q Have you ever had a workers compensation claim or a
24 personal injury claim?
25 A Never.

22

1 Q Have you ever been in an automobile accident prior to
2 this?
3 A Yes.
4 Q And when was that?
5 A I think it was '07.
6 Q In 2007?
7 A Yes.
8 Q And where did that accident occurred?
9 A Here in Charleston.
10 Q Were you injured in that accident?
11 A No.
12 Q Was there any sort of settlement with the insurance
13 company over that accident?
14 A Yes.
15 Q Do you recall about how much you received in that
16 settlement?
17 A No.
18 Q Was it a couple hundred dollars, a couple thousand
19 dollars?
20 A It was a few hundred. And the owner of the car is the
21 one that got his car repaired. I borrowed the car.
22 Q Did they take you hospital or anything after the
23 accident?
24 A No.
25 Q Do you have any chronic medical conditions like high

23

1 blood pressure, diabetes anything like that.
2 A High blood pressure. Asthma.
3 Q Do you take prescription medications for either of
4 those conditions?
5 A For high blood pressure Lotensin.
6 Q And who prescribes Lotensin for you?
7 A Dr. Able.
8 Q And before Dr. Able, who --
9 A I was not on any medication for high blood pressure.
10 Q Were you aware you had high blood pressure before the
11 accident?
12 A Yes, but it wasn't dangerously high.
13 Q Do you monitor your blood pressure now?
14 A Now, I do, yes.
15 Q Do you have it under control now?
16 A Yes.
17 Q And just so I'm clear, you may have already told me
18 this, but Dr. Able -- you never saw Dr. Able until after
19 this accident in August?
20 A Right. The blood pressure medicine, they first assumed
21 the headaches I was having was because of the blood
22 pressure. Then the blood pressure came under control and
23 then I still had the headaches.
24 Q Does the pain medication that you're taking, does that
25 help with the headaches?

24

1 A No, not really.
2 Q How would you describe the type of headaches you have.
3 Where do you feel it and what does it feel like?
4 A The back of my head. It's like a buildup of pressure,
5 throbbing.
6 Q Does that change through the course of the day, the
7 intensity?
8 A Sometimes it gets worse and sometimes it's milder, but
9 it's there.
10 Q I noticed your wearing a soft collar around your neck.
11 Where did you get that?
12 A Dr. Able.
13 Q When do you wear that?
14 A Whenever I have to keep my head up.
15 Q So like you don't wear that around the house or that
16 sort of thing?
17 A No. Right now just keeping my head up it hurts, and my
18 collar is just to help me keep it up.
19 Q So you kind of rest your chin on it a little bit?
20 A Yeah.
21 Q And the cane, I notice that your off carrying the cane?
22 A Discomfort and balance.
23 Q Have you talked to Dr. Able about maybe your
24 medications affecting you making you a little dizzy?
25 A He said that the whiplash effect, I'm going to be dizzy



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25

1 for another year, I'll still have side effects from it.

2 Q But you have not gone to a neurologist to have that

3 checked out.

4 A Not yet.

5 Q And you don't think any appointments are scheduled

6 right now with the specialist?

7 A No. They've taken X-rays, and Dr. Kollat is the last

8 to take X-rays of my neck, and he referred me to the

9 neurologist.

10 Q And that's in his same practice together, Dr. Wildsteen

11 and Dr. Kollat, is that right?

12 A Dr. Wilds and Dr. Kollat is in the same practice.

13 Dr. Able is in a different practice.

14 Q Have you had any sources of income since the accident?

15 A Just family and money that I've borrowed.

16 Q You don't have like a AFLAC policy or any kind of

17 insurance policy?

18 A No.

19 Q And your medical bills, have you started getting bills

20 from MUSC or any of the other providers?

21 A Yes.

22 Q Have you paid any of your medical bills?

23 A No.

24 Q When was the last time you spoke to Sedrick Smalls?

25 A It's been over a month ago.

26

1 Q And you said that he told you that you were covered by

2 workmen's? He had a worker's comp policy that covered you?

3 A That was in the hospital after the accident he told me

4 that and that was back in August.

5 Q Did you subsequently find out that he didn't have a

6 policy in effect?

7 A Yes.

8 Q Did you talk to Jan about that?

9 A I spoke with my lawyer.

10 Q But you never confronted Mr. Smalls, and said hey, your

11 policy was no good?

12 A Yeah. I asked him about it, and he still showed me

13 that it was good.

14 Q Do you have a gut feeling, do you believe him, do you

15 think he had a workmen's compensation policy?

16 A At the time of the accident, I did believe him.

17 Q What about now, do you know what to think?

18 A Right now I was told they didn't that the policy

19 lapsed.

20 Q Do you think you know, if Mr. Smalls said he had it,

21 do you think he knew it had lapsed, or do you think he was

22 telling you the truth -

23 A At the time, I assumed he was telling me the truth.

24 Q If we needed you to help us figure out how much you had

25 earned while working for JJS Trucking, do you have any sort

27

1 of record like a check stub or anything like that that you

2 could -

3 A I didn't save any.

4 Q You didn't save any.

5 A We probably can go to the bank and ask for copies of

6 the check.

7 Q But you said they were always on a JJS Trucking

8 checking account?

9 A Yes.

10 Q And then there would have also been somebody would have

11 kept a log -

12 A Sedrick Smalls.

13 Q Did your log survive the accident, do you know?

14 A I have no idea.

15 Q With the log that you would have had with you on the

16 night of the accident, been your only log you ever had

17 working for JJS Trucking, or would there have been other

18 logs?

19 A Copies of the logs are kept by Chris Thompson when we

20 turned in the logs at the end of the week.

21 Q Did you ever see him personally and then hand him the

22 log, or was there just left in the place?

23 A We left it in a place.

24 Q Was that left at Capstone?

25 A No, it was left in Summerville.

28

1 Q At the saw mill in Summerville?

2 A Yes.

3 Q Would it have been at that front office where you drop

4 in?

5 A No, back at the scales.

6 Q Would you talk to anybody when you dropped that off?

7 A No. We put it in an envelope in the mailbox. The

8 mailbox was for CTS Trucking, and we just put it in an

9 envelope for CTS Trucking.

10 Q There was just some kind of lobby with the mailbox in

11 it?

12 A It's outside.

13 Q Outside. And it's over there by the scales?

14 A Yes. And if there was any problems CTS would contact

15 me or Sedrick Smalls would contact me.

16 Q As far as problems with the logs?

17 A Yes.

18 Q Mr. Rose, I think that's all the questions I have for

19 you. Mr. Killen may have some questions for you and your

20 lawyer might have some, too.

21 EXAMINATION BY MR. KILLEN:

22 Q I'm Tim Killen. I represent the state agency involved

23 in this case. This is Workmen's Compensation Uninsured

24 Employer Fund. When you went to work for JJS Trucking, did

25 your route ever vary?



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<p>19</p> <p>1 A We took the interstate or we went the back way through 2 Hanahan and Goose Creek. 3 Q But you were always going to the same place from the 4 same place; is that correct? 5 A Yes. 6 Q How did you know you were hauling these loads for Chris 7 Thompson? 8 A Chris Thompson was the contractor and everything coming 9 out of Summerville saw mill is either hauled for Don Swael 10 or Chris Thompson. Everybody else were just subcontractors 11 under those two. 12 Q How did you know you were working under Chris 13 Thompson? 14 A I was told. 15 Q Who told you that? 16 A Sedrick Smalls. 17 Q Did you ever work for anybody else other than Chris 18 Thompson? 19 A At the saw mill, no. 20 Q You said that Chris Thompson would contact you? 21 A No, his secretary. 22 Q His secretary would contact you? 23 A If there's a problem with the logs or paperwork that I 24 turn in, they left either notes in the box for us, or when 25 we picked up our checks, we received the notes from them, or</p>	<p>20</p> <p>1 Chris Thompson. The trucks belong to JJS Trucking, and they 2 were responsible for the maintenance on the trailer. JJS 3 Trucking was responsible for maintenance on the truck. 4 Q Every time you hauled a load the trailer was Chris 5 Thompson's? 6 A Yes. 7 Q When you were haul the trailer on your out truck was 8 Chris Thompson's? 9 A Yes. 10 Q Did JJS Trucking own any of the trailers? 11 A No, just the truck. 12 Q Could you have done the job without the trailer? 13 A No. The trailer is used to haul the chips. 14 Q And so in order to get the job done you needed Chris 15 Thompson's trailer? 16 A Right. 17 Q Did you ever have any direct interaction with Chris 18 Thompson himself? 19 A His mechanics. 20 Q What would they do? 21 A They were the ones that inspected the trucks, look care 22 of the maintenance on the trucks, fix the tires, just the 23 regular maintenance on the trailer. 24 Q You said the trucks, you mean the trucks or the trailer 25 or both?</p>
<p>30</p> <p>1 they would call us on the phone, or our boss would tell us, 2 relay the message to us. 3 Q Did somebody from Chris Thompson call you more often, 4 or did your boss Sedrick Smalls? 5 A Mostly Sedrick Smalls. Once I was contacted by someone 6 from Chris Thompson's office? 7 Q Just once? 8 A Twice. 9 Q Are you sure? 10 A Yes. 11 Q I don't want you to guess. I just want you to tell us 12 what you know. And when you were contacted by someone from 13 Chris Thompson what did they want? 14 A First time, was my hours of service. I went over 12 15 hours, and they told me not to do that, and the second time 16 it was for truck inspections. 17 Q What in regards to truck inspections? 18 A I needed to take the truck over to his shop to have 19 them inspect it. 20 Q You needed to take your JJS Trucking truck over to 21 Chris Thompson's shop; is that correct? 22 A Yes. 23 Q So that someone from Chris Thompson's outfit could 24 inspect your truck? 25 A The trailer. The trailers that we hauled belonged to</p>	<p>31</p> <p>1 A The trailer. The day before the accident they 2 inspected the trucks, the truck itself. 3 Q And that JJS Trucking's truck? 4 A Yes. Chris Thompson mechanic inspected the truck 5 itself. The tractor, the day before the accident and prior 6 to that they were only inspecting the trailer and just done 7 any maintenance or anything that we found wrong with the 8 trailer, they would fix it. 9 Q Do you know why they would inspect your truck the day 10 before the accident? 11 A One of trucks that belonged to JJS Trucking had a tire 12 problem. The tread on the tires was worn. The mechanics 13 inspected it when it was parked at Summerville saw mill. He 14 left a note saying it needed to get repaired, and then he 15 wanted to see all the trucks and inspect the tires. 16 Q He being who? 17 A The head mechanic. A guy named Tim. 18 Q Tim working for? 19 A Chris Thompson. And to my knowledge he wanted every 20 truck that JJS drove inspected by him. 21 Q Did you talk to Sedrick Smalls about that? 22 A Yes. 23 Q What did Sedrick Smalls tell you? 24 A The truck that I was driving I had to take it to the 25 mechanic to get some tires replaced, and after I had the</p>



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33

1 tires replaced, I took it to have Tim, Chris Thompson's
 2 mechanic to have it inspected.
 3 Q What did Sedrick Smalls tell you about the inspections?
 4 A That we passed the inspection.
 5 Q Did he tell you anything else?
 6 A No. He just you told me to go get the trailer from
 7 Chris Thompson, so I could continue my work for the day.
 8 Q Did you ever hand in your logs to Sedrick Smalls or JJS
 9 Trucking?
 10 A Yes.
 11 Q How frequently would you do that?
 12 A When I first started, I gave him my logs personally.
 13 But after approximately two weeks I started putting it in
 14 the box.
 15 Q And giving it directly to Chris Thompson's company?
 16 A Yes.
 17 Q Besides the truck and the trailer, was there anything
 18 else you needed to do your job?
 19 A Fuel.
 20 Q And you handled the logs, right?
 21 A Yes.
 22 Q How was fuel paid for?
 23 A Tohya Smalls, Sedrick's wife, we met her at the gas
 24 station on Monroe Gray Avenue. She would fill up the truck.
 25 She did it twice a week.

34

1 Q Did you ever --
 2 A Plus she would pay for it after we filled it up.
 3 Q Did you fill up your truck any other way than that?
 4 A No.
 5 Q And when you got those new tires on the truck how was
 6 that paid for?
 7 A He paid for it himself. Sedrick Smalls paid for it.
 8 Q Did anybody working for JJS Trucking ever get fired
 9 while you worked there?
 10 A Nobody got fired.
 11 Q Did anybody ever get reprimanded while you were there?
 12 A Not to my knowledge.
 13 Q Did you ever get reprimanded in any way?
 14 A Once for my hours of service.
 15 Q You got reprimanded by Chris Thompson's secretary.
 16 A Both. Chris Thompson secretary and Sedrick Smalls.
 17 Q And you got paid \$25 a load?
 18 A Yes.
 19 Q And as the load you were hauling were --
 20 A Woodchips.
 21 Q In Chris Thompson's trailers.
 22 A Yes.
 23 Q Do you know whether or not Chris Thompson had a right
 24 to fire you?
 25 A He would recommend that we be fired.

35

1 Q What do you think would you happen if he made that
 2 recommendation?
 3 A We would be fired.
 4 Q Is it your understanding that Chris Thompson said he
 5 would pay for your medical bills?
 6 A That's what I was told.
 7 Q You were told that by Sedrick Smalls?
 8 A Yes.
 9 Q And none of your medical bills have been paid?
 10 A Nothing.
 11 Q And you have not received any form of weekly
 12 compensation while you have been out?
 13 A No.
 14 Q Did Chris Thompson subcontract this work out to any
 15 other companies other than JJS Trucking?
 16 A I wouldn't know that.
 17 Q Were you aware of any drivers from other companies
 18 hauling loads using Chris Thompson's trailers?
 19 A I wouldn't know that.
 20 Q Capstone ever have any drivers?
 21 A None that came in contact with it. Everybody that
 22 drove there just came from all over the state.
 23 Q You never saw any Capstone employees driving your truck
 24 doing the same things that you were you doing?
 25 A I wouldn't know if they were Capstone employees.

36

1 Q So you don't know, is that the right?
 2 A Right.
 3 Q How often do you take the Oxycodone?
 4 A I take the oxycodone when the pain is unbearable.
 5 Q When's the last time you took it?
 6 A Last night.
 7 Q Before that, when's the last time you took it?
 8 A When I took my MRI.
 9 Q How long ago was that?
 10 A Last week, Monday.
 11 Q Do you ever take it more than a couple times a week?
 12 A No.
 13 Q And you said you were tossed over the median when you
 14 got out of the truck?
 15 A The people that pulled me out of the truck. They tried
 16 to pull me away from it. I remember one guy saying get him
 17 on the other side against the wall, and then I felt them
 18 throw me over the wall, and when I came, to the police and
 19 firemen was dragging me further away from the truck while it
 20 was burning.
 21 Q What was burning?
 22 A The truck blew up. The tractor that hit me blow up,
 23 and my truck was burning. It caught on fire.
 24 Q You didn't get any burns yourself?
 25 A Smoke inhalation, no.



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37

1 Q Who pulled you out of the truck?
 2 A I have no idea.
 3 Q Do you know who hit you?
 4 A I was told it was the driver by the name of Robbie.
 5 Q Do you know Robbie?
 6 A No.
 7 Q Have you ever met him prior to that night?
 8 A Just speaking saying hi and bye.
 9 Q Where would you see him?
 10 A When I'm leaving or coming to work. When I'm leaving
 11 the saw mill or coming to work to the truck.
 12 Q Saw mill. That's where you would start your work every
 13 day?
 14 A Yes.
 15 Q What business is there?
 16 A Sumnerville saw mill. That's where we picked up the
 17 woodchips to take to Capstone.
 18 Q Where did you keep your
 19 A All the trucks were parked across the street from the
 20 saw mill property. All of Chris Thompson's trucks and JJS
 21 trucks, they were parked there.
 22 Q Where there any other trucks from any other companies
 23 parked in the same lot?
 24 A There used to be, but back in June or you July Don
 25 Sweet, he had his drivers bring his trucks to him, and his

38

1 and contractors parked their trucks somewhere else. The only
 2 people that parked there was Chris Thompson and JJS trucks.
 3 Q Do you know anything about who paid who to park there?
 4 A No.
 5 Q Do you know anything about the agreement between JJS
 6 Trucking and Chris Thompson?
 7 A No.
 8 Q Do you know how much -- and I know I just asked you
 9 this question. Do you know what percentage Chris Thompson
 10 took from each of your loads.
 11 A No.
 12 Q Did you have an understanding what would have happened
 13 had your truck not passed that inspection by Chris
 14 Thompson's personnel that day?
 15 A I would have either had to drive a different truck or
 16 not work.
 17 Q Do you know whether or not Sedrick Smalls had any
 18 discussions with Chris Thompson when you were hired?
 19 A I don't know.
 20 Q That's all I have.
 21 MS. BARR: Thank you, sir. That's all we have for
 22 you if Mr. Fisher doesn't have any questions.
 23 (The deposition was concluded at
 24 10:40 a.m. November, 14th,
 25 2011.)

39

1 STATE OF SOUTH CAROLINA
 2 : C-E-R-T-I-F-I-C-A-T-E
 3 COUNTY OF DORCHESTER
 4 I, Lad B. Bearden, Court Reporter and Notary Public,
 5 certify that I did have Samuel Rose to appear before me at
 6 9:45 a.m. on Monday, November 14th, 2011, at the law offices
 7 of George Sink, P.A., 7011 Rivers Avenue, n. Charleston,
 8 South Carolina; that the witness was sworn and cautioned to
 9 tell the truth, the pages constitute a true and accurate
 10 transcript of the testimony given at that time and place.
 11 I further certify that I am not of counsel or kin to
 12 any of the parties to this cause of action, nor am I
 13 interested in any manner in its outcome.
 14 IN WITNESS WHEREOF, I have hereunto set my hand and
 15 seal this the 14th day of November, 2011.
 16
 17
 18
 19 _____
 20 Lad B. Bearden
 21 Notary Public for South Carolina
 22 My Commission Expires: September 29, 2021
 23
 24
 25



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his August 10, 2011 work-related accident. The Claimant alleges injuries to the right knee, back, neck, and head as a result of an August 10, 2011 motor vehicle accident.

2. JJS Trucking, LLC was the Claimant's direct employer at the time of the August 10, 2011 accident. (See attached depositions of Samuel Rose and Sedrick Smalls).
3. JJS Trucking, LLC was a subcontractor for Chris Thompson Services, LLC at the time of the Claimant's alleged injuries.
4. JJS Trucking, LLC provided Chris Thompson Services, LLC with a Certificate of Liability Insurance, with effective date of October 8, 2010 and expiration date of October 8, 2011 for its workers' compensation policy, at the time it commenced work for Chris Thompson Services, LLC. (Exhibit A).
5. Travelers Insurance Company is listed as the workers' compensation insurer on the Certificate of Insurance provided by JJS Trucking, LLC to Chris Thompson Services, LLC.
6. JJS Trucking's workers' compensation policy with Travelers apparently lapsed, without notice to or the knowledge of Chris Thompson Services, LLC, prior to the August 10, 2011 accident.
7. Pursuant to S.C. Code Ann. § 42-1-415(A), "[n]otwithstanding any other provision of law, upon the submission of documentation to the commission that a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance at the time the contractor or subcontractor was engaged to perform work, the higher tier subcontractor, contractor, or project owner must be relieved of any and all liability under this

title...In the event that employer is uninsured...the higher tier subcontractor, contractor, project owner, or his insurance carrier shall in the first instance pay all benefits due under this title. The higher tier subcontractor, contractor, project owner, or his insurance carrier may petition the commission to transfer responsibility for continuing compensation and benefits to the Uninsured Employer's Fund."

8. Pursuant to S.C. Code Ann. § 42-1-415(B), "[t]o qualify for reimbursement under this section, the higher tier subcontractor, contractor, or project owner must collect documentation of insurance as provided in subsection (A) on a standard form acceptable to the commission. The documentation must be collected at the time the contractor or subcontractor is engaged to perform work and must be turned over to the commission at the time a claim is filed by the injured employee."
9. Under S.C. Code Ann. § 42-1-415, it is clear that when a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance, and the higher tier subcontractor, contractor, or project owner collects documentation of said insurance, the higher tier party must be relieved of any and all liability under this title.
10. JJS Trucking, LLC represented itself to Chris Thompson Services as having workers' compensation insurance coverage as evidenced by the attached Accord Form 25, Certificate of Insurance, which is a standard form acceptable to the Commission. (Exhibit A).
11. Furthermore, S.C. Code Ann. § 42-1-415(C) requires that the lower tier subcontractor notify, by certified mail, the higher tier contractor, subcontractor, or project owner of a lapse in coverage within five days of such a lapse in coverage.

12. ~~NS Trucking, LLC~~ never provided Chris Thompson Services, LLC with notice, by certified mail or otherwise, that its workers' compensation coverage had lapsed, as required by S.C. Code Ann. § 42-1-415(c).

13. Based on all of the above, Chris Thompson Services, LLC is informed and believes it must be relieved of any and all liability under this Act.

~~WHEREFORE~~, Petitioners Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company respectfully request that the South Carolina Workers' Compensation Commission issue an Order relieving Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company from any liability under the Act for WCO Claim Number 130928 in accordance with S.C. Code Ann. § 42-1-419 and transfer liability, if any, to the Self-Insured Employers' Fund.

Respectfully submitted,

TRASK & HOWELL, L.L.C.

P. O. Box 2167

Mt. Pleasant, SC 29463

By ~~_____~~

Attorney-in-Fact

Attorney for Chris Thompson Services, LLC
and Bridgefield Casualty Insurance Company

January 24, 2012
Revised April 30, 2012

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

WCC File # 1112328
Carrier File # 943450
Carrier Code # _____
Employer FEIN _____

Samuel A. Rose
Claimant's Name

SSN

Address _____
City State Zip

Home Phone _____
Work Phone _____

JIS Trucking, LLC/SCUEF and Chris Thompson Services,
LLC/Bridgefield Casualty Insurance Company
Employer's Name
106 New Hope Dr. Summerville, SC 29483
Address City State Zip
Bridgefield Casualty Insurance Co.
Insurance Carrier

Kirsten L. Barr (843) 881-4228
Preparer's Name Phone #

1. Date of Injury: August 10, 2011 2. Total Weeks of Compensation Paid: 35 weeks
month day year

3. Type of Compensation Paid (TP or TT)/Periods of Payment:

Type: TTD From: 8/11/11 To: 4/12/12
Type: _____ From: _____ To: _____
Type: _____ From: _____ To: _____

4. Date of First Payment: 8/11/11
month day year

5. Total Amount Paid (a) Compensation: \$2,625.00
(b) Medical (Include Nursing, Hospital Drugs, Etc.): \$1,055.85

6. Informal Conference is Requested: yes no
(check one)

7. Use these lines to send a memo to the Commission: _____

Kirsten L. Barr (843) 881-4228
Employer's Representative Phone

April 10, 2012
Date

Type or print all information. File this form 6 months after the alleged injury date and each 6 months until the Commission's File is closed. Form 18 must be filed whether or not compensation is ongoing. Check "yes" after number 6 to request an informal conference. Refer to R.67-413, R.67-507, and R.67-804 for further information.

THE SUBJECT OF THIS RECORD IS
A CONVICTED SEX OFFENDER.
ADDITIONAL INFORMATION MAY
BE OBTAINED FROM THE NATIONAL
SEX OFFENDER PUBLIC WEBSITE AT
WWW.NSOPW.GOV

ARREST RECORD

S.C. LAW ENFORCEMENT DIVISION

Since neither fingerprints nor an identifying number which is indexed in our files accompanied your request, SLED cannot guarantee in any manner that this material concerns the individual in whom you are interested.

TO: REC21A-09985 Mon Apr 30, 2012 14:23:31 OPHDRVBOREFM
FROM: SCCH-00561 Mon Apr 30, 2012 14:23:31

ICHR REQUEST FOR RAP SHEET
ORI-SCLED0000 SID-1354050 PUR-E
IPN-SELP, LB

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BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY
SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

AGE-01 DATE-04/30/2012 TIME-14:23:31
REQ ORI-SCLED0000 S C LAW ENF DIV
IID-SC01354050 FBI-
NAME-ROSE, SAMUEL ARCHIEDE SEX-M RACE-B
HEIGHT-601 WEIGHT-165 EYES-BRO HAIR-BLK SKIN- BORN-SC
PC- HENRY-
PHOTOGRAPH AVAILABLE AUTHORIZED USE ONLY
-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAPIS

ARREST RECORD ENTERED--02/23/2001 DATE OF LAST UPDATE--04/23/2012

ADDITIONAL IDENTIFIERS	BIRTH			
NAME	DATES	MARKS	SOC SEC	MISC NUM
OSE, SAMUEL ARCHIEDELL				
OSE, SAMUEL				
OSE, SAMUEL A				
ISE, SAMUEL ARCHIEDELL				

ARCHIEDELL, ROSE SAMUEL
OSE, SAMUEL ARCHIEDELL

CONTRIBUTOR/SUBJECT DOA/RCVD CHARGE/DISPOSITION/ETC

OSE, SAMUEL ARCHIEDE 02/07/2001
0100800 NORTH CHARLESTON PD
OSE-01-999999B
IN-

ARREST CHARGE 01-INDECENT
EXPOSURE

DOC-01GSI003669 WARR-G536930

PHOTOGRAPH AVAILABLE
ARREST CHARGE 02-TRESPASS
OFFENSE DATE-02/07/2001
COURT CHARGE 01-INDECENT

EXPOSURE
COURT DISP-CONVICTED:3 YRS
SUS PROB 5 YRS/CRED STARTE
D 2-7-01/SEX
COURT DATE-07/18/2001
ATN-

JOC-RB4 WARR-G536915

COURT CHARGE 02-TRESPASSING
COURT DISP-NON-CONVICTION;
DISMISSED
COURT DATE-03/20/2001

IC040055C R & E CENTER COLA
CASE-276934
IT-16-15-130-MISDEMEANOR

07/24/2001 CUSTODY STATUS-RECEIVED
START DATE-07/24/2001

COURT CHARGE 01-INDECENT
EXPOSURE
COURT DISP-CONVICTED:2YRS SS
2YRS WITH 5YRS PROBATION
ATN-

ROSE, SAMUEL
IC0100000 CHARLESTON CNTY SO
CASE-02999999X

10/03/2002

ATN-
IT-N/A-MISDEMEANOR

ARREST CHARGE 01-PROBATION
VIOLATION
OFFENSE DATE-10/03/2002
PHOTOGRAPH AVAILABLE

ROSE, SAMUEL ARCHIEDE
C8100000 CHARLESTON CNTY SO
ASE-02015011B
ATN-
ARR-H099911
IT-23-3-470 (A) (B) (1)-MISDEMEAN

10/08/2002

ARREST CHARGE 01-SEX OFFENDER
REGISTRY VIOLATION 1ST
OFFENSE
OFFENSE DATE-10/08/2002
PHOTOGRAPH AVAILABLE

IT-23-3-470 (A) (B) (1)-MISDEMEAN
XC-03GSI000111 WARR-H099911

COURT CHARGE 01-SEX OFFENDER
REGISTRY VIOLATION 1ST
OFFENSE
COURT DISP-CONVICTED:197

DAYS/CRED GIVEN FOR TIME
SERVED BY SC DOC
COURT DATE-06/24/2003

ATN-

SC048015C SC DEPT CORRECTIONS 12/30/2002 CUSTODY STATUS-RECEIVED://///
CASE-276934 SC01454479 CONSOLIDATED
START DATE-12/30/2002

CIT-16-15-130-MISDEMEANOR

COURT CHARGE 01-INDECENT
EXPOSURE
COURT DISP-CONVICTED;3 YRS

ATN-500300026890

ROSE, SAMUEL ARCHIEDE 02/12/2004
SC0100100 CHARLESTON POLICE DE
CASE-03-25362C
ITN-10X004043021
WARR-H407261
IT-C/ORDINANCE-UNCLASSIFIED

ARREST CHARGE 01-INDECENT
EXPOSURE
OFFENSE DATE-02/12/2004

PHOTOGRAPH AVAILABLE

ARR-H407262
IT-N/A-MISDEMEANOR

ARREST CHARGE 02-SIMPLE ASSAU
LT
OFFENSE DATE-02/12/2004

IT-16-15-130-MISDEMEANOR
XC-04G31003067 WARR-H407261

COURT CHARGE 01-INDECENT
EXPOSURE
COURT DISP-CONVICTED;3 YRS
SERVE 2 YRS BAL SUS 3 YRS
PROB/CRED FOR TIME
COURT DATE-01/03/2006
ATN-10X004043021

IT-C/L-UNCLASSIFIED
XC-04G31003068 WARR-H407262

COURT CHARGE 02-ASSAULT OF A
HIGH AND AGGRAVATED NATURE
COURT DISP-CONVICTED;10 YRS
SERVE 3 YRS BAL SUS 3 YRS
PROB/CRED FOR
COURT DATE-01/03/2006

SE, SAMUEL ARCHIEDE 10/25/2004

SC0100100 CHARLESTON POLICE DE
XC-04023850C
ITN-10X004299044
IT-C/ORDINANCE-UNCLASSIFIED

37

ARREST CHARGE 02-INDICENT
EXPOSURE
OFFENSE DATE-10/25/2004
PHOTOGRAPH AVAILABLE

CIT-C/ORDINANCE-UNCLASSIFIED

ARREST CHARGE 02-INDICENT
EXPOSURE
OFFENSE DATE-10/25/2004

CIT-16-15-130-MISDEMEANOR
DOC-056810000518 WARR-H865013

COURT CHARGE 01-INDICENT
EXPOSURE
COURT DISP-CONVICTED:3YRS
SERVE 2YRS BAL SUS 3YRS

PROBATION CREDIT TIME
SERVED

ATN-10X004299044

ROSE, SAMUEL ARCHIEDELL

11/17/2004

CO100100 CHARLESTON POLICE DE
ATN-
WARR-H749964
CIT-16-15-130-MISDEMEANOR

ARREST CHARGE 01-INDICENT
EXPOSURE
PHOTOGRAPH AVAILABLE

CIT-16-15-130-MISDEMEANOR
OC-05681000768 WARR-H749964

COURT CHARGE 01-INDICENT
EXPOSURE
COURT DISP-CONVICTED:3 YRS
SERVE 2 YRS BAL SUS 3 YRS
PROB/CRED FOR TIME
COURT DATE-01/03/2006

ATN-

ROSE, SAMUEL
CO100100 CHARLESTON POLICE DE
ASE-165 738
FN-990000031005
WARR-H768017
CIT-16-3-654-FELONY

02/28/2005

ARREST CHARGE 01-CRIMINAL

SEXUAL CONDUCT - THIRD
DEGREE
OFFENSE DATE-02/28/2005

CIT-16-3-654-FELONY
C-006910 WARR-H768017

COURT CHARGE 01-CRIMINAL
SEXUAL CONDUCT - THIRD
DEGREE
COURT DISP-NON-CONVICTION;
DISM/HOL PROB/PROS ENDED

38

111-55000001000

KC040015C SC DEPT CORRECTIONS 01/12/2006 CUSTODY STATUS-RECEIVED
CASE-200601 START DATE-01/12/2006
KIT-16-15-130-MISDEMEANOR

COURT CHARGE 01-INDECENT
EXPOSURE
COURT DISP-CONVICTED;3 CTS 3
YRS 332YRS 3YRS PROBEEA
COURT DATE-01/12/2006
ATN-500200045680

KIT-C/L,-MISDEMEANOR

COURT CHARGE 02-ASSAULT/BATTE

RY OF HIGH AND AGGRAVATED
NATURE
COURT DISP-CONVICTED;1YRS33YR
33YRS PROBCC
COURT DATE-01/12/2006

KIT-C/L-UNCLASSIFIED

COURT CHARGE 03-ASSAULT OF A
HIGH AND AGGRAVATED NATURE
COURT DISP-CONVICTED;10 YRS
33 3 YRS 3 YRS PROB CC
COURT DATE-01/12/2006

KC040015G CENTRAL PFP 06/30/2006 CUSTODY STATUS-PROBATION
CASE-SC0100 START DATE-06/30/2006
KIT-C/L-UNCLASSIFIED

COURT CHARGE 01-ASSAULT OF A
HIGH AND AGGRAVATED NATURE
COURT DISP-CONVICTED;10 YRS
3USE 3YRS W/3YRS PROBATION
ATN-990000209935

END OF PAGE 01 - PAGE 02 TO FOLLOW

IN Mon Apr 30, 2012 14:23:31

000305513716/220

OUT Mon Apr 30, 2012 14:23:32 REC21A MSG# 09985 SAN: 0PHDRVBORPKM

TO: REC21A-09986 Mon Apr 30, 2012 14:23:32 0PHDRVBORPKM

FROM: SCCH-00562 Mon Apr 30, 2012 14:23:32

AGE-02 DATE-04/30/2012 TIME-14:23:31
EQ ORI-SCLEDO000 S C LAW ENF DIV
ID-SC01354050 FBI-

CIT-16-15-130-MISDEMEANOR

COURT CHARGE 02-INDECENT
EXPOSURE
COURT DISP-CONVICTED;3YRS
SUSP 2YRS W/3YRS PROBATION

CIT-C/L,-MISDEMEANOR

COURT CHARGE 03-ASSAULT/BATTE
RY OF HIGH AND AGGRAVATED
NATURE
COURT DISP-CONVICTED;10 YRS
SUSP 3YRS W/3YRS PROBATION

CIT-16-15-130-MISDEMEANOR

COURT CHARGE 04-INDECENT

EXPOSURE

COURT DISP-CONVICTED;3YRS
2YRS W/3YRS PROBATION

CIT-16-15-130-MISDEMEANOR

COURT CHARGE 05-INDECENT
EXPOSURE
COURT DISP-CONVICTED;3YRS
SUSP 2YRS W/3YRS PROBATION

DSE, SAMUEL
C0100156 CHARLESTON PFP
ASE-20080225
FN-10D100528242
ARR-W10081703 *
IT-N/A-MISDEMEANOR

02/26/2008

ARREST CHARGE 01-PROBATION
VIOLATION
OFFENSE DATE-02/26/2008
PALM PRINTS AVAILABLE

DSE, SAMUEL
C0100156 CHARLESTON PFP
ASE-20080714

07/14/2008

FN-10D100541133
ARR-W10081703 *
IT-N/A-MISDEMEANOR

ARREST CHARGE 01-PROBATION
VIOLATION
OFFENSE DATE-07/14/2008
PALM PRINTS AVAILABLE

D40015C SC DEPT CORRECTIONS
SE-071620
T-C/L-UNCLASSIFIED

07/15/2008 CUSTODY STATUS-RECEIVED
START DATE-07/16/2008

COURT CHARGE 01-ASSAULT OF A
HIGH AND AGGRAVATED NATURE
COURT DISP-CONVICTED;10 YRS

ATN-500200058694

CIT-C/L,-MISDEMEANOR

COURT CHARGE 02-ASSAULT/BATTE
RY OF HIGH AND AGGRAVATED
NATURE
COURT DISP-CONVICTED:10 YRS
SS 3 YRS 3 YRS PROB CC

COURT DATE-07/16/2008

CIT-16-15-130-MISDEMEANOR

COURT CHARGE 03-INDECENT
EXPOSURE
COURT DISP-CONVICTED:3 CTS 3
YRS SS 2 YRS 3 YRS PRO
COURT DATE-07/16/2008

ROSE, SAMUEL ARCHIEDELL 04/14/2012
SC0180000 DORCHESTER CNTY SO
CASE-12004033
ATN-18D100513871
ARR-M473169
CIT-16-11-311-FELONY

ARREST CHARGE 01-BURGLARY -
FIRST DEGREE
OFFENSE DATE-04/14/2012
PHOTOGRAPH AVAILABLE
FALM PRINTS AVAILABLE

ARR-M473168
CIT-16-13-180 (B) (1)-MISDEMEANOR

ARREST CHARGE 02-RECEIVING
STOLEN GOODS <\$2,000

OFFENSE DATE-04/14/2012

- WARRANT OCCURS IN MORE THAN ONE ARREST CYCLE UNDER THIS SID NUMBER

BASED ON SEARCH OF SCLED CJIS CCH FILE USING SID/SC01354050
HIS CRIMINAL HISTORY RECORD IS FOR SOUTH CAROLINA ARRESTS AND
CONVICTIONS ONLY AND IS BASED ON THE INFORMATION PROVIDED. SINCE
CHANGES MAY OCCUR DAILY A NEW INQUIRY SHOULD BE MADE AND NO SUBSEQUENT
USE OF THIS RECORD IS ALLOWED.

>>> *** NOTICE *** <<<

THE SUBJECT OF THIS RECORD IS A CONVICTED SEX OFFENDER. ADDITIONAL *
INFORMATION MAY BE OBTAINED FROM THE SOUTH CAROLINA SEX OFFENDER *
REGISTRY AT: > WWW.SLED.SC.GOV < *

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING HANDGUN IN
SOUTH CAROLINA

INFORMATION SUBMITTED TO SLED CCH PURSUANT TO 16-23-10 (C) AND 23-31-110
C) OF THE SOUTH CAROLINA CODE OF LAWS INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A CRIME OF VIOLENCE AND IS NOT PERMITTED TO POSSESS OR
ACQUIRE A HANDGUN.

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A MISDEMEANOR IN WHICH AN OFFENDER COULD RECEIVE IN EXCESS OF
TWO (2) YEARS OF CONFINEMENT, ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
HEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT OR RECEIVE ANY
FIREARMS OR AMMUNITION, AFFECTED BY INTERSTATE OR FOREIGN COMMERCE AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18.U.S.C. 922(G)).

* S C CJIS END OF RECORD **

N Mon Apr 30, 2012 14:23:32
UT Mon Apr 30, 2012 14:23:33

REC21A MSG# 09986

000305515414/220
SAN: OPHDRVBOREKM

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER 1112328

Samuel Rose,)	
)	
v.)	
)	
JJS Trucking, LLC and Chris)	NOTICE OF WITNESSES
Thompson Services, LLC,)	
)	
Employers,)	
and)	
)	
SCUEF, Bridgefield Casualty)	
Insurance Company, and Travelers)	
Indemnity Company,)	
)	
Carriers.)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND KIRSTEN L. BARR, ESQUIRE, ATTORNEY FOR THE EMPLOYER AND CARRIER, AND AMY V. COFIELD, ESQUIRE, ATTORNEY OF RECORD FOR THE UNINSURED EMPLOYERS' FUND AND JJS TRUCKING, LLC, AS UNINSURED AND UNREPRESENTED EMPLOYER.

PLEASE TAKE NOTICE THAT the Claimant pursuant to the provisions of the *South Carolina Workers' Compensation Act* and S.C. Code § 1-23-330 (Law. Co-op. 1976), as amended, herewith submits the following written medical reports, copies of which are attached hereto, as direct evidence on behalf of the Claimant:

<u>Physician</u>	<u>Address</u>	<u>Dates of Report(s)</u>	<u>Pages</u>
8. Stuart M. Leon, M.D.	MUSC Medical Center 169 Ashley Avenue Charleston, SC 29401	8/10/2011	pp. 43 - 44 (2)
9. Andrew B. Conrad, M.D.	MUSC – Radiology Dept. 169 Ashley Avenue Charleston, SC 29401	8/10/2011	pp. 45 - 47 (3)
10. Christopher J. Erikson, M.D.	MUSC – Radiology Dept. 169 Ashley Avenue Charleston, SC 29401	8/10/2011	pp. 48 - 49 (2)
11. Peter H. White, M.D.	MUSC 169 Ashley Avenue Charleston, SC 29401	8/11/2011	pp. 50 - 51 (2)

12. Alan N. Abel, M.D.	7741-C Dorchester Road North Charleston, SC 29418	8/16/2011 – 6/6/2013	pp. 52 – 72 (21)
13. Michael S. Rissing, M.D.	MUSC – Radiology Dept. 169 Ashley Avenue Charleston, SC 29401	8/23/2011 (MRI – Rt. Knee)	pp. 73 – 74 (2)
14. Cameron Wills, D.C.	Tri-County Spinal Care 8626 Dorchester Road, Suite 101 N. Charleston, SC 29420	9/2/2011	pp. 75 – 76 (2)
15. Richard Kellett, M.D.	Tri-County Spinal Care 8626 Dorchester Road, Suite 101 N. Charleston, SC 29420	9/6/2011-10/11/2011	pp. 77 – 90 (14)
16. Troy Marlow, M.D.	TriCounty Radiology Associates 2851 Tricom Street N. Charleston, SC 29406	11/9/2011	pp. 91 – 92 (2)
17. Michael Wildstein, M.D.	Wildstein Spine Center, P.A. 418 Folly Road, Suite C Charleston, SC 29412	11/23/11 – 12/14/11	pp. 93 – 96 (4)
18. Donald E. Olofsson, D.O.	TriCounty Radiology Associates 2851 Tricom Street N. Charleston, SC 29406	11/30/2011	pp. 97 – 98 (2)
19. Steven C. Poletti, M.D.	Southeastern Spine Institute 1106 Chuck Dawley Boulevard Mt. Pleasant, SC 29464	07/15/2013	pp.99 - 100 (2)

EXHIBITS

20. Traffic Collision Report	S.C. Highway Patrol	8/10/2011	pp.101 – 104 (4)
21. Statement of Account	Dr. Alan N. Abel, M.D.	8/16/11 – 6/6/13	pp. 105 – 107 (3)
22. Statement of Account	TriCounty Spinal Care Centers	9/2/11 – 10/11/11	pp. 108 – 111 (4)
23. Statement of Account	Southeastern Medical Solutions	11/9/11 – 12/14/11	p.112
24. Decision & Order	Commissioner Gene McCaskill	8/23/2012	pp.113 – 123 (11)
25. Decision & Order	Appellate Panel	5/15/2013	pp.124 – 134 (11)

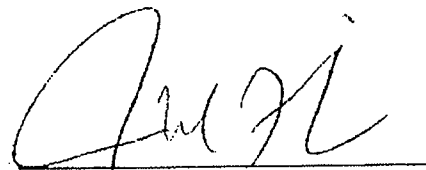
YOU ARE FURTHER HEREBY NOTIFIED that you have the right of cross-examination; and, should you desire to exercise said right, you are to forthwith schedule

the depositions of any 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 Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant.

1. The Claimant
2. Family Members of the Claimant
3. Co-Workers of the Claimant
4. Medical Providers of the Claimant (or deposition transcript)
5. Any witnesses named by the Defendants
6. Corporate designee of JJS Trucking, LLC (or deposition transcript)
7. Corporate designee of Chris Thompson Services, LLC (or deposition transcript)



Joseph B. Fisher
Attorney for the Claimant
7011 Rivers Avenue, Suite 105
N. Charleston, SC 29406
(843) 569-1700
(843) 569-1848 *facsimile*

N. Charleston, SC

July 24, 2013

**MUSC Health**

Medical University of South Carolina

Charleston, SC

843-792-2123

History and Physical Report

Patient: ROSE, SAMUEL

MRN: 000177114

Attending:

Date: 8/10/11 1:58 PM

Status: INITIAL

PATIENT NAME: ROSE, SAMUEL

MRN: 002658620

PATCOM: 495787582

DATE: 08/10/2011

SERVICE:

ATTENDING: Stuart M Leon, MD

CHIEF COMPLAINT: Motor vehicle collision

HISTORY OF PRESENT ILLNESS: The patient is a very pleasant 40-year-old African American gentleman who was involved in a motor vehicle collision earlier this morning on Interstate 26. The patient was reportedly the restrained driver of a tractor trailer, whose vehicle was rear-ended by another tractor trailer. The patient did have loss of consciousness at the scene. He was transferred to MUSC for further definitive evaluation and care. He arrives awake and alert, complaining of right lower extremity pain and headache.

PAST MEDICAL HISTORY: Childhood asthma.

PAST SURGICAL HISTORY: None.

ALLERGIES: NO KNOWN DRUG ALLERGIES.

MEDICATIONS: None.

SOCIAL HISTORY: Negative for alcohol, tobacco, and intravenous drug use.

FAMILY HISTORY: The patient reports that his mother had a history of high blood pressure.

REVIEW OF SYSTEMS:

Significant only for right lower extremity pain and headache. The patient specifically denies neck pain, chest pain, shortness of breath, abdominal pain and all other systems were negative to review as well.

PHYSICAL EXAMINATION:

On physical examination, the patient's airway is patent. He has equal breath sounds bilaterally. There is no gross chest wall deformity. His trachea is midline, and a cervical collar is in place. He has palpable femoral pulses. His heart is regular rate and rhythm. Glasgow Coma Score is 15. His abdomen is soft, nontender, nondistended. His pelvis is stable to AP and lateral compression. All four extremities are without gross deformities. The patient is noted to have a right knee laceration as well as a right shin laceration.

A complete and thorough trauma evaluation has just been completed, revealing the following injury complex:

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Printed by: PELZER, CHERISE

Date Printed: 09/04/2011

Page 1

**MUSC Health**

Medical University of South Carolina

Charleston, SC

843-792-2123

History and Physical Report

Patient: ROSE, SAMUEL

MRN: 000177114

Attending:

Date: 8/10/11 1:58 PM

Status: INITIAL

-
1. Traumatic brain injury with loss of consciousness without evidence of intracranial bleed.
 2. Right knee laceration.
 3. Right shin laceration.

ASSESSMENT: This is a very pleasant 40-year-old African American gentleman involved in a motor vehicle collision earlier this morning with the above-noted injury complex.

PLAN:

1. The patient be assigned to 23-hour observation and will be admitted to the trauma service.
2. We will follow up all right lower extremity films in order to rule in or out the presence of injury.
3. Local wound care will continue.
4. We will attempt to clear the patient's cervical collar clinically.
5. A cognitive evaluation will be obtained later this afternoon.
6. Adequate pain control will be ensured.

Dictated by: Stuart M Leon, MD

Stuart M Leon, MD

Attending

477190246/medq/

JOB: 1001777

DD: 08/10/2011 13:58:30

DT: 08/10/2011 14:52:00

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Date Printed: 09/04/2011

Page2

Radiology Results**Page: 1**

Name: ROSE, SAMUEL

Date Printed: 09/04/11

ID: 177114 SEX:M AGE:41

08/10/11 : 04:53am
RAD - DIAG CHEST SINGLE VIEW FRONTAL
OUT

Accession number: 6414046

EXAMINATION: CHEST 08/10/11 04:53:00

ACCESSION NUMBER: 6414046

INDICATION: trauma

COMPARISON: None

FINDINGS: Single AP view on backboard. Mediastinum is within normal limits of width and aortic arch is clearly visualized. Heart size normal. Lungs are clear. No evidence for pneumothorax. No gross evidence of osseous injury.

IMPRESSION:

No gross evidence of trauma recommend upright off backboard when able.

VOICE DICTATED BY: Dr. Andrew Conrad
I have reviewed the images and agree with the findings in this report.

AUTHENTICATING RADIOLOGIST: PAL SURANYI

Practice Partner signature acknowledges receipt of results only.

trauma
SIGNED BY ADMINISTRATOR (ADM) 08/11/2011 06:50AM

Radiology Results

Name: ROSE, SAMUEL

Page: 1

Date Printed: 09/04/11

ID: 177114 SEX:M AGE:41

08/10/11 : 05:43am
RAD - CT HEAD/BRAIN W/O CONTRAST
OUT

Accession number: 6414045

EXAMINATION: BRAIN CT 08/10/11 05:43:00

ACCESSION NUMBER: 6414045

INDICATION: mvc

COMPARISON: None

TECHNIQUE: CT of the brain without intravenous contrast.

FINDINGS: Notably diminutive appearance of the lateral ventricles and third ventricle, suggestive of increased intracranial pressure, with intact appearance of the basilar cisterns and no CT evidence for hemorrhagic or non-hemorrhagic diffuse axonal injury. No evidence of focal contusions, subarachnoid hemorrhage, extra-axial collections, or other intracranial bleed. There are no signs of acute infarction. The CSF spaces are symmetrical. There is no evidence of fracture. Minimal mucosal thickening in the maxillary sinuses bilaterally, but the paranasal sinuses and mastoids are otherwise unremarkable. Significant beam hardening present due to dental hardware limiting evaluation of the posterior fossa.

IMPRESSION:

Slightly decreased caliber of the lateral and third ventricles, suggestive of increased intracranial pressure, but no other evidence of acute intracranial abnormality.

Findings discussed with Dr. Ellett by Dr. Rogers at 1128 on 8/10/2011. Patient is walking/talking with no clinical signs of increased intracranial pressure. Patient's ventricular system is decreased in caliber, but at the upper limits of normal, per attending review.

VOICE DICTATED BY: Andrew B. Conrad M.D.

I have reviewed the images and agree with the findings in this report.

AUTHENTICATING RADIOLOGIST: M, MATHEUS

Practice Partner signature acknowledges receipt of results only.

er bed 2

mvc

SIGNED BY ADMINISTRATOR (ADM) 05/12/2011 06:58AM

Radiology Results

Page: 1

Date Printed: 09/04/11

Name: ROSE, SAMUEL

ID: 177114 SEX:M AGE:41

08/10/11 : 06:30am
RAD - DIAG KNEE, AP/LAT VIEWS
OUT
Accession number: 6414050

EXAMINATION: RIGHT KNEE 08/10/11 06:30:00

ACCESSION NUMBER: 6414050

INDICATION: Right knee laceration and pain following trauma

COMPARISON: None

FINDINGS: Antero-posterior and lateral views of right knee demonstrate the bones to be well mineralized. Well corticated ossific fragments noted at the tibial insertion of the patellar tendon, likely due to prior Osgood-Schlatter disease. There is minimal narrowing and osteophytosis of the medial tibiofemoral as well as the patellofemoral compartments, but no evidence of acute bony, joint or soft tissue abnormality. There is no evidence of fracture or dislocation. The joint spaces are normal. There is no evidence of capsular distention.

IMPRESSION:

Mild to moderate two compartment osteoarthritis.

Evidence of Osgood-Schlatter disease.

No evidence of acute fracture or dislocation.

Discussed with Dr. Malouf at 06:32 on 8/10/11 via telephone who reports that the laceration is superficial over the lateral aspect of the patella.

VOICE DICTATED BY: Andrew B. Conrad M.D.
I have reviewed the images and agree with the findings in this report.

AUTHENTICATING RADIOLOGIST: WILLIAM CONWAY

Practice Partner signature acknowledges receipt of results only.

trauma right knee laceration and pain
SIGNED BY ADMINISTRATOR (ADM) 08/11/2011 06:50AM

Radiology Results

Page: 1

Date Printed: 09/04/11

Name: ROSE, SAMUEL

ID: 177114 SEX:M AGE:41

08/10/11 : 05:43am

RAD - TRAUMA ANGIO NECK WITH CONTRAST
OUT

Accession number: 6414043

EXAMINATION: CERVICAL SPINE CT WITH CONTRAST 08/10/11 05:43:00

ACCESSION NUMBER: 6414043

INDICATION: pain.

COMPARISON: None

TECHNIQUE: Multiple contiguous spiral CT images were obtained through the cervical spine without IV contrast.

FINDINGS: There is normal alignment of the cervical spine with no evidence of acute fracture or dislocation. Vertebral body heights are preserved. There is loss of intervertebral disk noted at C5-C6 and to a greater degree at C6 and C7. Posterior disk osteophyte complexes noted at these levels as well resulting in mild canal stenosis at C5-C6. Mild R>L neural foraminal narrowing at the level of C5/6 secondary osteophyte formation. There is anterior osteophyte formation noted. Posterior elements are unremarkable. There is no prevertebral soft tissue swelling.

No vascular injury. Fetal origin of the right PCA.

Please see concurrently performed CT of the chest for findings in this area.

IMPRESSION:

No evidence of acute traumatic injury to the cervical spine. No vascular injury.

Multilevel degenerative changes as above with mild canal stenosis C5-C6.

Key findings discussed with Dr. Selander on 08/10/11 06:02:27.

VOICE DICTATED BY: Dr. C. J. Erikson
I have reviewed the images and agree with the findings in this report.

AUTHENTICATING RADIOLOGIST: M, MATHEUS

Practice Partner signature acknowledges receipt of results only.

er bed 2

mvc

SIGNED BY ADMINISTRATOR (ADM) 08/12/2011 06:58AM

Radiology Results

Page: 1

Date Printed: 09/04/11

Name: ROSE, SAMUEL

ID: 177114 SEX:M AGE:41

08/10/11 : 05:43am

RAD - CT CHEST/ABDOMEN/PELVIS W/CONT
OUT

Accession number: 6414044

EXAMINATION: CT CHEST / ABDOMEN / PELVIS 08/10/11 05:43:00

ACCESSION NUMBER: 6414044

INDICATION: pain; motor vehicle collision.

COMPARISON: None.

TECHNIQUE: Multiple helical CT images were obtained of the chest, abdomen and pelvis after intravenous administration of 100 cc Omnipaque 350. Coronal and sagittal reconstructions were also performed.

FINDINGS:

Chest: No vascular injury. Bovine-type arch. Lung parenchyma reveals bibasilar hypoventilatory changes. There is no pneumothorax or pleural effusion. No fracture. Mild thoracic spondylosis. Hiatal hernia.

Abdomen: No traumatic solid lesion. 5 to 6-mm hypodensity in the left kidney too small to characterize accurately. Gastrointestinal tract is unremarkable without abnormal wall thickening. Colonic diverticulosis. No vascular injury. No free intraperitoneal gas, fluid nor lymphadenopathy. No visible fracture.

Pelvis: Lower intestinal tract shows no evidence for bowel wall thickening or injury. No vascular injury. Normal appendix. Prostate upper limits of normal in size. Normal bladder. No free gas or fluid. No lymphadenopathy. No visible fracture. There is mild degenerative disk disease at L3-L4.

IMPRESSION:

1. No acute injury to chest, abdomen or pelvis.
2. Key findings discussed with Dr. Ricky on at 0544 hrs.

VOICE DICTATED BY: C. J. Erikson, M.D.

I have reviewed the images and agree with the findings in this report.

AUTHENTICATING RADIOLOGIST: MUNAZZA ANIS

Practice Partner signature acknowledges receipt of results only.

er bed 2

MVC

SIGNED BY ADMINISTRATOR (ADM) 08/11/2011 06:50AM

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Medical University of South Carolina
Charleston, SC
843-792-2123

CONSULTATION REPORT

Patient: ROSE, SAMUEL

MRN: 000177114

Attending:

Date: 8/11/11 7:55 PM

Status: FINAL

MUSC Medical Center

CONSULTATION REPORT

PATIENT NAME: ROSE, SAMUEL

MRN: 000177114

PATCOM: 495787582

DATE: 08/11/2011

SERVICE: Ortho Surg

ATTENDING: Langdon A Hartsock, MD

REQUESTING PHYSICIAN: NONE PER PATIENT

TYPE OF SERVICE: Orthopedic Surgery.

REASON FOR CONSULTATION: Right knee pain.

HISTORY OF PRESENT ILLNESS: This is a 40-year-old male who was involved in an MVC yesterday where his knee struck the steering wheel on the right. He was admitted to the trauma surgery service for observation and orthopedic surgery service was consulted for his right knee pain.

PAST MEDICAL HISTORY: None.

PAST SURGICAL HISTORY: Irrigation debridement of scalp wound when he was a child.

CURRENT MEDICATIONS: None.

ALLERGIES: NONE.

SOCIAL HISTORY: Negative for alcohol, tobacco, and drugs.

REVIEW OF SYSTEMS:

Negative except for his right knee strain.

PHYSICAL EXAMINATION:

GENERAL: This a well-appearing, well-developed African American male in no acute distress. He is alert, oriented x3, answering questions appropriately.

RIGHT LOWER EXTREMITY: A focused examination of his right knee, the patient has no obvious deformity of right lower extremity. Hip flexion is greater than 90 degrees. Internal and external rotation to approximately 20 and 35 degrees respectively. He has active flexion of his knee greater than 90 degrees. There is minimal edema about his right knee. There is no appreciable effusion. The patient does have tenderness to palpation in the superior aspect of his right patella. Knee is stable to varus and valgus stress. Anterior drawer is negative. Posterior drawer is negative. He is able to plantar flex and dorsiflex his right ankle. His toes are up and downgoing. He has a warm and well-perfused foot. 2+ dorsalis pedis pulse and sensation is intact to light touch in all dermatomal distributions. He has 5/5

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Printed by: PELZER, CHERISE

Date Printed: 09/04/2011

Page 1

**MUSC Health**

Medical University of South Carolina

Charleston, SC

843-792-2123

CONSULTATION REPORT

Patient: ROSE, SAMUEL

MRN: 000177114

Attending:

Date: 8/11/11 7:55 PM

Status: FINAL

muscle strength in all muscle groups in the right lower extremity.
RADIOGRAPHIC EVALUATION: AP and lateral views of the patient's right knee is negative for fracture dislocation. However, there is evidence of a tibial avulsion this is an old finding that is consistent with previous Osgood-Schlatter disease.

ASSESSMENT AND PLAN: This is a 40-year-old male with right knee pain after a MVC 1 day ago. We recommend an MRI to evaluate the patient's ligamentous structures in his knee as well as the meniscus for possible soft tissue injury. The patient will be discharged from the trauma surgery service today and he will follow up with Dr. Hartsock in approximately 10 days with an outpatient MRI. This patient has been discussed with Dr. Laura Liles of the orthopedic surgery service and will be discussed with Dr. Hartsock.

Dictated by: Peter Holland White, MD

Peter Holland White, MD

Langdon A Hartsock, MD

Attending

477411670/medq/

JOB: 1002103

DD: 08/11/2011 19:55:08

DT: 08/12/2011 04:49:14

Authenticated by PETER H. WHITE, MD On 08/12/2011 10:56:51 AM

Authenticated by LANGDON A HARTSOCK, MD On 08/18/2011 09:45:14 AM

This document should not be filed in the paper medical record and should be confidentially destroyed when it is no longer needed.

Printed by: PELZER, CHERISE

Date Printed: 09/04/2011

Page2

--51--

w/c

DATE	NAME	AGE	ALLERGIES	OCCUPATION	LNMP
8/12/11	Box, Samuel	40	0	Truck Driver	
SUBJECTIVE					
<p>Truck - Trunk accident, low back, muscle by overexertion - Hospitalized overnight require need truck, 2 weeks. Strain persistent pain Right knee - no</p>					
OBJECTIVE					
<p>HT _____ WT _____ BP _____ RESP _____ General Appearance <i>obese</i> HEENT <i>stomach 72 in hospital</i> Chest & Heart <i>normal</i> Abdomen <i>normal</i> Skin <i>obese</i> MUSCULO-SKELETAL</p>					
Neck					
	Location	Degree Tenderness	Degree Spasm		
	Sternomastoids R-L	0-1-2-3-4	0-1-2-3-4		
	Trapezius R-L	0-1-2-3-4	0-1-2-3-4		
	Occipitalis R-L	0-1-2-3-4	0-1-2-3-4		
	O-C Junction R-L	0-1-2-3-4	0-1-2-3-4		
	Cervical (Paraspi) R-L	0-1-2-3-4	0-1-2-3-4		
Limitation of Motion _____ Flexion _____ Extension _____ Rotation _____ Lateral Flexion _____ R-L					
Shoulders					
	Trapezius R-L	0-1-2-3-4	0-1-2-3-4		
	Acromioclavicular Jt	0-1-2-3-4	0-1-2-3-4		
	Clavicle	0-1-2-3-4	0-1-2-3-4		
	Acromion	0-1-2-3-4	0-1-2-3-4		
	Deltoid	0-1-2-3-4	0-1-2-3-4		
	Other:				
Limitation of Motion _____ Elevation _____ Depression _____ Rotation _____ Extension _____ Abduction _____					
Mid-Upper Back (thoracic)					
	Paraspinous R-L	0-1-2-3-4	0-1-2-3-4		
	Trapezius R-L	0-1-2-3-4	0-1-2-3-4		
	Supraspinatous R-L	0-1-2-3-4	0-1-2-3-4		
	Teres Major R-L	0-1-2-3-4	0-1-2-3-4		
	Teres Minor R-L	0-1-2-3-4	0-1-2-3-4		
	Latissimus Dorsi R-L	0-1-2-3-4	0-1-2-3-4		

Thoracic Wall Sternocostal Joints

	Degree Tenderness	Degree Spasm
Pectoralis Muscles	0-1-2-3-4	0-1-2-3-4
Breasts	0-1-2-3-4	0-1-2-3-4

Low Back

Paralumbars <u>R-L</u>	0-1-2-3-4	0-1-2-3-4
Limitation of Motion		
Flexion _____	Extension _____	Rotation R-L _____

Knees

*all above
& knee - (hid)
low -
300 - med -*

Patella R-L	0-1-2-3-4	0-1-2-3-4
Tubercle of Tibia R-L	0-1-2-3-4	0-1-2-3-4
Head of Fibula R-L	0-1-2-3-4	0-1-2-3-4
Joint Space _____	Swelling R-L 0-1-2-3-4	0-1-2-3-4
Limitation of Motion R-L		
Flexion _____	Extension _____	Rotation _____
Laxity of Motion _____	R-L	

Abnormal Signs: Anterior Drawer's R-L _____

Upper Extremities

Right

Neurological Evaluation

Cranial Nerves II-XII Intact _____ Abnormal _____
 Sensory Deficit: 0 Location _____
 Motor Deficit: - Location _____

ASSESSMENT

- (1) Neck, breast skin / sp
- (2) @ Knee injury -
- (3) Body - by tx

PLAN

- * @ get MR + X, 7 - misc
- @ RT 5-600

ADDITIONAL INFORMATION (FINDINGS)

- (3) Motor 800 3.0 - 1000
GI (N/A)

Alan N. Abel
 ALAN N. ABEL, M.D.

Name Samuel Rose

Birthdate [REDACTED]

Chart No. _____

DATE

PROGRESS NOTES

8-22-11

Present neck, low back

+ (C) knee leg

Neck to 12/12

NE from (D) neck

upper back

low from (D) knee

To have

acromioclavicular

joint

seen

Ortho at

Neck - back start

Knee pain

on Ortho consult

1/12/11

1/12/11

Get for
reper muscle

(C)

neck
of neck

(D)

8-29-11

ces on neck from

voiced from - gully DT

at home (reper muscle)

DK

ce - ce

1/12/11

neck (2+) neck h.)

25 + comb neck

Neck, back pain

mit. neck

(C)

neck
reper neck
* Get reperf neck
1/12/11

(D)

Alan N. Abel, M.D.

Family Medicine

7741-C Dorchester Road - North Charleston, SC 29418



Name Samuel Rose SS# _____ Page # _____

Address _____

Phone (home) _____ (work) _____ Date of birth [REDACTED]

Drug allergies _____

[REDACTED]

8/31 VT has been getting VT 3X 2/week
at home via Dr. [REDACTED]

He feels that it causes
in his pain + was
full. "no pain, 10 grain"
pills canceled his [REDACTED] + today.

VT
[REDACTED]
[REDACTED]
[REDACTED]

Neck veins 5/10 kind of
pain [REDACTED] and
[REDACTED] 12/10 - 9/10
Back 3/10 pain to [REDACTED]
+ 10/10 [REDACTED]

Frank
[REDACTED]

(R) has the [REDACTED] - [REDACTED] [REDACTED]
[REDACTED] - [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]

1-2+ Neck region

to [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]

(O)

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]



Name Samuel Rose SS# _____ Page # _____

Address _____

Phone (home) _____ (work) _____ Date of birth [REDACTED]

Drug allergies _____



9-6-11 Pt. came to Frisco County Spinal care
for therapy & ~~assessment~~^{MD}.
give shots in neck today
T200, 1000 mg in leg. (see report)

180/110
Pt. is s.
then pronounced near
h/d to prep room.
very thin and ~~has~~
(exposed to air) D/Salt
2 Lisinopril
10 TB

Need back xray

for knee.

AMM (not related)

~~intention~~ JDE

~~o~~ ~~th~~

(BV)

Name Samuel Rose

Birthdate

Chart No.

DATE

PROGRESS NOTES

9/28/11

PT Doing better. Head
 improved low head +
 O-C injection.
 on Lorazepam + Elavil - Mod "Garex" -
 Low neck pain after procedure with aches
 PT
 (14/25) sleep
 H₂O on
 M.D. procedure follow
 1-2+ fever when low neck
 pain still contact
 mod - /let's 40-45°
 17cc at end.

- ① 500mg / 500mg - 1000mg
- ② Dizziness
- ③ 17cc TX -

①

PT
+ 10/29/11

ped

9-29-11

Denies neck back pain
 H.A's (OC) - give
 Gabapentin by Mr. Keller
 Dizziness
 In Mod NTD
 PE - mod face up + low
 neck
 mod face OC just h.d
 venail

①
mod
mod

OC neck
 venail
 neck - back stop

①

Alan N. Abel, M.D.
Family - 57 -

7741-C Dorchester Road - North Charleston, SC 29418
Telephone: (843) 552-9061 / Fax: (843) 552-0662

Name Samuel Rose Birthdate _____ Chart No. _____

DATE _____ PROGRESS NOTES _____

10-11-11 Routine exam & labs
 OC Hx
 No red or white blood cells
 Seen heart from center (T. Louis
 + required to make up. Spina Core)
 OC
 three
 four
 five
 six
 seven
 eight
 nine
 ten
 eleven
 twelve
 thirteen
 fourteen
 fifteen
 sixteen
 seventeen
 eighteen
 nineteen
 twenty
 twenty-one
 twenty-two
 twenty-three
 twenty-four
 twenty-five
 twenty-six
 twenty-seven
 twenty-eight
 twenty-nine
 thirty
 thirty-one
 thirty-two
 thirty-three
 thirty-four
 thirty-five
 thirty-six
 thirty-seven
 thirty-eight
 thirty-nine
 forty
 forty-one
 forty-two
 forty-three
 forty-four
 forty-five
 forty-six
 forty-seven
 forty-eight
 forty-nine
 fifty
 fifty-one
 fifty-two
 fifty-three
 fifty-four
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 fifty-six
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 fifty-eight
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 sixty
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 sixty-two
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 sixty-seven
 sixty-eight
 sixty-nine
 seventy
 seventy-one
 seventy-two
 seventy-three
 seventy-four
 seventy-five
 seventy-six
 seventy-seven
 seventy-eight
 seventy-nine
 eighty
 eighty-one
 eighty-two
 eighty-three
 eighty-four
 eighty-five
 eighty-six
 eighty-seven
 eighty-eight
 eighty-nine
 ninety
 ninety-one
 ninety-two
 ninety-three
 ninety-four
 ninety-five
 ninety-six
 ninety-seven
 ninety-eight
 ninety-nine
 one hundred

11-26-11 Hx, Dizziness - need still payed
 (Hx/100 X2)
 2+ trace h.2 oc seen from
 true 1-2+ paracardiac nerve
 h.2
 Seen h.2 grade Bot need
 1+ true paracardiac nerve
 h.2
 Hx - Dizziness
 OC normal - same
 1+BP -

Alan N. Abel, M.D. + 10/10/11
 Family Medical - 58 -
 7741-C Dorchester Road - North Charleston, SC 29418
 Telephone: (843) 550-0000



DEA # _____
Lic. # _____

Alan N. Abel, M.D.
Family Medicine

7741-C Dorchester Rd.

Telephone: (843) 552-9061 / Fax: (843) 552-0062 North Charleston, SC 29418

Name: Samuel Nois Date: 8/31/11

Address: _____

Rx/Presc, health &

(B) / Lower injury
2 - MVA

Unable to work for
at least 30 more days

Label

Refill - 0 - 1 - 2 - 3 - 4 - PRN

Dispense As Written

Speed
Substitution Permissible



DEA # _____
Lic. # _____

Alan N. Abel, M.D.
Family Medicine

7741-C Dorchester Rd.

Telephone: (843) 552-9051 / Fax: (843) 552-0062 North Charleston, SC 29418

Name Somuel Rose Date 7/29/11

Address _____

Rx

Neck back injury
17's

still unable to
work
estimated 30 more days

Label

Refill - 0 - 1 - 2 - 3 - 4 - PRN

Dispense As Written

Abel
Substitution Permissible



DEA # _____
Lic. # _____

Alan N. Abel, M.D.
Family Medicine

7741-C Dorchester Rd.
Telephone: (843) 552-9061 / Fax: (843) 552-0062 North Charleston, SC 29418

Name: Samuel Dase Date: 10/31/11
Address: _____

Rx: *His 1's, D. 22.22.22
need, need 10/31*

*Corticosteroids
"no work status"
with re-eval*

Label

Refill - 0 - 1 - 2 - 3 - 4 - PRN

_____ *Spec* _____
Dispense As Written Substitution Permissible



DEA # _____
Lic. # _____

Alan N. Abel, M.D.
Family Medicine

7741-C Dorchester Rd.
North Charleston, SC 29418

Phone: (843) 552-9081 / Fax: (843) 552-0052

Name: Samuel Rose Date: 11/31/12

Address: _____

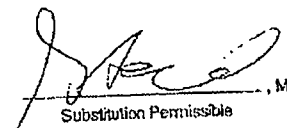
Rx

Continued "as written"
status for
additional
30 days

Label

Refill - 0 - 1 - 2 - 3 - 4 - PRN

_____, M.D.
Dispense As Written


_____, M.D.
Substitution Permissible



DEA # _____
Lic. # _____

Alan N. Abel, M.D.
Family Medicine

7741-C Dorchester Rd.

Phone: (843) 552-9061 / Fax: (843) 552-0052 North Charleston, SC 29418

Name: Samuel West Date: 12/30/11

Address: _____

R Continue "no work" status

Neck + back injury

Label

Refill - 0 - 1 - 2 - 3 - 4 - PRN

_____, M.D. Alan N. Abel, M.D.
Dispense As Written Substitution Permissible



DEA # _____
Lic. # _____

Alan N. Abel, M.D.
Family Medicine

7741-C Dorchester Rd.
North Charleston, SC 29418
Telephone: (843) 552-9061 / Fax: (843) 552-0062

Name Sam Rose Date 1/28/11
Address _____

Rx

BC neuritis
Post traumatic
Cont " no work
status "

Label

Refill - 0 - 1 - 2 - 3 - 4 - PRN

Dispense As Written

Substitution Permissible

Alan N. Abel, M.D.
7741-C Dorchester Rd.
North Charleston, SC 29418
Telephone: (843) 552-9061
Fax: (843) 552-0062

October 8, 2012

Joseph B. Fisher, Esquire
c/o George Sink, P.A.
Injury Lawyers
P.O. Box 63506
North Charleston, SC 29419-3506

RE: SAMUEL A. ROSE

Dear Mr. Fisher:

This is an update on Mr. Rose. I continue to see him for ongoing neck and back symptoms and associated headaches.

He was seen on 10/04/12 complaining of new symptoms of losing feeling in his right hand, with a decrease in grip in the right hand at times. He has ongoing low back pain and headaches in the occipital/cervical region. There is a decreased sensation of sharpness over the right hand vs. the left. There is still bilateral paracervical and paralumbar muscle tenderness, with painful range of motion of the neck.

This patient continues to be frustrated by the lack of recommended treatment. He does need to see a neurosurgeon for evaluation of surgery on his neck. He is to continue Elavil and ibuprofen, and see me again in three weeks.

I am concerned about any further delay in getting this patient the treatment that he needs. I wanted you to be aware of this.

Sincerely,



Alan N. Abel, M.D.

ANA/ppi

Alan N. Abel, M.D.
7741-C Dorchester Rd.
North Charleston, SC 29418
Telephone: (843) 552-9061
Fax: (843) 552-0062

December 17, 2012

Joseph B. Fisher, Esquire
c/o George Sink, P.A.
Injury Lawyers
P.O. Box 63506
North Charleston, SC 29419-3506

RE: SAMUEL A. ROSE

Dear Mr. Fisher

I am continuing to see Mr. Rose for his injuries. He remains symptomatic, and if at all possible, I would like to make arrangements for physical therapy for this gentleman as I feel this might help his condition improve.

Kindly let me know if you have any suggestions.

Sincerely,



Alan N. Abel, M.D.

ANA/ppi

Alan N. Abel, M.D.
7741-C Dorchester Rd.
North Charleston, SC 29418
Telephone: (843) 552-9061
Fax: (843) 552-0062

May 29, 2013

Joseph P. Fisher, Esquire
c/o George Sink, P.A.
Injury Lawyers
P.O. Box 63506
North Charleston, SC 29419-3506

RE: SAMUEL A. ROSE

Dear Mr. Fisher:

As you are aware, I have treated Mr. Rose since 08/16/11 for injuries sustained in a truck accident that occurred on 08/10/11.

Initially, Mr. Rose presented to my office with neck, back and right knee discomfort. My initial impression is that he had a neck and back strain/sprain injury in addition to a right knee injury as a result of this accident. He also informed me of having a slow heart rate for which he was evaluated at MUSC prior to seeing me. I requested that his records be obtained.

He was next seen on 08/22/11 with persistent neck and back pain and right knee discomfort. He stated that he was seeing an orthopaedist at the Medical University where pain medication had been prescribed for the patient.

He was seen again on 08/29/11 with ongoing back and neck discomfort. He was receiving physical therapy at home.

When seen on 08/31/11, he informed me of receiving therapy three times per week at home, and he thought this might be increasing his pain. He remained symptomatic, and I was agreeable to holding physical therapy at that time as the patient felt this might be aggravating his condition.

Joseph P. Fisher, Esquire
Re: Samuel A. Rose
May 29, 2013
Page 2

He returned on 09/06/11. He had been referred to Tri-county Spinal Care Center where he was receiving "shots in the back." He stated that he had a "fracture in the leg."

Mr. Rose was next seen on 09/20/11 and was doing somewhat better, having had an epidural injection and an injection into his occipital/cervical region. He still had neck soreness and low back pain after prolonged sitting and standing. He remained tender over the paracervical muscles and paralumbar muscles, with painful range of motion. The exam was non-revealing at that time.

I continued to see Mr. Rose who remained symptomatic. He was noted to have elevated blood pressure on 10/26/11. On subsequent visits of 11/03/11 and 11/28/11, he reported continued occipital/cervical headaches with some dizziness and persistent back pain. At this point, it was thought he had an occipital/cervical neuritis with secondary headaches and ongoing back pain. He was still seeing an orthopaedist for his neck and back.

X-rays of his lumbar spine done on 11/30/11 showed mild degenerative changes and facet arthropathy of the lumbar spine and mild degenerative changes of the sacroiliac joint. X-rays of the right knee showed mild soft tissue swelling anterior to the knee and over the tibial tuberosity. There was some fragmentation of the tibial tuberosity, suggesting prior Osgood-Schlatter's disease.

A cervical/lumbar scan was done on 11/09/11 which showed significant degenerative changes in the mid cervical region with moderate exit stenosis. There was also evidence of swelling of the lower cervical ligaments suggesting ligamentous strain/sprain.

When the patient returned to see me on 12/15/11, he informed me of having seen the orthopaedist who recommended that he have neck surgery based on an MR scan. He continued to have neck and back discomfort, and now had intermittent numbness reportedly in the left shoulder and forearm. There was improvement in his knee at this time, stating that it was "healing fine."

I continued to follow Mr. Rose. His symptoms in the neck and back region were continuing, with persistent occipital/cervical headaches.

Joseph P. Fisher, Esquire
Re: Samuel A. Rose
May 29, 2013
Page 3

Because of the chronicity of his discomfort, I placed him on a low-dose antidepressant on 02/09/12 to control his pain. The patient was awaiting a neurologic appointment.

We discussed the possibility of more physical therapy on his visit of 02/24/12. He stated that he was being scheduled for surgery on his neck. His shoulder was also bothersome.

On his visits of 03/15/12 and 04/12/12, his symptoms persisted. I thought there was developing anxiety and depression as a result of the delay in his worker compensation determination. He stated that his left arm got "cold" with tingling in the tips of all fingers of the left hand, and I suggested an EMG nerve conduction study.

When seen on 05/10/12, his back was getting worse and his left arm remained numb.

There was no change on his visit of 05/30/12, at which time he was using a cane for support.

On 06/27/12, he continued to have neck and back discomfort, along with headaches and dizziness. His blood pressure was slightly elevated. He reported still having numbness in the left upper arm with tingling in all of his fingers. He was given a pain medication, and I again suggested resumption of physical therapy.

On 07/20/12, he reported "pain, pain and more pain" in the neck, back and occipital/cervical region. He was very tender in the paralumbar and paracervical muscles at this time, and range of motion was painful in all directions. He was to continue his Elavil, and efforts were again made to arrange for physical therapy.

On 08/07/12, his low back was still bothersome, as was his neck. He still had numbness in the left arm and shoulder and "throbbing headaches that won't go away." He had persistent dizziness and was still quite anxious about the need for surgical intervention. He had not seen the orthopaedist since 12/28/11.

He reported no change in his condition upon his visit on 08/23/12. He stated that his right knee goes out at times. His examination was essentially unchanged.

He remained symptomatic on subsequent visits of 09/12/12 and 10/04/12, stating that he was losing feeling in his right hand and losing his grip in that hand. I suggested that he see a neurosurgeon as soon as possible. He was to continue his Elavil and ibuprofen.

Joseph P. Fisher, Esquire
Re: Samuel A. Rose
May 29, 2013
Page 4

There was no change in his clinical condition or his treatment on subsequent visits of 10/25/12 and 11/16/12.

On his visit of 12/07/12, he reported more pain in his right knee. It was thought that he had a possible Baker's cyst in the posterior knee. He remained tender in the neck and back region with painful range of motion.

The patient appeared to become more and more depressed on subsequent visits due to lack of improvement and intervention. He reported increasing pain and seemed to have more difficulty walking. He was referred by his insurance carrier to Dr. Gregory Jones whose records indicate that he felt the patient had chronic cervicothoracic and left shoulder girdle myofascial pain and chronic lumbosacral myofascial and facet-generated pain due to lumbosacral strain from the above accident. He allegedly told the patient that he had developed a fibromyalgia-type syndrome. I am essentially in agreement with this interpretation, although I do not feel he has a full fibromyalgia clinical presentation if this was diagnosed.

The patient continued to be symptomatic on subsequent visits of 03/28/13, 04/08/13 and 04/18/13. On 04/18/13, the patient reported that, "I just want to get back to normal and return to work" as before. He reported having no neck or back problems prior to this accident.

It is this examiner's opinion that the patient is at maximum medical improvement and, unfortunately, I am not optimistic that he will improve to any significant degree in the future. Perhaps physical therapy might be helpful, as suggested previously. He would benefit from an EMG nerve conduction study to see if there is, indeed, nerve decompression in his neck requiring surgical intervention.

Unfortunately, this patient is not improving to the extent that he would like to see. I do feel that earlier intervention and neurologic treatment may have benefited him, and perhaps lessened his degree of pain and lack of mobility that he now has.

At the time of his last visit of 05/16/13, the patient was walking with a limp, using a cane and holding his neck and back area stiffly. He was significantly more tender in the paracervical and paralumbar region with painful range of motion.

Although the patient is at maximum medical improvement, I will continue to see him to assure continuity of care. He did return on 05/23/13 expressing concern with transmission of hepatitis B at Tri-county Spinal Care where he had received two

Joseph P. Fisher, Esquire
Re: Samuel A. Rose
May 29, 2013
Page 5

injections in November. He was referred for hepatitis testing. As I continue to see him, I hope we can find some way to proceed with his further testing and physical therapy if insurance will allow. I will be glad to issue an impairment evaluation in writing if you so desire.

I hope this information is useful to you.

Sincerely,

A handwritten signature in cursive script, appearing to read "A. Abel, M.D.", written in dark ink.

Alan N. Abel, M.D.

ANA/ppi

Name Arnold Rose Birthdate [REDACTED] Chart No. [REDACTED]

DATE _____ PROGRESS NOTES _____

5/23/13 Pt. Arnold called
 concerning Hg level of 10
 in urine in morning
 at Tricent 500 mg
~~Prescribed~~ Epinephrine
 given in PM
 Hg level 10
 [Signature]

6-6-13 of the exam. ~~exam~~
 Pt. has pain in chest
 neck & back still present
 Rx with - ~~unimpaired~~
 Chest X-ray
 normal
 bed -
 2+ pain to spine L5/S1
 found non-mal
 mild trauma seen
 low back
 [Signature]

Normal + normal
 Back pain / present
 Neck pain / present
 [Signature]

[Signature]
 2. T. 100

Alan N. Abel, M.D.
 Family Medicine

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10513-1-0200-1-000-220-1170

PAGE 02/02

ALAN ABEL MD

8435520062

07/09/2013 08:41

Radiology Results

Page: 1

Name: ROSE, SAMUEL

Date Printed: 09/04/11

ID: 177114

SEX: M AGE: 41

08/23/11 : 4:52pm

RAD - MRI LOWER EXT JOINT W/O CONT

R5W

Accession number: 6423084

EXAMINATION: MRI KNEE 08/23/11 16:52:00

ACCESSION NUMBER: 6423084

INDICATION: RT KNEE PAIN AND SOFT TISSUE SWELLING. EVALUATE FOR
LIGAMENOUS INJURY

COMPARISON: Knee radiographs 08/10/11

TECHNIQUE: Routine multiplanar MRI of the right knee without contrast.

FINDINGS: There is an impaction type fracture to the medial femoral
condyle with associated bone marrow edema.

Medial and lateral menisci are normal.

Anterior and posterior cruciate ligaments are normal.

Normal lateral collateral ligament complex and iliotibial band.
There is no evidence of injury to the posterolateral corner,
including the popliteus tendon and arcuate ligament.Normal medial collateral ligament. Normal posteromedial corner,
including the distal semimembranosus complex, gracilis, and
semitendinosus tendons.Increased T2 signal within the infrapatellar tendon. The visualized
distal quadriceps tendon is normal.The patellofemoral articulation is congruent without tilt or
subluxation. Normal medial and lateral patellar retinacula.Incidental note is made of two well corticated ossific fragments
anterior to the tibial tubercle from prior Osgood Schlatter disease.No soft tissue masses, joint effusion, popliteal cyst, and no
periarticular bursitis.There are 3 compartment osteoarthritic changes with 3 compartment
chondromalacia and osteophyte formation.**IMPRESSION:**Mild impaction type fracture the medial femoral condyle with
associated bone marrow edema.

Patellar tendinopathy and evidence of prior Osgood Schlatter disease.

Radiology Results

Page: 2

Date Printed: 09/04/11

Name: ROSE, SAMUEL

ID: 177114

SEX:M AGE:41

No evidence of internal derangement.

Three compartment chondromalacia and osteoarthritic changes.

VOICE DICTATED BY: Dr. MICHAEL RISSING

I have reviewed the images and agree with the findings in this report.

AUTHENTICATING RADIOLOGIST: JOSH MCCAIN

Practice Partner signature acknowledges receipt of results only.

MRI RT KNEE **PT WILL BRING ORDER WITH HIM** WORKER'S COMP PER PATIENT 08/11/11 C 1.3/GFR

59,FW

RT KNEE PAIN AND SOFT TISSUE SWELLING. EVALUATE FOR LIGAMENOUS INJURY

SIGNED BY BRANDI B AQUINO, PA (R5W) 09/01/2011 07:58AM



TRI-COUNTY SPINAL CARE CENTER

Medical Care Chiropractic Care Physical Therapy

Jeffrey Gersbach, M.D.
Richard Kelletti, M.D.
Cameron Wills, D.C.

North Charleston-West Ashley-Summerville
Ph:843-225-7746 Fax:843-647-7035
Central Office:8626 Dorchester Rd. Ste 101 N. Charleston SC 29420

09/02/2011

Samuel A Rose

CHIEF COMPLAINT

Back Pain
Extremity Pain
Neck pain

HISTORY

Date of Accident:08-10-11

The patient was injured in a high velocity car crash.

The patient was transported to the emergency room by EMS. Diagnostics were taken. Medication was prescribed.

The patient revisited the ER 2 weeks later.

Mri was taken of his knee. Impaction fracture was noted.

He has been under the care of his PCP. Pain management was recommended.

PAST MEDICAL HISTORY

Hypertension

PAST SURGICAL HISTORY

No past surgical history reported.

MEDICATIONS

Oxycodone, Flexeril, Colace, IB

FAMILY HISTORY

There is no significant family history.

SOCIAL HISTORY

There is no significant social history.

ALLERGIES

No known drug allergies.

VITAL SIGNS: Blood Press	Pulse	Resp Rate	O2 Sat%
132 / 94	79	18	99

PHYSICAL EXAM

Cervical Pain is described by the patient as being a 8 out of 10, with 10 being most severe.

Cervical Range of motion is reduced by 30%. Spasm and pain is evident upon palpation. Thoracic pain is present.

Thoracolumbar Exam:

Back Pain is described by the patient as being a 7 out of 10, with 10 being most severe.

Range of motion is reduced by 25%. Pain is evident with motion.

Knee:Right

Knee exam reveals pain with motion. Pain is reported as a 6 of 10.

Objective Test Findings:

Cervical Compression Test: Indication of Cervical Nerve Root Compression. Soto Hall Test: Indication of Cervical Sprain.

Non Organic Exams:

The patient tested negative for Libman's Sign and Mankopf's Sign: A negative indicator for malingering.



TRI-COUNTY SPINAL CARE CENTER

Medical Care Chiropractic Care Physical Therapy

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Central Office: 8626 Dorchester Rd. Ste 101 N. Charleston SC 29420

09/02/2011

Samuel A Rose

DX STUDIES

ER records were reviewed.

The following Radiographs were reviewed:

Knee series, PA Chest.

Cervical, Thoracic, Abdomen, Head, Pelvis CT was reviewed. Possible intracranial pressure noted.

Knee MRI was reviewed. Impaction fracture noted.

Cervical Degenerative Joint and Disc Disease was evident.

TREATMENT

The patient was seen in the North Charleston facility today.

97010: Heat therapy to increase circulation and reduce spasm.

97032: Interferential muscle stimulation for pain management and reduction of spasm.

97140: 1 Unit(s) of Manual therapy/Trigger point Therapy/Myofascial Release: To reduce segmental dysfunction, pain, spasm, fibrous adhesions, and to increase pain free range of motion.

97110: 1 Unit(s) Therapeutic stretching and exercise to rehabilitate the injured areas.

E0238: Ice and Heat packs were prescribed to the patient for at home use.

ASSESSMENT

723.4 Cervical Radiculitis

847.0 Cervical Sprain Strain, 847.1 Thoracic Sprain Strain, 847.2 Lumbar Sprain Strain

728.85 Spasm of Muscle

Tibial impaction fracture

PLAN

The patient will be seen 2-3 x per week until symptoms diminish or referral is indicated. The injuries of the patient were caused by this accident.

The patient is being referred for Orthopaedic evaluation of his neck and knee, Dr. Wildstein ph 843-406-2771 fax 406-2789.

Cameron Wills, D.C.
Electronically Signed



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09/06/2011

Samuel A Rose

CHIEF COMPLAINT

Back Pain
Extremity Pain
Neck pain

VITAL SIGNS:	Position	Blood Press	Pulse	O2 Sat%
	pre	170 / 115	66	95
	post	149 / 107	72	97

PHYSICAL EXAM

Original intake and examination findings are accurate and consistent with patient pain levels. There continues to be high levels of pain. I discussed the risks and rewards of steroid injection therapy. Informed consent was given.

Radicular symptoms are present in the upper extremity.

PROCEDURES

The patient was given IV sedation.
The target area was identified under fluoroscopic guidance.
The area was prepped and draped in the usual sterile fashion.
The skin was anesthetized with 1% lidocaine using a 25 ga needle.
A 20 ga Touhy needle was advanced into the epidural space using standard LOR technique. LEVEL C 6-7
Placement was verified under fluoroscopy with contrast dye.
A mixture of 0.25% Marcaine, normal saline, and 40 mg of Depo-Medrol was injected into the epidural space.
The needle was removed, the skin cleaned, and a sterile bandage was applied.
No complications were encountered.

DX STUDIES

I have reviewed diagnostic reports. They are consistent with pain pathway and diagnosis.

TREATMENT

The patient was seen in the North Charleston facility today.
98941: Joint manipulation to mobilize fixated joints, restore range of motion and reduce nerve root irritation.
62310: Epidural injection, cervical/thoracic region C 6-7
77003: Fluoroscopic Guidance and Localization of Needle
99144: Moderate sedation, first 30 min
J2250: 2 units Versed (midazolam), per 1 mg
J1030: DepoMedrol 40 mg
A4645: Contrast 200-299 Mg/ML Iodine, 1ML
J3490 Marcaine .25%
1% Lidocaine
A4550: Injection Tray
A4649: IV Kit, Dressing, Adaptor, Syringe, Needle, Pulse Ox, O2 + Nasal Tubing, Sterile Surgical Gloves
20553: Trigger Point Injections to reduce pain, spasm, inflammation, and to increase pain free range of motion. X2
J1030: DepoMedrol 40 mg
A4550: Injection Tray

PLAN

Follow up care is scheduled. Post procedure care advice was given.



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09/06/2011

Samuel A Rose

██████████

Richard Kellett, M.D.
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09/08/2011

Samuel A Rose

CHIEF COMPLAINT

Back Pain

Extremity Pain

Neck pain

PHYSICAL EXAM

Steroid injection has reduced patient symptom levels greatly.

TREATMENT

The patient was seen in the North Charleston facility today.

97010: Heat therapy to increase circulation and reduce spasm.

98941: Joint manipulation to mobilize fixated joints, restore range of motion and reduce nerve root irritation.

97032: Interferential muscle stimulation for pain management and reduction of spasm.

97140: 1 Unit(s) of Manual therapy/Trigger point Therapy/Myofascial Release: To reduce segmental dysfunction, pain, spasm, fibrous adhesions, and to increase pain free range of motion.

97110: 1 Unit(s) Therapeutic stretching and exercise to rehabilitate the injured areas.

PLAN

Prescribed therapy will continue until MMI is reached.

sas

Richard Kellett, M.D.
Electronically Signed



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09/13/2011

Samuel A Rose

CHIEF COMPLAINT

Back Pain
Extremity Pain
Neck pain

PHYSICAL EXAM

Higher pain levels are reported today.

TREATMENT

The patient was seen in the North Charleston facility today.

97010: Heat therapy to increase circulation and reduce spasm.

98941: Joint manipulation to mobilize fixated joints, restore range of motion and reduce nerve root irritation.

97032: Interferential muscle stimulation for pain management and reduction of spasm.

97140: 1 Unit(s) of Manual therapy/Trigger point Therapy/Myofascial Release: To reduce segmental dysfunction, pain, spasm, fibrous adhesions, and to increase pain free range of motion.

97110: 1 Unit(s) Therapeutic stretching and exercise to rehabilitate the injured areas.

PRESCRIPTIONS

Lortab 5mg, No. 20, 1 PO. every 4 to 6 hours PRN for pain.
May Cause Drowsiness.

Flexeril 5 mg, No. 20, 1 PO t.i.d. PRN muscle spasms/stiffness.
May cause Drowsiness

PLAN

Steroid injection procedure is scheduled. Pre procedure instruction was given.

jmb

Richard Kellett, M.D.
Electronically Signed



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09/15/2011

Samuel A Rose

CHIEF COMPLAINT

Back Pain
Extremity Pain
Neck pain

VITAL SIGNS:	Position	Blood Press	Pulse	O2 Sat%
	pre	167 / 113	73	94
	post	193 / 130	73	97

PHYSICAL EXAM

The patient is making clinical progress. We will proceed with a follow up procedure.

PROCEDURES

The patient was given IV sedation.
The target area was identified under fluoroscopic guidance.
The area was prepped and draped in the usual sterile fashion.
The skin was anesthetized with 1% lidocaine using a 25 ga needle.
A 22 ga spinal needle was advanced into each identified facet space. Level L 2-3 bilateral
Placement was verified under fluoroscopy with contrast dye.
A mixture of 0.25% Marcaine, and 40 mg of Depo-Medrol was divided equally at each facet space.
The needle was removed, the skin cleaned, and a sterile bandage was applied.
No complications were encountered.

TREATMENT

The patient was seen in the North Charleston facility today.
64493: Lumbar or Sacral facet Injection, diagnostic or therapeutic agent, first level bilateral L2 - L 3
77003: Fluoroscopic Guidance and Localization of Needle
99144: Moderate sedation, first 30 min
J2250: 2 units Versed (midazolam), per 1 mg
J1030: DepoMedrol 40 mg
A4645: Contrast 200-299 Mg/ML Iodine, 1ML
J3490 Marcaine .25%
1% Lidocaine
A4550: Injection Tray
A4649: IV Kit, Dressing, Adaptor, Syringe, Needle, Pulse Ox, O2 + Nasal Tubing, Sterile Surgical Gloves

64405: Occipital nerve block
J1030: DepoMedrol 40 mg
A4550: Injection Tray

PRESCRIPTIONS

Elavil 25mg #30 1 QHS
2 Refills

PLAN

There were no adverse reactions to the procedure. Post treatment instruction was given.
sas



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09/15/2011

Samuel A Rose

██████████

Richard Kellett, M.D.
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09/20/2011

Samuel A Rose

CHIEF COMPLAINT

Back Pain
Extremity Pain
Neck pain

PHYSICAL EXAM

Pain levels have reduced moderately since steroid injection procedure. The patient reports less pain with day to day activities.

TREATMENT

The patient was seen in the North Charleston facility today.

97010: Heat therapy to increase circulation and reduce spasm.

98941: Joint manipulation to mobilize fixated joints, restore range of motion and reduce nerve root irritation.

97032: Interferential muscle stimulation for pain management and reduction of spasm.

97140: 1 Unit(s) of Manual therapy/Trigger point Therapy/Myofascial Release: To reduce segmental dysfunction, pain, spasm, fibrous adhesions, and to increase pain free range of motion.

97110: 1 Unit(s) Therapeutic stretching and exercise to rehabilitate the injured areas.

PLAN

We will continue prescribed therapy. There was pain reduction with today's therapy.

sas

Richard Kellett, M.D.
Electronically Signed



TRI-COUNTY SPINAL CARE CENTER

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09/22/2011

Samuel A Rose

CHIEF COMPLAINT

Back Pain
Extremity Pain
Neck pain

PHYSICAL EXAM

The patient reports an increase in knee pain.
Spinal pain appears to be reducing with treatment.

DX STUDIES

Knee MRI was reviewed.

TREATMENT

The patient was seen in the North Charleston facility today.
97010: Heat therapy to increase circulation and reduce spasm.
97032: Interferential muscle stimulation for pain management and reduction of spasm.
97140: 1 Unit(s) of Manual therapy/Trigger point Therapy/Myofascial Release: To reduce segmental dysfunction, pain, spasm, fibrous adhesions, and to increase pain free range of motion.
97110: 1 Unit(s) Therapeutic stretching and exercise to rehabilitate the injured areas.

PLAN

The patient is being referred for Orthopaedic evaluation, Dr. Wildstein ph843-406-2771 fax 406-2789. He does not appear to be a surgical case, but your medical opinion would be appreciated.

Richard Kellett, M.D.
Electronically Signed



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09/27/2011

Samuel A Rose

CHIEF COMPLAINT

Back Pain
Extremity Pain
Neck pain

PHYSICAL EXAM

Symptoms continue. The patient will be prescribed medication to help with pain, inflammation and muscular spasm.

TREATMENT

The patient was seen in the North Charleston facility today.

97010: Heat therapy to increase circulation and reduce spasm.

98941: Joint manipulation to mobilize fixated joints, restore range of motion and reduce nerve root irritation.

97032: Interferential muscle stimulation for pain management and reduction of spasm.

97140: 1 Unit(s) of Manual therapy/Trigger point Therapy/Myofascial Release: To reduce segmental dysfunction, pain, spasm, fibrous adhesions, and to increase pain free range of motion.

97110: 1 Unit(s) Therapeutic stretching and exercise to rehabilitate the injured areas.

97035: Therapeutic ultrasound for the reduction of pain, relaxation of spasm, and reduction of joint contractures.

PRESCRIPTIONS

Neurontin 300mg #90 1 QHS FOR 3 DAYS, BID FOR 3 DAYS, 1 TID

PLAN

Prescribed therapy will continue until MMI is reached.

Ortho visit will be held for now.

Richard Kellett, M.D.
Electronically Signed



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09/29/2011

Samuel A Rose

[REDACTED]

CHIEF COMPLAINT

- Back Pain
- Extremity Pain
- Neck pain

PHYSICAL EXAM

Positive Muscular Findings of Pain and Spasm:

Occipitalis, SCM, Splenius Capitus, Spinalis thoracis, Latissimus dorsi, Longissimus thoracis, Quadratus lumborum, Iliocostalis lumborum.

Trigger Point therapy and Stretching will be administered to each muscle group.

TREATMENT

The patient was seen in the North Charleston facility today.

97010: Heat therapy to increase circulation and reduce spasm.

98941: Joint manipulation to mobilize fixated joints, restore range of motion and reduce nerve root irritation.

97032: Interferential muscle stimulation for pain management and reduction of spasm.

97140: 1 Unit(s) of Manual therapy/Trigger point Therapy/Myofascial Release: To reduce segmental dysfunction, pain, spasm, fibrous adhesions, and to increase pain free range of motion.

97110: 1 Unit(s) Therapeutic stretching and exercise to rehabilitate the injured areas.

PLAN

Therapy will continue as prescribed. The patient was taken through assisted stretching today.

sas

Richard Kelleff, M.D.
Electronically Signed



TRI-COUNTY SPINAL CARE CENTER

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10/04/2011

Samuel A Rose

CHIEF COMPLAINT

Back Pain
Extremity Pain
Neck pain

PHYSICAL EXAM

Neck pain and headaches continue.
Spinal and knee pain appears to be progressing.

TREATMENT

The patient was seen in the North Charleston facility today.
97010: Heat therapy to increase circulation and reduce spasm.
98941: Joint manipulation to mobilize fixated joints, restore range of motion and reduce nerve root irritation.
97032: Interferential muscle stimulation for pain management and reduction of spasm.
97140: 1 Unit(s) of Manual therapy/Trigger point Therapy/Myofascial Release: To reduce segmental dysfunction, pain, spasm, fibrous adhesions, and to increase pain free range of motion.
97110: 1 Unit(s) Therapeutic stretching and exercise to rehabilitate the injured areas.
97035: Therapeutic ultrasound for the reduction of pain, relaxation of spasm, and reduction of joint contractures.

PLAN

If this procedure does not reduce pain levels, we will proceed with Cervical Diagnostic block procedure and possible radiofrequency ablation.

Richard Kellett, M.D.
Electronically Signed



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10/06/2011

Samuel A Rose

CHIEF COMPLAINT

Back Pain
Extremity Pain
Neck pain

PHYSICAL EXAM

Pain continues.

TREATMENT

The patient was seen in the North Charleston facility today.

97010: Heat therapy to increase circulation and reduce spasm.

98941: Joint manipulation to mobilize fixated joints, restore range of motion and reduce nerve root irritation.

97032: Interferential muscle stimulation for pain management and reduction of spasm.

97140: 1 Unit(s) of Manual therapy/Trigger point Therapy/Myofascial Release: To reduce segmental dysfunction, pain, spasm, fibrous adhesions, and to increase pain free range of motion.

97110: 1 Unit(s) Therapeutic stretching and exercise to rehabilitate the injured areas.

97035: Therapeutic ultrasound for the reduction of pain, relaxation of spasm, and reduction of joint contractures.

PLAN

Prescribed therapy will continue until MMI is reached.

sas

Richard Kellett, M.D.
Electronically Signed



TRI-COUNTY SPINAL CARE CENTER

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Samuel A Rose 10/11/2011 8:30:00 AM 41 year old
[REDACTED] RELEASED
[REDACTED]
[REDACTED]

CHIEF COMPLAINT

referral

VITAL SIGNS:	Position	Blood Press	Pulse	Resp Rate	O2 Sat%
	pre	140 / 111	75	16	96

PHYSICAL EXAM

Today's exam reveals significant pain. Cervical more than back.

PROCEDURES

Facet Injection

The patient was given IV sedation.

The target area was identified under fluoroscopic guidance.

The area was prepped and draped in the usual sterile fashion.

The skin was anesthetized with 1% lidocaine using a 25 ga needle.

A 22 ga spinal needle was advanced into each identified facet space. Level C 3-4 RT SIDE

Placement was verified under fluoroscopy with contrast dye.

A mixture of 0.25% Marcaine, and 40 mg of Depo-Medrol was divided equally at each facet space.

The needle was removed, the skin cleaned, and a sterile bandage was applied.

No complications were encountered.

DX STUDIES

Cervical MRI was ordered.

TREATMENT

The patient was seen in the North Charleston facility today.

64490: Cervical or Thoracic facet Injection, diagnostic or therapeutic agent, first level C 3-4 RT SIDE

77003: Fluoroscopic Guidance and Localization of Needle

99144: Moderate sedation, first 30 min

J2250: 2 units Versed (midazolam), per 1 mg

J1030: DepoMedrol 40 mg

A4645: Contrast 200-299 Mg/MI Iodine, 1ML

J3490 Marcaine .25%

1% Lidocaine

A4550: Injection Tray

A4649: IV Kit, Dressing, Adaptor, Syringe, Needle, Pulse Ox, O2 + Nasal Tubing, Sterile Surgical Gloves

PLAN

The patient did not tolerate the procedure well. His hands were interfering with the procedure. The patient could be a candidate for RF ablation if he could tolerate the procedure.

The patient is being released today. He continues to suffer from accident related neck and knee pain.

The patient is being referred for Orthopaedic knee and spinal evaluation, Dr. Wildstein ph843-406-2771 fax 406-2789.

The patient is scheduled for further diagnostic testing.



TRI-COUNTY SPINAL CARE CENTER

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Samuel A Rose 10/11/2011 8:30:00 AM 41 year old
[REDACTED] RELEASED
[REDACTED]
[REDACTED]

Richard Kellett, M.D.
Electronically Signed

TriCounty Radiology Associates

(843) 529-0600
 North Charleston
 Summerville
 West Ashley

PATIENT: Rose, Samuel
DOB: [REDACTED]
MRN: 806624
PATIENT PHONE: [REDACTED]
PHYSICIAN: Richard Kellett, MD
DATE: 11/9/2011

EXAM: CERVICAL MRI WITHOUT CONTRAST

HISTORY: Cervical radiculitis.

COMPARISON STUDIES: None.

TECHNIQUE: Multiplanar multisequence images cervical spine without contrast.

FINDINGS: *Alignment and bony structures:* C5/6 mild degenerative retrolisthesis and mild lateral discogenic endplate irregularity. C6/7 moderate disc narrowing and discogenic endplate irregularity. Both levels have mild type I Modic change. C5/6 mild right facet edema. Remaining marrow and alignment preserved. Patchy STIR hyperintensity within lower cervical interspinous ligaments most noticeable at C6/7, possibly ligamentous strain or sprain. *Spinal cord:* Normal signal and caliber. *Craniocervical junction:* Unremarkable central elements and junction as visualized. *Findings by level:*

C2/3: Normal.

C3/4: Mild left uncovertebral and bilateral facet hypertrophies. No stenosis.

C4/5: Mild disc bulge and facet hypertrophy. No stenosis.

C5/6: Moderate disc-osteophyte complex extends biforaminally. Moderate uncovertebral and facet hypertrophy. Moderate exit crowding of C6s bordering on severe. Mild central narrowing.

C6/7: Disc-osteophyte complex extends biforaminally. Uncovertebral and facet hypertrophy are mild. Mild exit narrowing. There may be slight contact exiting C7s.

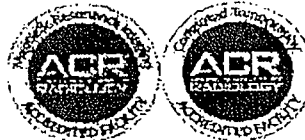
C7/T1: Mild disc bulge and facet hypertrophy. No stenosis.

IMPRESSION:

1. Midcervical spondylosis most impressive at C5/6 where prominent uncovertebral hypertrophy causes moderate exit stenosis bordering on severe. Correlation for C6 radiculopathies might be helpful. Lesser findings discussed above.
2. Lower cervical interspinous ligament edema is mild and may represent ligamentous strain or sprain.

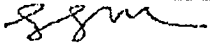
Troy Marlow, M.D.
 TM/hc

DD: 11/10/2011 / DT: 11/10/2011
 JOB: 13940324



Patient Name: Rose, Samuel
MRN: 806624
EXAM: CERVICAL MRI WITHOUT CONTRAST

This document has been electronically reviewed and signed.



Wildstein Spine Center, P.A.
 418 Folly Rd.
 Suite C
 Charleston, SC 29412
 Phone 843.406.2771 Fax 843.406.2789

ROSE, SAMUEL (DOB: [REDACTED]) Nov 23, 2011 Wed 11:08 AM

CC Neck & Knee pain MVA

HPI DOI: 8.11.11

Seen at the request of Richard Kollett, M.D. for evaluation of his neck and knee pain since being involved in a rear-end MVC in which he was the restrained driver of the truck that was rear-ended at a speed of 45 MPH. He was taken to MUSC where he was admitted for 2 days for neck, back and knee pain. Since then, he has had headaches that won't go away, pain in the neck that is in the back and sides without paresthesias, low back pain that is in the middle and lower part and is sharp and worse with movement and improved by sleeping. His R knee is painful when he walks and he states it feels like the knee is twisted. He has associated swelling of the right knee at times. He denies locking or popping of the knee. He currently uses a cane for ambulation, but he does so in the incorrect hand for a right knee injury. His pain is a 10/10 in all areas and he has not been able to work since the accident. He has been treated with LES's x 3 and a back brace for the LBP, as well as cortisone injections into the back of his head and a radiofrequency ablation to the back of his head as well. Nothing has helped his pain at all and he states that his pain is sometimes better, sometimes worse than when the accident first occurred.

ROS Detailed review of systems, past medical, social, and family histories, medications and drug allergies can be found on the patient intake form and were scanned into the electronic chart and reviewed by me today.

PMH denies

SH [Tobacco: Never smoker]

Meds Fioricet oral tablet
 Ibuprofen 400 mg oral tablet
 Lortab 5/300 oral tablet
 Neurontin 300 mg oral capsule

Vitals Wt: 210 lb Ht: 74 in BMI: 27.0

PE GENERAL: WNL NAD. ambulates w/ right-sided arthralgia and a cane in the right hand
 HEENT: NCAT, PERRLA, oral mucosa pink and moist, no CLAD, trachea midline and without gurgler
 LUNGS: CTA bilaterally
 HEART: RRR S1 S2 without murmurs, thrills, rubs
 ABDOMEN: Soft, Non-tender, non-distended Normo-active bowel sounds,
 SKIN: good turgor, no lesions, rashes or nodules BUE's, BLE's and trunk
 MSK: BUE's with PROM shoulders, elbows, wrists w/o decrement. negative apprehension test. Stable throughout ROM and to viv stresses. NTTP over Bilat clavicles, elbows, wrists. + trapezius epaem present bilaterally. Strength 5/5 B delt/W/Tri/WC/WF/Intrinsics/grip. R knee with mild TTP over medial femoral condyle. No effusion, no joint line TTP. neg lachman's at 30 degrees flexion. neg mcMurray's.
 SPINE: TTP over cervical and lumbar spine posteriorly. decreased ROM of neck in ext and

ROSE, SAMUEL (████████████████████) Nov 23, 2011 Wed 11:08 AM

left rotation secondary to pain. L spine with FROM without discomfort. there is no lumbar paraspinal spasm present. no palpable lumbar stepoff. no palpable stepoff. Sagittal alignment overall good. Shoulders level
 Neuro/Psych: DTR's intact and symmetric; BUE's bilat/BR 2+ and symmetric. no long tract signs, SLTI BUE's median, radial and ulnar nerve distributions. Spurlings and Hoffman's negative. No Hoffman's sign, no ulnar escape. No difficulty with rapid, alternating movements. negative SLR bilaterally. Tandem walks w/o difficulty. babinski negative, no clonus. Alert and oriented to person, time and event. Affect appropriate for condition

VASCULAR: Bilateral upper extremities with 2+ radial, 2+ ulnar pulses with good capillary refill present

IMAGING: MRI of the C spine obtained at Tricounty 11/9/11 and MRI of the right knee from 8/23/11 done at MUSC and reviewed by me today shows C5-6 cervical spinal stenosis and spondylosis causing bilateral C6 foraminal stenosis. There is also evidence of an interspinous ligamentous injury with high signal at the lower cervical levels. Knee MRI from 8/23/11 demonstrated an impaction fracture of the medial femoral condyle on the right with marrow edema present and tricompartmental changes consistent with osteoarthritis.

AP

CERVICALGIA (723.1);
 # LUMBAGO (724.2);
 # FRACTURE OF LOWER END OF FEMUR UNSPECIFIED PART CLOSED (821.20);

I would like to see imaging of the L spine as well of the right knee to see how the impaction fracture is healing. Additionally, I do not see where he has had any workup of his LBP so plain films of this are needed as well. I would further like to get copies of the MUSC records and Dr. Kelle's notes to find out what exactly has been done to date and the diagnoses he has been given to date. I do not think that he is currently a reasonable surgical candidate as most of his complaints are rather nonspecific and are out of proportion to his physical exam findings. I will see him back once I have had a chance to review these records and get imaging.

ORDERED/ADVISED: - AP/Lat of Lumbar spine ICD9 Codes (723.1, 821.20, 724.2)

- Standing AP/Lat/sunrise and notch views of the right knee ICD9 Codes (723.1, 821.20, 724.2)

- Custom Order (Please get copies of Dr. Kelle's notes on Mr. Rose- what procedures he has had done and for the office visits he has had with him.) ICD9 Codes (723.1, 821.20, 724.2)

- FU 3 weeks ICD9 Codes (723.1, 821.20, 724.2)

Coded: 99245

Michael Wildstein, MD
 Electronic Signature

Wildstein Spine Center, P.A.
416 Folly Rd.
Suite C
Charleston, SC 29412
Phone 843.406.2771 Fax 843.406.2789

ROSE, SAMUEL (DOB: [REDACTED]) Dec 14, 2011 Wed 09:13 AM

CC 3 WK FU

HPI DOB: 8.11.11
Referring: Richard Kelleff M.D.

He returns for up for evaluation of his low back, neck and knee pain. He has had his l. spine and knee imaging and he still complains mostly of neck, pariscapular, and headache pains. His cervical MRI showed some severe bilateral C6 foraminal stenosis and broad based disc bulge along with disc desiccation at C5-7.

ROS Patient denies any fever, chills. He is complaining of some dizziness and continued headaches posteriorly in the occipital region.

PMH denies

SH [Tobacco; Never smoker]

Medx Fioricet oral tablet
ibuprofen 400 mg oral tablet
Lortab 5/500 oral tablet
Neurontin 300 mg oral capsule

Vitals Wt: 210 lb Ht: 74 in RR: 13 BMI: 27.0

PE GENERAL: WNLVD NAD. ambulates w/ right-sided antalgia and a cane in the right hand
HEENT: NC/AT, PERRLA, oral mucosa pink and moist, no CLAD, trachea midline and without goiter
LUNGS: CTA bilaterally
HEART: RRR S1 S2 without murmurs, thrills, rubs
ABDOMEN: Soft, Non-tender, non-distended Normo-active bowel sounds,
SKIN: good turgor, no lesions, rashes or nodules BUE's, BLE's and trunk

MSK: BUE's with FROM shoulders, elbows, wrists w/o decrement. negative apprehension test. Stable throughout ROM and to v/v stresses. NTTP over Bilat clavicles, elbows, wrists. + trapezius spasm present bilaterally. Strength 5/5 B delts/Bi/Tri/WE/WF/Intrinsics/grip. R knee with mild TTP over medial femoral condyle. No effusion, no joint line TTP. neg Lachman's at 30 degrees flexion. neg McMurray's.

SPINE: TTP over cervical and lumbar spine posteriorly. decreased ROM of neck in ext and left rotation secondary to pain. L spine with brace in place. Sagittal alignment overall good. Shoulders level. + cervical paraspinal spasm present.

Neuro/Psych: DTR's intact and symmetric BUE's bitri/BR 2+ and symmetric. no long tract signs. SLT1 BUE's median, radial and ulnar nerve distributions. Spurling's and Phemite's negative. No hoffman's sign, no ulnar escape. No difficulty with rapid, alternating movements. negative SLR bilaterally. Tandom walks w/o difficulty. babinski negative, no clonus. Alert and oriented to person, time and event. Affect appropriate for condition

IMAGING: AP/Lat of the L spine and AP/Lat of the R knee ordered from Tribouty on 11.30.11 and reviewed by me today shows no obvious fractures or listhesis. The medial femoral

AniazingCharts.com

Page 1 of 2

The information on this page is confidential.

Any release of this information requires the written authorization of the patient listed above.

ROSE, SAMUEL (DOB: [REDACTED]) Doc: 14, 2011 Wed 09:13 AM

condyle appears to be intact and healing well, the L spine shows some L5-S1 facet arthrosis with good preservation of disc height.

A/P

CERVICALGIA (723.1);

LUMBAGO (724.2);

FRACTURE OF LOWER END OF FEMUR UNSPECIFIED PART CLOSED (821.20);

symptoms Given his complaints and imaging studies, I do not feel that surgery would be beneficial for his back or knee currently. Discussing with him further his periscapular pain and neck, I feel that he could potentially benefit from a one level C5-6 ACDP which I feel would reliably take care of the periscapular pain and neck pain. I do not know that it would help relieve his headaches, though.

Coded: 99214

Michael Wildstein, MD

Electronic Signature

TriCounty Radiology Associates

(843) 529-0600
North Charleston
Summerville
West Ashley

PATIENT: Rose, Samuel
DOB: [REDACTED]
MRN: 806624
PATIENT PHONE: [REDACTED]
PHYSICIAN: Michael Wildstein, MD
DATE: 11/30/2011

EXAM: X-RAY OF THE LUMBAR SPINE, TWO VIEWS

HISTORY: Lumbago: 821.2, closed fracture of unspecified part in lower end of femur.

TECHNIQUE: Two views of the lumbar spine.

COMPARISON STUDIES: None.

FINDINGS: Five, lumbar shaped, non-rib bearing vertebral bodies in the lumbar spine. Mild facet arthropathy most pronounced L3-4 through L5-S1. Mild degenerative changes of the sacroiliac joints. Minimal intervertebral joint space narrowing most pronounced L2-3 and L5-S1. The pedicles appear well-maintained. The remaining bones and soft tissues are unremarkable. The hips and pelvis are not included in the field of view.

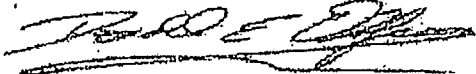
IMPRESSION:

1. Mild degenerative disc disease and facet arthropathy of the lumbar spine. No acute fracture line seen.
2. Mild degenerative changes of the sacroiliac joints.

Donald E. Olofsson, DO
DO / cm

DD: 11/30/2011 / DT: 11/30/2011
JOB: 14062385

This document has been reviewed and electronically signed by



Page 1 of 1

TriCounty Radiology Associates

(843) 529-0600
North Charleston
Summerville
West Ashley

PATIENT: Rose, Samuel
DOB: [REDACTED]
MRN: 806624
PATIENT PHONE: [REDACTED]
PHYSICIAN: Michael Wildstein, MD
DATE: 11/30/2011

EXAM: X-RAY RIGHT KNEE FOUR VIEWS

HISTORY: Closed fracture of unspecified part of lower end of femur.

TECHNIQUE: Four views of the right knee.

COMPARISON: None.

FINDINGS: Soft tissue swelling anterior to the knee. Fragmentation of the tibial tuberosity and multiple ossicles suggesting prior Osgood-Schlatter's. The soft tissue swelling may represent contusion or reactivation of the Osgood-Schlatter's. No acute fracture line seen. Mild soft tissue swelling about the medial aspect of the knee. The remaining bones and soft tissues are unremarkable.

IMPRESSION:

1. Mild soft tissue swelling anterior to the knee and anterior to the tibial tuberosity. There is also soft tissue swelling medially about the knee.
2. Fragmentation of the tibial tuberosity suggesting prior Osgood-Schlatter's. The local soft tissue swelling about the tibial tuberosity may represent a recent contusion or reactivation of the Osgood-Schlatter's.

Donald E. Olofsson, DO
DO/lb

DD: 11/30/2011 / DT: 11/30/2011
JOB: 14062598

This document has been reviewed and electronically signed by



SOUTHEASTERN SPINE INSTITUTE

ROSE, SAMUEL
Patient #600980
DOB: [REDACTED]
July 15, 2013

Independent medical evaluation

Mr. Rose is seen for the purposes of an independent medical evaluation.

This man has a history of a job-related injury and motor vehicle accident dating to 2011. It is a fairly well-documented accident where he was rear-ended at moderately high speed by another tractor trailer while driving a tractor trailer. Apparently the effect of the accident was, per the patient, for his truck to jackknife; and then he had to be pulled out of the car. He had severe pain into his knee, pain into his back, into his neck. He has had multiple injections in the cervical and lumbar spine. He was seen by Dr. Wildstein. He has been potentially recommended for surgical intervention. He has seen Dr. Jones who is a physical medicine and rehabilitation doctor who did not recommend surgery. He was recommended per Dr. Jones to return to work without restrictions.

On exam he has limited motion in his neck and back. He has positive Spurling's test with rotation of his neck to the right. He has positive straight leg raising on the right. He has tenderness in and around his right knee on the right. He has pain with extension and forward flexion of his spine. There are no long tract signs.

His MRI scan of the cervical spine shows him to have two-level disc herniations at C5-6 and C6-7. There is disc material that's herniated causing compression of the C6 roots bilaterally. At the C6-7 level there is degeneration with exit stenosis. He has not to my interpretation had any type of MRI scanning of his lumbar spine. There is a report of an MRI interpretation per Dr. Wildstein where Dr. Wildstein feels that he has an impaction fracture of his medial femoral condyle.

Diagnoses:

1. Cervical disc herniation with cervical spondylosis and cervical radiculopathy.
2. Low back pain of indeterminate etiology.
3. History of right knee contusion/impaction fracture.

Comment: First with regards to this man's knee, he has gotten an opinion from his chiropractor and from Dr. Jones who is a physical medicine and rehabilitation doctor that there is nothing to be done for his knee. The only orthopedic doctor that I can see having evaluated him is Dr. Wildstein, and the MRI interpretation per him is that of an impaction fracture of his medial femoral condyle. He obviously has some significant pain in and around his knee. He requires evaluation by a knee specialist. I suspect that he may require additional MRI scanning of his knee and perhaps even knee surgery.

(Continued)

SOUTHEASTERN SPINE INSTITUTE

ROSE, SAMUEL

Patient #600980

DOB: [REDACTED]

July 15, 2013

Page 2

With regards to his cervical spine, he has pain into his neck, two-level disc disease; and he has gotten an opinion again from Dr. Jones that "It is my opinion that this patient would likely not benefit from a single-level fusion at C5-6" and an opinion from Dr. Wildstein that surgery could reasonably be expected to decrease his disability.

I do agree with Dr. Wildstein that surgical intervention is indicated. This man has two-level disc disease. He does have pain radiating into his arm. That is consistent with cervical radiculopathy. Without belaboring the point, a non-surgical recommendation from a non-surgeon doesn't really mean all that much to me. Although surgery may not be a magic wand answer, it is clearly indicated and clearly related to his pain. With regards to his lumbar spine, he has not had an MRI scan. He has had an interpretation by Dr. Jones in his independent medical evaluation that he "has multilevel degenerative disc lesions and facet arthropathy L2-3 through L5-S1 levels with chronic bilateral sacroiliitis and preexistent SI joint arthritis". The details of that make me wonder if he has, in fact, had a scan; but everything that I've seen in the medical records would indicate that he has not.

This man has a potential surgical lesion in his neck, requires further MRI imaging of his lumbar spine, and should be evaluated by an orthopedic surgeon for his ongoing problems with his knee. His current impairment is 13 percent to the cervical spine with an additional 5 percent to his lumbar spine, and I would leave any impairment up to Dr. Wildstein or the orthopedist with regards to his knee. He is on off-duty status pending recommendations as mentioned.

I have seen this gentleman for the purpose of an independent medical evaluation and hold my opinions true, most probable, to a reasonable degree of medical certainty.

Steven C. Poletti, M.D.

SCP/dmp
T- 7/16/13

CC: Joseph B. Fisher, Esquire

ORIGINAL

SOUTH CAROLINA DPS/DHS & DMV USE ONLY				Page # 1	SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM TR - 310 (Rev. 7/2010)				# Of Units 02	Amended - Attach Copy of Original Report Corrected	Notified 0 3 4 2	Arrived 0 3 4 9										
Date 08-10-2011	Time of Collision 0340	County 10	Collision Location (Rt. # / Name) S 25 / 126		Main Intersection (Rt. # / Name) 75 / ASHLEY PHOSPHATE RD		Second Intersection (Rt. # / Name) 52 / US 52 CONN		Miles: Dir. N E S W	In Near City or Town of: NORTH CHARLESTON												
Lane # / Dir. 3 / 10 / S W	Distance Offset 10	Direction N E S W	Base Intersection (Rt. # / Name) 75 / ASHLEY PHOSPHATE RD		Second Intersection (Rt. # / Name) 52 / US 52 CONN		GPS COORDINATES 00 00 00.00 DEGREES MINUTES SECONDS Latitude Longitude		32 56 12.53 80. 02 55.45													
E-079899				E-079900																		
Driver/Pedestrian's Full Name ROSE SAMUEL A				Driver/Pedestrian's Full Name CLARK ROBBIE																		
Unit # 01	Sex M	Race B	Street/R.F.D. [REDACTED]		Unit # 02	Sex M	Race B	Street/R.F.D. [REDACTED]														
Birth Date [REDACTED]				Birth Date [REDACTED]				SC 29485														
State SC	Driver's License # [REDACTED]		Class A	Insurance Company TOWER INS CO		State SC	Driver's License # [REDACTED]		Class A	Insurance Company TOWER INS CO												
Year 1995	Body TR	Vehicle Make INTL	VIN # 1HSHGALR3536SH684		Year 1999	Body TR	Vehicle Make INTL	VIN # 2HSFRAER8XC05828														
State SC	Year 2011	License Plate # PS91257	Owner's D.L. # [REDACTED]		State SC	Year 2012	License Plate # P434865	Owner's D.L. # [REDACTED]														
Home Telephone (843) 5773988		Owner's Full Name JJS TRUCKING LLC			Home Telephone ()		Owner's Full Name CHRIS THOMPSON SERVICES LLC															
Bus. Telephone ()		Street/R.F.D. [REDACTED]			Bus. Telephone ()		Street/R.F.D. [REDACTED]															
Contributed To Collision Yes (No)				City, State, & Zip [REDACTED]				Contributed To Collision Yes (No)				City, State, & Zip [REDACTED]										
Estimated Speed 50	Speed Limit 60	C.D.L. Req. (Yes/No) Summons #	T/B S Req. (Yes/No) Code	Alc/Drg Info (see back): Yes (No) Towed (Yes/No) ELITE		Estimated Speed 60	Speed Limit 60	C.D.L. Req. (Yes/No) Summons #	T/B S Req. (Yes/No) Code	Alc/Drg Info (see back): Yes (No) Towed (Yes/No) ELITE												
Driver/Pedestrian's Full Name				State				Year				License Plate #										
Unit # [REDACTED]	Sex [REDACTED]	Race [REDACTED]	Street/R.F.D. [REDACTED]		Home Telephone ()		Owner's Full Name															
Birth Date [REDACTED]				City, State, & Zip				Bus. Telephone ()		Street/R.F.D. [REDACTED]												
State	Driver's License #		Class	Insurance Company		Contributed To Collision Yes (No)		City, State, & Zip														
Year	Body	Vehicle Make	VIN #		Estimated Speed	Speed Limit	C.D.L. Req. (Yes/No) Summons #	T/B S Req. (Yes/No) Code	Alc/Drg Info (see back): Yes (No) Towed (Yes/No)													
Dir. of Travel: Unit 1: N S (E) W Unit 2: N S (E) W Unit 3: N S E W													Unit 1 Dam. \$ 20000		Unit 2 Dam. \$ 30000		Unit 3 Dam. \$		Prop. Dam. 1 \$		Prop. Dam. 2 \$	
Property Owner/Witness						Property Owner/Witness																
Address				City				Address				City										
State		Zip		Phone		State		Zip		Phone												
Photo: Describe What Happened (Refer to Units by Number) <input checked="" type="checkbox"/> N																						
UNIT 1 AND UNIT 2 WERE TRAVELING EAST ON I-26. UNIT 1 WAS SLOWING DOWN FOR CONSTRUCTION ZONE AHEAD. UNIT 2, DRIVING TOO FAST FOR CONDITIONS, STRUCK THE REAR OF UNIT 1. UNIT 1 WAS THEN PUSHED INTO THE CONCRETE MEDIAN WALL.																						

NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANT IS MADE AS TO THE FACTUAL ACCURACY THEREOF.

Investigating Officer's Name: [REDACTED] Rank: [REDACTED] Badge #: 1775 Jurisdiction Code: 4 P A G Review Date: [REDACTED] Reviewer's Name: [REDACTED] Rank: [REDACTED] Internal Agency Code: [REDACTED]

Unit:	Date of Birth:	Sex:	Race:	INJ:	Seat:	R/S/D:	A.O.D:	Eject:	LAI:	Tran:	Name:	Street Address:	Zip Code:
01		M	B	2	01	13	7	3	1	1	ROSE SAMUEL A		
02		M	B	3	01	13	7	3	1	1	CLARK ROBBIE		

Race	A - Asian/Pacific Islander	W - Caucasian	a) Injury Status	2 - Non-incapacitating	Seating Loc.	20 - Pedestrian	60 - Sleeper or Cab	Restraint/Safety Device	
B - African American	H - Hispanic	O - Other	0 - Not Injured	3 - Incapacitating	01 02 03	30 - Tractor Unit	70 - Riding on Unit Exterior	00 - None Used	21 - Child
1 - Alaskan Native or American Indian	U - Unk.		1 - Possible Injury	4 - Fatal	04 05 06	40 - Bus or Van (4th row or Higher)	80 - Lap	11 - Shoulder Belt	Safety Seat
Air Bag Deployment / Switch	Ejection	b) 2 or 3 Wheel Motorized Vehicle	Head Injury	1 - Yes	07 08 09	50 - Other Enclosed Area (nontrailing)	89 - Unk./NA	12 - Lap Belt Only	88 - Other
1 - Deployed Front	4 - Not Deployed	1 - Not Ejected	2 - Extricated (Mechanical Means)	2 - No	3 - Freed (non-mech.)	51 - Other Unenclosed Area (nontrailing)		13 - Shoulder & Lap Belt	99 - Unk.
2 - Deployed Side	7 - Not Applicable	2 - Part Ejected	3 - Free (non-mech.)		4 - Not Applicable			14 - Pedestrian, Motorist/Pedestrian Only	
3 - Deployed Both	8 - Deployment Unk.	3 - Tot. Ejected	1 - Not Trapped		9 - Unknown			31 - Helmet	51 - Reflective Clothing
2 - Switch in Off Position	9 - Unknown	7 - Not App.	2 - Extricated (Mechanical Means)					41 - Protective Pans	61 - Lighting
		9 - Unk.							

14 - Collision	04 - Equipment Failure	Collision: Not Fixed	27 - Pedestrian	Collision: Fixed Object	47 - Embankment	55 - Mail Box	60 - Other
01 - Cargo/Equip Loss of Shift	05 - Flt/Explosion	20 - Animal (Drm Only)	26 - Railway Veh	48 - Bridge Overhead Structure	48 - Equipment	56 - Median Barrier	61 - Unk.
02 - Cross Median Center	05 - Invention	21 - Animal (All Other)	29 - Work Zone Maint. Equip.	41 - Bridge Parapet End	49 - Fence	57 - Overhead Sign Support	
03 - Downhill Runaway	07 - Jackknife	22 - Motor Veh (In Transport)	30 - Other Movable Object	47 - Bridge Pier or Abutment	50 - Guardrail End	58 - Other (Post, Pole, Support, Etc.)	
		23 - Motor Veh (Stopped)	34 - Motor Veh (Other Roadway)	44 - Bridge Rail	51 - Guardrail Face	59 - Other (Post, Building, Tunnel, Etc.)	
		24 - Motor Veh (Other Roadway)	75 - Motor Veh (Falling)	45 - Culvert	52 - Highway Traffic Sign Post	60 - Tree	
		25 - Motor Veh (Falling)	76 - Pedestrian	46 - Other	53 - Impact Attenuator/Crash Cushion	61 - Utility Poles	
		26 - Pedestrian			54 - Sign/Luminaires Support	62 - Work Zone Maint. Equipment	

Manner of Collision (Struck Veh.)	30 - Rear-to-Rear	50 - Sideswipe Same Dir.	1st / Most Deformed	1st Deformed	1st / Most Deformed
1 - 00 - Not Coll. w/ Motor Veh.	41 - Angle (↘↗)	60 - Sideswipe Opposite Dir.	1 2 3 4 5 6	1 2 3 4 5 6	1 2 3 4 5 6
2 - 10 - Rear End	42 - Angle (→←)	70 - Backed Into	7 8 9 10 11 12	7 8 9 10 11 12	7 8 9 10 11 12
3 - 20 - Head On	43 - Angle (↖↗)	80 - Unknown	13 14 15 16 17	13 14 15 16 17	13 14 15 16 17

Vehicle Type:	15 - Full Size Van	27 - Pedalcycle	61 - School Bus	71 - Pedestrian	81 - None	92 - Rollover	93 - Total	94 - Under Carriage	98 - Other	99 - Unk.
1 - 13	01 - Automobile	16 - Mini Van	38 - Animal Drawn Veh	62 - Passenger Bus	01	02	03	04	05	06
2 - 17	17 - Sport Utility	17 - Sport Utility	39 - Animal (Ridden)	98 - Other	07	08	09	10	11	12
3 - 13	13 - Truck Tractor	25 - Motorcycle	41 - Pedestrian	99 - Unk. (Hlt and Run Only)	13	14	15	16	17	18
4 - 14	14 - Other Truck	26 - Other Motorbike	51 - Train		19	20	21	22	23	24

Vehicle Use Code	01 - Ambulance	08 - Farm Use	12 - Fire Fighting	01	02	03	04	05	06	07
1 - 07	01 - Personal	05 - Military	09 - Wrecker or Tow	13 - Logging	08	09	10	11	12	13
2 - 07	02 - Driver Training	06 - Transport Passengers	10 - Police	14 - Other	14	15	16	17	18	19
3 - 07	03 - Construction/Maint	07 - Transport Property	11 - Government	41 - Pedestrian	20	21	22	23	24	25

Vehicle Attachment	4 - Utility Trailer	8 - Towed Motor Vehicle	C - Other Tanker	01	02	03	04	05	06	07
1 - 13	1 - None	5 - Farm Trailer	9 - Petroleum Tanker	D - Flat Bed	08	09	10	11	12	13
2 - 23	2 - Mobile Home	6 - Trailer w/Boat	A - Lowboy Trailer	E - Twin Trailers	14	15	16	17	18	19
3 - 23	3 - Semi-Trailer	7 - Camper Trailer	B - Autocarrier Trailer	F - Other	20	21	22	23	24	25

Action Prior to Impact (Vehicle)	01 - Backing	08 - Parked	21 - Approaching Leaning Vehicle	01	02	03	04	05	06	07
1 - 06	02 - Changing lanes	09 - Slowing or Stopped in traffic	22 - Entering/Crossing Location	08	09	10	11	12	13	14
2 - 03	03 - Entering traffic lane	10 - Turning left	23 - Playing/Working on Vehicle	15	16	17	18	19	20	21
3 - 04	04 - Leaving traffic lane	11 - Turning right	24 - Pushing Vehicle	22	23	24	25	26	27	28
4 - 05	05 - Making U-turn	26 - Walking, Playing, Cycling	25 - Stalling	29	30	31	32	33	34	35
5 - 06	06 - Movements Essentially Straight Ahead	27 - Working	26 - Walking, Playing, Cycling	36	37	38	39	40	41	42
6 - 07	07 - Overtaking/passing	88 - Other	89 - Unk.	43	44	45	46	47	48	49

Weather Condition	3 - Cloudy	6 - Fog, Smog, Smoke	02 - Flashing Traffic Signal	21 - Officer or Flagman	01	02	03	04	05	06
1 - 1	1 - Clear (no adverse conditions)	4 - Steel Mill	7 - Blowing Sand	8 - Severe Crosswinds	11 - RR (X-bucks, Lights & Gates)	12 - RR (X-bucks & Lights)	13 - RR (X-bucks Only)	1 - Yes, Directly	2 - Yes, Indirectly	3 - No
2 - 2	2 - Rain	5 - Snow	01 - Dark (Street Lamp Not Lit)		21 - Pavement Markings (only)	43 - Yield Sign	51 - Flashing Beacon	1 - Yes	2 - No	Work Zone: 3
3 - 3	3 - Dusk	6 - Dark (Street Lamp Lit)			44 - Work Zone	45 - Other Warning Sign	99 - Unk.			
4 - 4	4 - Daylight	4 - Dark (Lighting Unspecified)	7 - Dark (No Lights)		46 - Work Zone					
5 - 5	5 - Dawn	5 - Dark (Street Lamp Lit)			47 - School zone Sign					

Junction Type	03 - Five/More Points	07 - Shared Use Path or Trail	12 - Y-Intersection	01	02	03	04	05	06	07
1 - 13	01 - Crossover	04 - Four-way Intersection	05 - T-Intersection	15 - Nonjunction	08	09	10	11	12	13
2 - 02	02 - Driveway	05 - Railway Grade Crossing	08 - Traffic Circle	89 - Unk.	16	17	18	19	20	21

Primary Contributing Factors	09 - Made an Improper Turn	10 - Medical Related	30 - Debris	46 - Other	56 - Inoperative	60 - Animal in Road	63 - Weather Cond.
03	01 - Disregarded Signs, Signals, Etc.	12 - Aggressive Operation of Vehicle	31 - Non-highway Work	49 - Unk.	57 - Lying Motor Vehicle in Roadway	61 - Care	68 - Other
	02 - Distraction/Inattention	13 - Over-correcting/Over-steering	32 - Obstruction in Roadway		58 - Failure to Yield R. of W.	62 - Careless	69 - Unk.
	03 - Driving Too Fast for Conditions	14 - Swerving to Avoiding Object	33 - Road Surface Condition (i.e., Wet)		59 - Not Visible (Dark Clothing)	64 - Careless	
	04 - Exceeded Authorized Speed Limit	15 - Wrong Side or Wrong Way	34 - Rut, Hole, Bumps		60 - Inoperative Crossing	65 - Careless	
	05 - Failed to Yield Right of Way	16 - Under the Influence	35 - Shoulder (None, Low, Soft, High)		61 - Dangling	66 - Careless	
	06 - Ran off Road	17 - Vision Obscured (Within Unit)	36 - Shoulder (None, Low, Soft, High)		62 - Wrong Side of Road	67 - Careless	
	07 - Fatigued/Asleep	18 - Improper Lane Usage/Change	37 - Traffic Control Device (i.e., Missing)		63 - Other	68 - Unk.	
		19 - Cell Phone	38 - Work Zone (Construction/Utility)		64 - Under the Influence	69 - Unk.	
		20 - Tying	39 - Work Zone (Construction/Utility)		65 - Other Person Under Influence		

Vehicle Defect	70 - Brakes	76 - Windows/Shield
	71 - Steering	77 - Restraint System
	72 - Power Plant	78 - Truck Coupling
	73 - Tires/Wheel	79 - Cargo
	74 - Lights	80 - Fuel System
	75 - Signal	81 - Other

ORIGINAL

SOUTH CAROLINA DPS AND DMV USE ONLY			South Carolina Uniform Traffic Collision Report (For Investigating Officers) Supplemental Bus & Truck Collision Report (Revised 04/2009)		Amended/Amash Copy of Original Report		Corrected	
			Page <u>1</u> of <u>2</u> Pages					
Date	Time	County	Route Category		Accident Location (Route Number and Name if Any)		Auxiliary	
08-10-2011	0340	10	1-Interstate 2-US Primary 3-SC Primary 4-Secondary 5-County 6-PP		ON 26 / 126		0-Mainline 2-Alternate 5-Spiral 6-Connection 7-Business 9-Other	
IF THIS CRASH INCLUDES:					Access Control			
Any truck that has a gross vehicle weight rating (GVWR) of more than 10,000 pounds or a gross combination weight rating (GCWR) of more than 10,000 pounds and is used on public highways.					1- No Access Control 2- Full Access Control 3- Partial Access Control			
OR					2			
Any motor vehicle with seating to transport nine (9) or more people, including the driver.					1- No Access Control 2- Full Access Control 3- Partial Access Control			
OR					2			
Any motor vehicle (regardless of weight) displaying a hazardous materials placard;					1- No Access Control 2- Full Access Control 3- Partial Access Control			
					2			
AND RESULTS IN:					Vehicle Information			
Any fatality or fatalities					Gross Vehicle Weight Rating Gross Combination Weight Rating 01- Less than or Equal to 10,000 Pounds 02- 10,001-26,000 Pounds 03- More than 26,000 Pounds 05- Unknown/Hit and Run			
Any person(s) transported for immediate medical services					01- Passenger Car (only w/ HAZMAT placard) 02- Bus (seats for 8-15 people) 03- Bus (seats for 16+ people) 04- Single Unit Truck (2 axle/6+ tires) 05- Single Unit Truck (3 or more axles) 06- Truck w/ Trailer 07- Truck-Tractor Only (Bobtail)			
Number of Vehicles Towed					08- Tractor w/ Semi-Trailer 09- Tractor w/ Double Trailers 10- Tractor w/ Triple Trailers 98- Other/Unable to Classify 99- Unknown/Hit and Run			
Any disabled motor vehicle(s) towed away from the scene					01- Not used as a bus 02- School 03- Transit/Commuter/Sch service 04- Intercity			
					01			
Complete This Form Only If:					Cargo Body Type			
One or More Qualifying Vehicle(s) was Involved - AND					00- Bus (seats for 8-15 people) 01- Bus (seats for 16+ people) 02- Enclosed Box 03- Cargo Tank 04- Flat Bed 05- Dump 06- Concrete Mixer 07- Auto Transporter 08- Garbage/Refuse			
One or More Qualifying Injuries/Fatalities was Sustained - OR					09- Grab, Chips, Gravel 10- Pole 11- Intermodal Container 12- Leg 13- Veh. Towing Vehicle 97- N/A 98- Other 99- Unknown/Hit & Run			
One or More Disabled Vehicle(s) was Towed Away From the Scene					00- No Trailer 01- Less than 480 in. (40 ft.) 02- 481 in. - 576 in. (48 ft.) 03- 577 in. or more 99- Unknown/Hit and Run			
Total Number of Supplemental Forms Required for this Collision					00- No Trailer 01- Less than 60 in. (5 ft.) 02- 61 in. - 84 in. (7 ft.) 03- 85 in. or more 99- Unknown/Hit and Run			
2					00- No Trailer 01- Less than 60 in. (5 ft.) 02- 61 in. - 84 in. (7 ft.) 03- 85 in. or more 99- Unknown/Hit and Run			
Unit Number <u>01</u> FR-10 Number <u>E-079899</u>					Trailer Length and Width			
Carrier Information					Length 00- No Trailer 01- Less than 480 in. (40 ft.) 02- 481 in. - 576 in. (48 ft.) 03- 577 in. or more 99- Unknown/Hit and Run			
Name: <u>JJS TRUCKING LLC</u>					Trailer 1 Length Trailer 2 Length			
Address: <u>137 GORDON ST</u>					Width 00- No Trailer 01- Less than 60 in. (5 ft.) 02- 61 in. - 84 in. (7 ft.) 03- 85 in. or more 99- Unknown/Hit and Run			
City: <u>CHARLESTON</u> State: <u>SC</u> Zip: <u>29403</u>					Trailer 1 Width Trailer 2 Width			
Business Phone Number: <u>843 577 3988</u>					00- No Trailer 01- Less than 60 in. (5 ft.) 02- 61 in. - 84 in. (7 ft.) 03- 85 in. or more 99- Unknown/Hit and Run			
Identification Numbers					Hazardous Material Involvement			
U.S. DOT <u>1390374</u> None = 0					Was This Vehicle Carrying Hazardous Materials? 1- Yes 2- No 3- Unknown/Hit and Run			
State Number <u>585258</u> SC					Did the Vehicle Have a Hazardous Material Placard? 1- Yes 2- No 3- Unknown/Hit and Run			
Carrier Type: Is this vehicle a(n) (1) Interstate, (2) Intrastate					If "Yes", What Class of Hazardous Material (off placard/shipping papers)? 01- Class 1 (Explosives) 06- Class 6 (Poison/Infectious Substance) 02- Class 2 (Gases) 07- Class 7 (Radioactive) 03- Class 3 (Flammable Liquids) 08- Class 8 (Corrosives) 04- Class 4 (Flammable Solids) 09- Class 9 (Misc. Goods) 05- Class 5 (Oxidizing Substance) 10- No Placard 98- Other/Unable to Classify 99- Unknown/Hit and Run			
State Number <u>585258</u> SC (3) Not in Commerce - Other Truck/Bus (4) Not in Commerce - Government (5) Other Operator/Not Specified					1- Yes 2- No 3- Unknown/Hit and Run			
Carrier Type: Is this vehicle a(n) (1) Interstate, (2) Intrastate					1- Yes 2- No 3- Unknown/Hit and Run			
Was a Citation Issued to this Vehicle?					Name of Agency Notified (In Case of Release): <u>DHEC</u>			
1- Yes 2- No 3- Pending <u>2</u>					Investigator's Name Rank Date <u>WILSON - D-A</u>			
Investigator's Name Rank Date <u>WILSON - D-A</u>					Reviewer's Name Rank <u>LICPL</u>			

ORIGINAL

SOUTH CAROLINA DPS AND DMV USE ONLY			South Carolina Uniform Traffic Collision Report (For Investigating Officers) Supplemental Bus & Truck Collision Report (Revised 04/2009)		Amended Attach Copy of Original Report		Corrected	
			Page <u>2</u> of <u>2</u> Pages					
Date	Time	County	Route Category		Accident Location (Route Number and Name if Any)		Auxiliary	
08-10-2011	0340	10	1-Interstate 2-US Primary 3-SC Primary		ON 25 / 126		0-Mainline 2-Alternate 5-Spurs 6-Connection 7-Business 9-Other	
IF THIS CRASH INCLUDES:					Access Control			
Any truck that has a gross vehicle weight rating (GVWR) of more than 10,000 pounds or a gross combination weight rating (GCWR) of more than 10,000 pounds and is used on public highways.					1- No Access Control 2- Full Access Control 3- Partial Access Control			
OR					Any motor vehicle with seating to transport nine (9) or more people, including the driver			
OR					Any motor vehicle (regardless of weight) displaying a hazardous materials placard;			
					Vehicle Information			
					Gross Vehicle Weight Rating Gross Combination Weight Rating 01- Less than or Equal to 10,000 Pounds 02- 10,001-26,000 Pounds 03- More than 26,000 Pounds 99- Unknown/HE and Run			
					Vehicle Configuration			
					00- Passenger Car (only w/ HAZMAT placard) 01- Light Truck (only w/ HAZMAT placard) 02- Bus (seats for 9-15 people) 03- Bus (seats for 16+ people) 04- Single Unit Truck (2 axles/6+ tires) 05- Single Unit Truck (3 or more axles) 06- Truck w/ Trailer 07- Truck/Tractor Only (Bobtail) 08- Tractor w/ Semi-Trailer 09- Tractor w/ Double Trailers 10- Tractor w/ Triple Trailers 98- Other/Unable to Classify 99- Unknown/HE and Run			
					Bus Use			
					01- Not used as a bus 02- School 03- Transit/Commuter/Sch service 04- Intercity 05- Charter/Out 06- Shuttle/Church 07- Unknown			
AND RESULTS IN:					Cargo Body Type			
Any (fatality or fatalities)					00- Bus (seats for 9-15 people) 01- Bus (seats for 16+ people) 02- Enclosed Box 03- Cargo Tank 04- Flat Bed 05- Dump 06- Concrete Mixer 07- Aerial Transporter 08- Garbage/Refuse 09- Grain, Chpts, Gravel 10- Pole 11- Intermodal Container 12- Log 13- Veh. Towing Vehicle 97- N/A 98- Other 99- Unknown/HE and Run			
Any person(s) transported for immediate medical services								
Number of Vehicles Towed								
Any disabled motor vehicle(s) towed away from the scene								
Complete This Form Only If:					Trailer Length and Width			
One or More Qualifying Vehicle(s) was Involved - AND					Length 00- No Trailer 01- Less than 480 in. (40 ft) 02- 481 in. - 576 in. (48 ft.) 03- 577 in. or more 98- Unknown/HE and Run			
One or More Qualifying Injuries/Fatalities was Sustained - OR					Width 00- No Trailer 01- Less than 60 in. (5 ft.) 02- 61 in. - 64 in. (7 ft.) 03- 65 in. or more 99- Unknown/HE and Run			
One or More Disabled Vehicle(s) was Towed Away From the Scene								
Total Number of Supplemental Forms Required for this Collision:					2			
Unit Number <u>02</u> FR-10 Number <u>E-079900</u>					Hazardous Material Involvement			
Carrier Information					Was This Vehicle Carrying Hazardous Materials?			
Name: <u>CHRIS THOMPSON SERVICES</u>					1- Yes 2- No 3- Unknown/HE and Run			
Address: <u>106 NEW HOPE</u>					Did the Vehicle Have a Hazardous Material Placard?			
City: <u>SUMMERVILLE</u> State: <u>S C</u> Zip: <u>29403</u>					1- Yes 2- No 3- Unknown/HE and Run			
Business Phone Number: <u>843 296 9600</u>					If "Yes", What Class of Hazardous Material (off placard/shipping papers)?			
U.S. DOT <u>0</u> None = 0 <u>0</u>					01- Class 1 (Explosives) 06- Class 6 (Poison/Infectious Substance) 02- Class 2 (Gases) 07- Class 7 (Radioactive) 03- Class 3 (Flammable Liquids) 08- Class 8 (Corrosives) 04- Class 4 (Flammable Solids) 09- Class 9 (Misc. Goods) 05- Class 5 (Oxidizing Substance) 10- No Placard 99- Other/Unknown/HE and Run			
State Number <u>S C</u>					If "YES", enter 4 digit HAZMAT (Q.I. look up placard/shipping papers)			
Carrier Type: Is this vehicle a(n) (1) Interstate, (2) Intrastate Carrier?					Did Hazardous Material Release from this Vehicle?			
Was a Citation Issued to this Vehicle?					1- Yes 2- No 3- Unknown/HE and Run			
Investigator's Name <u>WILSON - D A</u> Rank <u>LICPL</u> Date <u></u>					Name of Agency Notified (In Case of Release):			
					DHRC			
					Reviewer's Name <u></u> Rank <u></u>			

STATEMENT

ALAN N. ABEL, M.D.

7741-C DORCHESTER RD. * NORTH CHARLESTON, S.C. 29418
 247-80-4607 (843)552-9061
 57-0604998 (843)552-0062/fax

Date: 10-8-2012

Joseph B. Dister, Esq.
 Thrash + Newton, LLC
 P.O. Box 2167
 Mt. Pleasant, SC 29464
 Re: Annual Ret. - DOB: [REDACTED]

Date	Service / acct	Fee	Balance
8-16-11	EEC/99245: examination, evaluation + consultation	\$300.00	\$300.00
8-22-11	OV/99214: office visit	\$100.00	\$400.00
8-29-11	OV - "	\$100.00	\$500.00
8-31-11	OV - "	\$100.00	\$600.00
9-6-11	OV - "	\$100.00	\$700.00
9-20-11	OV - "	\$100.00	\$800.00
9-20-11	OV - "	\$100.00	\$900.00
9-29-11	OV - "	\$100.00	\$900.00
10-11-11	OV - "	\$100.00	\$1,000.00
10-24-11	OV - "	\$100.00	\$1,100.00
11-3-11	OV - "	\$100.00	\$1,200.00
11-28-11	OV - "	\$100.00	\$1,300.00
12-30-11	OV - "	\$100.00	\$1,400.00
1-12-12	OV - "	\$100.00	\$1,500.00
1-25-12	OV - "	\$100.00	\$1,600.00
2-9-12	OV - "	\$100.00	\$1,700.00
2-24-12	OV - "	\$100.00	\$1,800.00
3-15-12	OV - "	\$100.00	\$1,900.00

Continued on page 2 →

MONTHLY STATEMENT KEEP THIS PORTION FOR YOUR RECEIPT

ALAN N. ABEL, M.D. STATEMENT OF PROFESSIONAL SERVICES

STATEMENT

ALAN N. ABEL, M.D.

7741-C DORCHESTER RD. * NORTH CHARLESTON, S.C. 29418
 247-80-4607 (843)552-9061
 57-0604998 (843)552-0062/fax

Date: 10-8-2012

Page 2 (continued)
 Samuel Rose

Date	Service / code	Fee	Balance
	Balance forward		\$1,900.00
4-12-12	CV / 99214 office visit	\$100.00	\$2,000.00
4-20-12	CV - "	\$100.00	\$2,100.00
5-10-12	CV - "	\$100.00	\$2,200.00
6-30-12	CV - "	\$100.00	\$2,300.00
6-27-12	CV - "	\$100.00	\$2,400.00
7-20-12	CV - "	\$100.00	\$2,500.00
8-7-12	CV - "	\$100.00	\$2,600.00
8-23-12	CV - "	\$100.00	\$2,700.00
9-12-12	CV - "	\$100.00	\$2,800.00
10-4-12	CV - "	\$100.00	\$2,900.00
10-8-12	letter + bill sent out		
	Balance due		\$2,900.00
	Thank you		
10-30-12	CV: 99214	\$100.00	\$3,000.00
11-16-12	CV: 99214	\$100.00	\$3,100.00
12-7-12	CV: 99214	\$100.00	\$3,200.00
12-17-12	letter + bill sent out		
	Balance due		\$3,200.00

MONTHLY STATEMENT KEEP THIS PORTION FOR YOUR RECEIPT
 ALAN N. ABEL, M.D. STATEMENT OF PROFESSIONAL SERVICES

STATEMENT

ALAN N. ABEL, M.D.

7741-C DORCHESTER RD. * NORTH CHARLESTON, S.C. 29418
 247-80-4607 (843)552-9061
 57-0604998 (843)552-0062/fax

Date: _____ 20__

Page 3 - (continued)

Samuel Rose - [REDACTED]

date			(forward) 3200.00
1-2-13	Office visit - 99214	\$100.00	(Balance) \$3,300.00
1-25-13	OV: 99214	\$100.00	\$3,400.00
2-18-13	OV: 99214	\$100.00	\$3,500.00
3-14-13	OV: 99214	\$100.00	3,600.00
3-21-13	OV: "	100	3,700.00
3-28-13	OV: "	100	3,800.00
4-8-13	OV - "	100	3,900.00
4-18-13	OV - "	100	4,000.00
5-16-13	OV - "	100	4,200.00
5-24-13	Office visit	100	4,300.00
5/24/13	letter + Bill sent out.		
	Balance due		\$4,200.00
	Thank you		

MONTHLY STATEMENT - KEEP THIS PORTION FOR YOUR RECORD

ALAN N. ABEL, M.D. STATEMENT OF PROFESSIONAL SERVICES

MAKE CHECKS PAYABLE TO:

TriCounty Spinal Care Centers
 8626 Dorchester rd.ste101
 North Charleston, SC 29420

Medical-PT-Chiropractic
 DBA:Health Physicians, PC
 Tax ID:010653103
 Richard Kelleit, M.D.
 Jeffrey Gersbach, M.D.
 Cameron Wills, D.C.

For all billing questions, please call

STATEMENT DATE	PAY THIS AMOUNT	PATIENT
10/18/2011	\$9,908.00	446
	SHOW AMOUNT PAID HERE	\$ 0

SEND TO:

Rose, Samuel A

REMIT TO:

TriCounty Spinal Care Centers
 8626 Dorchester rd.ste101
 North Charleston, SC 29420

STATEMENT

SERVICE DATE	DESCRIPTION	CHARGES	ADJUST	OTHER PMTS	BALANCE	INS. PEND
09/02/2011	97010 - application hot/cold packs	20.00				
09/02/2011	97032 - electrical stimulation	30.00				
09/02/2011	97110 - therapeutic stretching	45.00				
09/02/2011	97140 - manual therapy	40.00				
09/02/2011	99203 - new office visit level 3	190.00				
09/02/2011	A4505 - tens pads, 4	20.00				
09/02/2011	A9270 - topical analgesic/biotfreeze	20.00				
09/02/2011	A9273 - hot/cold pack	10.00				
09/06/2011	20553 - trigger point injection(s)	150.00				
09/06/2011	62310 - epidural; cervical/thoracic	1,800.00				
09/06/2011	72275 - epidurography, radiological supervision, interp.	300.00				
09/08/2011	98941 - (cmt); spinal, 3-4 regions	50.00				
09/08/2011	99144 - iv sedation	250.00				
09/06/2011	99212 - office/tp visit, est pt, 2 key components: prob focus hx; prob focus exam; strtfwd med decision	100.00				
09/06/2011	99212 - office/tp visit, est pt, 2 key components: prob focus hx; prob focus exam; strtfwd med decision	100.00				
09/06/2011	A4550 - surgical trays	25.00				
09/06/2011	A4550 - surgical trays	25.00				
09/06/2011	A4649 - surgical supplies	15.00				
09/08/2011	J1030 - methylprednisolone 40 mg inj	15.00				
09/08/2011	J1030 - methylprednisolone 40 mg inj	15.00				
09/08/2011	J2250 - inj midazolam hydrochloride	80.00				

723.4 Cervical Radiculitis
 847.0 Cervical Sprain Strain
 847.1 Thoracic Sprain Strain
 847.2 Lumbar Sprain Strain
 728.85 Spasm of Muscle
 Tibial impaction fracture

MAKE CHECKS PAYABLE TO:

TriCounty Spinal Care Centers
 8626 Dorchester rd.ste101
 North Charleston, SC 29420

Medical-PT-Chiropractic
 DBA:Health Physicians, PC
 Tax ID:010653103
 Richard Kelleff, M.D.
 Jeffrey Gersbach, M.D.
 Cameron Wills, D.C.

For all billing questions, please call

STATEMENT DATE	PAY THIS AMOUNT	PATIENT
10/18/2011	\$9,908.00	446
SHOW AMOUNT PAID HERE		\$ 0

SEND TO:

Rose, Samuel A

REMIT TO:

TriCounty Spinal Care Centers
 8626 Dorchester rd.ste101
 North Charleston, SC 29420

STATEMENT

09/08/2011	J3490 - drugs unclassified injection	25.00
09/06/2011	Q9960 - contrast 200-299 mgs iodine	15.00
09/08/2011	97010 - application hot/cold packs	20.00
09/08/2011	97032 - electrical stimulation	30.00
09/08/2011	97110 - therapeutic stretching	45.00
09/08/2011	97140 - manual therapy	40.00
09/08/2011	98941 - (cmt); spinal, 3-4 regions	50.00
09/13/2011	97010 - application hot/cold packs	20.00
09/13/2011	97032 - electrical stimulation	30.00
09/13/2011	97110 - therapeutic stretching	45.00
09/13/2011	97140 - manual therapy	40.00
09/13/2011	98941 - (cmt); spinal, 3-4 regions	50.00
09/15/2011	64405 - greater occipital nerve	592.00
09/15/2011	64493 - facet with guidance, #/s first level	1,500.00
09/15/2011	99144 - iv sedation	250.00
09/15/2011	99212 - office/op visit, est pt, 2 key components: prob focus hx; prob focus exam; strctwd med decision	100.00
09/15/2011	A4550 - surgical trays	25.00
09/15/2011	A4550 - surgical trays	25.00
09/15/2011	A4649 - surgical supplies	15.00
09/15/2011	J1030 - methylprednisolone 40 mg inj	15.00
08/15/2011	J1030 - methylprednisolone 40 mg inj	15.00
09/15/2011	J2250 - inj midazolam hydrochloride	80.00
09/15/2011	J3490 - drugs unclassified injection	25.00

723.4 Cervical Radiculitis
 847.0 Cervical Sprain Strain
 847.1 Thoracic Sprain Strain
 847.2 Lumbar Sprain Strain
 728.85 Spasm of Muscle
 Tibial Impaction Fracture

MAKE CHECKS PAYABLE TO:

TriCounty Spinal Care Centers
 8626 Dorchester rd.ste101
 North Charleston, SC 29420

Medical-PT-Chiropractic
 DBA:Health Physicians, PC
 Tax ID:010653103
 Richard Kellett, M.D.
 Jeffrey Gersbach, M.D.
 Cameron Wills, D.C.

For all billing questions, please call

STATEMENT DATE	PAY THIS AMOUNT	PATIENT
10/18/2011	\$9,908.00	446
	SHOW AMOUNT PAID HERE	\$ 0

SEND TO:

Rose, Samuel A

REMIT TO:

TriCounty Spinal Care Centers
 8626 Dorchester rd.ste101
 North Charleston, SC 29420

STATEMENT

09/15/2011	Q9960 - contrast 200-299 mgs iodine	15.00
09/20/2011	97010 - application hot/cold packs	20.00
09/20/2011	97032 - electrical stimulation	30.00
09/20/2011	97110 - therapeutic stretching	45.00
09/20/2011	97140 - manual therapy	40.00
09/20/2011	98941 - (cmt); spinal, 3-4 regions	50.00
09/20/2011	99213 - ep office visit level 3	130.00
09/22/2011	97010 - application hot/cold packs	20.00
09/22/2011	97032 - electrical stimulation	30.00
09/22/2011	97110 - therapeutic stretching	45.00
09/22/2011	97140 - manual therapy	40.00
09/22/2011	99213 - ep office visit level 3	130.00
09/27/2011	97010 - application hot/cold packs	20.00
09/27/2011	97032 - electrical stimulation	30.00
09/27/2011	97035 - ultrasound	22.00
09/27/2011	97110 - therapeutic stretching	45.00
09/27/2011	97140 - manual therapy	40.00
09/27/2011	98941 - (cmt); spinal, 3-4 regions	50.00
09/27/2011	99213 - ep office visit level 3	130.00
09/29/2011	97010 - application hot/cold packs	20.00
09/29/2011	97032 - electrical stimulation	30.00
09/29/2011	97110 - therapeutic stretching	45.00
09/29/2011	97140 - manual therapy	40.00
09/29/2011	98941 - (cmt); spinal, 3-4 regions	50.00

723.4 Cervical Radiculitis
 847.0 Cervical Sprain Strain
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 847.2 Lumbar Sprain Strain
 728.85 Spasm of Muscle
 Tibial impaction fracture

MAKE CHECKS PAYABLE TO:

TriCounty Spinal Care Centers
 8626 Dorchester rd.ste101
 North Charleston, SC 29420

Medical-PT-Chiropractic
 DBA:Health Physicians, PC
 Tax ID:010653103
 Richard Kellett, M.D.
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 Cameron Wills, D.C.

For all billing questions, please call

STATEMENT DATE	PAY THIS AMOUNT	PATIENT
10/18/2011	\$9,908.00	446
	SHOW AMOUNT PAID HERE \$	0

SEND TO:

Rose, Samuel A

REMIT TO:

TriCounty Spinal Care Centers
 8626 Dorchester rd.ste101
 North Charleston, SC 29420

STATEMENT

10/04/2011	97010 - application hot/cold packs	20.00
10/04/2011	97032 - electrical stimulation	30.00
10/04/2011	97035 - ultrasound	22.00
10/04/2011	97110 - therapeutic stretching	45.00
10/04/2011	97140 - manual therapy	40.00
10/04/2011	96941 - (cmt); spinal, 3-4 regions	50.00
10/06/2011	97010 - application hot/cold packs	20.00
10/06/2011	97032 - electrical stimulation	30.00
10/06/2011	97035 - ultrasound	22.00
10/08/2011	97110 - therapeutic stretching	45.00
10/06/2011	97140 - manual therapy	40.00
10/06/2011	98941 - (cmt); spinal, 3-4 regions	50.00
10/11/2011	64490 - facet with guidance, c/f first level	1,500.00
10/11/2011	99144 - iv sedation	250.00
10/11/2011	99212 - office/op visit, est pt. 2 key components: prob focus hx; prob focus exam; strtfwd med decision	100.00
10/11/2011	A4550 - surgical trays	25.00
10/11/2011	A4649 - surgical supplies	15.00
10/11/2011	J1030 - methylprednisolone 40 mg inj	15.00
10/11/2011	J2250 - inj midazolam hydrochloride	80.00
10/11/2011	J3490 - drugs unclassified injection	25.00
10/11/2011	Q9960 - contrast 200-299 mgs iodine	15.00

723.4 Cervical Radiculitis
 847.0 Cervical Sprain Strain
 847.1 Thoracic Sprain Strain
 847.2 Lumbar Sprain Strain
 728.85 Spasm of Muscle
 Tibial impaction fracture

Southeastern Medical Solutions

Invoice

Phone: 843-628-1380 Fax: 843-628-7054

Email: southeasternms@gmail.com

Page: 1

7/24/2013

Patient: Samuel Rose
 [REDACTED]
 [REDACTED]

Date of injury: 8/10/2011

Referring physician:

Rendering Facility:

Chart #: ROSSA000

Attorney: Sink Injury Lawyer-J. Fisher

Case #: 45

P.O. Box 63506 North Charleston SC 29419

PH: (843)569-1700 FAX: (843)569-1848

Date	Description	Procedure	Modify	Dx 1	Dx 2	Dx 3	Dx 4	Units	Charge
11/9/2011	Non Contrast MRI Cervical	72141		723.4				1	2,080.00
11/9/2011	Radiologist Interpretation	1		723.4				1	370.00
11/30/2011	XR-Lumbar Two or Three Views	72100		724.2				1	160.00
11/30/2011	XR Knee-Complete; Min 4 views	73564		821.20				1	160.00
11/23/2011	Office Consultation Ortho Level 5	99245		821.20	724.2	723.1		1	1,160.00
12/14/2011	Follow up Evaluation	99214		723.1	724.2	821.20		1	520.00

Please Make Checks Payable To:

Southeastern Medical Solutions, LLC
 PO Box 80201
 Charleston, SC 29416
 Tax ID: 27-3700262

Total Charges:	\$ 4450.00
Total Payments:	\$ 0.00
Total Adjustments:	\$ 0.00
Total Due This Visit:	\$ 4450.00
Total Account Balance:	\$ 4,450.00

Amounts billed for medical services represent SMS usual and customary fee schedule and administrative charges.

Questions regarding this statement? Call 843-628-1380 or Email: southeasternms@gmail.com

PLEASE DO NOT CONTACT THE RENDERING PHYSICIAN OR FACILITY FOR CLINICAL OR BILLING DOCUMENTATION.

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO: 1112328

SAMUEL ROSE, EMPLOYEE/CLAIMANT

vs.

JJS TRUCKING, LLC, AND CHRIS THOMPSON SERVICES, LLC, EMPLOYERS,

and

BRIDGEFIELD CASUALTY INSURANCE COMPANY AND TRAVELERS
INSURANCE COMPANY, CARRIERS,

and

SOUTH CAROLINA UNINSURED EMPLOYERS FUND/ DEFENDANT.

Hearing: Held in Summerville, South Carolina on May 15, 2012

Appearances: Employee/Claimant represented by Joseph B. Fisher, George Sink
Law Firm, N. Charleston, South Carolina

Employer, Chris Thompson Services and Bridgefield Casualty
Company represented by Kirsten L. Barr, Trask & Howell, LLC,
Mt. Pleasant, South Carolina

Employer, JJS Trucking, LLC appeared pro se.

Carrier, Travelers Insurance Company represented by F. Reid
Warder, Jr., Esquire, Wood & Warder, LLC, Charleston, SC

South Carolina Uninsured Employers' Fund, Defendant was
represented by Amy V. Cofield, Cofield Law Firm, Lexington,
South Carolina

Purpose of Hearing: To determine issues as set forth on Form 50 and Form 51

Decision and Order: By Commissioner Gene McCaskill

Date: August 23, 2012

STIPULATIONS

The parties stipulated to the following matters at the hearing:

1. The purpose of the hearing was to determine issues pursuant to Form 50 and 51.
2. Notice of the hearing was timely and properly served upon all parties of interest.
3. The Claimant's average weekly wage is \$650.00 and compensation rate is \$433.34 respectively.
4. Venue, set in Dorchester County, is proper.
5. The Employee/Claimant was injured while working for Chris Thompson Services, LLC and workers' compensation was filed, therefore, the South Carolina Workers' Compensation Commission has jurisdiction of the case.

APA SUBMISSIONS:

ON BEHALF OF THE EMPLOYER:

<u>EXHIBIT NO.</u>	<u>NAME OF REPORT/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORTS</u>	<u>NO. OF PAGES</u>
1	SLED Report	04/30/12-04/26/12	1-9
2	Petition to Transfer Liability	04/30/12-01/24/12	10-14
3	SCWCC Form 18	04/10/12	15
4	Deposition of Samuel Rose	11/14/11	16-26
5	Deposition of Sedrick Smalls	11/14/11	27-38
6	JJS Trucking Certificate of Insurance	10/08/11-10/08/10	39

ON BEHALF OF THE CLAIMANT

<u>EXHIBIT NO.</u>	<u>NAME OF REPORT/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORTS</u>	<u>NO. OF PAGES</u>
1	Stuart M. Leon, MD MUSC Medical Center	08/10/11	1-2
2	Andrew B. Conrad, MD MUSC Medical Center	08/10/11	3-5
3	Christopher J. Erikson, MD		

4	MUSC Medical Center Peter H. White, MD MUSC Medical Center	08/10/11 08/11/11	6-7 8-9
5	Alan N. Abel, MD	08/16/11-01/25/12	10-22
6	Michael S. Rissing, MD MUSC Medical Center	08/23/11	23-24
7	Cameron Wills, DC Tri-County Spinal Care	09/02/11	25-26
8	Richard Kellett, MD Tri-County Spinal Care	09/06/11-10/11/11	27-40
9	Troy Marlow, MD TriCounty Radiology Associates	11/09/11	41-42
10	Michael Wildstein, MD Wildstein Spine Center, PA	11/23/11	43-44
11	Donald E. Olofsson, DO TriCounty Radiology Associates	11/30/11	45-46
EX A	Traffic Collision Report SC Highway Patrol	08/10/11	47-50
EX B	Pay Records of the Claimant	07/12/11-08/09/11	51-55

ON BEHALF OF TRAVELERS INDEMNITY COMPANY

<u>EXHIBIT NO.</u>	<u>NAME OF REPORT/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORTS</u>	<u>NO. OF PAGES</u>
1	Correspondence from Garry Smith, Compliance Division, to F. Reid Warder, Jr.	03/30/12	14
2	Premium Finance Agreement for JJS Trucking, LLC	10/13/10	1
3	Travelers Invoice to JJS Trucking, LLC	11/08/10	2
4	Notice of Cancellation	01/04/11	2
5	SC Department of Employment And Workforce	02/21/12	15

ON BEHALF OF SC UNINSURED EMPLOYERS' FUND

<u>EXHIBIT NO.</u>	<u>NAME OF REPORT/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORTS</u>	<u>NO. OF PAGES</u>
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NONE

STATEMENT OF THE CASE

This claim is before the South Carolina Workers' Compensation Commission pursuant to a Form 50 filed by the Claimant on November 18, 2011, and Form 51 filed by Defendant, Chris Thompson Services on December 15, 2011, and Form 51 filed by Defendant, SC Uninsured Employers' Fund on January 4, 2012. The Claimant alleged that on August 10, 2011 he sustained an alleged injury to his right knee, back, neck and head. Defendants denied the claim.

It was the Claimant's position that he was injured on August 10, 2011 while employed by JJS Trucking. Claimant asserted that JJS Trucking was a subcontractor to Chris Thompson Services. JJS Trucking is uninsured and Chris Thompson is insured by Bridgefield Casualty Insurance Company. The Claimant seeks a finding of compensability that includes medical treatment, payment of temporary total benefits less any amounts paid by the carrier of Chris Thompson Services.

It was the position of Chris Thompson Services that the Claimant sustained an admitted injury by accident as alleged on August 10, 2011. However, the severity of permanency of injuries and need for future treatment was specifically denied. Chris Thompson Services also made a Motion to Transfer Liability to the South Carolina Uninsured Employers' Fund pursuant to §42-1-415 because Mr. Cedric Smalls, a principal of JJS Trucking, had represented to Chris Thompson Services that it had workers' compensation coverage. Chris Thompson Services had obtained an ACORD Form 25 Certificate of Insurance indicating coverage. Chris Thompson Services also stated to the Commissioner that it had, through its insurance carrier, Bridgefield, paid temporary total disability payments since the date of the accident in the amount of \$75.00 per week and requested that the South Carolina Uninsured Employers' Fund reimburse Bridgefield for those benefits paid. Chris Thompson Services argued that JJS Trucking never provided notice that his coverage had changed or lapsed. Chris Thompson Services argued that a

certificate of insurance presented distinguished this case from the Hopper case, (Hopper v. Terry Hunt Construction, 383 S.C. 310, 680 S.E.2d 1 (2009).)

Because the case at had a description of the policy terms. The distinction was also offered that the Hopper case dealt with an out of state employer or multi-state employers and regulations and that this case did not.

It was further argued that the signature of David Hayes as the authorized agent for the insurance company satisfactory the face of the certificate of insurance rose no red flags regarding the authority of the signature. It was also argued that a copy of the certificate of insurance was filed with the South Carolina Workers' Compensation Commission on November 4, 2011, which was believed to be a timely filing.

The SC Uninsured Employers' Fund argued that liability could not be transferred to the UEF. It was argued that the certificate of insurance presented was sufficient pursuant to the law set forth in the Barton v. Higgs case (Barton v. Higgs, 381 S.C. 367, 674 S.E.2d 145 (2009)) as well as the Hopper v. Terry Hunt Construction case. The SC Uninsured Employers' Fund argued that the description of operations box was blank and that the cases of Barton and Hopper stood for the proposition that incomplete certificates were not sufficient to transfer liability. It was also argued that the certificate of insurance only stated it was a "binder" and never conveyed any information that there was ever a policy written.

The Uninsured Employers' Fund argued that the timing of the presentation of the certificate was contrary to §42-1-415. That statute provides that documentation must be turned over to the Commission "at the time a claim is filed". This certificate was not turned over for several months. The UEF argued that §42-1-415(A) stated that the upstream contractor must first pay all benefits due before requesting liability to be transferred and at the time of the

hearing. However, only a few benefits had been paid, certainly not all. Therefore, the UEF argued that the case was premature as far as the motion to transfer liability.

EVIDENCE OF THE CASE

The Claimant testified that he was working on August 10, 2011 for JJS Trucking in Summerville, SC at the Keystone Lumber Mill. He stated that JJS Trucking was owned by Cedric Smalls and that he had been working there for about 4 ½ to 5 months prior to his accident. Claimant testified that during his time at JJS Trucking, his job was to haul loads from Summerville, SC to North Charleston, SC, specifically from Keystone Lumber Mill to Westvaco. He explained that he was injured when he was rear-ended by a truck that was following him causing his truck to jackknife and hit the median wall. Following the accident, Claimant testified that he suffered a fractured knee, low back and neck injury as well as dizziness and problems with his left hand. He testified that following the accident, he went to MUSC where he was to receive further treatment from a neurologist and orthopedist but never got those because of having no insurance. Instead he went to a general practitioner by the name of Dr. Abel and from there, he was referred to Tri County Spinal Care for pain management and then to Dr. Wildstein, an orthopaedic surgeon.

Claimant testified that he has been unable to work since August 10, 2011, because of the nerve damage he sustained in his neck and back. He further testified that he still has headaches, numbness in his left arm and fingers and his back. He is currently on several medications such as Flexeril, Neurontin, Elavil and Viracept as well as Ibuprofen. He testified that it is his understanding that he needs to see a neurologist and needs to have surgery.

On cross-examination, the Claimant stated that he had to reschedule his last hearing because he had been incarcerated, accused of stealing a 32" television, some barstools and a laptop. Claimant stated, "the police said a witness observed me running across the parking lot

running from an apartment across the street to my mom's car and putting it in the car". Claimant testified that he was using a cane recommended by Dr. Avery because he had fallen down the stairs once. He said he had fallen down the stairs in January when at his mother's house but after that fall, his pain became worse.

On cross-examination by Mr. Smalls, the Claimant testified that he was hired by JJS Trucking as a contractor. He testified that he worked his own schedule but that Cedric Smalls told him to work 12 hours from the time he started. On further cross-examination by Mrs. Cofield, the Claimant clarified that he was a sub-contractor for Chris Thompson Services, but was an employee of JJS. He also stated that when he was arrested last month, he was not using his cane, but he was on Oxycodone and other medications.

On cross-examination by Mrs. Barr, it was stated that it was his responsibility to keep his truck clean and would be responsible for any fines due to his own negligence. He also stated that he is responsible for any state and federal taxes and any workers' compensation insurance.

Christopher Thompson testified that his business was Chris Thompson Services, LLC, and in August of 2011 JJS Trucking was a subcontractor for Chris Thompson Services. He indicated he had been using JJS Trucking since approximately 2008. He explained that when he first hired JJS Trucking he was given a certificate of insurance showing that they had workers' compensation coverage. He said that he requested updated documentation once a year.

Mr. Thompson was shown a certificate of insurance that he identified to be dated October 18, 2011, and issued by Swamp Fox Agency. He stated that he was familiar with Swamp Fox Agency and knew David Hayes who signed the certificate of insurance as being the owner of Swamp Fox Insurance Agency. He stated that his view of the certificate of insurance gave him no reason to question whether or not JJS Trucking had insurance. He conveyed that it was not

until about September or beginning of October before he was positively told that he did not have insurance. After that information was received, he severed his relationship with JJS Trucking.

On cross-examination by Mrs. Cofield, Mr. Thompson acknowledged that there was no description in the Description of Operations box on the certificate of insurance. Mr. Thompson also acknowledged that it did not have a policy number, but in fact, stated that it was a "binder". Mr. Thompson testified that he did not believe that Mr. Smalls purposely defrauded him or purposely gave a false certificate of insurance.

FINDINGS OF FACT

1. Samuel Rose was an employee of JJS Trucking on August 10, 2011.
2. On August 10, 2011, Samuel Rose sustained an injury by accident to his head, knee, leg back and neck arising out of and in the course of his employment with JJS Trucking.
3. Claimant has an average weekly wage of \$650.00 and a compensation rate of \$433.34.
4. Claimant is not at maximum medical improvement.
5. As a result of his accident, Claimant is entitled to temporary total disability benefits beginning on August 10, 2011 and continuing until such time as he reaches maximum medical improvement.
6. As a result of his accident, Claimant is entitled to an evaluation to determine the extent of his injuries and is entitled to ongoing medical treatment as prescribed by an authorized treating physician to be selected by the carrier.
7. On or about October 8, 2010, JJS Trucking, LLC represented to Chris Thompson Services, LLC that it had workers' compensation insurance.
8. On August 10, 2011, JJS Trucking was operating without proper insurance as required by the Workers' Compensation Act.

9. On August 10, 2011, JJS Trucking was operating as a subcontractor for Chris Thompson Services, LLC. Chris Thompson Services, LLC, is an "upstream employer" pursuant to §42-1-415.

10. Chris Thompson Services, LLC is liable to pay Claimant all benefits to which he is entitled under the Act.

CONCLUSIONS OF LAW

1. On August 10, 2011 Samuel Rose was an "employee" of JJS Trucking as defined in S.C. Code Ann. § 42-1-130 (1976).

2. At the time of the Claimant's accident, JJS Trucking possessed over the Claimant the actual right and authority to control and direct his particular work or undertaking and the manner or means of its accomplishment, consistent with the definition of an employee provided in Young v. Warr, 252 S.C. 179, 189, 165 S.E.2d 797, 802 (1969).

3. The testimony of the Claimant, his immediate employer, Cedric Smalls, and the upstream contractor, Chris Thompson, combined with the evidence available in the record, when evaluated using the factors outlined in Nelson v. Yellow Cab Co., 564 SE 2d 110 (S.C. 2002), weigh towards finding Claimant is an employee and not an independent contractor. This finding is consistent with South Carolina's policy to resolve jurisdictional doubts in favor of the inclusion of employers and employees under the Workers' Compensation Act. See South Carolina Workers' Compensation Comm'r v. Ray Covington Realtors, Inc., 318 S.C. 546, 459 S.E.2d 302 (1995).

4. Claimant is entitled to temporary total disability benefits beginning on August 10, 2011 pursuant to § 42-9-10 until such time as he is able to return to work.

5. Claimant is entitled to medical treatment causally related to his injury pursuant to §42-15-60. Claimant is entitled to reimbursement for all out of pocket medical expenses incurred to date. Carrier shall select an authorized treating physician.

6. Claimant was an employee of JJS Trucking which, at the time of his accident, was an uninsured subcontractor. Pursuant to § 42-1-415(A) Chris Thompson Services, LLC, as the higher tier contractor, shall pay all benefits due the Claimant under the Workers' Compensation Act.

7. Chris Thompson Services, LLC, asserted in its pleadings and at the Hearing that liability for this claim should be transferred to the South Carolina Uninsured Employer's Fund. § 42-1-415 only permits the higher tier contractor to petition the Commission to transfer responsibility for benefits to the UEF after it has paid all benefits due the Claimant under the Act. The evidence in the record indicates that Claimant has not received all benefits he is due under the Act from Chris Thompson Services, LLC, or its carrier. Therefore, the issue of transfer of responsibility to the UEF is not ripe for adjudication at this time.

8. Chris Thompson Services, LLC is entitled to credit for any compensation paid to the Claimant prior to the date of this Order.

9. Traveler's Indemnity was not the carrier for JJS Trucking, LLC on the date of Claimant's injury and therefore is dismissed as a party to this claim.

ORDER

IT IS THEREFORE ORDERED that the statutory employer, Chris Thompson Services, LLC, through its carrier, Bridgefield Casualty Insurance Company, is liable for this claim and shall pay Claimant's medical treatment and temporary total disability benefits beginning August 10, 2011 and continuing through such time Claimant is able to return to work.

All other issues are held in abeyance.

Any party wishing to appeal this Decision and Order may, within fourteen (14) days of the date this Decision and Order is received, file an application for review by the Full Commission, along with the appropriate filing fee.


Commissioner Gene McCaskill

CERTIFICATE OF SERVICE

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

August 23, 2012

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSIONS'
APPELLATE PANEL

SAMUEL A. ROSE,)	W.C.C. FILE NO. 1112328
Claimant/Respondent,)	
)	
v.)	DECISION & ORDER
)	
JJS TRUCKING, LLC)	
Uninsured Employer/Respondent,)	
and)	
CHRIS THOMPSON SERVICES, LLC,)	
Upstream Contractor, and)	
BRIDGEFIELD CASUALTY INS. CO.,)	
Carrier, Appellants,)	
and)	
S.C. UNINSURED EMPLOYERS' FUND,)	
Respondent.)	
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Statement of the Case

This matter is before the Commission's Appellate Panel pursuant to the Form 30 filed by Chris Thompson Services and Bridgefield Casualty, seeking review and reversal of the August 23, 2012 Decision and Order of Hearing Commissioner McCaskill. The Appellants respectfully contend that Commissioner McCaskill erred as a matter of law in failing to transfer liability to the UEF pursuant to S.C. Code Ann. § 42-1-415, erred as a matter of law in ordering the Appellants to reimburse "all out-of-pocket medical expenses," and erred as a matter of law in awarding the Claimant future medical treatment pursuant to S.C. Code Ann. § 42-1-415.

The Hearing Commissioner's Decision and Order contained the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. *Samuel Rose was an employee of JJS Trucking on August 10, 2011.*
2. *On August 10, 2011, Samuel Rose sustained an injury by accident to his head, knee, leg back and neck arising out of and in the course of his employment with JJS Trucking.*
3. *Claimant has an average weekly wage of \$650.00 and a compensation rate of \$433.34.*
4. *Claimant is not at maximum medical improvement.*
5. *As a result of his accident, Claimant is entitled to temporary total disability benefits beginning on August 10, 2011 and continuing until such time as he reaches maximum medical improvement.*
6. *As a result of his accident, Claimant is entitled to an evaluation to determine the extent of his injuries and is entitled to ongoing medical treatment as prescribed by an authorized treating physician to be selected by the carrier.*
7. *On or about October 8, 2010, JJS Trucking, LLC represented to Chris Thompson Services, LLC that it had workers' compensation insurance.*
8. *On August 10, 2011, JJS Trucking was operating without proper insurance as required by the Workers' Compensation Act.*
9. *On August 10, 2011, JJS Trucking was operating as a subcontractor for Chris Thompson Services, LLC. Chris Thompson Services, LLC, is an "upstream employer" pursuant to §42-1415.*
10. *Chris Thompson Services, LLC is liable to pay Claimant all benefits to which he is entitled under the Act.*

CONCLUSIONS OF LAW

1. *On August 10, 2011 Samuel Rose was an "employee" of JJS Trucking as defined in S.C. Code Ann. § 42-1-130 (1976).*
2. *At the time of the Claimant's accident, JJS Trucking possessed over the Claimant the actual right and authority to control and direct his particular work or undertaking and the manner or means of its accomplishment, consistent with the definition of an employee provided in Young v. Warr, 252 S.C. 179, 189, 165 S.E.2d 797, 802 (1969).*
3. *The testimony of the Claimant, his immediate employer, Cedric Smalls, and the upstream contractor, Chris Thompson, combined with the evidence available in the record, when evaluated using the factors outlined in Nelson v. Yellow Cab Co., 564 SE 2d 110 (S.C. 2002), weigh towards finding Claimant is an employee and not an independent contractor. This finding is consistent with South Carolina's policy to resolve jurisdictional doubts in favor of the inclusion of employers and employees under the Workers' Compensation Act. See South Carolina Workers' Compensation Comm'r v. Ray Covington Realtors, Inc., 318 S.C. 546, 459 S.E.2d 302 (1995).*
4. *Claimant is entitled to temporary total disability benefits beginning on August 10, 2011 pursuant to § 42-9-10 until such time as he is able to return to work.*
5. *Claimant is entitled to medical treatment causally related to his injury pursuant to §42- 15-60. Claimant is entitled to reimbursement for all out of pocket medical expenses incurred to date. Carrier shall select an authorized treating physician.*
6. *Claimant was an employee of JJS Trucking which, at the time of his accident, was an uninsured subcontractor. Pursuant to § 42-1-415(A) Chris*

Thompson Services, LLC, as the higher tier contractor, shall pay all benefits due the Claimant under the Workers' Compensation Act.

5. *Chris Thompson Services, LLC, asserted in its pleadings and at the Hearing that liability for this claim should be transferred to the South Carolina Uninsured Employer's Fund. § 42-1415 only permits the higher tier contractor to petition the Commission to transfer responsibility for benefits to the UEF after it has paid all benefits due the Claimant under the Act. The evidence in the record indicates that Claimant has not received all benefits he is due under the Act from Chris Thompson Services, LLC, or its carrier. Therefore, the issue of transfer of responsibility to the UEF is not ripe for adjudication at this time.*
6. *Chris Thompson Services, LLC is entitled to credit for any compensation paid to the Claimant prior to the date of this Order.*
7. *Traveler's Indemnity was not the carrier for JJS Trucking, LLC on the date of Claimant's injury and therefore is dismissed as a party to this claim.*

Furthermore, the Form 30 filed by the Appellants alleges the followings errors and exceptions:

1. *The Hearing Commissioner erred in finding that Chris Thompson Services, LLC is liable to pay Claimant all benefits to which he is entitled under the Act, as this "finding" is arbitrary, capricious, impermissibly vague, and contrary to the greater weight of the evidence and the applicable law.*

2. *The Hearing Commissioner erred in finding that the Claimant sustained an injury to his head, knee, leg, back, and neck, as this finding is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.*
3. *The Hearing Commissioner erred in "finding" that the Claimant is entitled to temporary total disability benefits from August 10, 2011 and continuing until, as this finding is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.*
4. *The Hearing Commissioner erred in "finding" that the Claimant is entitled to an evaluation to determine the extent of his injuries, as this finding is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.*
5. *The Hearing Commissioner erred in "finding" that the Claimant is entitled to ongoing medical treatment, as this finding is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.*
6. *The Hearing Commissioner erred as a matter of law in concluding that the Claimant is entitled to reimbursement for all out of pocket medical expenses incurred to date, as this conclusion is arbitrary, capricious, and otherwise contrary to the greater weight of the evidence and the applicable law.*

7. *The Hearing Commissioner erred as a matter of law in concluding that the Claimant has not received all benefits due under the Act, as this "conclusion" is arbitrary, capricious, and otherwise contrary to the greater weight of the evidence in the record and the applicable law.*
8. *The Hearing Commissioner erred as a matter of law in concluding that the issue of transfer of responsibility to the UEF is not ripe for adjudication at this time, as this conclusion is arbitrary, capricious, and otherwise contrary to the greater weight of the evidence in the record and the applicable law.*

Evidence Summary

The Claimant testified that he was employed as a driver for JJS Trucking on August 10, 2011 when he was injured in a motor vehicle accident. Since the accident, the Claimant has received medical treatment from MUSC, Dr. Abel, and Dr. Wildstein for alleged injuries to his back, knee, and left hand. Although the Claimant testified that he has been unable to work since the accident, the originally hearing in this case had to be rescheduled due to the Claimant's incarceration. According to the Claimant, he was accused of stealing a 32" television, some barstools, and a computer. The Claimant testified that, "the police said a witness observed me running across the parking lot running from an apartment across the street to my mom's car and putting it in the car." In addition, the Claimant testified that he fell down the stairs in January 2012 at his mother's house, which increased his pain and resulted in him using a cane.

Chris Thompson testified that JJS Trucking was operating as a subcontractor Chris Thompson Services, LLC, at the time in question. Mr. Thompson testified that he obtained a

Certificate of Insurance from JJS Trucking at the time his relationship with the company began in 2008 and that he has requested and obtained updated Certificates of Insurance from JJS Trucking on a yearly basis since that time. Mr. Thompson identified the October 18, 2010 Certificate of Insurance contained in the Record (Appellants' APA #6, p.39). This Certificate shows that JJS Trucking had workers' compensation coverage through Travelers Insurance for the period from October 8, 2010 through October 8, 2011. This Certificate shows Chris Thompson Services as the Certificate Holder and is signed by David W. Hayes, whom Mr. Thompson identified as the owner of the Producer, the Swamp Fox Agency. Mr. Thompson testified that after receiving this Certificate of Insurance, he had no reason to believe that JJS Trucking did not have workers' compensation insurance until after the Claimant's accident.

The record reveals that Travelers Insurance did, in fact, insure JJS Trucking for a period after the Certificate of Insurance was issued, but the policy lapsed without notice to Chris Thompson Services by any person or entity. Cedric Smalls, the owner of JJS Trucking, confirmed that he did not ever inform Chris Thompson Services that his workers' compensation insurance had lapsed and further testified that Chris Thompson would not allow him to work as a subcontractor if his workers' compensation insurance ever lapsed.

At the time of the hearing, the Claimant was receiving weekly temporary total disability compensation from the Chris Thompson's carrier, as reflected on the Form 18.

Conclusion

After reviewing the record and considering the briefs and oral arguments, we AFFIRM with AMEND in part, as follows:

FINDINGS OF FACT

1. Samuel Rose was an employee of JJS Trucking on August 10, 2011.

2. On August 10, 2011, Samuel Rose sustained an injury by accident to his head, knee, leg
back and neck arising out of and in the course of his employment with JJS Trucking.
3. Claimant has an average weekly wage of \$650.00 and a compensation rate of \$433.34.
4. Claimant is not at maximum medical improvement.
5. As a result of his accident, Claimant is entitled to temporary total disability benefits beginning on August 10, 2011 and continuing until such time as he reaches maximum medical improvement.
6. As a result of his accident, Claimant is entitled to an evaluation to determine the extent of his injuries and is entitled to ongoing medical treatment as prescribed by an authorized treating physician to be selected by the carrier.
7. On or about October 8, 2010, JJS Trucking, LLC represented to Chris Thompson Services, LLC that it had workers' compensation insurance.
8. On August 10, 2011, JJS Trucking was operating without proper insurance as required by the Workers' Compensation Act.
9. On August 10, 2011, JJS Trucking was operating as a subcontractor for Chris Thompson Services, LLC. Chris Thompson Services, LLC, is an "upstream employer" pursuant to §42-1415.
9. Chris Thompson Services, LLC is liable to pay Claimant all benefits to which he is entitled under the Act.

CONCLUSIONS OF LAW

1. On August 10, 2011 Samuel Rose was an "employee" of JJS Trucking as defined in S.C. Code Ann, § 42-1-130 (1976).
2. At the time of the Claimant's accident, JJS Trucking possessed over the Claimant the actual right and authority to control and direct his particular work or undertaking and the manner or means of its accomplishment, consistent with the definition of an employee provided in Young v. Warr, 252 S.C. 179, 189, 165 S.E.2d 797, 802 (1969).
3. The testimony of the Claimant, his immediate employer, Cedric Smalls, and the upstream contractor, Chris Thompson, combined with the evidence available in the record, when evaluated using the factors outlined in Nelson v. Yellow Cab Co., 564 SE 2d 110 (S.C. 2002), weigh towards finding Claimant is an employee and not an independent contractor. This finding is consistent with South Carolina's policy to resolve jurisdictional doubts in favor of the inclusion of employers and employees under the Workers' Compensation Act. See South Carolina Workers' Compensation Comm'r v. Ray Covington Realtors, Inc., 318 S.C. 546, 459 S.E.2d 302 (1995).
4. Claimant is entitled to temporary total disability benefits beginning on August 10, 2011 pursuant to § 42-9-10 until such time as he is able to return to work.
5. Claimant is entitled to medical treatment causally related to his injury pursuant to §42-15-60. Claimant's past causally-related medical treatment should be paid directly to the providers pursuant to the Fee Schedule. Carrier shall select an authorized treating physician for any future medical treatment.

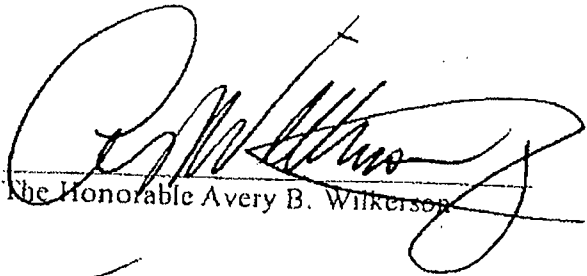
5. Claimant was an employee of JJS Trucking which, at the time of his accident, was an uninsured subcontractor. Pursuant to § 42-1-415(A) Chris Thompson Services, LLC, as the higher tier contractor, shall pay all benefits due the Claimant under the Workers' Compensation Act.
6. Chris Thompson Services, LLC, asserted in its pleadings and at the Hearing that liability for this claim should be transferred to the South Carolina Uninsured Employer's Fund. § 42-1415 only permits the higher tier contractor to petition the Commission to transfer responsibility for benefits to the UEF after it has paid all benefits due the Claimant under the Act. The evidence in the record indicates that Claimant has not received all benefits he is due under the Act from Chris Thompson Services, LLC, or its carrier. Therefore, the issue of transfer of responsibility to the UEF is not ripe for adjudication at this time.
7. Chris Thompson Services, LLC is entitled to credit for any compensation paid to the Claimant prior to the date of this Order.
8. Traveler's Indemnity was not the carrier for JJS Trucking, LLC on the date of Claimant's injury and therefore is dismissed as a party to this claim.

ORDER

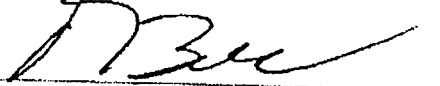
IT IS THEREFORE ORDERED that the statutory employer, Chris Thompson Services, LLC, through its carrier, Bridgefield Casualty Insurance Company, is liable for this claim and shall pay Claimant's medical treatment and temporary total disability benefits beginning August 10, 2011 and continuing through such time Claimant is able to return to work.

All other issues are held in abeyance.

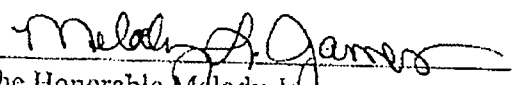
IT IS SO ORDERED!


The Honorable Avery B. Wilkerson

WE CONCUR:



The Honorable T. Scott Beck



The Honorable Melody James

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 15 day of May, 2013

By Valerie D. Deller

Administrative Assistant to the Commissioner

Amy V. Cofield

Kirsten L. Barr

Joseph B. Fisher

Chris Thompson Services (Reg & cert)

JTS Trucking LLC (Reg & cert)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

The Honorable T. Scott Beck, Commissioner

RECEIVED
APR 22 2020
SC Court of Appeals

W.C.C. File No. 1112328
Appellate Case No. 2019-001357

Samuel Rose, Claimant.....Respondent,

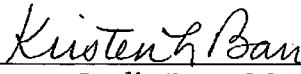
v.

JJS Trucking, LLC, Uninsured Employer, and Chris Thompson
Services, Upstream Employer, and Bridgefield Casualty Ins. Co.,
Carrier for Chris Thompson Services, and The State Accident
Fund,.....Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal of the Appellants, Chris
Thompson Services and Bridgefield Casualty Insurance Co., complies with Rule 211(b),
SCACR, and Supreme Court Order 2007-08-16-02, dated August 13, 2007, requiring
redaction of personal data identifiers.

April 20, 2020


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Attorneys for Appellants