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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE APPELLATE PANEL OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 1413115
Appellate Case No. 2020-000053

Ex Parte: C. Daniel Veg of Chappell, Smith & Arden, PA., ...Appellant,

v.

Kevin M. Barth of Barth, Ballenger, & Lewis LLP, ...Respondent.

In re: Stephen Evans, Employee, ...Claimant,

v.

Nan-ya Plastics Corp. America, Employer and New Hampshire Insurance
Company, Carrier, ... Defendants.

**RECORD ON APPEAL
VOLUME I OF II**

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Certificate of Counsel

BEFORE THE SOUTH CAROLINA
WORKER'S COMPENSATION COMMISSION

WCC FILE NO.: 1413115

Stephen Evans,)
)
 Claimant,)
 v.)
)
 Nan Ya Plastics Corp.,)
)
 Employer,)

**CONSENT ORDER
RELIEVING COUNSEL**

CERTIFICATE OF SERVICE

and
Gallagher Bassett Services,
Carrier.

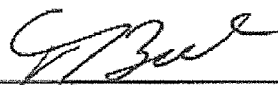
This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Shawn Debruhl on July 6, 2016

It appears to the Court that the Claimant no longer desires to use the services of Kevin M. Barth as his attorney, and that Kevin M. Barth, as attorney for Claimant, hereby consents to being relieved as counsel. It is therefore,

ORDERED, ADJUDGED AND DECREED that Kevin M. Barth be hereby relieved as counsel for Claimant and that he be relieved of any further obligation or responsibility in regard to the within action.

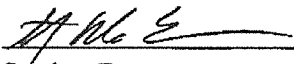
AND IT IS SO ORDERED!

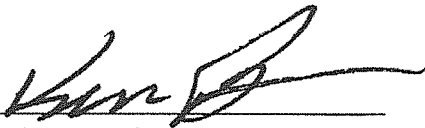
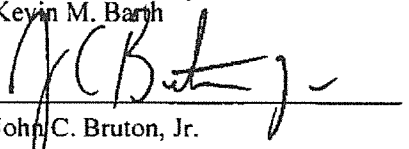

T. Scott Beck, Commissioner

Columbia, South Carolina

July 6, 2016

WE CONSENT TO THE TERMS OF THIS ORDER:


Stephen Evans
Claimant


Kevin M. Barth

John C. Bruton, Jr.
Attorney for Employer/Carrier

DECISION AND ORDER OF THE
SOUTH CAROLINA WORKERS= COMPENSATION COMMISSION

WCC FILE NUMBER: 1413115

Stephen Evans,
Employee/Claimant,
vs.
Nan-Ya Plastics Corporation of America,
Employer/Insured,
and
New Hampshire Insurance Company,
Carrier/Defendants.

HEARING CONDUCTED:

HELD IN HARTSVILLE, SOUTH CAROLINA ON 7TH OF FEBRUARY 2019

APPEARANCES:

C. Daniel Vega, Esquire of Chappell Smith & Arden, P.A., of Columbia, South Carolina, for Claimant.

Defendants represented by John C. Bruton, Jr., Esquire of Haynsworth Sinkler & Boyd, P.A., of Columbia, South Carolina, but who did not appear at the hearing.

Kevin M. Barth, Esquire of Barth Ballenger & Lewis, L.L.P. of Florence, South Carolina, appearing as Claimant's former attorney.

SUBJECT OF THE HEARING:

To determine the issues as set forth in the Motion to Enforce Charging Lien filed by Kevin M. Barth, and Motion for Payment of Attorney's Fees filed by C. Daniel Vega.

OPINION AND ORDER:

Aisha Taylor, Commissioner

FILED:

July 10, 2019

STIPULATIONS:

Counsel for all parties stipulated at the hearing to the following issues:

1. The purpose of the hearing is to determine those issues as set forth in the Hearing Notice and issued raised in the Motion to Enforce Charging Lien and the Motion for Payment of Attorney's Fees.

2. Notice of the hearing on this file was timely and properly served upon all parties in interest.

3. The venue was properly set in Hartsville, South Carolina.

4. Claimant's former attorney, Kevin M. Barth, is seeking to enforce a lien upon the settlement proceeds in the sum of \$33,333.33, plus costs in the sum of \$427.97.

5. The attorney for Claimant, C. Daniel Vega, is seeking to have a fee approved pursuant to the Form 61 wherein he is requesting a fee of \$40,000.00 plus costs from the total settlement in this matter.

6. The South Carolina Workers= Compensation Commission has jurisdiction over this case.

SUBMISSIONS

1. SUBMISSIONS BY KEVIN M. BARTH:

- A. Contract for Legal Services between Kevin M. Barth and Stephen M. Evans;
- B. April 6, 2016 email from John Bruton to Kevin M. Barth;
- C. May 9, 2016 email from Kevin M. Barth to John Bruton;

ROA 0005

- D. File Release signed by Stephen Evans dated May 31, 2016;
- E. June 1, 2016 letter from Kevin Barth to John Bruton advising of attorney fee lien;
- F. September 11, 2018 letter from Daniel Vega to Kevin Barth;
- G. Letter from Stephen Evans dated March 31, 2016 to Kevin M. Barth terminating representation;
- H. April 5, 2016 email from Kevin M. Barth to John Bruton regarding meeting with the client.2.

SUBMISSIONS BY C. DANIEL VEGA:

EX. #	Date	Description
1	9/25/2014	Form 12A
2	9/25/2014	LOR from Gerald Malloy
3	9/27/2014	Claimant's handwritten notes
4	10/29/2014	Letter from Nan Ya Safety, Health and Environmental Dept. to claimant
5	11/4/2014	LOR from John Bruton to Gerald Malloy
6	11/11/2014	Form 15
7	11/24/2014	Notice of Hearing
8	11/25/2014	Letter from Gerald Malloy to John Bruton
9	11/25/2014	Letter from Gerald Malloy to claimant
10	11/26/2014	Claimant's Form 58 and APA
11	12/2/2014	Employer's Form 58 and APA
12	12/10/2014	Email from John Bruton to Elaine Boyd
13	12/22/2014	Letter from claimant to Gerald Malloy
14	12/22/2014	Letter from Gerald Malloy to claimant
15	12/22/2014	Letter from Gerald Malloy to claimant enclosing a copy of file
16	12/28/2014	Letter from claimant to Gerald Malloy
17	12/28/2014	Gerald Malloy's Motion to Relieve Counsel
18	12/29/2014	Contract for Legal Services between Kevin Barth and claimant
19	6/8/2015	Letter from Barth to SCWCC enclosing Form 50
20	6/24/2015	Letter from Bruton enclosing Form 51
21	8/28/2015	Form 18
22	7/16/2015	Letter to claimant from Barth advising of hearing date
23	10/30/2015	Letter to claimant from Barth enclosing IME report
24	2/10/2016	Email from Nurse Case Manager
25	3/1/2016	Email from Nurse Case Manager to adjuster requesting approval for surgery
26	3/3/2016	Form 18
27	3/3/2016	Claimant letter to Kevin Barth
28	5/13/2016	Letter from Barth to Bruton returning settlement documents
29	6/1/2016	Letter from Barth to Bruton enclosing Motion to Be Relieved
30	1/1/2017	Letter from claimant to Vega

31	1/5/2017	Letter from Vega to claimant
32	1/9/2017	Letter from claimant to Vega
33	7/26/2018	Form 18
34	8/13/2018	Letter from claimant to Vega
35	9/4/2018	Email from Bruton to Vega
36	9/20/2018	Letter from Barth to Vega with enclosures
37	10/1/2018	Vega letter submitting Fee Petition
38	10/12/2018	Final Lump Sum Agreement
39	9/28/2018	Form 19
40	9/28/2018	Questionnaire completed by claimant
41	9/17/2018	Phone call history
42	1/11/2017	Claimant's handwritten notes

The parties stipulated that all of the documents submitted to the Commission as attachments to the two Motion are admitted into evidence. These documents are the ones listed above.

STATEMENT OF THE CASE

This matter is before the Commission to determine the appropriate distribution of attorney's fees and costs that relate to the Claimant's total settlement of \$150,000.00.

Kevin M. Barth contends that the Claimant authorized him to settle this case for the sum of \$100,000.00. Pursuant to the Contract for Legal Services executed by the client and attorney, Mr. Barth, if terminated by the client, would be entitled to receive 33.3% of any settlement offers made in the case, plus costs. Mr. Barth contends that the parties agreed to settle the matter for \$100,000.00 in early April of 2016, and that he should be entitled to 33.3% of that amount plus costs. He further contends that the Claimant declined to execute the settlement documents in May of 2016, and that on May 31, 2016 Claimant retrieved his file from Mr. Barth and handed his office a letter

purporting to have terminated Mr. Barth's representation two months earlier, on March 31, 2016.

Claimant contends that Mr. Barth was never authorized to settle the case and that he knew nothing about any settlement discussions. He further claims that he terminated Mr. Barth's representation on March 31, 2016, the date shown on the letter of termination.

Claimant alternatively contends that Mr. Barth should not be entitled to receive any fee for his services, basing that contention on the factors outlined in the *Glasscock* case.

Mr. C. Daniel Vega was retained as claimant's counsel once Mr. Barth was terminated. Mr. Vega ultimately settled Claimant's case for \$150,000.00. Mr. Vega is requesting that the Commission approve his fee request for \$40,000.00 plus costs.

EVIDENCE OF THE CASE

1. Christina Graves: Ms. Graves testified that she has been the civil paralegal for attorney Kevin M. Barth for approximately 20 years and that she handled all of his civil matters and workers' compensation claims. She further testified that the Claimant hired Mr. Barth to represent him in his workers' compensation claim. She further testified regarding the difficulty surrounding the approval of Claimant's requested surgery.

Ms. Graves then testified that the Claimant agreed to settle his claim for \$100,000.00 on April 5, 2016 because he needed the

money, but that the settlement check and settlement documents were not received from defense counsel until early May 2016. In the month between the settlement and the arrival of the settlement documents, Ms. Graves testified that the Claimant called the office numerous times asking about the status of the settlement check and documents. Once the documents arrived, Ms. Graves testified that she contacted the Claimant to come sign the settlement check and documents. When Claimant arrived to execute the documents and settlement check, he met with Ms. Graves, as Mr. Barth was not in the office. She testified that while he was reviewing the documents, Claimant indicated that he was not going to settle the case for that amount of money as it was not sufficient "for what he had been through" and because he had "lost everything".

Ms. Graves testified that Mr. Barth notified defense counsel that the Claimant would not sign the documents and he ultimately returned the check and settlement documents to the defense attorney. She then testified that in late May, Claimant called the office and wanted his file. The file was copied, and the Claimant appeared at the office on May 31, 2016 to retrieve his file and sign a File Release. She then testified that when Claimant retrieved his file, he handed in a white envelope with a letter enclosed. The letter was a letter terminating Mr. Barth's services and was dated March 31, 2016 (two months earlier). However, Ms. Graves testified that the letter was not received by the office

until May 31, 2016, when it was hand delivered and the file was retrieved.

2. C. Daniel Vega: Mr. Vega testified that he assumed representation of the Claimant and that he represented him through the settlement of his claim. Mr. Vega testified that the Claimant said he had never authorized Mr. Barth to settle his case and as a result, no offer had been made to the Claimant prior to him assuming representation of the Claimant.

3. Stephen Evans: Mr. Evans testified that he is the Claimant in this matter and originally retained attorney Gerald Malloy to represent him. The Claimant then testified that he terminated Malloy's representation in December of 2015 and did so by certified letter.

He then hired Mr. Barth to represent him in his workers' compensation claim in January or February of 2015.

The Claimant also testified that he was in severe pain at the time and that he needed surgery. His surgery was not approved in a timely fashion and the Claimant testified that as a result he was losing faith in Mr. Barth's ability to handle the claim and losing faith in the system. He noted that the insurance carrier "cut off his checks" a number of times causing he and his family to lose everything they had and forced them to live in a motel.

Claimant testified that he never authorized Mr. Barth to engage in settlement discussions with defense counsel and that he never was aware a settlement offer had been made. Claimant also

testified that he never would have authorized settlement discussions until he had received the surgery he needed.

Claimant then testified that the first time he heard that his case had been settled for \$100,000.00 was when Mr. Barth's paralegal contacted him to come and sign the settlement documents.

Claimant testified that he did not know what the documents were, but he went to Mr. Barth's office and met with Ms. Graves, the paralegal, to go over the documents as Mr. Barth was not in the office.

Claimant testified that he had not authorized the settlement and refused to sign the settlement documents. He also testified that because of the purported settlement, his weekly TTD checks were cut off for a number of weeks.

Claimant then testified that he wrote a letter to Mr. Barth terminating his representation and that the letter was written and dated March 31, 2016. He also testified the letter was sent to Mr. Barth by certified mail. In his testimony, Claimant denied delivering the termination letter on May 31, 2016 and denies backdating the letter for March 31, 2016. He testified that he retrieved his file on May 31, 2016 but did not deliver the termination letter at that time. He testified that the letter had been sent on March 31, 2016. Claimant testified that he then contacted attorney John Etheridge about representing him and Mr. Etheridge referred him to Mr. Vega, whom he hired. After retaining Mr. Vega, Claimant testified that his TTD checks were reinstated

and surgery was approved and completed. Claimant testified that in January of 2017, he terminated Mr. Vega's representation of him and did so by certified letter. He testified that he later wrote Mr. Vega and requested that he continue representing him and that Mr. Vega agreed to do so.

He also testified that when Mr. Vega discussed the value of his claim, he was very disappointed. However, Claimant testified that he appeared at a hearing with his attorney and agreed to settle his claim. Claimant then later wrote Mr. Vega indicating that he was dissatisfied with the settlement that had been agreed to. After further discussions between the two, Claimant testified that he agreed to the settlement because his only choices were to settle the claim for that amount or appear at a hearing "and get nothing".

Claimant then testified that he signed the settlement documents and the Form 61. He also testified that he signed a document in Mr. Vega's presence that was designed to ensure that Mr. Barth would not be paid for his services on this claim. Claimant testified that he believes Mr. Vega's paralegal prepared the document and that it was executed in the presence of Mr. Vega and his paralegal.

Claimant testified that even though the case has settled, he believes he is entitled to receive additional surgeries under the workers' compensation claim and that he is going to file an appeal in an attempt to have the future surgeries approved.

FINDINGS OF FACT

Based upon the testimony of Claimant, Christina Graves and C. Daniel Vega and the documentary evidence submitted pursuant to the Administrative Procedures Act, and the Commission file in this matter, I find as facts:

1. That the parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers= Compensation Law, as amended, with Nan-Ya Plastics Corporation of America, as the employer, and New Hampshire Insurance Company, as the carrier.

2. That Stephen Evans was an employee of Nan-Ya Plastics Corporation of America at the time of the accident giving rise to the within claim.

3. That the Claimant was initially represented in this claim by attorney Gerald Malloy. Attorney Malloy filed a Form 50 on Claimant's behalf (Vega Exhibit 7-2), but the issues were resolved, and a hearing was never held. Vega Exhibit 12-7. Claimant fired attorney Mallory and did so by sending him a certified letter dated December 22, 2014. Vega Exhibits 13-1 through 13-11.

4. That Claimant subsequently retained attorney Kevin Barth to represent him. Claimant signed a Contract for Legal Services. Exhibit A to the Motion to Enforce Charging Lien. This Contract for Legal Services provided as follows: "If I terminate the services of my attorney at any time prior to settlement, then I

agree to pay said attorney \$175.00 per hour for all attorney services rendered in this matter, and \$75.00 per hour for all paralegal services rendered in this matter or the contracted contingency fee percentage on any offers that have been made at the time of termination, **whichever is greater.**" (emphasis in original).

The contracted contingency percentage is 33.33%, and Claimant agreed to be responsible for the costs incurred in the prosecution of this claim.

5. Attorney Barth filed a Form 50 on Claimant's behalf requesting additional medical treatment for the Claimant. Vega Exhibits 22-1 and 22-2. The Defendant's attorney, John Bruton, filed a Form 51 (Vega Exhibit 20-1) which included a partial acceptance of the claim and a partial denial. The issues raised in the Form 50 were resolved and a hearing was never held.

6. After a medical deposition was taken, the Claimant submitted to an IME and after receiving recommendations for treatment, Claimant and attorney Barth began discussing the possibility of settling the claim because, as the Claimant testified, he had "lost everything". Transcript p. 61.

7. During the months of March and April of 2016 settlement discussions took place between Barth and Bruton. Claimant contends that these discussions took place without his knowledge or permission. Ultimately, the matter was settled for \$100,000.00 on April 6, 2016. The undersigned bases these findings on a number of

documents verifying this finding, including Barth's Exhibit B and the April 5, 2016 email from Mr. Barth to Mr. Bruton which was submitted to the undersigned at the hearing. These findings are also based on the testimony of Christina Graves, Barth's long-time civil paralegal. I find her to be credible and knowledgeable about dates, times and discussions regarding this claim. She testified that the matter was settled in "late March, early April 2016... I believe it was April the 5th of 2016". Transcript p. 18.

8. Over the course of the next month there were numerous communications between Barth and Bruton requesting that the settlement documents be expedited. Vega Exhibits 36-9 through 36-13 and Barth's Exhibit B.

9. Christina Graves also testified that between the time the claim was settled and early May when the settlement check and documents were sent to Barth, the Claimant contacted the firm numerous times asking about the status of his settlement check and documents. I find this testimony to be credible. Transcript p. 19.

10. When the settlement documents arrived, Ms. Graves contacted the Claimant to come in and sign the settlement documents. He appeared at the office to sign the settlement documents "around May the 8th, 9th." Transcript p. 19. The Claimant confirms that he received a call to come to the office to sign documents, which he did. Transcript pp. 68-69. When asked why he appeared to sign documents in May if he had fired Barth on

March 31, 2016, his response was "I don't know. I don't know why she called and told me I had to settle - I mean, had to come and sign a paper." Transcript p. 69.

11. Claimant refused to sign the settlement documents (confirmed by Vega Exhibit 36-9), and they were ultimately returned by Barth to Bruton by letter of May 13, 2016. Vega Exhibit 28-1. Claimant indicated when he began reading the settlement documents that "he had thought about it, and it just wasn't enough for what he had been through". Transcript p. 20. The undersigned specifically finds that the Claimant knew of the settlement offer, appeared at the attorney's office to sign the settlement documents, and then changed his mind. The undersigned notes that the Claimant did the very same thing to Mr. Vega later in the case. He authorized attorney Vega to settle his claim for \$150,000.00 on July 26, 2018 but changed his mind and notified Vega in writing on August 13, 2018 that he disavowed the settlement and would prefer to have a hearing. Vega Exhibits 34-1 through 34-3.

12. In late May of 2016, Claimant called Barth's office and requested a copy of his file. It was made available to him the next day, May 31, 2016. Claimant appeared at the office the next day, where he picked up his file and signed a File Release. Vega Exhibit 27-1. Transcript p. 21.

13. Claimant prepared a letter terminating Barth from representing him in this claim. This letter is dated March 31,

2016 and indicates that the Claimant is not ready to settle his case as he needs more medical attention. Vega Exhibit 27-1.

14. The crux of this matter is when this letter was delivered to Mr. Barth's office. Claimant says it was sent certified on March 31, 2016, although he could produce no evidence that it was.

Mr. Barth's office contends that it was hand delivered to the office on May 31, 2016 when Claimant picked up his file. Transcript p. 22-23. The undersigned was put in the very difficult position of weighing the testimony of the Claimant against the testimony of an attorney and paralegal.

15. After carefully considering the credibility of the witnesses, the undersigned gives great weight to the testimony of Mr. Barth's paralegal, Christina Graves. She was very knowledgeable about the dates, times and discussions surrounding Claimant's termination of Mr. Barth's representation. Specifically, the undersigned finds Ms. Graves' testimony regarding her receipt of the letter of termination on May 31, 2016 to be very credible. Claimant's letter dated March 31, 2016 was not delivered to Mr. Barth until May 31, 2016. Thus, Mr. Barth's services to Claimant were terminated on May 31, 2016.

16. The undersigned does not find Claimant's testimony regarding an earlier delivery date to be credible, particularly in light of the fact that the record contains numerous references to

it being sent by certified mail, but Claimant could produce no evidence of certified mailing or delivery. Transcript p. 67-68.

17. Based on the foregoing findings, Mr. Barth's representation of Claimant was terminated after the settlement offer of \$100,000.00 was made to the Claimant and Mr. Barth. His Contract for Legal Services provides for a 33.33% contingency fee on all settlement offers made, plus costs. Mr. Barth's Motion to Enforce Charging Lien is granted and he is entitled to receive the sum of \$33,333.33, plus costs of \$427.97 from the proceeds of this settlement.

18. Claimant further contends that Mr. Barth should not be awarded any attorney's fees in this matter because he allegedly did nothing for the Claimant. Transcript p. 57. The undersigned has carefully considered the *Glasscock* factors and finds that Mr. Barth satisfies those factors and is entitled to the fee requested.

19. As it pertains to the Claimant and Vega's Motion for Payment of Attorney's Fees and costs, the undersigned grants the same in part and finds that Mr. Vega is entitled to an attorney's fee up to 33.33% of the additional settlement amount secured by him of \$50,000.00 plus costs pursuant to R. 67-1205(C)(7) upon his submission of a Form 61 and a proposed Order reflecting same.

20. No hearing costs are assessed in this matter.

CONCLUSIONS OF LAW

In view of these findings and facts, I conclude as matters of law:

1. That the parties to this proceeding are subject to and bound by the South Carolina Workers= Compensation Act.

2. That this is dispute over attorney's fees to be paid from the \$150,000.00 settlement of Claimant's claim. Attorney's fees in workers' compensation cases are subject to approval of the Commission. Additionally, no attorney may receive a fee in a workers' compensation claim until it has been approved by the Commission. S.C. Code Ann. § 42-15-90 (A) and (B).

3. A Claimant and attorney can agree on a contingency fee arrangement. However, "an attorney may charge up to, but not more than, 33.3% of the total amount of compensation..." R. 67-1205(C).

4. "When an attorney is employed after the employer's representative makes a written offer of settlement to the claimant, the attorney shall base his or her fee on the amount of compensation secured in excess of the settlement offer. The fee shall not exceed 33.3% of the difference between the offer of settlement and the amount of compensation secured." R. 67-1205(C)(7).

5. "A lien for the payment of an attorney's fee out of the proceeds of a judgment obtained as a result of an attorney's efforts, however, may be created by an express agreement between an

attorney and his client. 7 Am. Jur. 2d *Attorneys at Law* § 326 at 338 (1980); 7A C.J.S. *Attorney & Client* § 360 at 717 (1980). Indeed, an agreement between an attorney and his client "that the attorney shall have a lien on the judgment, is decisive as to the existence of the lien and its amount, and constitutes a valid equitable assignment *pro tanto* which attaches to the judgment as soon as it is entered." *Adair v. First National Bank*, 139 S.C. 1, 6, 137 S.E. 192 (1924); see also 7A C.J.S. *Attorney & Client* § 360 at 717-18 (1980). Our courts will recognize an equitable lien created by contract in proper cases. (citations omitted) *Eleazer v. Hardaway Concrete*, 281 S.C. 174, 315 S.E. 2d 174 (Ct. App. 1984)

6. In *Lester v. Dawson*, 327 S.C. 263, 491 S.E.2d 240 (1997), in discussing the Court of Appeals decision in *Eleazer v. Hardaway Concrete*, the Supreme Court stated first that "an attorney's charging lien is an 'equitable right to have the fee and costs due an attorney for services rendered in a legal proceeding secured to him out of any judgment or recovery obtained therein.' . Observing that this kind of lien protects only costs and disbursements, the Court nevertheless found that '[a] lien for the payment of an attorney's fee out of the proceeds of a judgment obtained as a result of an attorney's efforts, however, may be created by an express agreement between an attorney and his client.' Because the attorney and client in *Eleazer* had specifically agreed that the attorneys' fee would be secured by a

lien upon the proceeds of any judgment the attorney obtained for the client, the Court found there was an equitable lien. ... We believe the holding in *Eleazer* is correct."

7. In *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (S.C., 1991), the Court outlined the six factors to be considered in determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.

ORDER

Accordingly, it is therefore ordered as follows:

1. Kevin M. Barth's Motion to Enforce Charging Lien is granted, and he is entitled to receive from the settlement proceeds the sum of \$33,333.33, plus \$427.97, for a total of \$33,760.97.

2. C. Daniel Vega's Motion for Payment of Attorney's fees and costs is granted and upon the submission of a Form 61 as outlined above will be entitled to receive 33.3% of \$50,000.00, plus costs incurred.



Commissioner Aisha Taylor

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.

July 11, 2019

By: Renee Smith, Administrative Assistant to Commissioner
Taylor

Served by USPS
CDV
KMB
JCB
7-11-19
RYS

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 1413115

Stephen Evans,

Claimant,

v.

Nan-Ya Plastics Corp. America,
Employer,

and

New Hampshire Insurance Co.,

Carrier.

ORDER OF FULL COMMISSION

HEARING: Held in Columbia, South Carolina on October 21, 2019

APPEARANCES: Derrick L. Williams for the Respondent Kevin Barth, and Danny Vega for the Appellant/Claimant;

PURPOSE OF HEARING: Hearing was set on Appellant/Claimant's request for review (Form 30 appeal)

DECISION AND ORDER: Commission Panel: Commissioner T. Scott Beck, Commissioner Avery B. Wilkerson, and Commissioner Melody James (chair)

FILED: December 13, 2019

STATEMENT OF THE CASE

The South Carolina Workers' Compensation Commission scheduled the hearing before the undersigned Commissioner on February 7, 2019, pursuant to the Attorney Kevin Barth's Motion to Enforce a Lien and Attorney C. Daniel Vega's Motion for Payment of Attorney's Fees.

Mr. Barth contends that the Claimant authorized him to settle this case for the sum of \$100,000.00. Pursuant to the Contract for Legal Services executed by the client and attorney, Mr. Barth, if terminated by the client, would be entitled to receive 33.3% of any settlement offers made in the case, plus costs. Mr. Barth contends that the parties agreed to settle the matter for \$100,000.00 in early April of 2016, and that he should be entitled to 33.3% of that amount plus costs. He further contends that the Claimant declined to execute the settlement documents in May of 2016, and that on May 31, 2016 Claimant retrieved his file from Mr. Barth and handed his office a letter purporting to have terminated Barth's representation two months earlier, on March 31, 2016.

Claimant contends that Mr. Barth was never authorized to settle the case and that he knew nothing about any settlement discussions. He further claims that he terminated Mr. Barth's representation on March 31, 2016, the date shown on the letter of termination.

Claimant alternatively contends that Mr. Barth should not be entitled to receive any fee for his services basing that contention on the factors outlined in the Glasscock case.

Mr. C. Daniel Vega was retained as claimant's counsel once Mr. Barth was terminated. Mr. Vega ultimately settled Claimant's case for \$150,000.00. Mr. Vega is requesting that the Commission approve his fee request for \$40,000.00 plus costs.

Specifically, the Commissioner ordered the following:

1. Kevin M. Barth's Motion to Enforce Charging Lien is granted, and he is entitled to receive from the settlement proceeds the sum of \$33,333.33, plus \$427.97, for a total of \$33,760.97.

2. C. Daniel Vega's Motion for Payment of Attorney's fees and costs is partially granted and upon the submission of a Form 61 as outlined above will be entitled to receive 33.3% of \$50,000.00, plus costs incurred.

Mr. Vega filed an appeal to the Full Commission.

EVIDENCE OF THE CASE

EVIDENCE OF THE CASE/HEARING TESTIMONY

Testimony of Christina Graves

Ms. Christina Graves testified that she has been the civil paralegal for attorney Kevin M. Barth for approximately 20 years and that she handled all of his civil matters and workers' compensation claims. She further testified that the Claimant hired Mr. Barth to represent him in his workers' compensation claim. She further testified regarding the difficulty surrounding the approval of Claimant's requested surgery.

Ms. Graves then testified that the Claimant agreed to settle his claim for \$100,000.00 on April 5, 2016 because he needed the money, but that the settlement check and settlement documents were not received from defense counsel until early May 2016. In the month between the settlement and the arrival of the settlement documents, Ms. Graves testified that the Claimant called the office numerous times asking about the status of the settlement check and documents. Once the documents arrived, Ms. Graves testified that she contacted the Claimant to come sign the settlement check and documents. When Claimant arrived to execute the documents and check, he met with Ms. Graves as Mr. Barth was not in the office. She testified that while he was reviewing

the documents, he indicated that he was not going to settle the case for that amount of money as it was not sufficient "for what he had been through," and because he had "lost everything".

Ms. Graves testified that Mr. Barth notified defense counsel that the Claimant would not sign the documents and he ultimately returned the check and settlement documents to the defense attorney. She then testified that in late May, Claimant called the office and wanted his file. The file was copied, and the Claimant appeared at the office on May 31, 2016 to retrieve his file and sign a File Release. She then testified that when Claimant retrieved his file, he handed in a white envelope with a letter enclosed. The letter was a letter terminating Mr. Barth's services and was dated March 31, 2016 (two months earlier). However, Ms. Graves testified that the letter was not received by the office until May 31, 2016 when it was hand delivered and the file was retrieved.

Testimony C. Daniel Vega

Mr. Danny Vega testified that he assumed representation of the Claimant and that he represented him through the settlement of his claim. Mr. Vega testified that the Claimant said he had never authorized Mr. Barth to settle his case and as a result, no offer had been made to the Claimant prior to him assuming representation of the Claimant.

Testimony of Stephen Evans

Mr. Stephen Evans testified that he is the Claimant in this matter and originally retained attorney Gerald Malloy to represent him. The Claimant then testified that he terminated Malloy's representation in December of 2015 and did so by certified letter.

He then hired Mr. Barth to represent him in his workers compensation claim in January or February of 2015.

The Claimant also testified that he was in severe pain at the time and that he needed surgery. His surgery was not approved in a timely fashion and the Claimant testified that as a result he was losing faith in Mr. Barth's ability to handle the claim and losing faith in the system. He noted that

the insurance carrier "cut off his checks" a number of times causing he and his family to lose everything they had and forced them to live in a motel.

Claimant testified that he never authorized Mr. Barth to engage in settlement discussions with defense counsel and that he never was aware a settlement offer had been made. Then also testified that he never would have authorized settlement discussions until he had received the surgery he needed.

Claimant then testified that the first time he heard that his case had been settled for \$100,000.00 was when Mr. Barth's paralegal contacted him to come and sign the settlement documents. Claimant testified that he did not know what the documents were, but he went to Mr. Barth's office and met with Ms. Graves, the paralegal, to go over the documents. Mr. Barth was not in the office.

Claimant testified that he had not authorized the settlement and refused to sign the settlement documents. He also testified that because of the purported settlement, his weekly TTD checks were cut off for a number of weeks.

Claimant then testified that he wrote a letter to Mr. Barth terminating his representation and that the letter was written and dated March 31, 2016. He also testified the letter was sent to Mr. Barth by certified mail. In his testimony, Claimant denied delivering the termination letter on May 31, 2016 and denies backdating the letter for March 31, 2016. He testified that he retrieved his file on May 31, 2016 but did not deliver the termination letter at that time. He testified that the letter had been sent on March 31, 2016.

Claimant testified that he then contacted attorney John Etheridge about representing him and Mr. Etheridge referred him to Mr. Vega, whom he hired. After retaining Mr. Vega, Claimant testified that his TTD checks were reinstated, and surgery was approved and completed.

Claimant testified that in January of 2017, he terminated Mr. Vega's representation of him and did so by certified letter. He testified that he then wrote Mr. Vega and requested that he continue representing him and that Mr. Vega agreed to.

He also testified that when Mr. Vega discussed the value of his claim, he was very disappointed. However, Claimant testified that he appeared at a hearing with his attorney and agreed to settle his claim. Claimant then later wrote Mr. Vega indicating that he was dissatisfied with the settlement that had been agreed to. After further discussions between the two, Claimant testified that he agreed to the settlement because his only choices were to settle the claim for that amount or appear at a hearing "and get nothing".

Claimant then testified that he signed the settlement documents and the Form 61. He also testified that he signed a document in Mr. Vega's presence that was designed to ensure that Mr. Barth would not be paid for his services on this claim. Claimant testified that he believes Mr. Vega's paralegal prepared the document and that it was executed in the presence of Mr. Vega and his paralegal.

Claimant testified that even though the case has settled, he believes he is entitled to receive additional surgeries under the workers compensation claim and that he is going to file an appeal in an attempt to have the future surgeries approved.

The matter before the Single Commissioner on February 7, 2019, resulted in a Decision and Order dated July 10, 2019. The Single Commissioner made the following specific Findings of Fact and Conclusions of Law:

1. *That the parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Law, as amended, with Nan-Ya Plastics Corporation of America, as the employer, and New Hampshire Insurance Company, as the carrier.*

2. That Stephen Evans was an employee of Nan-Ya Plastics Corporation of America at the time of the accident giving rise to the within claim.

3. That the Claimant was initially represented in this claim by attorney Gerald Malloy. Attorney Malloy filed a Form 50 on Claimant's behalf (Vega Exhibit 7-2), but the issues were resolved, and a hearing was never held. Vega Exhibit 12-7. Claimant fired attorney Malloy and did so by sending him a certified letter dated December 22, 2014. Vega Exhibits 13-1 through 13-11.

4. That Claimant subsequently retained attorney Kevin Barth to represent him. Claimant signed a Contract for Legal Services. Exhibit A to the Motion to Enforce Charging Lien. This Contract for Legal Services provided as follows: "If I terminate the services of my attorney at any time prior to settlement, then I agree to pay said attorney \$175.00 per hour for all attorney services rendered in this matter, and \$75.00 per hour for all paralegal services rendered in this matter or the contracted contingency fee percentage on any offers that have been made at the time of termination, whichever is greater." (emphasis in original). The contracted contingency percentage is 33.33%, and Claimant agreed to be responsible for the costs incurred in the prosecution of this claim.

5. Attorney Barth filed a Form 50 on Claimant's behalf requesting additional medical treatment for the Claimant. Vega Exhibits 22-1 and 22-2. The Defendant's attorney, John Bruton, filed a Form 51 (Vega Exhibit 20-1) which included a partial acceptance of the claim and a partial denial. The issues raised in the Form 50 were resolved and a hearing was never held.

6. After a medical deposition was taken, the Claimant submitted to an IME and after receiving recommendations for treatment, Claimant and attorney Barth began discussing the possibility of settling the claim because, as the Claimant testified, he had "lost everything". Transcript p. 61.

7. *During the months of March and April of 2016 settlement discussions took place between Barth and Bruton. Claimant contends that these discussions took place without his knowledge or permission. Ultimately, the matter was settled for \$100,000.00 on April 6, 2016. The undersigned bases these findings on a number of documents verifying this finding, including Barth's Exhibit B and the April 5, 2016 email from Mr. Barth to Mr. Bruton which was submitted to the undersigned at the hearing. These findings are also based on the testimony of Christina Graves, Barth's long-time civil paralegal. I find her to be credible and knowledgeable about dates, times and discussions regarding this claim. She testified that the matter was settled in "late March, early April 2016... I believe it was April the 5th of 2016". Transcript p. 18.*

8. *Over the course of the next month there were numerous communications between Barth and Bruton requesting that the settlement documents be expedited. Vega Exhibits 36-9 through 36-13 and Barth's Exhibit B.*

9. *Christina Graves also testified that between the time the claim was settled and early May when the settlement check and documents were sent to Barth, the Claimant contacted the firm numerous times asking about the status of his settlement check and documents. I find this testimony to be credible. Transcript p. 19.*

10. *When the settlement documents arrived, Ms. Graves contacted the Claimant to come in and sign the settlement documents. He appeared at the office to sign the settlement documents "around May the 8th, 9th." Transcript p. 19. The Claimant confirms that he received a call to come to the office to sign documents, which he did. Transcript pp. 68-69. When asked why he appeared to sign documents in May if he had fired Barth on March 31, 2016, his response was "I don't know. I don't know why she called and told me I had to settle — I mean, had to come and sign a paper." Transcript p. 69.*

11. Claimant refused to sign the settlement documents (Confirmed by Vega Exhibit 36-9), and they were ultimately returned by Barth to Bruton by letter of May 13, 2016. Vega Exhibit 28-1. Claimant indicated when he began reading the settlement documents that "he had thought about it, and it just wasn't enough for what he had been through". Transcript p. 20. The undersigned specifically finds that the Claimant knew of the settlement offer, appeared at the attorney's office to sign the settlement documents, and then changed his mind. (The undersigned notes that the Claimant did the very same thing to Mr. Vega later in the case. He authorized attorney Vega to settle his claim for \$150,000.00 on July 26, 2018 but changed his mind and notified Vega in writing on August 13, 2018 that he disavowed the settlement and would prefer to have a hearing.) Vega Exhibits 34-1 through 34-3.

12. In late May of 2016, Claimant called Barth's office and requested a copy of his file. It was made available to him the next day, May 31, 2016. Claimant appeared at the office the next day, where he picked up his file and signed a File Release. Vega Exhibit 27-1. Transcript p. 21.

13. Claimant prepared a letter terminating Barth from representing him in this claim. This letter is dated March 31, 2016 and indicates that the Claimant is not ready to settle his case as he needs more medical attention. Vega Exhibit 27-1.

14. The crux of this matter is when this letter was delivered to Mr. Barth's office. Claimant says it was sent certified on March 31, 2016, although he could produce no evidence that it was. Mr. Barth's office contends that it was hand delivered to the office on May 31, 2016 when Claimant picked up his file. Transcript p. 22-23. The undersigned was put in the very difficult position of weighing the testimony of the Claimant against the testimony of an attorney and paralegal.

15. After carefully considering the credibility of the witnesses, the undersigned gives great weight to the testimony of Mr. Barth's paralegal, Christina Graves. She was very

knowledgeable about the dates, times and discussions surrounding Claimant's termination of Mr. Barth's representation. Specifically, the undersigned finds Ms. Graves' testimony regarding her receipt of the letter of termination on May 31, 2016 to be very credible. Claimant's letter dated March 31, 2016 was not delivered to Mr. Barth until May 31, 2016. Thus, Mr. Barth's services to Claimant were terminated on May 31, 2016.

16. The undersigned does not find Claimant's testimony regarding an earlier delivery date to be credible, particularly in light of the fact that the record contains numerous references to it being sent by certified mail, but Claimant could produce no evidence of certified mailing or delivery. Transcript p. 67-68.

17. Based on the foregoing findings, Mr. Barth's representation of Claimant was terminated after the settlement offer of \$100,000.00 was made to the Claimant and Mr. Barth. His Contract for Legal Services provides for a 33.33% contingency fee on all settlement offers made, plus costs. Mr. Barth's Motion to Enforce Charging Lien is granted and he is entitled to receive the sum of \$33,333.33, plus costs of \$427.97 from the proceeds of this settlement.

18. Claimant further contends that Mr. Barth should not be awarded any attorney's fees in this matter because he allegedly did nothing for the Claimant. Transcript p. 57. The undersigned has carefully considered the Glasscock factors and finds that Mr. Barth satisfies those factors and is entitled to the fee requested.

19. As it pertains to the Claimant and Vega's Motion for Payment of Attorney's Fees and costs, the undersigned finds that Mr. Vega is entitled to an attorney's fee up to 33.33% of the additional settlement amount secured by him of \$50,000.00 plus costs pursuant to R. 67-1205(C)(7) upon his submission of a Form 61 and a proposed Order reflecting same.

20. No hearing costs are assessed in this matter.

CONCLUSIONS OF LAW

In view of these findings and facts, I conclude as matters of law:

1. *That the parties to this proceeding are subject to and bound by the South Carolina Workers= Compensation Act.*
2. *That this is dispute over attorney's fees to be paid from the \$150,000.00 settlement of Claimant's claim. Attorney's fees in workers compensation cases are subject to approval of the Commission. Additionally, no attorney may receive a fee in a worker's compensation claim until it has been approved by the Commission. S.C. Code Ann. § 42-15-90 (A) and (B).*
3. *A Claimant and attorney can agree on a contingency fee arrangement. However, "an attorney may charge up to, but not more than, 33.3% of the total amount of compensation..." R. 67-1205(C).*
4. *"When an attorney is employed after the employer's representative makes a written offer of settlement to the claimant, the attorney shall base his or her fee on the amount of compensation secured in excess of the settlement offer. The fee shall not exceed 33.3% of the difference between the offer of settlement and the amount of compensation secured." R. 67-1205(C)(7).*
5. *"A lien for the payment of an attorney's fee out of the proceeds of a judgment obtained as a result of an attorney's efforts, however, may be created by an express agreement between an attorney and his client. 7 Am. Jur. 2d Attorneys at Law § 326 at 338 (1980); 7A C.J.S. Attorney & Client § 360 at 717 (1980). Indeed, an agreement between an attorney and his client "that the attorney shall have a lien on the judgment, is decisive as to the existence of the lien and its amount, and constitutes a valid equitable assignment pro tanto which attaches to the judgment as soon as it is entered." Adair v. First National Bank, 139 S.C. 1, 6, 137 S.E. 192 (1924); see also 7A C.J.S. Attorney & Client § 360 at 717-18 (1980). Our courts will recognize an*

equitable lien created by contract in proper cases. (citations omitted) Eleazer v. Hardaway Concrete, 281 S.C. 174, 315 S.E. 2d 174 (Ct. App. 1984)

6. *In Lester v. Dawson, 327 S.C. 263, 491 S.E.2d 240 (1997) the Supreme Court stated first that "an attorney's charging lien is an 'equitable right to have the fee and costs due an attorney for services rendered in a legal proceeding secured to him out of any judgment or recovery obtained therein.'" Id. at 348, 315 S.E.2d at 177. "Observing that this kind of lien protects only costs and disbursements, the Court nevertheless found that "[a] lien for the payment of an attorney's fee out of the proceeds of a judgment obtained as a result of an attorney's efforts, however, may be created by an express agreement between an attorney and his client." Id. (emphasis added). Because the attorney and client in Eleazer had specifically agreed that the attorneys' fee would be secured by a lien upon the proceeds of any judgment the attorney obtained for the client, the Court found there was an equitable lien....We believe the holding in Eleazer is correct."*

7. *In Glasscock v. Glasscock, 304 S.C. 158, 403 S.E.2d 313 (S.C., 1991) the Court outlined the six factors to be considered in determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.*

STANDARD OF REVIEW

The Full Commission is the ultimate fact finder in Workers' Compensation cases and is not bound by the Single Commissioner's findings of fact. Ross v. American Red Cross, 298 S.C. 490, 381 S.E.2d 728 (1989). *See also* Hoxit v. Michelin Tire Corp., 304 S.C. 461, 405 S.E.2d 407 (1991) (Full Commission is fact finder and it is not within Supreme Court's province to reverse

Commission's findings if they are supported by substantial evidence). Although it is logical for the Full Commission, which did not have the benefit of observing the witnesses, to give weight to the Single Commissioner's opinion, the Full Commission is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the Single Commissioner. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 414 S.E.2d 162 (1992). "From time immemorial, the Courts of this State have said that it is the duty of a reviewing body, in examining a record, to carefully review the entire record and to give due weight to the fact that the original fact finder 'saw the witnesses, heard the testimony delivered from the stand, and had the benefit of that personal observation of and contact with parties and witnesses which may be of peculiar value in arriving at a correct result.'" Barr's Next of Kin v. Cherokee, Inc., 220 S.C. 447, 68 S.E.2d 440, 442 (1951) *citing* Baylor et. al. Bath et. al., 189 S.C. 269, 1 S.E.2d 139, 143 (1938).

APPLICABLE LAW, REGULATIONS, AND ARGUMENT.

S.C. Regulation, Section 67-1205(7) provides as follows: "When an attorney is employed after the employer's representative makes a written offer of settlement to the claimant, the attorney shall base his or her fee on the amount of compensation secured in excess of the settlement offer. The fee shall not exceed 33.3% of the difference between the offer of settlement and the amount of compensation secured."

This lien arises as a result of a contract between the Claimant and Barth and is enforceable pursuant to the Court's ruling in Eleazer v. Hardaway Concrete, 281 S.C. 174, 315 S.E. 2d 174 (Ct. App. 1984).

In Eleazer, the Court of Appeals found:

A lien for the payment of an attorney's fee out of the proceeds of a judgment obtained as a result of an attorney's efforts, however, may be created by an express agreement between an attorney and his client. 7 Am. 349 Jur. 2d *Attorneys at Law* § 326 at 338 (1980); 7A C.J.S. *Attorney & Client* § 360 at 717 (1980). **Indeed, an agreement between an attorney and his client "that the attorney shall have a lien on the judgment, is decisive as to the existence of the lien and its amount, and constitutes a valid equitable assignment *pro tanto* which attaches to the judgment as soon as it is entered."** Adair

v. First National Bank, 139 S.C. 1, 6, 137 S.E. 192 (1924); see also 7A C.J.S. *Attorney & Client* § 360 at 717-18 (1980). Our courts will recognize an equitable lien created by contract in proper cases. See Adair v. First National Bank, *supra*; Simmons v. Reid, *supra*; cf. Black v. B.B. Kirkland Seed Co., 163 S.C. 222, 161 S.E. 489 (1931); In re Wells, 43 S.C. 477, 21 S.E. 334 (1895); Georgia-Carolina Gravel Co. v. Blassingame, 129 S.E. 18, 123 S.E. 324 (1924). (emphasis added)

The South Carolina Supreme Court reaffirmed this position in Lester v. Dawson, 327 S.C. 263, 491 S.E.2d 240 (1997) wherein they found:

"It found first that an attorney's charging lien is an "equitable right to have the fee and costs due an attorney for services rendered in a legal proceeding secured to him out of any judgment or recovery obtained therein." Id. at 348, 315 S.E.2d at 177. Observing that this kind of lien protects only costs and disbursements, the Court nevertheless found that "[a] lien for the payment of an attorney's fee out of the proceeds of a judgment obtained as a result of an attorney's efforts, however, may be created by an express agreement between an attorney and his client." Id. (emphasis added). Because the attorney and client in Eleazer had specifically agreed that the attorneys' fee would be secured by a lien upon the proceeds of any judgment the attorney obtained for the client, the Court found there was an equitable lien.... **We believe the holding in Eleazer is correct.** (emphasis added)".

As a result of a hearing held in the front of the Appellate Panel, the Appellate Panel has considered the matter and has **Affirmed the Order of the Single Commissioner in Full**. The Appellate Panel makes the following Findings of Fact and Conclusions of Law:

1. That the parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Law, as amended, with Nan-Ya Plastics Corporation of America, as the employer, and New Hampshire Insurance Company, as the carrier.
2. That Stephen Evans was an employee of Nan-Ya Plastics Corporation of America at the time of the accident giving rise to the within claim.
3. That the Claimant was initially represented in this claim by attorney Gerald Malloy. Attorney Malloy filed a Form 50 on Claimant's behalf (Vega Exhibit 7-2), but the issues were resolved, and a hearing was never held. Vega Exhibit 12-7. Claimant fired attorney Malloy and

did so by sending him a certified letter dated December 22, 2014. Vega Exhibits 13-1 through 13-11.

4. That Claimant subsequently retained attorney Kevin Barth to represent him. Claimant signed a Contract for Legal Services. Exhibit A to the Motion to Enforce Charging Lien. This Contract for Legal Services provided as follows: "If I terminate the services of my attorney at any time prior to settlement, then I agree to pay said attorney \$175.00 per hour for all attorney services rendered in this matter, and \$75.00 per hour for all paralegal services rendered in this matter or the contracted contingency fee percentage on any offers that have been made at the time of termination, **whichever is greater.**" (emphasis in original). The contracted contingency percentage is 33.33%, and Claimant agreed to be responsible for the costs incurred in the prosecution of this claim.

5. Attorney Barth filed a Form 50 on Claimant's behalf requesting additional medical treatment for the Claimant. Vega Exhibits 22-1 and 22-2. The Defendant's attorney, John Bruton, filed a Form 51 (Vega Exhibit 20-1) which included a partial acceptance of the claim and a partial denial. The issues raised in the Form 50 were resolved and a hearing was never held.

6. After a medical deposition was taken, the Claimant submitted to an IME and after receiving recommendations for treatment, Claimant and attorney Barth began discussing the possibility of settling the claim because, as the Claimant testified, he had "lost everything". Transcript p. 61.

7. During the months of March and April of 2016 settlement discussions took place between Barth and Bruton. Claimant contends that these discussions took place without his knowledge or permission. Ultimately, the matter was settled for \$100,000.00 on April 6, 2016. The undersigned bases these findings on a number of documents verifying this finding, including Barth's Exhibit B and the April 5, 2016 email from Mr. Barth to Mr. Bruton which was submitted

to the undersigned at the hearing. These findings are also based on the testimony of Christina Graves, Barth's long-time civil paralegal. We find her to be credible and knowledgeable about dates, times and discussions regarding this claim. She testified that the matter was settled in "late March, early April 2016... I believe it was April the 5th of 2016". Transcript p. 18.

8. Over the course of the next month there were numerous communications between Barth and Bruton requesting that the settlement documents be expedited. Vega Exhibits 36-9 through 36-13 and Barth's Exhibit B.

9. Christina Graves also testified that between the time the claim was settled and early May when the settlement check and documents were sent to Barth, the Claimant contacted the firm numerous times asking about the status of his settlement check and documents. We find this testimony to be credible. Transcript p. 19.

10. When the settlement documents arrived, Ms. Graves contacted the Claimant to come in and sign the settlement documents. He appeared at the office to sign the settlement documents "around May the 8th, 9th." Transcript p. 19. The Claimant confirms that he received a call to come to the office to sign documents, which he did. Transcript pp. 68-69. When asked why he appeared to sign documents in May if he had fired Barth on March 31, 2016, his response was "I don't know. I don't know why she called and told me I had to settle — I mean, had to come and sign a paper." Transcript p. 69.

11. Claimant refused to sign the settlement documents (Confirmed by Vega Exhibit 36-9), and they were ultimately returned by Barth to Bruton by letter of May 13, 2016. Vega Exhibit 28-1. Claimant indicated when he began reading the settlement documents that "he had thought about it, and it just wasn't enough for what he had been through". Transcript p. 20. The undersigned specifically finds that the Claimant knew of the settlement offer, appeared at the attorney's office to sign the settlement documents, and then changed his mind. (The undersigned

notes that the Claimant did the very same thing to Mr. Vega later in the case. He authorized attorney Vega to settle his claim for \$150,000.00 on July 26, 2018 but changed his mind and notified Vega in writing on August 13, 2018 that he disavowed the settlement and would prefer to have a hearing.) Vega Exhibits 34-1 through 34-3.

12. In late May of 2016, Claimant called Barth's office and requested a copy of his file. It was made available to him the next day, May 31, 2016. Claimant appeared at the office the next day, where he picked up his file and signed a File Release. Vega Exhibit 27-1. Transcript p. 21.

13. Claimant prepared a letter terminating Barth from representing him in this claim. This letter is dated March 31, 2016 and indicates that the Claimant is not ready to settle his case as he needs more medical attention. Vega Exhibit 27-1.

14. The crux of this matter is when this letter was delivered to Mr. Barth's office. Claimant says it was sent certified on March 31, 2016, although he could produce no evidence that it was. Mr. Barth's office contends that it was hand delivered to the office on May 31, 2016 when Claimant picked up his file. Transcript p. 22-23. The undersigned was put in the very difficult position of weighing the testimony of the Claimant against the testimony of an attorney and paralegal.

15. After carefully considering the credibility of the witnesses, the undersigned gives great weight to the testimony of Mr. Barth's paralegal, Christina Graves. She was very knowledgeable about the dates, times and discussions surrounding Claimant's termination of Mr. Barth's representation. Specifically, the undersigned finds Ms. Graves' testimony regarding her receipt of the letter of termination on May 31, 2016 to be very credible. Claimant's letter dated March 31, 2016 was not delivered to Mr. Barth until May 31, 2016. Thus, Mr. Barth's services to Claimant were terminated on May 31, 2016.

16. The undersigned does not find Claimant's testimony regarding an earlier delivery date to be credible, particularly in light of the fact that the record contains numerous references to it being sent by certified mail, but Claimant could produce no evidence of certified mailing or delivery. Transcript p. 67-68.

17. Based on the foregoing findings, Mr. Barth's representation of Claimant was terminated after the settlement offer of \$100,000.00 was made to the Claimant and Mr. Barth. His Contract for Legal Services provides for a 33.33% contingency fee on all settlement offers made, plus costs. Mr. Barth's Motion to Enforce Charging Lien is granted and he is entitled to receive the sum of \$33,333.33, plus costs of \$427.97 from the proceeds of this settlement.

18. Claimant further contends that Mr. Barth should not be awarded any attorney's fees in this matter because he allegedly did nothing for the Claimant. Transcript p. 57. The undersigned has carefully considered the *Glasscock* factors and finds that Mr. Barth satisfies those factors and is entitled to the fee requested.

19. As it pertains to the Claimant and Vega's Motion for Payment of Attorney's Fees and costs, the undersigned finds that Mr. Vega is entitled to an attorney's fee up to 33.33% of the additional settlement amount secured by him of \$50,000.00 plus costs pursuant to R. 67-1205(C)(7) upon his submission of a Form 61 and a proposed Order reflecting same.

20. No hearing costs are assessed in this matter.

CONCLUSIONS OF LAW

**IN VIEW OF THESE FINDINGS OF FACT, AND AS PROVIDED BY S.C. CODE ANN.
§ 42-17-40 AS AMENDED, WE CONCLUDE AS MATTERS OF LAW:**

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

2. That this is dispute over attorney's fees to be paid from the \$150,000.00 settlement of Claimant's claim. Attorney's fees in workers compensation cases are subject to approval of the Commission. Additionally, no attorney may receive a fee in a worker's compensation claim until it has been approved by the Commission. S.C. Code Ann. § 42-15-90 (A) and (B).

3. A Claimant and attorney can agree on a contingency fee arrangement. However, "an attorney may charge up to, but not more than, 33.3% of the total amount of compensation..." R. 67-1205(C).

4. "When an attorney is employed after the employer's representative makes a written offer of settlement to the claimant, the attorney shall base his or her fee on the amount of compensation secured in excess of the settlement offer. The fee shall not exceed 33.3% of the difference between the offer of settlement and the amount of compensation secured." R. 67-1205(C)(7).

5. "A lien for the payment of an attorney's fee out of the proceeds of a judgment obtained as a result of an attorney's efforts, however, may be created by an express agreement between an attorney and his client. 7 Am. Jur. 2d Attorneys at Law § 326 at 338 (1980); 7A C.J.S. Attorney & Client § 360 at 717 (1980). Indeed, an agreement between an attorney and his client "that the attorney shall have a lien on the judgment, is decisive as to the existence of the lien and its amount, and constitutes a valid equitable assignment pro tanto which attaches to the judgment as soon as it is entered." Adair v. First National Bank, 139 S.C. 1, 6, 137 S.E. 192 (1924); see also 7A C.J.S. Attorney & Client § 360 at 717-18 (1980). Our courts will recognize an equitable lien created by contract in proper cases. (citations omitted) Eleazer v. Hardaway Concrete, 281 S.C. 174, 315 S.E. 2d 174 (Ct. App. 1984)

6. In Lester v. Dawson, 327 S.C. 263, 491 S.E.2d 240 (1997) the Supreme Court stated first that “an attorney’s charging lien is an ‘equitable right to have the fee and costs due an attorney for services rendered in a legal proceeding secured to him out of any judgment or recovery obtained therein.’” Id. at 348, 315 S.E.2d at 177. “Observing that this kind of lien protects only costs and disbursements, the Court nevertheless found that “[a] lien for the payment of an attorney’s fee out of the proceeds of a judgment obtained as a result of an attorney’s efforts, however, may be created by an express agreement between an attorney and his client.” Id. (emphasis added). Because the attorney and client in Eleazer had specifically agreed that the attorneys’ fee would be secured by a lien upon the proceeds of any judgment the attorney obtained for the client, the Court found there was an equitable lien.... We believe the holding in Eleazer is correct.”

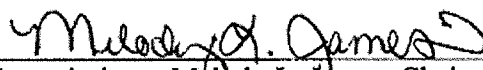
7. In Glasscock v. Glasscock, 304 S.C. 158, 403 S.E.2d 313 (S.C., 1991) the Court outlined the six factors to be considered in determining a reasonable attorney’s fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.

IT IS THEREFORE ORDERED AS FOLLOWS:

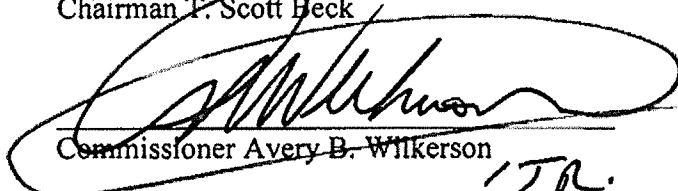
THEREFORE, IT IS HEREBY ORDERED that Kevin M. Barth’s Motion to Enforce Charging Lien is granted, and he is entitled to receive from the settlement proceeds the sum of \$33,333.33, plus \$427.97, for a total of \$33,760.97.

THEREFORE, IT IS HEREBY ORDERED that C. Daniel Vega’s Motion for Payment of Attorney’s fees and costs is partially granted and upon the submission of a Form 61 as outlined above will be entitled to receive 33.3% of \$50,000.00, plus costs incurred.

**BY FULL AFFIRMATION OF THE SINGLE COMMISSIONER'S
DECISION & ORDER, IT IS SO ORDERED**


Commissioner Melody L. James, Chair


Chairman T. Scott Beck


Commissioner Avery B. Wilkerson

ITR.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on December 13, 2019

BEFORE THE SOUTH CAROLINA

WORKER'S COMPENSATION COMMISSION

WCC FILE NO.: 1413115

Stephen M. Evans,	)	
	)	
Claimant,	)	
	)	
v.	)	
	)	
Nan Ya Plastics,	)	
	)	MOTION TO ENFORCE CHARGING LIEN
Employer,	)	
	)	
and	)	
	)	
New Hampshire Insurance Co.,	)	
	)	
Carrier.	)	
	)	

YOU WILL PLEASE TAKE NOTICE that the undersigned will move before the South Carolina Workers' Compensation Commission for an Order enforcing the undersigned's charging lien on \$100,000.00 of the settlement proceeds in this action.

The basis for this Motion is that the undersigned represented the Claimant pursuant to the Contract for Legal Services attached hereto and incorporated herein by reference as Exhibit A. This Contract provides as follows: "If I terminate the services of my attorney at any time prior to settlement, then I agree to pay said attorney \$175.00 per hour for all attorney services rendered in this matter, and \$75.00 per hour for all paralegal services rendered in this matter or the contracted contingency fee percentage on any offers that have been made at the time of termination, **whichever is greater.**" (emphasis in original).

#1
KMB
ROA 0043

On April 6, 2016, the workers compensation carrier ~~ROA-0044~~ offered to settle this claim on a clincher basis for the sum of \$100,000.00, as shown in the email from attorney John Bruton to the undersigned, attached hereto and incorporated as Exhibit B. The settlement check was received by John Bruton on May 3, 2016, as appears in the email attached hereto and incorporated herein as Exhibit C. The Claimant appeared to sign his settlement documents on May 9, 2016, at which time he refused to execute the settlement documents (See email attached hereto and incorporated herein as Exhibit D.)

The Claimant subsequently notified the undersigned that he no longer desired his representation. Claimant signed a file release on May 31, 2016. By letter dated June 1, 2016, the undersigned sent a letter to John Bruton notifying him of the lien being claimed (See letter attached hereto and incorporated herein as Exhibit E.) This notification contained the following language: "Please also be advised that pursuant to the Fee Contract that Mr. Evans signed, a copy of which is enclosed, I have a lien on any recovery he may receive in the amount of \$33,761.30 (\$33,333.33 as my 1/3 of the \$100,000 offer plus \$427.97 in costs). Please consider this letter as formal notice of my lien in this matter." Upon information and belief, this lien is enforceable pursuant to *Eleazer v. Hardaway Concrete Company*, 281 S.C. 344, 315 S.E. 2d 174 (Ct. App., 1984). A Consent Order Relieving Counsel was filed on July 6, 2016.

Attorney C. Daniel Vega undertook representing the Claimant. Upon information and belief, Mr. Vega settled this claim for the sum of \$150,000.00. By letter dated September 11, 2018, Mr. Vega notified the undersigned that he nor the Claimant would be honoring the lien except as to the costs incurred. (See letter attached hereto and incorporated herein as Exhibit F.)

#2
ROA-0044
KMB

ROA 0045
The undersigned would respectfully request that this Honorable Commission set a hearing on this matter, and issue an Order requiring the settlement funds to be held in escrow pending further Court Order, and enforcing the undersigned's charging lien in the sum of \$33,333.33 in attorney's fees and \$452.97 in costs.

RESPECTFULLY SUBMITTED.



KEVIN M. BARTH
POST OFFICE BOX 107
FLORENCE, SOUTH CAROLINA 29503
(843) 662-6301
kbarth@bbllawsc.com

November 13, 2018

#3

ROA 0045

CONTRACT FOR LEGAL SERVICES

ROA 0046

I hereby retain and employ Kevin M. Barth, **ESQUIRE** (hereinafter "Attorney") as my attorney to represent me in the following matter:

WORKERS COMP ACCIDENT vs. NAV-YA

For his services, I agree to pay my Attorney as follows:

A. 33 1/3 percent of whatever may be recovered from the claim if settlement is made without filing suit¹.

B. 33 1/3 percent of whatever may be recovered from the claim after suit is filed. (See footnote 1)

I agree to pay all necessary costs of processing the claim, including, without limitation, filing fees, discovery costs, service of process, court costs and travel, witness fees, medical records, medical reports, investigative costs, telephone and postage. From time to time, I understand that Attorney may advance costs on my behalf. Any such costs not previously paid by me are to be deducted from my share of any recovery as outlined below; however, I understand that costs and expenses must be paid in full whether or not there is any recovery. I will pay these costs as taxed by the court and/or as billed by Attorney.

I further authorize my Attorney, in appropriate cases, to pay from my share of the proceeds of recovery any unpaid amounts due health providers for services rendered in connection with this claim. I further acknowledge that my attorney **MUST** protect known liens or assignments signed by me, and that if there is a dispute between me and a health care provider, the attorney must hold the money in escrow until that dispute is resolved.

I further understand that I may terminate the services of my Attorney at any time, but that such termination will not relieve me of my obligation to pay him any outstanding balance owed based upon his hourly services computed to the date of such termination. If I terminate the services of my Attorney at any time prior to settlement, then I agree to pay said Attorney \$175.00 per hour for all attorney services rendered in this matter, and \$75.00 per hour for all paralegal services rendered in this matter or the contracted contingency fee percentage on any offers that have been made at the time of termination, **whichever is greater**. Attorney will also be entitled to reimbursement for costs. To secure payment by me to the firm for all expenses, costs and attorney fees I am obligated to pay under this agreement, I hereby grant the firm a charging lien applicable to any and all recoveries in this matter whether by settlement, collection of a judgment or otherwise.

I further understand that unless specified above, my Attorney shall not be required to pursue any appeal in this representation without specific

¹ The contingency fee is to be determined based on the gross recovery. Litigation costs and expenses are to be deducted after the contingency fee is calculated, and are to be deducted from the client's portion of the proceeds.

further agreement as to the fee, nor shall he be required to provide further services at the conclusion of the case without further agreement as to fees, whether such services relate to the enforcement or modification of the order of judgment obtained in my case. I understand that unless otherwise specified, this agreement only applies through the trial stage, and does not include any form of appellate proceedings, and that my Attorney has the right to terminate this contract at any time, and that if he elects to terminate, he shall still be entitled to payment for his services and costs as set forth in the above paragraph concerning termination by the client.

I acknowledge that NO GUARANTEE of any results, recovery, or outcome has been made to me by my Attorney. Attorney does agree to use his best professional judgment in handling my case and advising me in regard to what actions I am to take.

I further acknowledge and agree, by the signing of this letter, to keep this office advised of my whereabouts at all times, shall appear on reasonable notice at any and all depositions and Court appearances, and shall comply with all reasonable requests of this office in connection with the preparation and presentation of the aforesaid action. I understand my cooperation is a basis of this agreement/contract, and a failure to cooperate, disappearance for 6 months or more without contacting my attorney or leaving a forwarding address, is a material breach, and just and adequate cause for my attorney to withdraw as counsel without further notice to me.

I understand that you reserve the right to destroy all files after 10 years. In the event there are any original documents in my file which I wish to have returned to me upon conclusion of this case, I understand it is my responsibility to request same. Further, if I wish to receive my original file instead of you destroying it, I need to advise you in writing. This notice would be attached to the front of my file and the file would then be provided to me instead of it being destroyed.

I have read and fully understand this contract and I hereby acknowledge receipt of a copy.

NAME: M. W. [Signature]

DATED: 12-29-14

ACCEPTED BY: [Signature]
Kevin M. Barth

Signed this 29th day of December 2018

From: Bruton, John [mailto:jbruton@hsblawfirm.com]

Sent: Wednesday, April 06, 2016 5:46 PM

To: Kevin Barth

Subject: RE: Stephen Evans v. Nan Ya

ROA 0048

Kevin,

We can pay \$100K to end this on a clincher. Please email me your firm's tax ID number asap so I can get moving on the check.

Due to the size of the of the check it's probably going to take 10 days or so to get it funded and sent to my office. Hopefully Mr. Evans can hold it together while we're waiting for the check to arrive.

Meanwhile, please call me if you have any questions. Thanks.

John Bruton
Haynsworth Sinkler Boyd, P.A.
803.540.7861

ROA 0048



From: Bruton, John [mailto:jbruton@hsblawfirm.com]

Sent: Tuesday, May 03, 2016 10:58 AM

To: Kevin Barth

Subject: FW: Stephen Evans

ROA 0049

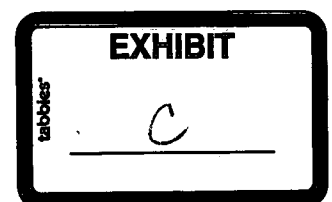
Kevin,

The check has arrived. I will put it in the mail to you today along with the clincher agreement and Form 19s unless you want to send someone to Columbia to pick it up.

Please let me know. Thanks.

John

ROA 0049



Kevin Barth

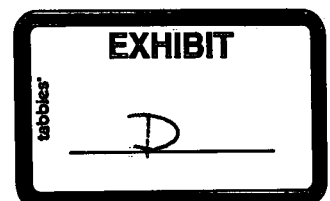
ROA 0050

From: Kevin Barth
Sent: Monday, May 9, 2016 10:10 AM
To: 'Bruton, John'
Subject: RE: Stephen Evans

Stephen came to the office to sign the documents. I was out at the time. He blew a gasket and called me this AM. Shock of shocks. He will not sign it and wants me to file a 50 for his surgery. I'm terribly sorry. I was afraid this would happen, and it did. Just wanted to let you know. I'm going to hold the settlement documents a day or two and maybe he'll change his mind.

Kevin M. Barth, Esquire
Barth, Ballenger and Lewis, LLP
Post Office Box 107
Florence, SC 29503
(o) 843-662-6301
(f) 843-664-8384
email: kbarth@hbbh.net

ROA 0050



Barth, Ballenger & Lewis, LLP

ROA 0051

Attorneys At Law
205 North Irby Street
Post Office Box 107
Florence, South Carolina 29503
Phone: 843-662-6301
Fax: 843-664-8384
Web: bblawsc.com

Kevin M. Barth
E. Guy Ballenger
Nicholas W. Lewis
Brendan P. Barth

Michael Ballenger (Retired)

June 1, 2016

John C. Bruton, Jr.
P.O. Box 11889
Columbia, SC 29211-1889

Re: Stephen W. Evans v. Nan Ya Plastics
Case No. 1413115

Dear John:

Enclosed, please find a Consent Order Relieving Counsel with regard to the above matter. Mr. Evans picked up his file from my office yesterday and indicated that he no longer wished for me to continue representing him. I would appreciate you signing the Consent Order and returning it to me in the envelope provided.

Please also be advised that pursuant to the Fee Contract that Mr. Evans signed, a copy of which is enclosed, I have a lien on any recovery he may receive in the amount of \$33,761.30 (\$33,333.33 as my 1/3 of the \$100,000 offer plus \$427.97 in costs). Please consider this letter as formal notice of my lien in this matter.

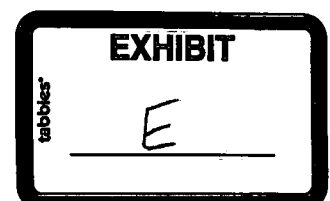
With best regards, I am

Sincerely,

Kevin M. Barth
kbarth@hbbh.net

KMB/chg
enclosure

ROA 0051





Part of the



ROA 0052

Licensed to practice
in South Carolina,
North Carolina,
Georgia and the
District of Columbia

CHAPPELL SMITH & ARDEN, P.A.

PO Box 12330
Columbia, SC 29211
803.929.3600
Fax 803.929.3604
800.531.9780

www.CSA-LAW.com

September 11, 2018

Kevin Barth
P.O. Box 107
Florence, SC 29503

Re: Stephen Evans v. Nan Ya Plastics
SCWCC No.: 1413115

Dear Kevin:

I am in receipt of a lien for a fee you are asserting in the matter of Stephen Evans v. Nan Ya Plastics from John Bruton. I have discussed this matter with Mr. Evans. Based on the information I have, and the amount of work I have performed on behalf of Mr. Evans, I am respectfully going to dispute the lien. I am willing to protect the costs incurred during your representation of Mr. Evans. In order to resolve this matter feel free to contact me. I am, however, in the process of requesting a hearing before the commission for approval of the fee. I will copy you on the hearing requests and notice of hearing.

Should you have questions or concerns regarding any issues raised in this letter feel free to contact me. Thank you for your continuing cooperation in this matter. I remain,

Very truly yours,

C. Daniel Vega
Danny Vega
dvega@csa-law.com
Direct Dial: 803-509-5830

CDV/CDV

Defense counsel:
John C. Bruton, Esq.
Haynsworth Sinkler & Boyd
P.O. Box 11889
Columbia, SC 29211-1889

Co-counsel:
Johnny Etheridge, Esq.
Post Office Drawer 6557 Florence, SC 29502

ROA 0052

EXHIBIT

F

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO: 1413115

Stephen Evans,

Claimant,

vs.

Nan Ya Plastics,

Employer,

New Hampshire Insurance Co.,

Carrier/Defendants.

**MOTION FOR PAYMENT OF
ATTORNEY'S FEE AND COSTS**

TO: MELODY JAMES, ESQ., COMMISSIONER, SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION, KEVIN BARTH, ESQ., FLORENCE, S.C., AND JOHN BRUTON, ESQ., FLORENCE, S.C.

MOTION

This motion arises from the issuance of a lien by attorney Kevin Barth, of Florence, to Stephen Evans, Claimant, and his attorney of record, C. Daniel Vega, of Columbia. Defense attorney John Bruton, of Florence, brought attorney Barth's lien for attorney's fee to the Commission's attention on August 29, 2018, at a hearing requested by the Claimant. Attorney Barth first contacted attorney Vega directly by telephone on September 09, 2018, demanding payment of \$33,333.33, plus costs, "unless you got something that says otherwise." On September 20, 2018, Barth sent a follow up letter to Vega, advising Vega that Barth is entitled to a fee and costs of \$33,761.28. Attorney Barth then issued a Motion to Enforce Charging Lien on November 14, 2018.

Pursuant to the facts to be demonstrated on the record, and South Carolina governing legal authority, Claimant and his attorney respectfully request the Commission *not* approve attorney Barth's purported fee and costs of \$33,761.28. Conversely, Claimant requests the Commission

approve attorney Vega's Form 61 Attorney Fee Petition of \$47,291.65. In support of this requests

Claimant would demonstrate the following:

1. **Whether attorney Barth is barred from asserting a lien against Claimant's compensation when attorney Barth sought and received a compromise settlement contrary to specific written instructions given to attorney Barth, in a letter dated March 31, 2016, in which Claimant terminated attorney Barth's services, and instructed attorney Barth not to resolve the claim until after Claimant was able to secure approval for the surgery requested on February 10, 2016 by the authorized treating physician.**
2. **Whether attorney Barth is barred from asserting a lien when attorney Barth failed to comply with the statutory and regulatory requirements which govern payment of attorney fees and costs to be paid for representation in a workers' compensation claim.**
3. **Whether attorney Barth is barred from asserting a lien when the fee is not reasonable pursuant to the standard of *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991).**

FACTS TO BE DEMONSTRATED

Claimant suffered an admitted injury by accident to the spine on September 04, 2014, when he walked under a roll up door that came down on him, struck him in the head and crushed him to the ground. This is a lengthy claim that was not resolved until September of 2018. The dispute over the fee is fact specific so the following summary of evidence to be provided at the hearing is necessary to an understanding of the motion:

1. Employer files a form 12A First Report of Injury on September 25, 2014.
2. Claimant writes twelve pages of hand written notes between the date of injury and September 27, 2014. Claimant writes about the accident, the injury, the witnesses and co-workers involved in the claim, the medical care he sought and received, comments made, and his frustration with the way the claim was being handled. Ex. 3.
3. Gerald Malloy, Esq., of Hartsville, files a letter of representation as Claimant's attorney of record.¹ Ex. 2.
4. On October 29, 2014, Claimant was sent a letter by Adrian Harris, Director of Safety, informing Claimant he must return to work on November 01, 2014. Ex. 4.

¹ Gerald Malloy, Esq., is a member of the South Carolina Senate, representing the 29th District, who was acting in his capacity as an attorney with the S.C. bar and is therefore, with all due respect, referred to as an attorney in this motion.

5. John Bruton, attorney for the employer, files a letter of representation on November 04, 2014. Ex. 5.
6. Attorney Bruton subsequently files a Form 15 on November 11, 2014, suspending Claimant's TTD benefits. Ex. 6.
7. Attorney Malloy, requests a hearing pursuant to the Form 15 on November 13, 2014. Ex. 6.
8. On November 24, 2014, the parties are issued a hearing notice for date of hearing December 11, 2014. Ex. 7.
9. On December 10, 2014, attorney Bruton sends an email to the Commission indicating the parties have resolved the issues to be litigated at the hearing, and based on medical evidence, the Claimant is to remain out of work. The defendants purportedly agreed to continue payment of TTD to the Claimant. The Commission informs the parties a consent order must be filed with the Commission. Ex. 12.
10. In a letter dated December 22, 2014, Claimant informs attorney Malloy he is terminating "our professional relationship" and requests a copy of his case file. Evans writes he intends to retain other counsel. Ex. 13.
11. In a letter dated December 22, 2014, attorney Malloy informs Claimant he is terminating his relationship with the Claimant, forwarding a copy of the file to the Claimant and requesting Claimant sign and return the Motion and Order Relieving Counsel. Ex. 14, 15.
12. Attorney Malloy files a motion to be relieved as counsel with the Commission on December 28, 2014. Ex. 17.
13. Claimant writes a second letter to attorney Malloy on December 28, 2014, stating "I am very sorry on how things ended up with us..." and "God bless you my friend..." Ex. 16.
14. Claimant retains attorney Kevin Barth, of Florence, with a contract for legal services signed December 29, 2014. Ex. 18.
15. Attorney Barth files a Form 50 request for a hearing on June 08, 2015 contending Claimant is in need of medical care and treatment. Ex. 19.
16. Attorney Bruton files a Form 51 partial admission on June 24, 2015. Ex. 20.
17. Attorney Barth sends Claimant a letter on July 16, 2015 with a copy of the hearing notice attached. At the time the letter was sent Claimant was not living at the address listed on the letter. Ex. 22.
18. A Form 18 filed August 28, 2015, showing the amount of compensation paid to date as \$28,743.09; with medical payments to date being \$24,182.27. Ex. 21.
19. Claimant underwent an independent medical evaluation with Stephen Storick, MD, on October 07, 2014. In his evaluation Dr. Storick recommends a neurosurgical evaluation.
APA

20. On October 30, 2015, Barth advises Bruton of the IME performed by Dr. Storick. Ex. 23.
21. Attorney Barth and attorney Bruton purportedly enter into an agreement in which the hearing is cancelled and Claimant is scheduled to be treated by a neurosurgeon.
22. Claimant then undergoes an evaluation with Brett Gunter, MD, on November 17, 2015, as scheduled by the defendants, in which Dr. Gunter orders diagnostic imaging. APA
23. In a follow up medical note dated February 10, 2016, Dr. Gunter recommends Claimant undergo cervical decompression and disc replacement for compressive cervical myelopathy at C6-7. APA
24. The same day, February 10, 2016, Kathy Forsyth, RN, CCM, the nurse case manager, sends an email to the adjuster advising the adjuster Dr. Gunter is requesting a surgical disc replacement. Forsyth tells the adjuster Claimant's blood pressure is elevated and Claimant can not afford the medication. Forsyth further tells the adjuster Claimant is losing feeling in his left arm, left buttock and leg, and is having chronic headaches. Forsyth ask the adjuster whether she would prefer to do a second opinion. This email is addressed "To: brenda_gay@gbtpa.com, jbruton@hsblawfirm.com, cgraves@hbbh.net." Ex. 24.
25. On March 01, 2016, Forsyth sends a second email to the adjuster requesting authorization for the surgery. This email is also addressed "To: brenda_gay@gbtpa.com, jbruton@hsblawfirm.com, cgraves@hbbh.net." Ex. 25.
26. A Form 18 filed March 03, 2016, shows compensation paid to date as \$43,960.02; with medical payments to date being \$41,524.84. Ex. 26.
27. On March 31, 2016, Claimant sends a letter to attorney Barth stating, "I Stephen M. Evans have decided to release Kevin Barth from my case. I have had Kevin represent me for over a year now and I fell that my attorney is not capable of handling workmen's comp." Claimant then emphatically states he does not intend to settle the claim until after he has had the surgery. Evans writes "I am in no way, shape, or form even ready to consider a settlement. I want my surgeries. When my surgeries are done and I am released from my Dr. care then will worry about a settlement. My body needs repair." Ex. 27.
28. There is no documentation of communication between attorney Barth and Claimant after Claimant delivers the March 31 termination letter to attorney Barth. Instead what we find in the record is a series of communications between attorney Barth and attorney Bruton in which the attorneys attempt to settle the Claimant's claim.
29. In a letter to attorney Vega dated September 20, 2018, attorney Barth provides the following series of emails: On April 05, 2016, 11:53 a.m., there is a caption of an email from Barth to Bruton subject: "RE: Stephen Evans v. Nan Ya." The content of the message is omitted. Ex. 36.
30. On April 05, 2016, 12:07 p.m., Bruton emails Barth, "I hear what you are saying. How about \$75,000.00 to wrap it up?" (All emails in Fact 30 through Fact 43 are found in Ex. 36).

31. On April 05, 2016, 12:12 p.m., Barth emails Bruton rejecting \$75,000.00 to resolve the claim and suggests resolving the claim for \$100,000.00.
32. On April 06, 2016, 9:09 a.m., Bruton emails Barth stating he does not have authority to settle for \$100,000.00, but will request \$100,000.00 if the client will accept that amount.
33. Later that afternoon, at 2:25 p.m., Barth emails Bruton, "If you can pay 100K, it's a done deal."
34. Again, later that afternoon, at 5:46 p.m., Bruton emails Barth "we can pay \$100K to end this on a clincher" but it will take 10 days to get it funded.
35. Note: The commuted value of the claim at the time Barth accepts settlement is \$217,100.39 based on a present value of 385.2098 weeks using the 2014 Net Present Value table. This does not include additional consideration for medical care and treatment.
36. On April 07, 2016, 9:16 a.m., Barth emails Bruton that Barth will send someone to pick up the check when it is ready. Barth then tells Bruton Claimant is a "loose cannon" and "I'll do whatever it takes to facilitate this settlement."
37. At 9:33 a.m. the same day Bruton's email response to Barth is that he has ordered the check. Bruton calls Claimant "extremely volatile."
38. On April 27, 2016, 9:19 a.m., Barth emails Bruton asking for the status of the check. Barth claims Claimant is "blowing up" the phone.
39. A few minutes later at 9:24 a.m., Bruton's email response is that he will call the adjuster.
40. Barth's email response at 9:26 a.m. is "thank you thank you."
41. On April 27 at 9:50 a.m. Bruton advises Barth that the check should be "here" possibly Friday. Bruton then states, "Evans is still receiving his TTD so hopefully that will keep him calmed down until we can get the check to you."
42. On May 03, 2016, 9:50 a.m., Bruton emails Barth that the check is in the mail along with a clincher and Form 19. At 10:58 a.m. Bruton emails again saying the check has arrived and he will put it in the mail along with the clincher and Form 19.
43. On May 09, 2016, 10:10 a.m. Barth emails Bruton that Claimant came in to the office to sign the settlement documents while he, Barth, was out of the office. Barth states Claimant "Blew a gasket." Barth notes in the email Claimant would not sign the documents because he wanted Barth to file a Form 50 requesting surgery. Barth further tells Bruton he is going to hold the documents for a day or two to see if Claimant will change his mind.
44. On May 13, 2016, Barth writes a letter to Bruton returning the check and settlement documents. Ex. 28.
45. On May 31, 2016, Barth's office has Claimant sign an acknowledgement releasing the file to Claimant. Ex. 36-4.

46. On June 01, 2016, Barth writes a letter to Bruton with a copy of the Petition to be Relieved. Barth advises Bruton that he intends to assert a lien against Claimant's award for \$33,761.30 representing the fee and costs to date. Ex. 29.
47. Barth files a Petition to be Relieved with the SCWCC on June 20, 2016. Ex. 29.
48. Attorney Daniel Vega filed a Letter of Representation June 07, 2016 along with a Form 50 not requesting a hearing.
49. On August 01, 2016, Claimant underwent anterior cervical discectomy and fusion (ACDF) at the C6-7 level with Dr. Gunter. APA.
50. On January 01, 2017 Claimant filed a letter with attorney Vega in which Claimant terminated representation. Claimant states: "Dear Mr. Vega, I am notifying you in writing that you are fired and will in no way be allowed to represent me Stephen Murray Evans." Ex. 30. Ex. 30.
51. On January 05, 2017, attorney Vega writes a letter to Evans stating he will prepare a copy of the file along with a Petition to be Relieved as Counsel. Vega advises Claimant, Claimant may proceed with retaining another attorney. Ex. 31.
52. On January 09, 2017, Claimant writes a new letter to attorney Vega stating: "Mr. Vega please represent in my workers' compensation case. After discussing my issues with you today, I feel that you are the only person I can depend on to handle my case." Ex. 32.
53. On April 24, 2017 Claimant underwent left L5-S1 transforaminal lumbar interbody fusion with Dr. Gunter. APA.
54. On January 09, 2018 Claimant underwent a follow up exam with Dr. Gunter. Dr. Gunter explained Claimant's ongoing symptoms were the result of significant compression and prolonged recovery. Dr. Gunter opined Claimant received maybe 20% improvement. Dr. Gunter awards 10% whole person impairment to the cervical spine, and 23% whole person impairment to the lumbar spine, for a combined 31% whole person combined impairment. Dr. Gunter limits Claimant's activity to "medium duty." APA.
55. Claimant underwent mediation on April 04, 2018. Claimant did not agree to resolve the claim at mediation. On April 04, 2018 Claimant's attorney filed a new Form 50 requesting a hearing. Also on April 05, 2018 the mediator filed a Form 70 declaring an impasse and also requested a hearing.
56. A Form 18 filed July 26, 2018 showing compensation paid to date as \$114,408.77; with medical payments to date being \$135,691.28. Ex. 33.
57. On July 26, 2018, Claimant was scheduled to appear at a hearing at Hartsville City Hall. Claimant agreed to resolve the claim for \$150,000.00 plus provision of a Medicare Set-Aside to be provided by the defendants.
58. On August 13, 2018, Claimant writes a letter to attorney Vega in which he states "I appreciate trying to reach an agreed settlement in my workers' compensation case. I just

don't feel like the offer is based on everything it should be." Claimant explains in the letter he does not wish to settle the claim and would rather reset the hearing. Ex. 34.

59. Based on Claimant's request the hearing was rescheduled for August 29, 2018 in Hartsville. Claimant appeared at the hearing. Claimant once again agreed to resolve the claim for \$150,000.00 (the commuted value) plus provision of a Medicare Set-Aside. The Commission called the hearing to order and the terms of the settlement were placed on the record. Attorney Bruton stated Claimant's former attorney Barth had requested Bruton protect his lien for services rendered. Attorney Bruton requested the fee be held in trust by Claimant's current attorney Vega until such time as the lien was resolved and the Commission approved the fee.
60. September 04, 2018, 4:13 p.m., attorney Bruton sends an email to attorney Vega advising that he is in receipt of a lien from Barth for \$33,761.28 for attorney fees and costs. Ex. 35.
61. On September 19, 2018, 9:05 a.m., attorney Barth called attorney Vega to assert a lien verbally for \$33,333.33 plus costs. Attorney Barth asserts in the conversation "you know that's my fee." Attorney Barth then asserts Claimant terminated his services after he secured the settlement, unless "you got something that says otherwise." Ex. 41.
62. On September 20, 2018, Barth sends a letter to Vega advising Vega he is entitled to a fee for services in the amount of \$33,761.28. The letter includes a copy of a File Release dated May 31, 2016, costs incurred/advanced, a contract for legal services, and multiple emails between attorney Barth and Bruton. Ex. 36.
63. On September 28, 2018, Claimant met with attorney Vega and signed a Form 61 Attorney Fee Petition, the Final Lump Sum Agreement and Release, a Form 19, and a Questionnaire. *See* Ex. 37, 38, 39 and 40 respectively.
64. Claimant's questionnaire contains a series of questions concerning attorney Barth's representation of Claimant. Claimant states in the questionnaire the reasons for his dissatisfaction with attorney Barth's representation, and the reason for terminating attorney Barth. Claimant states Barth's actions were harmful to Claimant in that he did not want to settle the claim because he needed the surgeries. Claimant states the carrier did not send him compensation for twelve weeks because of attorney Barth's actions. Claimant states the carrier delayed approval of the surgeries from February to August because of attorney Barth's actions. Ex. 40.
65. The Form 19 signed September 28, 2018 showed compensation paid in the claim as \$268,353.90; with medical payments to date being \$135,691.28. Ex. 39.

LEGAL AUTHORITY TO BE CITED

The dispute over the fee compels the following legal authority be cited herein:

South Carolina Workers' Compensation Law:

1. Pursuant to S.C. Code Ann. § 42-3-20(C), Commissioners shall hear and determine such matters as may come before the department for judicial disposition.
2. Pursuant to S.C. Code Ann. § 42-15-90(A), attorney fee for services under this title are subject to approval of the Commission.
3. Pursuant to S.C. Code Ann. § 42-15-90(B), a person may not receive a fee for a service rendered pursuant to this title unless the fee is approved by the Commission.

Regulations of the South Carolina Workers' Compensation Commission:

1. Pursuant to S.C. Reg. 67-1203(A), an attorney shall not withdraw as counsel without first obtaining an order from the Commission.
2. Pursuant to S.C. Reg. 67-1203(C), an attorney may withdraw as counsel by filing a motion with the Commission.
3. Pursuant to S.C. Reg. 67-1203(C)(1), a Form 61 may accompany the motion to withdraw.
4. Pursuant to S.C. Reg. 67-1203(C)(3), upon relieving the attorney of record, the Commission may issue an appropriate order allowing a fee or order the fee considered upon final resolution of the claim.
5. Pursuant to S.C. Reg. 67-1204(A), an attorney shall report and obtain approval of any fee for services rendered in a worker's compensation claim.
6. Pursuant to S.C. Reg. 67- 1204(C), when the parties agree to a contingent fee contract the attorney shall report the fee by filing the original and one copy of a Form 61, Attorney Fee Petition, and an Order, with the Commission's claims department.
7. Pursuant to S.C. Reg. 67-1204(D), the Form 61 and Order may be approved when the fee calculation complies with S.C. Reg. 67- 1205.
8. Pursuant to S.C. Reg. 67- 1205(B), if the parties agree to a contingent fee contract the fee is deemed reasonable when the appropriate regulatory requirements are met and the fee does not conflict with the South Carolina Supreme Court Disciplinary Rule on determining a reasonable fee.
9. Pursuant to S.C. Reg. 67- 1205(B) the regulatory requirements are: (1) the attorney must fully explain the fee agreement to the client and inform the client of the total dollar amount of the fee that will be deducted from the client's benefits; (2) the client agrees to the fee by signing the completed Form 61; and (3) the attorney calculates the fee at no more than 33.3% of the total amount of compensation.
10. Pursuant to S.C. Reg. 67- 1205(C), if unusual circumstances exist the attorney may attach to the Form 61 a short memorandum supporting approval of a fee calculated on an hourly rate or by *quantum meruit*.

11. Pursuant to S.C. Reg. 67- 1205(C)(6), the combined fee of all attorneys for one party may not total more than 33.3%. The Commissioner shall then review jointly the motion for fee filed by a previous attorney for the client and the additional Form 61. The Commissioner assigned the claim shall indicate the portion of the fee approved for each attorney.
12. Pursuant to S.C. Reg. 67- 1205(D), if a Claimant refuses to sign a Form 61, the attorney shall request a hearing by filing the unsigned Form 61 with a motion which states the Claimant refuses to sign the Form 61. The Commission will then notify the Claimant shall then issue the Claimant a hearing notice.
13. Pursuant to S.C. Reg. 67- 1206(A), in addition to the attorney's fee, an attorney may request approval of the actual costs incurred in the prosecution of a claim by attaching a statement of costs to the Form 61. The attorney waives the request for reimbursement of costs when he or she does not attach the statement to the Form 61.

Case Law

1. Pursuant to *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991), six factors determine a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; (6) customary legal fees for similar services.

South Carolina Rules of Professional Conduct

1. Pursuant to Rule 1.2: Scope of Representation and Allocation of Authority Between the Client and Lawyer, a lawyer shall abide by a client's decisions concerning the objectives of representation and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to make or accept an offer of settlement of a matter.
2. Pursuant to Rule 1.5 Fees: (a) A Lawyer shall not make an agreement for, charge, or collect an unreasonable fee of an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent. ... (c) ...Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

3. Pursuant to Rule 1.16: Declining of Terminating Representation: (a) Except as stated in paragraph (c), a lawyer shall withdraw from the representation of a client if: (3) the lawyer is discharged. And further pursuant to subsection (d) upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests.

ARGUMENT

1. **Attorney Barth is barred from asserting a lien against Claimant's compensation when attorney Barth sought and received a compromise settlement subsequent to specific written instructions given to attorney Barth, in a letter dated March 31, 2016, in which Claimant terminated attorney Barth's services, and instructed attorney Barth not to resolve the claim until after Claimant was able to secure approval for the surgery requested by the authorized treating physician on February 10, 2016.**

Claimant is a letter writer and every attorney involved in Claimant's representation has received letters from the Claimant. Claimant wrote a letter terminating attorney Kevin Barth on March 31, 2016, writing, "I Stephen M. Evans have decided to release Kevin Barth from my case." Claimant writes, "...I feel that my attorney is not capable of handling workmen's comp." And writes, "I made this decision because I feel my case is stuck." Claimant then emphatically writes, "I am in no way, shape, or form even ready to consider a settlement. I want my surgeries. When my surgeries are done and I am released from my Dr. care then will worry about a settlement. My body needs repair." Barth, however, contacts attorney Bruton on April 05, 2016, in order to secure a compromise settlement for \$100,000.00, representing less than 50% of the commuted value of the claim, and no consideration for medical care and treatment.

Because Claimant terminated attorney Barth's services in writing on March 31, 2016, any settlement "offer" sought by attorney Barth and, or issued by attorney Bruton, was issued after Claimant made emphatically clear he did not wish to settle the claim, and issued without the express authority of the Claimant. As such attorney Barth's request for a fee should be denied pending authorization of the Form 61 Attorney Fee Petition signed by the Claimant on behalf of attorney Vega's fee.

Attorney Vega's fee should be approved because during his subsequent representation of Claimant, attorney Vega secured two surgeries, along with additional medical care and treatment as recommended by the authorized treating physician. Attorney Vega also secured a full and final settlement representing the full commuted value of the claim along with provision of lifetime medical care and treatment, or a CMS approved MSA. Claimant stated his satisfaction of attorney Vega's representation at the hearing and signed a Form 61 Attorney Fee Petition and Settlement Memorandum authorizing Vega's fee. Claimant also filled out a Questionnaire in which Claimant described his reason for terminating attorney Barth and described the harm he suffered as a result of attorney Barth's actions.

2. Attorney Barth is barred from asserting a lien when attorney Barth failed to comply with the statutory and regulatory requirements which govern payment of attorney fees and costs to be paid for representation in a workers' compensation claim.

Attorney Kevin Barth sought to be relieved as counsel on June 01, 2016, by obtaining an order pursuant to S.C. Reg. 67-1203(A). Attorney Barth, however, is barred from asserting a lien because he failed to do the following:

1. Barth did not seek approval of the fee for which he asserts a lien pursuant to the requirements of § 42-15-90.
2. Barth did not report the fee for services he rendered in the workers' compensation claim to the Commission pursuant to Reg. 67-1204(A).
3. Barth did not file a Form 61, Attorney Fee Petition, with the Commission's Claims Department pursuant to Reg. 67-1204(C).
4. Barth did not attach a Form 61 Attorney Fee Petition, to the motion to withdraw pursuant to Reg. 67-1203(C)(1).
5. Barth did not request the Commission issue an order allowing a fee, nor request the Commission consider the matter of a fee upon final resolution of the claim pursuant to Reg. 67-1203(C)(3).
6. Barth did not notify the Commission whether Claimant refused to sign the Form 61 pursuant to Reg. 67-1205(D).

7. Barth did not notify the Commission of unusual circumstances requiring payment at an hourly rate nor *quantum meruit* pursuant to Reg. 67-1205(C).
8. Barth did not request approval of the costs incurred by attaching a statement of the costs pursuant to Reg. 67-1206(A).

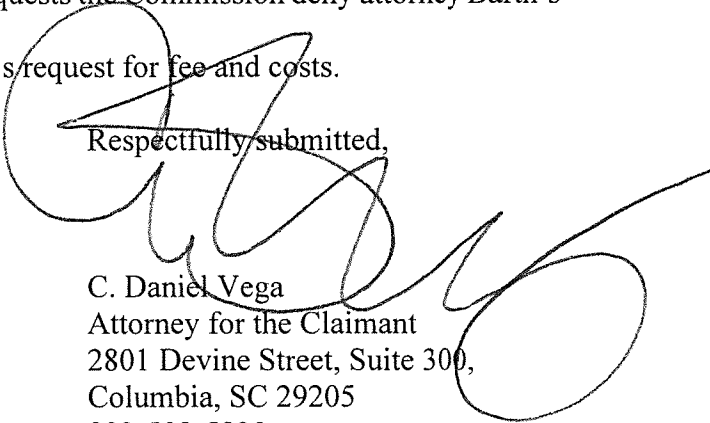
S.C. Reg. 67-1205(B) states a contingency fee is deemed reasonable when the regulatory requirements are met. Although attorney Barth is attempting to assert a lien for 33.3% of the amount of the compromise settlement he secured through attorney Bruton, attorney Barth has violated every regulatory requirement which would have made him eligible for the fee, including regulations which would have protected him in the event of a fee dispute, and, even further, waived any entitlement to costs. As such attorney Barth should be barred from receiving a fee and costs for this claim.

3. Attorney Barth is barred from asserting a lien when the fee is not reasonable pursuant to the standard of *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991).

S.C. Reg. 67-1205(B) states a contingency fee is deemed reasonable when the fee does not conflict with the South Carolina Supreme Court Disciplinary Rule on determining a reasonable fee. In *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991), the Supreme Court of South Carolina modified the attorney's fee when it reasoned the fee did not comport with Rule 407 (1.5)(d)(1), SCACR. *Glasscock* lists six factors in support of a reasonable fee as: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; (6) customary legal fees for similar services. In light of the six factors contained in *Glasscock*, Claimant contends attorney Barth did not follow Claimant's specific instructions to forego settlement in favor of surgery; obtained a compromise settlement of no value to the Claimant; had no regard for the harm caused to the Claimant when the carrier suspended his benefits; and did not follow statutory and regulatory requirements necessary for securing a fee. As such, Claimant seeks an order barring attorney Barth from asserting a lien for fee and costs.

CONCLUSION

Claimant contends he terminated attorney Kevin Barth's services in writing on March 31, 2016, because attorney Barth failed to secure authorization for the medically necessary cervical discectomy requested by the authorized treating physician on February 10, 2016. In his letter of termination Claimant instructed attorney Barth not to settle the claim. Contrary to Claimant's wishes attorney Barth neither released the Claimant nor sought authorization for the surgery. Attorney Barth instead contacted the defense attorney in order to secure a compromise settlement of no value to the Claimant. Because attorney Barth assured the carrier the claim was settled Claimant's benefits ceased and he received neither indemnity nor medical benefits for approximately twelve weeks. As such Claimant does not now want to pay attorney Barth a fee for services which he did not wish to receive, and were harmful to Claimant. Claimant, conversely, was able to receive both medical care and treatment and maximum value for the settlement as a result of attorney Vega's efforts. As such Claimant requests the Commission deny attorney Barth's request for fee and costs, and approve attorney Vega's request for fee and costs.



Respectfully submitted,

C. Daniel Vega
Attorney for the Claimant
2801 Devine Street, Suite 300,
Columbia, SC 29205
803-509-5830

Monday, November 26, 2018

09/25/14
FILEID017986

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION R08
EDI CREATED/UPDATED FIRST REPORT

CONTAINS ALL ITEMS REQUIRED BY OSHA FORM 101 (Enter all dates in MM/DD/YY format)

ROA 0066

EMPLOYER: NAN-YA PLASTICS CORP AMERICA
140 EAST BEULAH ROAD
LAKE CITY, SC 29560

CARRIER CLAIM#: 002848001824WC01
SCWCC CLAIM#: 1413115 9999

NAICS CODE: 326191

FED. TAX I.D. NO.: 223009119

INSURANCE NEW HAMPSHIRE INSURANCE CO, LT
CARRIER: Chartis Claims, Inc.
PO Box 4230
Alpharetta, GA 30023-4230

CLAIMS GALLAGHER BASSETT SERVICES INC
ADMIN: GAIL BULLOCK
8731 RED OAK BLVD
SUITE 240
CHARLOTTE, NC 28217-4062

CARRIER ID: 00143 CARRIER FEIN: 020172170

EMPLOYEE NAME (Last, First, Middle)
EVANS, STEPHEN

SOCIAL SECURITY NUMBER
247-43-2885

PHONE NO.
(843) 731-7669

ADDRESS: 121 CLYDE MCGEE RD LOT 7
TIMMONSVILLE, SC 29161-7746

DATE OF BIRTH: 02/02/1968 MARITAL STATUS: M

MALE/FEMALE: M # DEPENDENT CHILDREN: 0

DATE OF HIRE: 02/13/12

OCCUPATION: MECHANICAL MAINTENANCE TECHNIC

WAGE INFORMATION

RATE: \$845.34

WAGE PERIOD:

DATE RETURNED TO WORK:

FULL DAY PAY FOR DAY OF INJURY: N

DID SALARY CONTINUE: N

OCCURRENCE

PLACE OF ACCIDENT OR OCCURRENCE: 29560-7915

DATE OF INJ: 09/04/14

TIME OF INJ: 00:01 AM

EMPLOYER'S PREMISES: N

LAST WORKDATE: 09/04/14

DATE EMPLOYER NOTIFIED: 09/04/14

DESCRIBE NATURE OF INJURY OR ILLNESS IN DETAIL

CAUSE: 68 STATIONARY OBJECT
NATURE: 10 CONTUSION
LOCATION: 10 Multiple Head Injury

DESCRIBE EMPLOYEE'S ACTIVITIES WHEN INJURY OCCURED WITH DETAILS OF HOW EVENT OCCURED

MR. EVANS WAS WALKING FROM THE DTY PRODUCTION FLOOR TO THE YAC TO RETRIEVE
SOME MATERIAL. WHILE WALKING HE ATTEMPTED TO PASS THROUGH THE ROLL UP DOOR
AT THE SOUTH EAST CORNER OF DTY. AT THIS TIME THE DOOR WAS LOWERED DOWN ON
MR. EVANS. THE DOOR HIT HIM IN THE HEAD.

IF FATAL GIVE DATE OF DEATH:

** Created **

ELECTRONIC FILING

ORIGINAL DATE SENT:

<1>: <2>:
DATE PROCESSED: 09/25/14

TRADING PARTNER: Gallagher Bassett Services
Two Pierce Place
Itasca, IL 60143

11

ROA 0066

EX. 1-1

GERALD MALLOY

ATTORNEY AT LAW

108 CARGILL WAY
HARTSVILLE, SOUTH CAROLINA 29550

TELEPHONE (843) 339-3000
FASCIMILE (843) 332-4646
EMAIL: GMALLOY@BELLSOUTH.NET

POST OFFICE BOX 1200
HARTSVILLE, SOUTH CAROLINA 29551

September 25, 2014

VIA FACSIMILE

Gale Bullock
Gallagher Bassett
8210 University Executive Park Drive, Suite 250
Charlotte, North Carolina 28262
855-844-3908

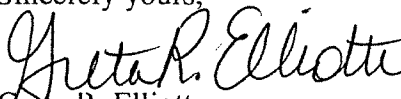
RE:	Our Client:	Stephen Evans
	Your Insured:	Nan Ya Plastics
	Date of Injury:	9-4-14

Dear Ms. Bullock:

Please be advised that our office is representing Stephen Evans regarding injuries he sustained on September 4, 2014 while working at Nan Ya Plastics. Please forward all future correspondence regarding this claim to our attention. At your convenience, please advise if Mr. Evans' TTD check has been mailed out.

With kind regards, I am,

Sincerely yours,


Greta R. Elliott
Paralegal

gre

GERALD MALLOY

ATTORNEY AT LAW

108 CARGILL WAY
HARTSVILLE, SOUTH CAROLINA 29550TELEPHONE (843) 339-3000
FASCIMILE (843) 332-4646
EMAIL: GMALLOY@BELLSOUTH.NETPOST OFFICE BOX 1200
HARTSVILLE, SOUTH CAROLINA 29551

September 25, 2014

South Carolina Workers' Compensation Commission
Attention: Judicial Department
Post Office Box 1715
Columbia, South Carolina 29202-1715Re: Claimant:
Address:SSN:
DOB:
Date of Injury:
Location of Accident:
Description of Accident:
Nature of Injury:
Employer:
Insurance Carrier:Stephen Evans
121 Clyde McGee Road, Lot 7
Timmonsville, SC
247-43-2885
2-2-68
9-4-14
Lake City, South Carolina
Door came down on head and back
head and back
Nan Ya Plastics
Gallagher Bassett

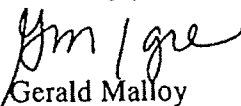
CHECK REC:	9/25/14
COPY FILE:	4894
COPIES MAILED:	203609B
TO BE INVOICED:	
ATTY ENTERED:	
REV. OR:	
END #	
BEG. #	
TOTAL	

Dear Sir/Madam:

Pursuant to South Carolina Section 42-14-40, this letter is to advise the Workers' Compensation Commission of my representation, of the above named claimant for injuries covered by the Workers' Compensation Act, and to establish a claim prior to the running of the Statute of Limitations. I have enclosed a check for \$20 and would request that you provide our office with a copy of the entire Workers' Compensation File for Mr. Evans.

With kind regards, I am,

Sincerely yours,


Gerald Malloy

5348

GM(gre)
Enclosure
SCWCC
SEP 26 2014
JUDICIAL

Referred to Dr. Peter O'Kelley on Wed. Sept. 24

I called Dr. Wagner's office on Sept. 18 and spoke to RN Wendy. She informed me that Dr. Wagner would not be in on Friday. I was having more severe private area parts' problems and needed to seek help. In good faith I went to Nan-Ya Safety and informed them of my more worsened condition. I am very worried. I cannot and have not had an erection since Sept. 4 accident and I cannot empty bladder fully. I speak to Mrs. Cathy Lewis (Safety) and was cut off by Dana Welch (Safety Equal). He bashed me verbally (now I have my wife with me for support, because from Day 1 Dana has tried to pre-shadow my injury (on multiple occasions asking me what I was trying to do to the company.) I went to walk out and was grabbed by my right arm by Dana for the second time. (This was done on the 8th also when I came to turn in paperwork for E.R. visit and went to walk out after verbal bashing from Dana. (Both occasions on a cane). Now Adrian Harris (Senior Safety) has joined in. He is shouting at me saying one condition has nothing to do with the other. Adrian tries to say I'm 46 and my age is the private's.

ROA 0069

Verbally attacked and told to use my ins.
card or whatever I have to do to see Dr. Peter
O'Kelley. Went to Caroline's E.R. on the 19th,
and was referred to Dr. O'Kelley for 2014-09-24
2:00 p.m. [Finally got away from Company
Dr. Wagner who told me by X-Ray only exam.
that I had narrowing in my lower spine and
damage to L6 and would heal fine because
of my stature and sent me home on that
9-04 (original injury date with 800 mg. rocton
and back to full duty on 9-8.]

Dr. O'Kelley (my blessing) told me 9-24
he needed to perform a _____ and I would
need to be put under for procedure. At
10:00 p.m. 9-24 (same day as visit) I was in my
easy chair watching sports and felt a tremendous
burst out of head of penis. I panicked hollered
for my wife called Jamie McGee (Lamlord to
take me to E.R.) I grabbed a pair of pants
a towel put in my pants. I grabbed my
manhood could not stop flow with gust
of every beat of my heart (even holding.) ~~at the~~
~~at the~~ Walked to Jamie's not half way
@ 100 yds. arrived at E.R. at @ 11:00.
E.R. worked on my manhood until @ 4:00 a.m.
could not stop flow or diagnose problem

Two Nurses were working on me one saline in one pumping out. Dr. Weinstein (present ER attending Dr. said take catheter out try again. I begged no, shortly after obtained flow. Had Emergency Surgery stayed in Room 609 2 days before being released with catheter home for 1 week and a hospital bed to comfort this and other damage (original) ~~Called Dana Welch~~ Called Safety requested Mrs. Cathy or Dana call me to obtain med's, ^{proper way} Dana called back verbally bashed me again for going to E.R. I ended call will not be mistreated in this condition by him any longer. He and Dr. Wagner have forestalled my case from minute one of injury. Dr. Peter O'Kelley has issued documents supporting none of my problems were pre-existing and forwarded to my Attorney Senator Gerald Malley.

Also my Best Friends Brother is Dr. Bill Paken (E.R. Admin. at Carolines) will touch for me that I seen him on 11-15 and an EKG was done and other tests and he has known me for 18 years and I am/was the picture of perfect health at that visit.

He will provide supporting letter and I will obtain that visit records. I have roofed his house, vinyl siding his house, painted his house in the past and personally know my physical capabilities. I went to that visit for heart palpitations. I have anxiety and have to be prescribed 3 5 mg. valium to attend Dentist (Drs Allen and Cates located at 322 Scoit st. in Florence, S.C. and I will obtain letter confirming that also (843-662-8141). My work is aware of this and I was not on any meds up until 9-04 when prescribed by Company Dr. due to ~~an~~ a Pneumatic Door failing and crushing me causing these NOW EXISTING

conditions. This accident happened through no fault of my own and I have supporting Technicians to support this event. A Pneumatic Door come down on me and malfunctioned breaking the ridding in my hard hat to the extent that I had to use force to pull my hard hat from my head breaking the ridding in my hat.

ROA 0072

An original MRI was not done until 2014-09-19 (15 days after accident) on the request of Dr. Fonseca at Carolina's Hospital System at my original ER visit to Hb. Carolina's. (on my own).

The original E.R. Dr. in Lake City Drs. Grim told me I had damage and needed further testing. I was then turned over to Dr. Wagner and I feel he did not check me properly which is supported by these other Dr. statements. He even sent me to 3 physical therapy appointments in this condition. And on Sept. ~~24~~ 23 Dr. Wagner forcefully raised my legs over my head and referred me to Dr. Alexander to be seen on Oct. 7 at Pee Dee Spine Center to begin Epidural injections and Steroid injections to repair my spine. He assured my wife after putting me in crying agony that I would not have to come to him again. (That was my Hope and Blessing.) I feel that from day one by him I have been malpracticed and put in life threatening danger by him to try and cover for the Company.

ROA 0073

I have never known or had any reason to have a problem with this Dr. Wagner. But I have been on a cone and more severely by what I believe some of could have been avoided if he had have listened to me and what I was telling him was wrong with my body.

I have never had any physical ailment and up until 2014-09-04 I was the picture of perfect health. Now that I have been blessed and spared the opportunity with the proper Dr. Care and Self Motivation.

I WILL BE 100%

AGAIN IF POSSIBLE!

Not one person from Nah-Ya or Workmen's Comp. has ever contacted me to see if I was o.k. or visited me in the hospital. In fact we had to contact Case manager Mrs. Gail Bullock ourselves up

ROA 0074

until this day 2014-09-27
we have received any funds.

In All Honesty,
Sincerely,
Stephen M. Evans

In my Dept. DTY Maintenance.
I hold the Safety Record for
both years I have been there
as far as suggestions and
Safety improvements. I do not
understand why I have been
wronged by my Company.

P.S.

I worked more hours from
day one in this Dept. Than any
Technician in my Department.
This information is in my 6 month
evaluation Reports Done by more
Immediate Supervisor Alex Richardson ⁸⁰³⁻⁶³⁴⁻²⁰⁸³
and Asst. Supervisor Jason McKenzie
⁸⁴³⁻³⁷³⁻⁸⁶⁷⁷

I do have 1 safety violation per each year and
signed responsibility forms with my Supervisors accepting
responsibility.

ROA 0075

2014-09-27

I have had memory loss and rambling since day one and blurred vision. I will be making an eye appt. and report results in future. My Memory loss and the rambling is improving but vision is not. Appt. results to follow. Never have had Pres. Glasses.

Discharged from Carolina's Hospital today. Follow up Appt. to be made by Tara Mon. the 29th with Dr. O'Kelley to remove Catheter sent home with for minimum of one week. Hospital Bed received to promote positive healing process for Bladder and MRL Spine results before removal of Catheter and Lee Dee Spine Center injections (Dr. O'Kelley Prescription ordered 4-26.) Working proper Meds ordered. Percocet 10/325 @ 40 and Bactrim (Antibiotic) @ 20 until finished to promote infection protection for Bladder while Cathetered. (Received and obtained prescription for Percocet 750/325 @ 40 on 9-23). (Do not understand why not originally administered by Dr. Wagner). Will obtain Drs. Kelley Knotts as Family Dr. ASAP.

Contacted Gail Bullock on 2014-09-24 (Tara) (Multiple Calls). Gail said we would receive \$1670.⁰⁰ from day one injury (no hold benefits. (Had to contact ourselves.) Same day 4 calls (return call at 4:50 p.m. \$1670.⁰⁰ to be received by 2014-09-27. \$563.¹⁰ to be received per week for Workman's Compensation. Discharged from Hospital no check as promised by 2014-09-27. Never received call prior from Gail with any offer (new all of a sudden ready to run all injuries and prescriptions together. Will have family Dr. check Hip points and Rotator Cuffs damage (very painful)

Stepher M. Evans 2014-09-27

(cannot raise arms over head comfortably or stand or sit long.

Dr. Wagner referred me to Dr. Alexander due to a leg stocking left leg glove (always dead) (unsure on foot from minute one as reported to Jessor M. Kenzie 4 times on originally injury date before going to original E.R. late on 2014-09-04 at 12:00 p.m. (Door Malfunctioned at 09:58 a.m.) Discharged from Carolina's 11:11:28 a.m. 9-27

Contacted Dana Welch (Safety) returned called at 11:50 a.m. asked where to obtain Med's

and Dana argued at me verbally asking who knew of this particular visit. (Very Rude) *I will no longer report to this person, hung up on him and will reserve my right as an Employee to never Report to him again and send supporting letter to Home Office and would prefer a conference and formal complaint to Charlie Tsai (Plant Manager) (Open Door Policy Right about Dana Welch, Adrian Harris and (Craig Schutte - my Director of Maintenance) whom I have contacted multiple occasions and verbally confronted on 2014-09-08 for first time, in front of All Techs and Supervisors with injury issues. Craig has never contacted me once with any concern. (last contacted from Hospital Bed on 2014-09-26). He said he was busy finishing supper and showed no concern. Contact him around mid-day on 9-27. I decided no more contact with any of these people again. I feel I have been overshadowed of my Plant caused injuries and can and will support all phone records and Dr. Files to support all said in this

ROA 0078

paperwork. I have seen many people injured and negatived by this Company. All injuries write ups are against Technicians (never considered company accidents). Except mine (It states clearly that the Door Manufacturing Door did malfunction). My Dept. Safety Record was taken from our shop (The Leading Maintenance Shop Record of days). Not fair because this was of no fault of my own.

Stephen M. Evans

* This Door Malfunctional / Crushed me / I landed in a squatting on right leg and buttocks crouch position and sent my left leg straight far left and I have had a dead left leg and center of spine stinger ever since that has now radiated to the right making it tingly. Garrett Tanner (my helper) helped me hold pressure of door with me. My netting was broken in my hand hot and Garrett helped lift door off of me as I rolled from under it in an awkward position.

ROA 0079

I asked Garrett to stay with Door
~~and~~ to avoid hurting anyone else. I
went and got E&I Tech's and they
restored the door to proper working
order. Garrett and I went to break @ 10:00 a.m.
I left at 12:00 a.m. to

Garrett said he has been called
to head office six times thus far and
that he told them supporting story
of me.

Sincerely,



Stephen M. Evans



NAN YA PLASTICS CORPORATION, AMERICA
SOUTH CAROLINA PLANT
140 E. BEULAH ROAD P.O. BOX 939
LAKE CITY, S.C. 29560
TEL: 843-389-7800 FAX: 843-389-6895

ROA 0081



SAFETY, HEALTH, & ENVIRONMENTAL DEPARTMENT

October 29, 2014

Certified No. 7009 2920 0001 0727 7025

Mr. Stephen Evans
121 Clyde McGee Rd Lot # 7
Timmonsville, SC 29161

Dear Mr. Evans

It is our understanding Dr. Wagner has referred you to Dr. Alexander, Pee Dee Spine Center on October 7th. It is also our understanding you had an appointment with your urologist Dr. Peter O'Kelly on Wednesday September 24th. We also understand you had emergency prostate surgery on September 24th and released by the doctor on September 27th. We have a note on file from Carolinas Medical Alliance (Dr. O'Kelly) stating you have been under his care from 9/8/14 to 10/31/14 and could return to work Nov 1, 2014. Since this is from your urologist, what about Dr. Alexander and/or the Pee Dee Spine Clinic?

On September 25th, we asked our attorney, Mr. John Bruton and Ms. Gail Bullock of Gallagher Bassett to contact your attorney (Mr. Gerald Malloy, 108 Cargill Way, Hartsville, SC 29550) and asked for an update of your condition, both work related and non-work related. On October 21st, Ms. Bullock sent a second request to your attorney.

Since that time, we have not received any communication or updated information from either you or your attorney regarding your medical condition.

Nan Ya Plastics Corp., America, like any other company, must schedule the work load based on production, labor, fixed costs, and other variables. We do not know anything about your condition, work related or non-work related, full duty, return date, or prognosis.

Should you not be able to return to work by November 1, 2014 we must have updated doctors' notes/letters from your attending physicians in order to assure your employment with Nan Ya Plastics Corp., America.

Should have any questions, please feel free to give me a call at 843-389-6858.

Sincerely,

Adrian A. Harris, Director
Safety/Health/Environmental

Cc: John Bruton
Gail Bullock
Teresa Cheng
Kevin Floyd
Chris Neisier
Fred Chan
Dana Welch
file/

ROA 0081

39

EX. 4-1

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH
WASHINGTON, DC

ROA 0082

1201 MAIN STREET, 22ND FLOOR (29201-3226)
POST OFFICE BOX 11889 (29211-1889)
COLUMBIA, SOUTH CAROLINA
TELEPHONE 803.779.3080
FACSIMILE 803.765.1243
WEBSITE www.hsblawfirm.com

JOHN C. BRUTON, JR.
EMAIL jbruton@hsblawfirm.com

November 4, 2014

Gerald Malloy, Esq.
Malloy Law Firm
108 Cargill Way
Hartsville, South Carolina 29551

Re: Stephen Evans v. Nan Ya Plastics Corp.
Date of Loss: 9/04/2014
HSB File No. 01973.0721

Dear Gerald:

I hope you're doing well.

I represent Nan Ya Plastics Corporation in regard to the above-referenced matter. Nan Ya is having difficulty communicating with and/or receiving information from one of its employees Stephen Evans who says he has sustained a workers' compensation injury. I am writing you because it is Nan Ya's understanding that you represent Mr. Evans.

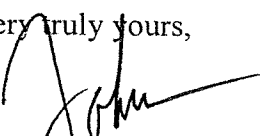
Last week Adrian Harris, Director of Safety/Health/Environmental at Nan Ya, wrote Mr. Evans a certified letter requesting updated information as to his condition and whether Mr. Evans planned to return to work. To date Nan Ya has not heard anything from Mr. Evans.

If you represent Mr. Evans, please make sure he receives a copy of the attached letter. Also, if you have any information on this claim, please let me know and I will try to clarify the situation with Nan Ya.

Thank you for your assistance.

With kind regards, I remain

Very truly yours,



John C. Bruton, Jr.

JCBjr/pgl
Enclosure

ROA 0082

GERALD MALLOY

ATTORNEY AT LAW

INCORPORATED
COLUMBIA, SOUTH CAROLINA 29202

TELEPHONE (843) 737-5000
FACSIMILE (843) 737-4000
EMAIL: GMALLOY@BELL.SOUTH.NET

POST OFFICE BOX 11889
COLUMBIA, SOUTH CAROLINA 29211

November 13, 2014

Amy Bracey
SC Workers' Compensation Commission
Judicial Department
Post Office Box 1715
Columbia, SC 29202-1715

Re: Stephen Evans vs. Nan-Ya Plastics
WCC File #: 1413115

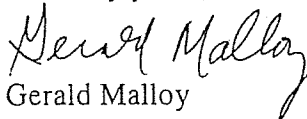
Dear Ms. Bracey:

Enclosed please find WCC Form 15, Employee's Request for Hearing regarding the termination of Temporary Compensation Payments and attached Certificate of Service. By copy of this letter, I am providing John Bruton, Jr., attorney for the Employer/Carrier, with a copy of the same.

Please do not hesitate to contact me should you have any questions regarding this matter.

With kind regards, I am,

Sincerely yours,


Gerald Malloy

GM/gre
Enclosure

cc: John Bruton, Jr., Esquire
Haynsworth, Sinkler Boyd, PA
Post Office Box 11889
Columbia, SC 29211-1889

Stephen Evans
121 Clyde McGee Road, Lot 7
Timmonsville, SC 29161

South Carolina Workers' Compensation Commission
1233 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1413115
Carrier File #: 00284800182WC01
Carrier Code #: ROA 0084
Employer FEIN #: ?

Claimant's Name: Stephen Evans

Employer's Name: Nan-Ya Plastics

Address: 121 Clyde McGee Road, Lot 7

Address: 140 E. Beulah Rd

City: Timmonsville State: SC Zip: 29161-7746

City: Lake City State: SC Zip: 29560

Home Phone: 803-731-7669

Work Phone: () -

Insurance Carrier: New Hampshire Insurance Co.

Preparer's Name: John C. Bruton, Jr.

Law Firm: Haynsworth Sinkler Boyd, P.A.

Preparer's Phone #: 803-779-3080

Date of injury: 09/04/14

Date of Notice to Employer of Injury: 09/04/2014

I. **Payment of Temporary Compensation** Check one: ☐ Initial period ☐ Additional period ☐ Corrected compensation rate
(choose A, B, or C)

- ☐ A. Temporary Total at the compensation rate of \$_____ per week. For this period of disability, disability began on _____ (m/d/yyyy) and the date of first payment was _____ (m/d/yyyy).
- ☐ B. Temporary Partial at the compensation rate of \$_____ per week. Note: When the Temporary Partial compensation rate will vary, report the first payment here. Supplement this report throughout the period of Temporary Partial compensation by filing a **Form 15S** with the **Form 18**, which shall be filed six months after the date of injury and each six months thereafter until the file is closed. For this period of disability, disability began on _____ (m/d/yyyy), and the date of first payment was _____ (m/d/yyyy).

Calculation of Temporary Partial Rate:

Average weekly wage before injury	\$
- Current weekly wage	\$
= Difference in wages before injury and now	\$ 0.00
x .6667	\$ 0.00
Temporary Partial Compensation Rate	\$ 0.00

- ☐ C. Salary in lieu of Temporary ☐ Total ☐ Partial (choose one) compensation in the amount of \$_____ per week. For this period of disability, disability began on _____ (m/d/yyyy) and the date of first payment of salary in lieu of temporary compensation was _____ (m/d/yyyy).

THIS SECTION MAY BE USED ONLY WITHIN 150 DAYS AFTER NOTICE TO EMPLOYER OF INJURY. ATTACH DOCUMENTATION AS TO THE REASON OF THE TERMINATION.

II. **Termination of Temporary Compensation**

Temporary compensation payments were stopped on 10/31/14 (m/d/yyyy) for the following reason:

- ☐ Claimant has returned to work at least 15 days and no temporary partial compensation is due.
- ☐ Claimant agrees he/she is able to return to work and has signed a **Form 17**.
- ☐ Based on a good faith investigation, the claim is denied. Reason for denial: _____
- ☐ Claimant has been released to return to work without restrictions and employment has been offered.
- ☒ Claimant has been released to work at limited duty and employer has provided limited duty work consistent with the terms upon which the Employee has been released.
- ☐ Claimant has refused medical treatment, examination, or evaluation. Note: Benefits must be resumed if claimant accepts the treatment, examination, or evaluation. Additional report must be filed if compensation is resumed.

I certify that this form has been served on the claimant per R.67-211.

Signature of Claims Administrator

Date 11/7/14 (m/d/yyyy)

III. **Notice to Injured Worker or Legal Representative when Temporary Compensation Has Been Stopped:**

The employer's representative may stop temporary compensation within 150 days of the date of notice of injury for the above reasons. However, if you believe that the temporary compensation should not have been stopped, you may request a hearing by signing below and returning this form to SCWCC Judicial Department at the address at the top of this form. A hearing will be held within 60 days of receipt of your request to determine if temporary compensation has been properly terminated.

MY SIGNATURE BELOW INDICATES THAT I DO NOT AGREE WITH THE TERMINATION OF TEMPORARY COMPENSATION. I REQUEST A HEARING TO DETERMINE WHETHER I AM ENTITLED TO FURTHER TEMPORARY COMPENSATION PAYMENTS.

Check one: ☒ Form 15(II) ☐ Has ☐ Has not been received.

Signature of Claimant or Legal Representative

Date 11-11-14 (m/d/yyyy)

Employer's representative must complete and file Form 15 with Claims Department within ten days after compensation begins or is terminated. Employer's representative must serve the Form 15 on the claimant when compensation begins per R.67-211. Employer's representative must prepare and serve Form 20 within thirty days of beginning compensation per R.67-1603. Employer's representative must serve per R.67-211 two copies of the Form 15 on claimant immediately on termination of compensation with documentation attached as to the reason for the termination. Injured worker may contest termination of compensation by completing section III of the Form 15 and filing it with Judicial Department.

WCC Form # 15
Rev. 01/2014

ROA 0084
15

TEMPORARY COMPENSATION REPORT

GERALD MALLOY

ATTORNEY AT LAW

105 CARGILL WAY
HARTSVILLE SOUTH CAROLINA 29111

TELEPHONE (843) 554-5000
FACSIMILE (843) 554-4840
EMAIL: GMALLOY@BELLSOUTH.NET

POST OFFICE BOX 1207
HARTSVILLE SOUTH CAROLINA 29111

November 24, 2014

Mr. Stephen Evans
121 Clyde McGee Road, Lot 7
Timmonsville, South Carolina 29161

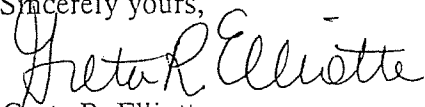
Re: Workers' compensation injury of 9-4-14

Dear Mr. Evans:

Enclosed please find the Notice of Hearing for your claim. The hearing will be held December 11, 2014 at 9:30 a.m. at the Southeastern Institute of Manufacturing & Business Incubator, located behind Florence Darlington Technical College. Please call our office to schedule a time to meet with Mr. Malloy prior to the hearing.

With kind regards, I am,

Sincerely yours,


Greta R. Elliott
Paralegal

gre
Enclosure

South Carolina Workers' Compensation Commission

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



WCC File #: ~~1A13115~~ **ROA 0086**
Carrier File #: 002848001824WC01
November 21, 2014

NOTICE OF HEARING

STEPHEN EVANS v. NAN-YA PLASTICS CORP AMERICA

Subject: To determine if claimant's temporary compensation was legally terminated.
Date: December 11, 2014 at 09:30 AM
Location: Southeastern Inst. of Manufacturing & Business Incubator, 1951 Pisgah Road,
Boardroom 102
Florence, SC 29501

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 Avery B. Wilkerson Jr.
803-737-5697, eboyd@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: Elaine Boyd, SC Workers' Compensation, November 21, 2014

Party

Employee: STEPHEN EVANS

Employer: NAN-YA PLASTICS CORP AMERICA
Carrier: New Hampshire Insurance Co

Attorney

Gerald Malloy
gmalloy@bellsouth.net
843-339-3000

John C. Bruton, Jr.
jbruton@hsblawfirm.com
803-779-3080

ROA 0086

GERALD MALLOY

ATTORNEY AT LAW

108 CARGILL WAY
HARTSVILLE, SOUTH CAROLINA 29350

TELEPHONE (843) 339-3000
FACSIMILE (843) 332-4640
EMAIL: GMALLOY@BELLSOUTH.NET

POST OFFICE BOX 1200
HARTSVILLE, SOUTH CAROLINA 29350

November 25, 2014

John C. Bruton, Jr., Esquire
Haynsworth Sinkler Boyd, P.A.
Post Office Box 11889
Columbia, South Carolina 29211-1889

Re: Stephen Evans v. Nan Ya Plastics Corp.
Date of Injury: 9-4-14
WCC File No.: 1413115

Dear John:

Thank you for calling today regarding the above referenced claim.

In response to the letter of October 29, 2014 sent by Adrian A. Harris, Mr. Evans states he never received it. I believe the issue with Dr. Alexander has been resolved and the nerve conduction study has now been scheduled for Mr. Evans. Also, that letter states that on September 25, you and Gail Bullock were asked to contact me regarding Mr. Evans' condition. We received an e-mail from Ms. Bullock, dated October 21, wherein she asked for a recorded statement. We advised her for the second time that our office policy was not to allow clients to participate in recorded statements. Her response was that she was not authorizing anything further and she was denying the claim until Mr. Evans' deposition could be taken.

As far as his return to work, it is my understanding that Mr. Evans has provided his employer with every return to work note he has received, including the most recent from Dr. O'Kelly that has him returning to work on December 18.

With kind regards, I am,

Sincerely yours,


Gerald Malloy

GM/gre

GERALD MALLOY

ATTORNEY AT LAW

108 CARGILL WAY
HARTSVILLE, SOUTH CAROLINA 29110

TELEPHONE (843) 552-3000
FACSIMILE (843) 552-4646
EMAIL: GMALLOY@BELLSOUTH.NET

POST OFFICE BOX 1200
HARTSVILLE, SOUTH CAROLINA 29110

November 25, 2014

Stephen Evans
121 Clyde McGee Road, Lot 7
Timmonsville, SC 29161

Re: Workers' compensation injury of 9-4-14

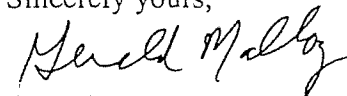
Dear Mr. Evans:

Thank you for providing us with a copy of the return to work statement Dr. O'Kelly gave you last week. It's my understanding that you have turned this in to your employer. If not, please do so immediately.

As Greta informed you by phone and in her letter of November 24, 2014, a hearing has been scheduled for December 11, 2014 at 9:30 a.m. in Florence. Today, I received a phone call from the defense attorney and we have scheduled your deposition for December 9, 2014 at 2:00 p.m. here in my office. At your first convenience, please contact my office to set up time for us to meet prior to the deposition.

With kind regards, I am

Sincerely yours,



Gerald Malloy

GM/gre

GERALD MALLOY

ATTORNEY AT LAW

108 CARGILL WAY
HARTSVILLE, SOUTH CAROLINA 29111

TELEPHONE: (843) 884-4000
FACSIMILE: (843) 884-4040
EMAIL: GMALLOY@BELLSOUTH.NET
November 26, 2014

POST OFFICE BOX 11889
HARTSVILLE, SOUTH CAROLINA 29111

Commissioner Avery B. Wilkerson
S.C. WORKERS' COMPENSATION COMMISSION
1333 Main Street, Suite 500
Columbia, South Carolina 29201

Re: Stephen Evans v. Nan Ya Plastics
WCC File No.: 1413115
Date of Accident: 9-4-14

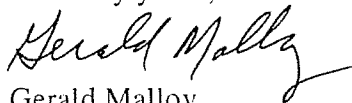
Dear Commissioner Wilkerson:

Enclosed please find Claimant's Pre-Hearing Brief and Notice of Witnesses and Written Medical Reports for filing in the above captioned matter.

By copy of this letter to John Bruton, Esquire, attorney for the Employer/Carrier, I am notifying him of these submissions and serving copies of the same upon him by mail.

With kind regards, I am,

Sincerely yours,


Gerald Malloy

GM/gre
Enclosure

cc: John C. Bruton, Jr., Esquire
Haynsworth Sinkler Boyd, P.A.
Post Office Box 11889
Columbia, South Carolina 29211-1889



Claimant's Name: Stephen Evans Employer's Name: Nan-Ya Plastics
Address: 121 Clyde McGee Road, Lot 7 Address: 140 E. Beulah Road
City: Timmonsville State: SC Zip: 29161 City: Lake City State: SC Zip: 29560
Home Phone: (843) 845-4841 Work Phone: () - Carrier: New Hampshire Insurance Co.
Preparer's Name: Gerald Malloy Preparer's Phone #: (843) 339-3000

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$563.00 2. AWW: \$845.34 Date of Injury: 9-4-14
3. Type of injury and body part(s): Back, urethral tear, bladder, head
4. Facts in controversy: 1. Whether or not Claimant has been released to work at limited duty 2. Whether or not termination of Claimant's Benefits was proper
5. Legal issues involved: _____
6. Unusual aspects: Employer terminated Claimant's benefits even though Claimant has not been released by all treating physicians to return to work
7. Witnesses (designate if expert):* 1. Claimant 2. Tara Evans (claimant's wife) 3. Dr. Peter O'Kelley
8. Exhibits: 1. Medical Report of Dr. Peter O'Kelley 2. Report of Carolinas Hospital System
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
1. Medical Report of Dr. Peter O'Kelley 2. Medical Records of Carolinas Hospital System
ALL MEDICAL RECORDS NOT RECEIVED YET
10. Name, address, and specialty, if any, of the treating physician: 1. Dr. Timothy Wagner, 300 Mercy St., Lake City, SC 29560, Orthopedic
2. Dr. Peter O'Kelley, 805 Pamplico Highway, Medical Mall B, Suite 310, Florence, SC 29505, Urologist; 3. Dr. Anthony Alexander, 901 E. Cheves St., Suite 100, Florence, SC 29506, Orthopedic.
11. Impairment rating(s); body part(s); physician and date of opinion: Not applicable at this time.
12. I am amending my Form 50/51 in the following manner: _____

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to John Bruton, Esquire, P.O. Box 11889, Columbia, SC 29211 on the 26th day of November 2014 by: ☒ first class postage ☐ certified mail ☐ personal service.

Signature: Gerald Malloy Email: gmalloy@bellsouth.net
Date of hearing: December 11, 2014 Time needed for hearing: 30 min.

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-60 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1413115

STEPHEN EVANS,	)	
	)	
Employee,	)	
	)	
Claimant,	)	
	)	
vs.	)	
	)	
NAN-YA PLASTICS	)	NOTICE OF WITNESSES AND
	)	WRITTEN MEDICAL REPORTS
Employer,	)	TO BE INTRODUCED AS
	)	DIRECT EVIDENCE ON BEHALF
AND	)	OF CLAIMANT
	)	
NEW HAMPSHIRE INSURANCE CO.,	)	
	)	
Carrier,	)	
	)	
Defendants.	)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
JOHN BRUTON, ESQUIRE:

YOU ARE NOTIFIED that the Claimant, pursuant to the provisions of the South Carolina Workers' Compensation Act and Section 1-23-330 of the South Carolina Code of Laws (Cum. Supp. 1988) submit the following medical records and other documents as evidence:

<u>APA #:</u>	<u>MEDICAL PROVIDER:</u>	<u>DATES:</u>	<u>PAGES:</u>
1.	Carolinas Hospital System	9-24-14 – 9-26-14	1 - 19
2.	Dr. Peter O'Kelley	9-24-14 – 11-2-14	20 - 37

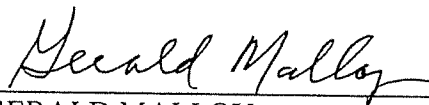
YOU ARE FURTHER NOTIFIED that you have the right to cross-examine or otherwise oppose this evidence and, should you desire to exercise this right, you are to promptly schedule the deposition of any provider whose records are submitted, for the purposes of cross-

examination, or otherwise promptly submit opposing medical records into evidence.

YOU ARE FURTHER NOTIFIED that these records, or photocopies of the same, will be provided to the South Carolina Workers' Compensation Commission for insertion in their file and for consideration as evidence on behalf of the Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant: 1. Claimant 2. Tara Evans 3. Dr. Peter O'Kelly.

MALLOY LAW FIRM

A handwritten signature in cursive script, reading "Gerald Malloy", is written over a horizontal line.

GERALD MALLOY
Post Office Box 1200
Hartsville, South Carolina 29551
843-339-3000
Attorney for Claimant

Hartsville, South Carolina
25 day of November, 2014

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1413115

STEPHEN EVANS,	)	
	)	
Employee,	)	
	)	
Claimant,	)	
	)	
vs.	)	
	)	
NAN YA PLASTICS,	)	CERTIFICATE
	)	OF
Employer,	)	SERVICE
	)	
AND	)	
	)	
NEW HAMPSHIRE INSURANCE CO.,	)	
	)	
Carrier,	)	
	)	
Defendants.	)	

The undersigned certifies that she is an employee at MALLOY LAW FIRM, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of the same in the United States Mail, postage prepaid, addressed to:

John C. Bruton, Esquire
 Haynsworth Sinkler Boyd, P.A.
 Post Office Box 11889
 Columbia, SC 29211-1889

Commissioner Avery B. Wilkerson
 SC WCC
 1333 Main Street, Suite 500
 Columbia, SC 29201

Claimant's Pre-Hearing Brief and Notice of Witnesses and Written Medical Reports
Date Mailed: November 26, 2014


 Greta Elliott, Paralegal

Haynsworth
Sinkler Boyd, P.A.
ATTORNEYS AND COUNSELORS AT LAW

ONE NORTH MAIN, 2ND FLOOR (29601-2772)
POST OFFICE BOX 2048 (29602-2048)
GREENVILLE, SOUTH CAROLINA
TELEPHONE 864.240.3200
FACSIMILE 864.240.3300
WEBSITE www.hsblawfirm.com

JOHN C. BRUTON, JR.
DIRECT DIAL NUMBER 803.540.7861
EMAIL jbruton@hsblawfirm.com

December 2, 2014

Via eCase

Commissioner Avery B. Wilkerson, Jr.
SC Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

Re *Stephen Evans v. Nan Ya Plastics*
WCC File No.: 1414115
Date of Accident: 9/04/14
HSB File No.: 01973.0721

Dear Commissioner Wilkerson:

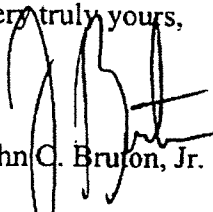
I represent the Employer/Carrier in regard to the above matter.

Enclosed herewith for filing is an original and one copy of Form 58 Pre-Hearing Brief and Notice of Witnesses and Written Report(s)/Physician or Other Evidence on Behalf of Employer/Carrier.

By copy of this letter I am providing Gerald Malloy, Esquire, Claimant's attorney a copy of the same as required by the Rules and Regulations of the Commission, together with copies of the submissions under the Administrative Procedures Act.

With kind regards, I remain

Very truly yours,


John C. Bruton, Jr.

JCBjt/pgl
Enclosures

cc: Gerald Malloy, Esq. (w/encl. via email)

ROA 0094



Claimant's Name: Stephen Evans Employer's Name: Nan Ya Plastics Corporation
Address: 121 Clyde McGee Road, Lot 7 Address: 140 E. Beulah Road
City: Timmonsville State: SC Zip: 29161 City: Lake City State: SC Zip: 29560
Home Phone: 843-845-4842 Work Phone: () - Carrier: New Hampshire Insurance Company
Preparer's Name: John C. Bruton, Jr., Esq., Preparer's Phone #: (803) 779-3080

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$563.00 2. AWW: \$845.34 Date of Injury: 9/04/14
3. Type of injury and body part(s): Neck and back; alleged bladder, urethral tear
4. Facts in controversy: Employer's termination of TTD pursuant to WCC Form 15 as Employee was released to light duty and Employer had light duty work available consistent with the terms upon which Employee had been released.
5. Legal issues involved: same
6. Unusual aspects: _____
7. Witnesses (designate if expert): Adrian Harris; Dana Welch; Claimant's supervisor; Claimant's co-worker
8. Exhibits: Letters to Employee from Employer; Photographs
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): Reports pursuant to R. 67-612. All medical records not yet received.
10. Name, address, and specialty, if any, of the treating physician: Dr. Anthony Alexander, 901 E. Cheves St., Suite 100, Florence, SC 29506, Orthopedic; Dr. Peter O'Kelly, 805 Pamplico Hwy., Medical Mail B., Suite 310, Florence, SC, 29505, Urologist;
11. Impairment rating(s); body part(s); physician and date of opinion: None
12. I am amending my Form 50/51 in the following manner: _____

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Gerald Malloy, Esquire at

Address P.O. Box 1200, Hartsville, SC 29551 on the _____ day of December, 2014 by: ☐ first class postage ☐ certified mail ☐ personal service ☒ Email.

Signature: [Signature]
Date of hearing: December 11, 2014

Email: jbruton@hsblawfirm.com

Time needed for hearing: 60 minutes

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

WCC Form # 58
Revised 7/13

58
ROA 0095

PRE-HEARING BRIEF

STATE OF SOUTH CAROLINA
BEFORE THE WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 1413115

Stephen Evans

Employee/Claimant,

vs.

Nan Ya Plastics,

Employer,

Gallagher Bassett Services,

Carrier,

Defendants.

**NOTICE OF WITNESSES AND WRITTEN
REPORT(S)/PHYSICIAN OR OTHER
EVIDENCE ON BEHALF OF
EMPLOYER/CARRIER**

**TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
GERALD MALLOY, ESQUIRE, ATTORNEY FOR CLAIMANT**

YOU ARE HEREBY NOTIFIED THAT THE Employer/Carrier, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330 (1976, as amended), herewith submits the following reports/physician or other evidence on behalf of the Employer/Carrier, to wit:

TAB NO.	NAME OF REPORT(S) / PHYSICIAN	DATE OF REPORT(S)	PAGE NUMBERS
3.	Anthony Alexander, M.D., Pee Dee Orthopaedics	10-7-14	38
4.	Letter from Nan Ya Plastics to Stephen Evans with attached return to work note from Dr. O'Kelly	10-29-14	39-40
5.	Photographs of area where accident occurred		41-42

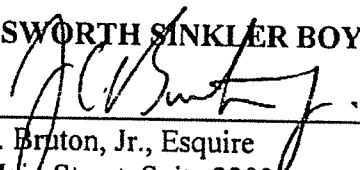
YOU ARE FURTHER NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the deposition(s) of any of the physicians or other person(s), whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred herein, or photocopies received from said physicians/others, shall be filed with the Commissioner, for

insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Employer/Carrier.

YOU ARE FURTHER NOTIFIED, that the following witnesses may be called on behalf of the Employer/Carrier: Adrian Harris; Dana Welch; Claimant's Supervisor; Claimant's Co-worker.

HAYNSWORTH SINKLER BOYD, P.A.

By: 

John C. Bruton, Jr., Esquire

1201 Main Street, Suite 2200

Post Office Box 11889 (29211-1889)

Columbia, South Carolina 29201

(803) 779.3080 telephone

(803) 765.1243 fax

Email Address: jbruton@hsblawfirm.com

Date: December 2, 2014

Attorneys for Employer and Carrier

STATE OF SOUTH CAROLINA
BEFORE THE WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 1413115

Stephen Evans

Employee/Claimant,

vs.

Nan Ya Plastics,

Employer,

Gallagher Bassett Services,

Carrier,

Defendants.

CERTIFICATE OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have caused the foregoing to be served via U.S. mail, postage prepaid, *or by other delivery as indicated*, to all parties of record at the addresses shown below.

Document(s): Form 58 Pre-Hearing Brief and Notice of Witnesses and Written Report(s)/Physician or Other Evidence on Behalf of Employer/Carrier

Parties of Record

Gerald Malloy
Post Office Box 1200
Hartsville, SC 29551
Attorney for Claimant

HAYNSWORTH SINKLER BOYD, P.A.

By: *Danew B Ledbetter*

Date: December 2, 2014

Boyd, Elaine

From: Bruton, John <jbruton@hsblawfirm.com>
Sent: Wednesday, December 10, 2014 12:29 PM
To: Boyd, Elaine; Gerald Malloy; Greta Elliotte
Subject: RE: 1413115 Evans

Sounds good. I'll send you a proposed consent order.

Thanks.

From: Boyd, Elaine [<mailto:EBoyd@wcc.sc.gov>]
Sent: Wednesday, December 10, 2014 12:25 PM
To: Bruton, John; Gerald Malloy; Greta Elliotte
Subject: RE: 1413115 Evans

I will take it off the docket for tomorrow, but the Commissioner will need a consent order for that.

Thanks!!

From: Bruton, John [<mailto:jbruton@hsblawfirm.com>]
Sent: Wednesday, December 10, 2014 12:22 PM
To: Boyd, Elaine; Gerald Malloy; Greta Elliotte
Subject: RE: 1413115 Evans

Elaine,

Thanks for the email.

I just got off the telephone with claimant's attorney Gerald Malloy and we have agreed that we do not need to go forward with the hearing tomorrow. The hearing was set based upon the employer (my client) filing a Form 15 terminating TTD payments to which the claimant did not agree.

Within the last week the employer received some additional information on this claim (which we did not previously have) in which we learned a treating physician has been holding the claimant out of work. As a result, the employer has now agreed to start the claimant back on weekly TTD checks and also issue a check to catch up his past TTD that had been stopped over the last 4-5 weeks.

Please let me know if you need any additional information. Thanks for your help.

John Bruton
803.540.7861

From: Boyd, Elaine [<mailto:EBoyd@wcc.sc.gov>]
Sent: Wednesday, December 10, 2014 11:15 AM
To: Bruton, John; Gerald Malloy; Greta Elliotte
Subject: 1413115 Evans
Importance: High

I am just double checking that this case is still going forward tomorrow at 9:30 in Florence.

*3/2/18 - F18 filed
requested from
D's*

12-22-14

Dear Senator Gerald Malloy,

I am writing this in regards to our "Retainer Agreement". I went to your office on 12-18-14 and met with a Preston F. McDaniel (Attorney), at your request. Greta Ellette called me @ 8:40 a.m. 12-18-14 and said this Gentleman was coming in to help us with the case. I went to your office at 11:30 a.m. as requested. I sat there until 2:30 p.m. before seeing Mr. McDaniel. Three other clients walked in and I was told to last. After my consult with Mr. McDaniel I was not comfortable.

I understand that you are a Senator and you expressed you would

12-22-1

be going into Senate and did not have time for my case right now. Under that circumstance you should have never taken my case. I was referred to you not Preston F. McDaniel and will not even consider letting him handle my case.

After thinking overnight I decided to end our professional relationship. I called at 7:30 a.m. 12-19 and left a message that I wanted my case file (which I am entitled to.) I received no response and called back at 9:00 a.m. and ask Greta Elliott (Paralegal) if I could come get a copy of it (care file.) Her response

ROA 0101

12-22-14
was very blunt and she said
"Yes, you come and get it and
get you another Lawyer in
the Process. This is not the
first time she (Greta Elliott)
has been rascy to me. The way
I see it, she is the Paralegal
and if she feels sour about me
she is not going to work fairly
for me.

I came to your office @ 11:00 a.m. 12-19
and met with you and had a
meaningless conversation and I
retrieved my case file. I got
Home that day and went through
the case file and there was no
Retainer Agreement in it. I was

12-22-14

very startled because my main problem with Preston F. McDaniel was that he tried to get me to sign a retainer agreement and the second page was just a line in the left corner of the top of a page that reads as follows:

agreements between Client and Attorney

(client)

That made me feel as if he was trying to get my signature.

After meeting with you I ask about my back pay for Workman's Compensation. Dita has been telling me I should be getting it in

12-22-11

the mail any day. When I met with you Friday 12-20 you (Gerald Malloy) said you should have my money any day. I do not understand why you are getting it. That comes in the mail to me weekly (when it was coming). I have been without for over 8 weeks now. Therefore I feel that the proper job has not been done for me.

I trusted you Senator Gerald Malloy and after all of these negative circumstances I have decided to seek further Counsel and find someone who has time to work my case. I am hurt and my family is hurting and I feel it

is time to end our professional relationship. I am a Christian, I stand on Faith alone and it tells me this is what is necessary. I am very sorry it ended this way. 12-22.

Any prior authorizations are hereby cancelled between me and your firm. I understand that there may be a fee owed for your services and I just ask that you come up with a decent figure and you can let me know or sue me or put a lien on me for it. This will be discussed with my new Attorney.

To this point I have not

12-22-11

received any monetary funds
from you and as far as I know
you have received no monetary
funds from my case.

I now end all authorizations
and I do not want you or your
~~Law~~ Firm involved in my case
in any way.

Enclosed is a set of papers
on How to Hire an Attorney and
I have abided within those spec-
ific guidelines. If you and
your Firm would have treated
me right and made me feel
confident in you, this would
never have happened. Again
I will have to say I wish it

12-22-14

could be different but (The
Damage is done).

I will have this letter typed
and it will be sent certified mail
on 12-23-14.

With Kindest Regards,
Stephen M. Evans
Stephen Murray Evans

Again I apologize and am sorry
this ended this way!

James H. Carroll
witness

12-24-14

Mr. Malloy,
This is in regards to your
(Defenseless)
stupid letter I received 12-23-14. You
knew I had delivered this same

letter to you firing you on 12-18 ~~and~~
and 12-19. You did not relieve yourself

I will picket your office ^{KOA 0108} on Christmas Day because you are the Quinch that stole my 7 year old's Christmas and he will be with me.

from my case. I relieved you, unfortunately I don't have Robal's at my discretion and could not have this typed and sent properly.

Your Paralegal had a problem with me and you should get you and her an Ethics class and learn how to treat people.

It's a shame that my Lawyer who had my check and settt it back to Gallagher + Barnett was my biggest problem.

Again I have no personal problem with you or your Firm but please "Stay Out Of My

Case. You have hurt my case and I have to start all over. ^{KOA 0108} with Kindest
witness Jona Cuervo ^{Regards} Steph M. Evans

I know your the
best and I depended on you.

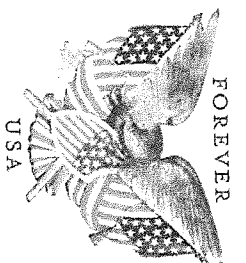
"I trusted you Mr. Gerald Malloy I was
referred to you by Amy Wilson (client of yours). This
thing is hard enough to fight without your ~~deceit~~
"Deceit?" ROA 0109 12-24-14 (10) 4/10

My Wife spoke with Lail Bullock
on 12-22-14 and she told my wife
that your firm sent my check
for Workmen's Compensation back to
them because I fired you. This
is an outrage, you know I
have been without since 10-31-14
and my 7 year old's Christmas along
with our bills are in jeopardy. Along
with the Pastor F. McDonald trying to
steal my signature this proves yet
another deceit. Apparently your firm
is geared toward "Liaroid Gain"
instead of "Honest Values" and what's
Humane. This is the last letter you
will receive from me but this is
not over! ROA 0109
with witness Jana Crows Styler M. Crows
with kindest regards

I am not angry I am not a hot head but
very disappointed! Wishing you and your son very
Merry Christmas!

Stephen M. Evans
121 Clyde McGehee Rd. Lot 7
Farmersville, D.C.
29161

Senator Donald Malloy
108 Carroll Way
Hortsville, D.C.
29551



SENDER: COMPLETE THIS SECTION

- ☒ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- ☒ Print your name and address on the reverse so that we can return the card to you.
- ☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Senator Donald Malloy
108 Carroll Way
Hortsville, D.C.
29550

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ <i>Donald Malloy</i>		☐ Agent
B. Received by (Printed Name) <i>Colleen E. Jones</i>		☐ Addressee
C. Date of Delivery		
D. Is delivery address different from item 1?		☐ Yes
If YES, enter delivery address below:		☐ No

3. Service Type

☒ Certified Mail®	☐ Priority Mail Express™
☐ Registered	☐ Return Receipt for Merchandise
☐ Insured Mail	☐ Collect on Delivery
4. Restricted Delivery? (Extra Fee) ☐ Yes	

2. Article Number

(Transfer from service label)

7014 0510 0002 2617 9454

PS Form 3811, July 2013

Domestic Return Receipt

GERALD MALLOY

ATTORNEY AT LAW

108 CARGILL WAY
HARTSVILLE, SOUTH CAROLINA 29550

TELEPHONE (843) 339-3000
FASCIMILE (843) 332-4646
EMAIL: GMALLOY@BELLSOUTH.NET

POST OFFICE BOX 1200
HARTSVILLE, SOUTH CAROLINA 29551

December 22, 2014

Stephen Evans
121 Clyde McGee Road, Lot 7
Timmonsville, SC 29161

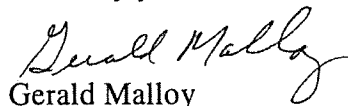
Re: workers' compensation injury of 9-4-14

Dear Mr. Evans:

This letter follows your phone call on December 22, 2014 after leaving a letter at my door over the weekend. You brought a second copy of your letter to my office this morning and then left. Since leaving my office this morning, you have called twice. I have forwarded another copy of your file under separate cover. Please sign the Motion and Order Relieving Counsel which was enclosed and return to me.

With kind regards, I am,

Sincerely yours,


Gerald Malloy

GM/gre

GERALD MALLOY

ATTORNEY AT LAW

108 CARGILL WAY
HARTSVILLE, SOUTH CAROLINA 29550

TELEPHONE (843) 339-3000
FASCIMILE (843) 332-4646
EMAIL: GMALLOY@BELLSOUTH.NET

POST OFFICE BOX 1200
HARTSVILLE, SOUTH CAROLINA 29551

December 22, 2014

Mr. Stephen Evans
121 Clyde McGee Road, Lot 7
Timmons ville, SC 29161

Re: Workers' Compensation Injury of 9-4-14

Dear Mr. Evans:

You received a copy of your file on 12-19-14 in my office. Attached is the acknowledgment and receipt signed by you. I have again enclosed a copy of the file along with some additional medical records from Lake City Hospital that came in the mail today, 12-22-14.

I have reviewed this matter and assessed it as I told you I would after our brief meeting on Friday. You were accompanied by a young man named Raymond. As I explained to you during the meeting, among other things, I do not allow clients to record my conversations. As a result of my assessment and the recent development, please be advised that I have decided to file a Motion and Order to be Relieved as Counsel in your case. I deeply regret it because I feel like my firm could have been of assistance to you.

We have previously discussed the need for development of your particular injuries and that we might get some assistance due to the door hitting you in the head and the nature of your injuries. You have declined this assistance. Preston McDaniel, a noted workers' compensation attorney was going to offer assistance on this issue.

It further seems as if you and one of my paralegals have an issue. As I explained I feel a separation is in our best interest.

To this end, I have enclosed a Consent Order which can be signed by you and returned in the self addressed stamped envelope.

I am not charging a fee and am not filing a lien. As to the costs incurred in this case to date, I am not seeking reimbursement. I anticipate receiving a bill for the deposition in the near future. You have already received a copy of the deposition.

You are free to seek other counsel. There are several very good lawyers who do workers' compensation cases in the Florence area. Here are a few: Hood Temple 662-5000, Stephen Wukela 669-5634, Ron Jebaily 667-0400.

The carrier may send the check for your back temporary total to my office. The reason they may send it to my office is that the result obtained was because of a hearing. If this occurs, I will forward it to you overnight on the same day it arrives. I am not charging a fee on these funds.

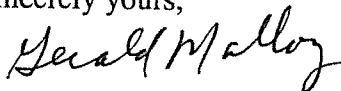
I am notifying the Commission and the other attorney that I no longer represent you.

Lastly, I have enclosed a Form 50, filing of a claim in your case and self addressed stamped envelope forwarded to the Commission for your filing of a claim or hearing.

I am willing to speak to your future counsel if necessary. I wish you the best.

With kind regards, I am,

Sincerely yours,

A handwritten signature in cursive script that reads "Gerald Malloy".

Gerald Malloy

GM/gre
Enclosure

Dear Senator Malloy

12-28-14

I am very sorry again on how things ended up with us (you and I). I trusted you fully only to discover that your Representation has been very detrimental to my case. I had enough going on with Ois, and workers compensation doing me wrong. Then you bring in this Preston F. McDaniel who really destroyed everything. I will be taking further action toward you and Hine (Mr. McDoniels) in this very delicate matter.

You let me go 7 weeks with no pay before filing for a hearing. We had a Hearing ^{12-9th} but I guess we would have been more fair to go to the

original hearing that was set for ¹²⁻²⁸⁻¹⁴ the 12-11th at the SIMT building at FDTC.

It's now the 28th December and I still haven't received my back pay for Workers' Compensation. Only to my astonishment we called Gail Bullock on 12-22-14 to find out that you had my back pay and mailed it back the previous Thursday Dec. 18th after my horrible meeting with Ms. McDaniel and my decision was made to fire you and your firm.

Then you grasp at straws and send me a stupid lying defenseless letter on 12-22-14 on how you did your assessment and decided to be relieved as counsel. You were

already relieved. You were ¹²⁻²⁸⁻¹⁴fired
on 12-18-14.

Then you go on to say in
said letter that you would send
my Worker's Compensation check over-
night to me if it showed up, knowing
your Firm had already received and
sent it back.

I picketed you on Christmas
Day with my 7 year old. During my
Exercising of my Rights (1st Amendment)
I met 2 people a Pearl Smith and
a Mr. Wayne Woodell who also claim
to have been wronged by your Firm.
Apparently this is a pattern for
your practice and I have
concluded ~~that~~ ^{ROA 0116} your Firm is

geared toward "Financial Gain¹²⁻²⁸⁻¹⁴
instead of what's Humane."

Yet I still feel a deep remorse in
my heart for how things are.

I told you from day one I
am a Christian and I stand on
Faith alone and that is my rock.

God Bless You My Friend Senator
Gerald Malloy. I hope through this
all, you and your firm will learn from
this, take it to heart and strive to
do better for your future clients.

With Kindest Regards,
(I am)

Stephen M. Evans
(Client)
Stephen M. Evans

I will not rest until
Justice has prevailed!
I am tired of being
wronged!

S.E.

Jana Arawa

ROA 0117

(Witness)

12-28-14

Dear Senator Malloy,

12-28-14

I have sent this letter along
with your "motion to Relieve," that
states my reasons (some of them) for
my decisions and I apologize again
"Things Did Not Have to be this way."

With Kindest Regards,
(I am)

Stephen M. Evans
(Client)
Stephen M. Evans

Sara Evans
Witness

12-28-14

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Stephen Evans,)
)
 Employee/Claimant,)
)
 vs.)
)
 Nan Ya Plastics,)
)
 Employer,)
 and)
)
 New Hampshire Insurance Co.,)
)
 Carrier,)
)
 Defendants.)
 _____)

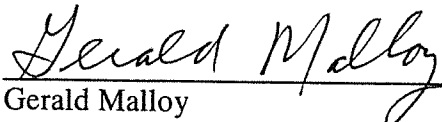
MOTION TO RELIEVE

WCC File Number: 1413115

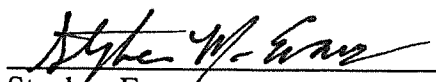
The undersigned attorney, GERALD MALLOY, would respectfully show as follows:

1. That the above-entitled action is presently pending before the South Carolina Workers' Compensation Commission.
2. That the client and attorney desire to sever the attorney/client relationship with the undersigned.
3. That the undersigned now moves that he be relieved as counsel for the Employee/Claimant, Stephen Evans, and released from further representation in this matter.

WHEREFORE, the undersigned prays that he be released as counsel for the Employee-Claimant and be released from further representation in this matter.



Gerald Malloy
Malloy Law Firm



Stephen Evans

Dated: 12-28-14

CONTRACT FOR LEGAL SERVICES

I hereby retain and employ Kevin M. Barth, **ESQUIRE** (hereinafter "Attorney") as my attorney to represent me in the following matter:

WORKERS Comp ACCIDENT vs. NAV-YA

For his services, I agree to pay my Attorney as follows:

A. 33 1/3 percent of whatever may be recovered from the claim if settlement is made without filing suit¹.

B. 33 1/3 percent of whatever may be recovered from the claim after suit is filed. (See footnote 1)

I agree to pay all necessary costs of processing the claim, including, without limitation, filing fees, discovery costs, service of process, court costs and travel, witness fees, medical records, medical reports, investigative costs, telephone and postage. From time to time, I understand that Attorney may advance costs on my behalf. Any such costs not previously paid by me are to be deducted from my share of any recovery as outlined below; however, I understand that costs and expenses must be paid in full whether or not there is any recovery. I will pay these costs as taxed by the court and/or as billed by Attorney.

I further authorize my Attorney, in appropriate cases, to pay from my share of the proceeds of recovery any unpaid amounts due health providers for services rendered in connection with this claim. I further acknowledge that my attorney MUST protect known liens or assignments signed by me, and that if there is a dispute between me and a health care provider, the attorney must hold the money in escrow until that dispute is resolved.

I further understand that I may terminate the services of my Attorney at any time, but that such termination will not relieve me of my obligation to pay him any outstanding balance owed based upon his hourly services computed to the date of such termination. If I terminate the services of my Attorney at any time prior to settlement, then I agree to pay said Attorney \$175.00 per hour for all attorney services rendered in this matter, and \$75.00 per hour for all paralegal services rendered in this matter or the contracted contingency fee percentage on any offers that have been made at the time of termination, **whichever is greater**. Attorney will also be entitled to reimbursement for costs. To secure payment by me to the firm for all expenses, costs and attorney fees I am obligated to pay under this agreement, I hereby grant the firm a charging lien applicable to any and all recoveries in this matter whether by settlement, collection of a judgment or otherwise.

I further understand that unless specified above, my Attorney shall not be required to pursue any appeal in this representation without specific

¹ The contingency fee is to be determined based on the gross recovery. Litigation costs and expenses are to be deducted after the contingency fee is calculated. **ROA 0120** and are to be deducted from the client's portion of the proceeds.

further agreement as to the fee, nor shall he be required to provide further services at the conclusion of the case without further agreement as to fees, whether such services relate to the enforcement or modification of the order of judgment obtained in my case. I understand that unless otherwise specified, this agreement only applies through the trial stage, and does not include any form of appellate proceedings, and that my Attorney has the right to terminate this contract at any time, and that if he elects to terminate, he shall still be entitled to payment for his services and costs as set forth in the above paragraph concerning termination by the client.

I acknowledge that NO GUARANTEE of any results, recovery, or outcome has been made to me by my Attorney. Attorney does agree to use his best professional judgment in handling my case and advising me in regard to what actions I am to take.

I further acknowledge and agree, by the signing of this letter, to keep this office advised of my whereabouts at all times, shall appear on reasonable notice at any and all depositions and Court appearances, and shall comply with all reasonable requests of this office in connection with the preparation and presentation of the aforesaid action. I understand my cooperation is a basis of this agreement/contract, and a failure to cooperate, disappearance for 6 months or more without contacting my attorney or leaving a forwarding address, is a material breach, and just and adequate cause for my attorney to withdraw as counsel without further notice to me.

I understand that you reserve the right to destroy all files after 10 years. In the event there are any original documents in my file which I wish to have returned to me upon conclusion of this case, I understand it is my responsibility to request same. Further, if I wish to receive my original file instead of you destroying it, I need to advise you in writing. This notice would be attached to the front of my file and the file would then be provided to me instead of it being destroyed.

I have read and fully understand this contract and I hereby acknowledge receipt of a copy.

NAME: AM

DATED: 12-29-14

ACCEPTED BY: Kevin M. Barth

Signed this 29th day of December 2018

Barth, Ballenger & Lewis, LLP

ROA 0122

Attorneys At Law
205 North Irby Street
Post Office Box 107
Florence, South Carolina 29503
Phone: 843-662-6301
Fax: 843-664-8384
Web: bbhlawfirm.com

Kevin M. Barth
E. Guy Ballenger
Nicholas W. Lewis
Brendan P. Barth

Michael Ballenger (Retired)

June 8, 2015

SC Workers' Compensation Commission
Division of Claims
P.O. Box 1715
Columbia, SC 29202

Re: Stephen W. Evans v. Nan Ya Plastics
Case No. 1413115

Dear Sir/Madam:

Enclosed herewith, please find my Form 50 requesting a hearing in regard to the above matter, along with the appropriate filing fee.

By copy of this letter, I am serving the Form 50 on John C. Bruton, Jr., attorney for the employer/carrier.

With best regards, I am

Sincerely,

Kevin M. Barth
kbarth@hbbh.net

KMB/chg
enclosure
cc: John C. Bruton, Jr.

ROA 0122

EX. 19-1

COLUMBIA

CHARLESTON

FLORENCE

GREENVILLE

ROA 0123

Haynsworth
Sinkler Boyd, PA

ATTORNEYS AND COUNSELORS AT LAW

1201 MAIN STREET, 22ND FLOOR (29201-3226)
POST OFFICE BOX 11889 (29211-1889)
COLUMBIA, SOUTH CAROLINA
TELEPHONE 803.779.3080
FACSIMILE 803.765.1243
WEBSITE www.hsblawfirm.com

JOHN C. BRUTON, JR.
EMAIL jbruton@hsblawfirm.com

June 24, 2015

SC Workers' Compensation Commission
Attention: Judicial Department
P.O. Box 1715
Columbia, SC 29202-1715

RE: *Stephen Evans v. Nan Ya Plastics*
WCC File No.: 1413115
Date of Accident: 09/04/2014
HSB File No.: 01973.0721

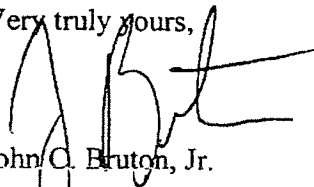
Dear Sir or Madam:

I am enclosing a duly executed Form 51, constituting the Answer of Nan Ya Plastics to the Form 50, in connection with the above-referenced workers' compensation claim, with the request that the same be filed with the other papers in this action.

By copy of this letter to the Claimant, I am serving a copy of our Answer, as required by the Rules of the Commission.

With kind regards, I remain

Very truly yours,



John C. Bruton, Jr.

JCBj:pgl
Enclosure

cc: Kevin M. Barth, Esq. (w/encl.)

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: **1413113 ROA 0124**
Carrier File #: **002848-001824-WC-01**
Carrier Code #: **00143**
Employer FEIN #: **223009119**

Claimant's Name: STEPHEN EVANS Employer's Name: NAN-YA PLASTICS CORP AMERICA
Address: 121 CLYDE MCGEE RD LOT 7 Address: 140 EAST BEULAH ROAD
City: TIMMONSVILLE State: SC Zip: 29161 City: LAKE CITY State: SC Zip: 29560
Home Phone: 843-731-7669 Work Phone: _____ Insurance Carrier: NEW HAMPSHIRE INSURANCE CO, LTD
Preparer's Name: BRENDA GAY Law Firm: _____ Preparer's Phone #: 704 405 6687

1. Date of injury: 9/4/2014 2. Total Weeks Compensation Paid: 51 weeks
(m/d/yyyy)

3. Type of Compensation Paid (TP or TT)/Periods of Payment:

	(m/d/yyyy)	(m/d/yyyy)
Type: <u>TT</u>	From: <u>9/5/2014</u>	To: <u>8/27/2015</u>
Type: <u>N/A</u>	From: _____	To: _____
Type: <u>N/A</u>	From: _____	To: _____

4. Date of First Payment: 9/24/2014
(m/d/yyyy)

5. Total Amount Paid (a) Compensation: \$ 28743.09
(b) Medical (Include Nursing, Hospital, Drugs, Etc.): \$ 24182.27

6. Informal Conference is Requested: ☐ Yes ☒ No (check one)

Use these lines to send a memo to the Commission: Filing Form 18 to maintain file in compliance.

BRENDA GAY 704 405 6687 8/28/2015
Employer's Representative Phone Date

Type or print all information. File this form six months after the alleged injury date and each six 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.

Barth, Ballenger & Lewis, LLP

ROA 0125

Attorneys At Law
205 North Irby Street
Post Office Box 107
Florence, South Carolina 29503
Phone: 843-662-6301
Fax: 843-664-8384
Web: bbbhlawfirm.com

Kevin M. Barth
E. Guy Ballenger
Nicholas W. Lewis
Brendan P. Barth

Michael Ballenger (Retired)

July 16, 2015

Stephen M. Evans
121 Clyde McGee Road, Lot 7
Timmonsville, SC 29161

Re: Stephen W. Evans v. Nan Ya Plastics

Dear Stephen:

Please be advised that we have received notice of your Workers' Compensation hearing. Your hearing is scheduled for September 1, 2015 at 2:00 p.m. and will be held in Boardroom 102 of the Southeastern Institute of Manufacturing Technology (SIMT) located at 1951 Pisgah Road, Florence. I would ask that you plan on meeting me there at 1:45 p.m. on that date.

In addition, I have also taken the liberty of scheduling an appointment for you to meet with me to prepare for the hearing. This appointment is scheduled for August 17, 2015 at 10:00 a.m.

Please make a note of these dates and times. With best regards, I am

Sincerely,

Kevin M. Barth
kbarth@hbbh.net

KMB/chg

ROA 0125

EX. 22-1

South Carolina Workers' Compensation Commission

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



WCC File #: 1413115 **ROA 0126**
Carrier File #: 002848001824WC01
July 7, 2015

NOTICE OF HEARING

STEPHEN EVANS v. NAN-YA PLASTICS CORP AMERICA

Subject: To determine issues as set forth on Forms 50 and 51.
Date: September 1, 2015 at 02:00 PM
Location: Southeastern Inst. of Manufacturing & Business Incubator, 1951 Pisgah Road,
Boardroom 102
Florence, SC 29501

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 Melody L. James
803-737-5668, tmorris@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: Tamara Morris, SC Workers' Compensation, July 7, 2015

Party

Employee: STEPHEN EVANS

Employer: NAN-YA PLASTICS CORP AMERICA
Carrier: New Hampshire Insurance Co

Attorney

Kevin Mitchell Barth
kbarth@hbbh.net
843-662-6301

John C. Bruton, Jr.
jbruton@hsblawfirm.com
803-779-3080

ROA 0126

Barth, Ballenger & Lewis, LLP

ROA 0127

Attorneys At Law
205 North Irby Street
Post Office Box 107
Florence, South Carolina 29503
Phone: 843-662-6301
Fax: 843-664-8384
Web: bblawsc.com

Kevin M. Barth
E. Guy Ballenger
Nicholas W. Lewis
Brendan P. Barth

Michael Ballenger (Retired)

October 30, 2015

John C. Bruton, Jr.
P.O. Box 11889
Columbia, SC 29211-1889

Re: Stephen W. Evans v. Nan Ya Plastics
Case No. 1413115

Dear John:

Enclosed, please find a copy of the IME report from Dr. Storick at Columbia Neurosurgical. He has recommended a spine surgical evaluation of the neck and back. We are requesting that this evaluation be scheduled for Mr. Evans as soon as possible.

I look forward to hearing from you and with best regards, I am

Sincerely,

Kevin M. Barth
kbarth@hbbh.net

KMB/chg
enclosure
cc: Steven Evans

ROA 0127

EX. 23-1



[Sign Out](#)

[Help](#)

ROA 0128

cgraves@hbbh.net

From: klforsyth@cvty.us.com

Valid Signature (Help)

[Print](#)

To: brenda_gay@gbtpa.com, jbruton@hsblawfirm.com, cgraves@hbbh.net

Cc: Hub_1@aetna.com

Sent: Wed Feb 10, 2016 12:26 PM (1 day ago)

Subject: [SEND SECURE] Evans

Attached: [MedicalReport.pdf \(434 kb\)](#) - Download

[Evans2.10.16.pdf \(749 kb\)](#) - Download

Stephen Evans

ROA 0128

EX. 24-1

ROA 0129

EVANS, STEPHEN: 900784356-1
002848-001824-WC-01

Please see attached MRI report from 2/10/16 as well as office note. Dr. Gunter has recommended anterior cervical discectomy and disc arthroplasty C6-7. Dr. Gunter recommends disc replacement instead of a fusion. Per Dr. Gunter recovery for disc replacement is 10-12 weeks and fusion is 3-6 months. Denise at Dr. Gunter's office will be sending a surgery sheet that must be signed by Brenda. Brenda, please advise if we will need a 2nd opinion.

Also, Mr. Evans BP today was 178/100, per EE, he does not have the money to pay for BP meds. The nurse at MD office instructed him to call his PCP to obtain free samples or a cheaper drug. Mr. Evans BP will need to be controlled prior to surgery. Mr. Evans c/o loss of sensory function "no feeling" to his Left leg and buttocks. Also, c/o tendency to "loose the feeling in his left arm" as well as chronic, constant headaches. No further PT at this time. Thanks

Kathy L Forsyth RN CCM
Coventry
Field Case Manager
Cell: 803-640-0372
Fax: 855-221-7806
klforsyth@cvtg.us.com

*Please Request Me Directly For Your Next
Referral!!!!*

*Please contact my manager Consuela Burrell to
let her know how I am doing, (706) 224-7836
or CXAnderson@cvtg.us.com*

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Utilization Review | Case Management
Independent Medical Exams | Bill Review

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Reply

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ROA 0129

EX. 24-2

From: klforsyth@cvtty.us.com
Valid Signature (Help)

Print **ROA 0130**

To: brenda_gay@gbtpa.com, jbruton@hsblawfirm.com

Cc: cgraves@hbbh.net, Hub_1@aetna.com

Sent: Tue Mar 1, 2016 3:59 PM (50 minutes ago)

Subject: [SEND SECURE] Evans

EVANS, STEPHEN: 900784356-1
002848-001824-WC-01

Brenda, please advise if the surgery for disc replacement is approved for C6-7. Thanks

Kathy L Forsyth RN CCM
Coventry
Field Case Manager
Cell: 803-640-0372
Fax: 855-221-7806
klforsyth@cvtty.us.com

*Please Request Me Directly For Your Next
Referral!!!!*

*Please contact my manager Consuela Burrell to
let her know how I am doing, (706) 224-7836
or CXAnderson@cvtty.us.com*

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Independent Medical Exams | Bill Review

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Reply

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ROA 0130

EX. 25-1



[Sign Out](#)

[Help](#)

ROA 0131

cgraves@hbbh.net

ROA 0131

EX. 25-2

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: **141311ROA 0132**
Carrier File #: **002848-001824-WC-01**
Carrier Code #: **00143**
Employer FEIN #: **223009119**

Claimant's Name: STEPHEN EVANS Employer's Name: NAN-YA PLASTICS CORP AMERICA
Address: 1556 W. OLD NO 4 HWY Address: 140 EAST BEULAH ROAD
City: SCRANTON State: SC Zip: 29591 City: LAKE CITY State: SC Zip: 29560
Home Phone: 843-858-1496 Work Phone: _____ Insurance Carrier: NEW HAMPSHIRE INSURANCE CO, LTD
Preparer's Name: BRENDA GAY Law Firm: _____ Preparer's Phone #: 704 405 6687

1. Date of injury: 9/4/2014 2. Total Weeks Compensation Paid: 78 weeks
(m/d/yyyy)

3. Type of Compensation Paid (TP or TT)/Periods of Payment:

	(m/d/yyyy)	(m/d/yyyy)
Type: <u>TT</u>	From: <u>9/5/2014</u>	To: <u>3/3/2016</u>
Type: <u>N/A</u>	From: _____	To: _____
Type: <u>N/A</u>	From: _____	To: _____

4. Date of First Payment: 9/24/2014
(m/d/yyyy)

5. Total Amount Paid (a) Compensation: \$ 43960.02
(b) Medical (Include Nursing, Hospital, Drugs, Etc.): \$ 41524.84

6. Informal Conference is Requested: ☐ Yes ☒ No (check one)

Use these lines to send a memo to the Commission: Filing Form 18 to maintain file in compliance.

BRENDA GAY 704 405 6687 3/3/2016
Employer's Representative Phone Date

Type or print all information. File this form six months after the alleged injury date and each six 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.

To Whom It May Concern, 3.31-16

I Stephen M. Evans have decided to release Kevin Barth from my case. I have had Kevin represent me for over a year now and I feel that my Attorney is not capable of handling workman comp.

I made this decision because I feel my case is stuck. I have never been released from my Dr. and I want the surgeries needed to better my body. I am in no way, shape, or form even ready to consider a settlement. I want my Surgeries. When my surgeries are done and I am released from my Dr. case then will worry about a settlement. Nobody needs my case.

I feel my case is stopped and I don't understand. If you can't look at a particular type of case, "Don't Take It."

I have a business card from Kevin that doesn't even have Workman Comp. listed on it. The newer ones I have, do have it on there. That tells me he never did a Workman Comp. case. I have no problem personally with Mr. Barth but I do not trust that he is the Lawyer for me.

Witness: James H. Parrott

ROA 0133

Sincerely,

Stephen M. Evans
Stephen M. Evans

* indicator parts not checked

ROA 0134

* Rotator cuffs - not checked
neck

lower back - need another opinion

head injury - Dr. Healy

bladder Dr. O'Kelly

* hips

* knees

* misc. cracked teeth

ROA 0134

EX. 27-2

Barth, Ballenger & Lewis, LLP

ROA 0135

Attorneys At Law
205 North Irby Street
Post Office Box 107
Florence, South Carolina 29503
Phone: 843-662-6301
Fax: 843-664-8384
Web: bblawsc.com

Kevin M. Barth
E. Guy Ballenger
Nicholas W. Lewis
Brendan P. Barth

Michael Ballenger (Retired)

May 13, 2016

John C. Bruton, Jr.
P.O. Box 11889
Columbia, SC 29211-1889

Re: Stephen W. Evans v. Nan Ya Plastics
Case No. 1413115

Dear John:

Enclosed, please find the settlement documents and check in the above matter. I am very sorry that Mr. Evans has now refused to accept the settlement offer. Per his instructions, I will be filing a Form 50 to have his surgery approved.

With best regards, I am

Sincerely,

Kevin M. Barth
kbarth@hbbh.net

KMB/chg
enclosure

ROA 0135

EX. 28-1

Barth, Ballenger & Lewis, LLP

ROA 0136

Attorneys At Law
205 North Irby Street
Post Office Box 107
Florence, South Carolina 29503
Phone: 843-662-6301
Fax: 843-664-8384
Web: bblawsc.com

Kevin M. Barth
E. Guy Ballenger
Nicholas W. Lewis
Brendan P. Barth

Michael Ballenger (Retired)

June 1, 2016

John C. Bruton, Jr.
P.O. Box 11889
Columbia, SC 29211-1889

Re: Stephen W. Evans v. Nan Ya Plastics
Case No. 1413115

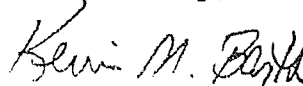
Dear John:

Enclosed, please find a Consent Order Relieving Counsel with regard to the above matter. Mr. Evans picked up his file from my office yesterday and indicated that he no longer wished for me to continue representing him. I would appreciate you signing the Consent Order and returning it to me in the envelope provided.

Please also be advised that pursuant to the Fee Contract that Mr. Evans signed, a copy of which is enclosed, I have a lien on any recovery he may receive in the amount of \$33,761.30 (\$33,333.33 as my 1/3 of the \$100,000 offer plus \$427.97 in costs). Please consider this letter as formal notice of my lien in this matter.

With best regards, I am

Sincerely,



Kevin M. Barth
kbarth@hbbh.net

KMB/chg
enclosure

ROA 0136

EX. 29-1

BEFORE THE SOUTH CAROLINA
WORKER'S COMPENSATION COMMISSION

WCC FILE NO.: 1413115

Stephen Evans,)
)
 Claimant,)
 v.)
)
 Nan Ya Plastics Corp.,)
)
 Employer,)
)
 and)
)
 Gallagher Bassett Services,)
)
 Carrier.)
 _____)

**CONSENT ORDER
RELIEVING COUNSEL**

It appears to the Court that the Claimant no longer desires to use the services of Kevin M. Barth as his attorney, and that Kevin M. Barth, as attorney for Claimant, hereby consents to being relieved as counsel. It is therefore,

ORDERED, ADJUDGED AND DECREED that Kevin M. Barth be hereby relieved as counsel for Claimant and that he be relieved of any further obligation or responsibility in regard to the within action.

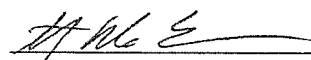
AND IT IS SO ORDERED!

SC Workers' Compensation
Commissioner

Columbia, South Carolina

_____, 2016

WE CONSENT TO THE TERMS OF THIS ORDER:



Stephen Evans
Claimant



Kevin M. Barth

John C. Bruton, Jr.

ROA 0137 Attorney for Employer/Carrier

Stephen M. Evans
1556 W. Ok No. 4 Hwy.
Spartanburg, S.C. 29591
843-373-0526

Spells, Smith & Anderson
1510 Calhoun St.
Columbia, S.C. 29201
843-929-3600
1-1-17

To Mr. Danny Vega,

I called your Office on
1-2-17 expressing this
event would be happening!
S.E.

Dear Mr. Vega, I am notifying you
in writing that you are fired and will in
no way be allowed to represent me Stephen
Murray Evans. I am not satisfied with your
services (At all). You have proceeded to make
a mess of my case (as if I wasn't already in
a bad situation because of previous lawyers I
tried to trust to include Mr. Gerald Mullay
and a Mr. Kevin Barth.) I did send them a
Certified Letter relieving them because of under-
hand strategies they tried to do.

I obtained you earlier this year due to the
advice of a trusted friend Mr. John Etheridge (Gardner
Law Firm in Florence, S.C.) I came to him and
explained my situation and followed up on his
suggestion. 3rd Biggest mistake I've made in this
fight for my livelihood. you came in playing a musical
Harp and ended up playing a one string banjo. I no
longer trust you. you have not worked for me. you
have not gotten body parts checked that are noted
in my original Deposition, you have not followed
up on a situation where a Carolina Hospital Technician
ripped my Urethra causing me to have Emergency Surgery,
you have not followed up on missing Benefit checks,
you have not been able to retrieve expense money
owed to me from trips to the Dr. (3) total since 9/16/16,
you helped me get a loan from a supposed friend
of yours that has a preposterously ridiculous interest
rate (300% maturity). It suggested My son come
to you with a case he was fighting and feel you
could have done ROA 0138 I suggested my brother come

1-1-17

to you with his Workers Compensation Case and I feel that you are quickly ruining that also. Therefore, I feel that you are incompetent and only out for your gain. I also have you working on a Disability Claim for me that I feel you not working diligently.

Furthermore I have made the decision to relieve you from my case because I do not trust that you will try to help me get what I deserve. I worked for Nan-Ya Plastics (A Division of Formosa Plastics) The Largest Plastics Plants in the world, based out of Taiwan. I walked through an automatic overhead door that dropped on me without me touching it. I don't understand how this company can get away with hurting American Workers on American Soil and cost them their livelihoods, disabling them and just throwing them away. I was at this Plant location for (3) years (this time) I ^(worked there two previous times) am a Certified Pipe Fitter and Pipe Welder. How in the world has this ended up this way. I received #1 Technician Safety award The 2 years prior to this acc.

I received a loan from you on Dec. 15, 16 of \$3,000.00 From day one it increased every 1,000.00. Therefore I feel I owe you no compensation in my case because I feel that you have made your compensation from this loan. You have done nothing personally for me but dig things out and make it harder on me. I've done been humiliated in life due to this accident, I have lost my health in many aspects of my ^{ROA 0139} I have lost my

(3)

1-1-17

ability to provide for my family, I have lost my self worth among many other things. But, I have not lost my faith or my intuition and both of them tell me to lose you. Goodbye Mr. Vega, never ever contact me, you and I have no chance of working together again. I could lose in life on my own I don't need you to push the envelope.

Sincerely,

Steph M. Evans
1-1-17

Stephen M. Evans

This letter will be Certified on 1-6-17 and hand delivered a copy by me to your office on that day and a copy mailed assuring that I am rid of you and you incompetent staff assuring that you get it ASAP.

This letter was Certified on Fri. Jan. 6-17 at Effingham, D.C. 29541 Federal Post Office prior to my traveling to Columbia, D.C. to retrieve Case File and Signing of Consent Order Releasing Mr. Danny Vega.

I have no personal problem with Mr. Vega but I feel he has not served me diligently and feel the need to find Honest Counsel.

My Decision was made based on above referenced explanations and has now been enacted
With Very Deep Regrets,
Stephen M. Evans

ROA 0140

(3)

ROA 0141

*Stephen M. Evans
1536 W. Old No. 4 Hwy
Montgomery, D.C. 29591*

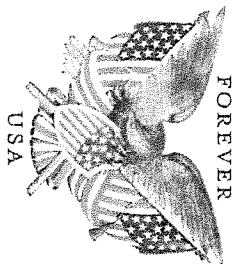


1000

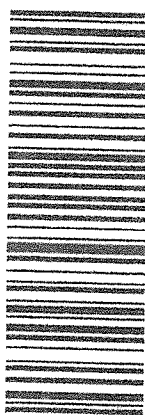


29201

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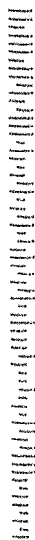


*Chappell, Smith & Nelson
1510 Calhoun St.
Columbia, D.C. 29201*



7016 0750 0000 9441 5016

29201-260710



ROA 0141

CHAPPELL, SMITH & ARDEN
ATTORNEYS AT LAW

Licensed to practice
in South Carolina,
North Carolina,
Georgia and the
District of Columbia

PO Box 12330
Columbia, SC 29211
803.929.3600
Fax 803.929.3604
800.531.9780
www.CSA-LAW.com

January 5, 2017

Mr. Stephen Evans
1556 West Old No. 4
Scranton, SC 29591

Re: Stephen Evans v. Nan Ya Plastics
SCWCC Docket No.: 1413115

Dear Mr. Evans:

Thank you for allowing me to represent you these past six months. I am sorry that we were not able to continue representing you in this matter. Pursuant to your request I have prepared a copy of your file. Also pursuant to your request I have prepared a Petition to be Relieved as Counsel for the Commission. In the Petition it states you know longer wish for me to represent you. Once signed by the Commission I will no longer be your attorney. I will forward a copy of the Petition to you once we have received the signed copy. In the mean time you may proceed with retaining another attorney or proceed by representing yourself in this matter. If you have questions, please feel free to contact me. I wish you the best of luck in all of your endeavors and remain,

Very truly yours,

C. Daniel Vega
dvega@csa-law.com
Direct Dial: 803-509-5830

CDV/ks
Enclosure
cc: Johnny Etheridge, Esq.

ROA 0142

EX. 31-1

from: Stephen M. Evans

1-9-17

ROA 0143

This is to inform Mr. Daniel C. Vega,
Attorney for the Law Firm of Chappell,
Smith & Arden, located at :

POB 12330, Columbia, D.C.
29211

office 803-929-3600

Fax 803-929-3604

Mr. Vega Please Represent in My Worker's
Compensation Case. After discussing my
issues with you today, I feel that you
are the only person I can depend on
to handle my case.

Sincerely,

Step M. Evans
1-9-17

ROA 0143

EX. 32-1

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1413115
Carrier File #: 0013800124WC-01
Carrier Code #: 00143
Employer FEIN #: 223009119

Claimant's Name: STEPHEN EVANS Employer's Name: NAN-YA PLASTICS CORP AMERICA
Address: P.O. BOX 597 Address: 140 EAST BEULAH ROAD
City: SCRANTON State: SC Zip: 29591 City: LAKE CITY State: SC Zip: 29560
Home Phone: (843) 858 - 1496 Work Phone: () - Insurance Carrier: NEW HAMPSHIRE INSURANCE CO, LTD
Preparer's Name: BRENDA GAY Law Firm: _____ Preparer's Phone #: (704) 405 - 6687

1. Date of injury: 9/4/2014 2. Total Weeks Compensation Paid: 203
(m/d/yyyy)

3. Type of Compensation Paid (TP or TT)/Periods of Payment:

Type: TT From: 9/5/2014 To: 7/26/2018
(m/d/yyyy) (m/d/yyyy)
Type: _____ From: _____ To: _____
Type: _____ From: _____ To: _____

4. Date of First Payment: 9/24/2014
(m/d/yyyy)

5. Total Amount Paid (a) Compensation: \$ 114,408.77
(b) Medical (Include Nursing, Hospital, Drugs, Etc.): \$ 135,691.28

6. Informal Conference is Requested: ☐ Yes ☐ No (check one)

Use these lines to send a memo to the Commission: _____

Employer's Representative _____ Phone () - Date _____

Type or print all information. File this form six months after the alleged injury date and each six 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, and R.67-804 for further information.

Chappel, Smith & Alder
Attorneys At Law
C/O Daniel Vega

ROA 0145

①

To Whom It May Concern,

8-13-18

Mr. Danny Vega, I appreciate trying to reach an Agreed Settlement in my Workers Compensation Case. I just don't feel like the offer is based on everything it should be. There are too many negatives. I do not like giving an option on leaving my Future Medical open for Mr. John Brutor to haggle with. Mr. Brutor received my Consent in June of 2018 and should've had his job completed on this matter. When I settle I want everything (all issues) clearly over and done with. I've been released at MMI since 12-17 and should've been ample time to have all of the figures complete with MMI, Indemnity. My understanding is that indemnity is based on 500 weeks of wage loss time and I don't understand why I'm not being offered future wage loss based on MMI and impairment ratings along with it.

I request that you request a hearing in front of the Commissioner. I just do ~~strongly~~ feel that all my issues haven't been addressed.

ROA 0145

EX. 34-1

I look forward to seeing Mr. Brutor

8-13-18

along with his Nan-Ya little group of Merryment. It's time I had an opportunity to put him in his place. He has put a lot of negative bearing on my case and I will come prepared with my witnesses and be happy to put him in his place.

The settlement Loan issue is of grave concern to me. I spoke with you (Danny Vega) on 8-31 and you said the payoff was \$41,000 less than a week later on 8-05 you said I was \$46,000⁰⁰. I've looked up various comparisons to include J.D. Wentworth and Davis. Their % rates are 24 and 25%. When I got the \$3,000⁰⁰ Loan from your friend, you said they would give us a better % rate. I did not know you meant 150%, that is ridiculous. I need a Contract on that Loan so that I can prepare a remedy on how I can use my rights to fight this Entity that is trying to charge me so much interest. I will pay back what is necessary but I will fight that percentage rate.

ROA 0146

8.13-18

Please help me anyway you will. I have trusted You (Mr. Danny Vega) with my Future and My families future. My Health has been taken and my Earning capacity has been taken.

I want what's best for my Family and what's best for your Firm., and to get this over for the best benefit possible.

Sincerely,

~~Steph M Evans~~

Stephen M. Evans

* P.S. It is my understanding that a Commission hearing is granted within 60 days. Please apply for it now. * Thank You. I don't care if Bruto needs longer that issue can be taken care of at the hearing.
SxE.

From: Bruton, John <jbruton@hsblawfirm.com>
Sent: Tuesday, September 04, 2018 4:13 PM
To: Danny Vega
Cc: Kim W. Spicer
Subject: Stephen Evans v. Nan Ya Plastics, SCWCC # 1413115
Attachments: DM 5495530-v1 Clincher Agreement.DOC

Danny,

Pursuant to the parties' settlement as agreed upon at the hearing last week, I have attached a draft of a Final Lump Sum Agreement and Release As To Indemnity, Temporary Total Compensation And Permanent Disability Compensation for your review. I expect to receive the settlement check fairly soon.

I have added the allocation of settlement language that you had previously sent in this draft agreement including the attorney fee provision. However, as previously noted, attorney Kevin Barth sent me a letter dated June 1, 2016 in which he claims a lien of \$33,761.30 "on any recovery [Mr. Evans] may receive". This lien is apparently based on the \$100,000 settlement offer that we made to Mr. Evans in 2016 that we believed was accepted by Mr. Evans to the extent that we had a check issued and sent to Mr. Barth which was subsequently returned.

In light of the above, can you go ahead and give Mr. Barth notice of the settlement and see if something can be worked out while we are waiting on issuance of the check? We have requested the check be made payable to "Stephen Evans and his attorney, Daniel Vega".

I previously forwarded to your office a copy of Mr. Barth's letter to me dated June 1, 2016 which he gives notice of his claimed lien and attached a copy of his contract for legal services.

Please review and give me your thoughts. Thanks.

John Bruton
Haynsworth Sinkler Boyd, P.A.
803.540.7861

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ROA 0149

Barth, Ballenger & Lewis, LLP

Attorneys At Law
205 North Irby Street
Post Office Box 107
Florence, South Carolina 29503
Phone: 843-662-6301
Fax: 843-664-8384
Web: bblawsc.com

Kevin M. Barth
E. Guy Ballenger
Nicholas W. Lewis
Brendan P. Barth

Michael Ballenger (Retired)

September 20, 2018

C. Daniel Vega, Esquire
P.O. Box 12330
Columbia, SC 29211

VIA FAX (803-929-3604) AND U.S. MAIL

Re: Stephen W. Evans v. Nan Ya Plastics
Case No. 1413115

Dear Mr. Vega:

I am writing in response to your letter dated September 11, 2018 and our conversation that followed. Based on that letter and our conversation, it appears that Mr. Evans and/or you do not believe that my lien should be protected in this settlement, but that our costs of \$400.00 would be. It is further my understanding that the basis for this position is that Mr. Evans never authorized me to settle the case for \$100,000.00.

Needless to say, I dispute that assertion and believe that I have sufficient documentation to back that up. I am sure that John Bruton likely has some documentation also that will support my position. In either event, I am notifying you by this letter that I am requesting at least the sum of \$33,333.33, plus costs in the sum of \$452.97 be held in your escrow account until this matter is resolved. I would also remind Mr. Evans that at the time he terminated my representation of him, he had liens on this settlement to Oasis Funding in the sum of \$14,000.00. When I was terminated, I notified Oasis that I was no longer representing him. As a result, I have no idea what his current balance would be.

I would ask you to reconsider your position for a number of reasons. First of all, Mr. Evans signed a Contract (copy attached) which provides that my firm would be entitled to a

ROA 0149

ROA 0150

lien on the settlement proceeds in the sum 33 1/3% "on any offers that have been made at the time of the termination". It also provides for the reimbursement of our costs. I am attaching an itemized list of our costs for your review. This Contract also provides as follows: "To secure payment by me to the firm for all expenses, costs and attorney's fees I am obligated to pay under this agreement, I hereby grant the firm a charging lien applicable to any and all recoveries in this matter whether by settlement, collection of a judgment or otherwise."

Mr. Evans terminated my representation on May 31, 2016 and picked up his file that day. I am attaching a copy of the file release for your review. The Consent Order relieving me, I believe, was signed that day as well. The Order was not filed until July 6, 2016.

In any event, the carrier made an offer to settle this matter on April 6, 2016 as is shown in the enclosed email from John Bruton to me. According to my records, I immediately spoke to Mr. Evans by phone at 1:26 PM. It was in that conversation that Mr. Evans authorized me to settle the case for \$100,000.00 on a clincher basis. I emailed John Bruton to confirm the settlement and that email is also attached to this letter. I am also attaching a number of emails between John and myself discussing the settlement and the fact that Mr. Evans was "blowing up our phones" wanting to know where his check was". Subsequently, the check and settlement documents were sent to me by John Bruton. On May 9, 2016 Mr. Evans came to the office to execute the settlement documents and changed his mind. As soon as that happened, I notified John by email of the client's change of heart. This email is also attached.

The reason I am providing you with all of this information is to substantiate two things. One, Mr. Evans authorized the settlement. And two, even if he contends otherwise, it is clear that the sum of \$100,000.00 was offered to him to settle this case during my representation of him. Under the Contract we both signed this offer would establish the amount of the lien I am claiming from this settlement.

On another note, I believe it is very important for you to consider that if the carrier had offered Mr. Evans directly the sum of \$100,000.00 and he rejected it and hired you, you would only be entitled to a fee on the additional \$50,000.00 under the workers compensation regulations and our ethical rules. So, I am not sure how you would be entitled to a fee on the first \$100,000.00 of this settlement whether it was offered to me on his behalf or him directly. So, as it relates to the lien, your

ROA 0150

ROA 0151

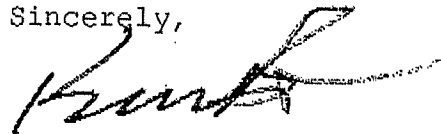
fee would be the same either way. If you have research that says otherwise, please provide it to me and I'll be glad to reconsider my position.

If the lien objection is so that Mr. Evans can keep the entire \$100,000.00, clearly that would not be appropriate either. I am not sure whether my lien will be cutting your fee or the net to Mr. Evans. In either event though, I still believe that the lien is valid and that it should be paid.

If you wish to discuss any of this letter, please call me. If not, please provide me with a copy of the Motion you file and we will likely need three (3) hours to try this issue before the workers compensation commissioner.

With best regards, I am

Sincerely,



Kevin M. Barth
kbarth@bblawsc.com

KMB/chg
enclosures

ROA 0151

EX. 36-3

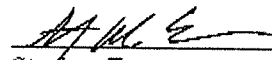
ROA 0152

FILE RELEASE

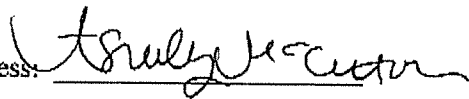
Re: Stephen Evans v. Nan Ya Plastics Corp.
SCWCC File #: 1413115
BBL File #: 32117

I, Stephen Evans, acknowledge receipt of my entire file in this matter and understand that Kevin M. Barth will be taking no further action on my behalf. I further acknowledge that I have received three (3) loans from Oasis Financial and that neither Kevin M. Barth nor the firm of Barth, Ballenger & Lewis, LLP has any obligation whatsoever regarding the payment of these loans.

Signed this 31st day of May, 2016.



Stephen Evans

Witness: 

ROA 0152

ROA 0153

09/20/2018

BARTH, BALLENGER & LEWIS L.L.P.
ATTORNEYS AT LAW
POST OFFICE BOX 107
205 N. IRBY STREET
FLORENCE, SC 29503-0107
843-662-6301

Stephen Evans
*WC*Stephen M. Evans
121 Clyde McGee Rd. Lot 7
Timmonsville SC 29161

* indicates work-in-process
Client #: 32117
File #: 32117
As of Date: 09/20/2018
Last Billed 05/01/2018
KEVIN M. BARTH

RE: Stephen M. Evans vs. Nan Ya Plastics
(Workers Compensation)

PROFESSIONAL SERVICES RENDERED

REGULAR ACCOUNT ACTIVITY

SERVICES RENDERED

DATE	TKPR	CODE	DESCRIPTION OF SERVICES RENDERED	RATE	HOURS	AMOUNT
12/30/2014	KMB	CF	Contingency Fee	0.00	.00	
TOTAL SERVICES RENDERED:					0.00	\$0.00

TIMEKEEPER SUMMARY:

KMB	- KEVIN M. BARTH	.00 HRS @ \$	0.00/HR =	0.00
Totals			0.00	\$0.00

COSTS ADVANCED

DATE	TKPR	CODE	DESCRIPTION	RATE	UNITS	AMOUNT
03/04/2015	KMB	MR	RECORDQUEST - Medical Records: PDOA #46115	26.360	1.00	26.36
03/09/2015	KMB	FF	SC WORKERS' COMPENSATION COMMISSION - Filing Fee #46121	25.000	1.00	25.00
03/24/2015	KMB	MR	RECORDQUEST - Medical Records: Southeastern Spine Institute 622706-57 #46165	37.860	1.00	37.86
03/24/2015	KMB	MR	DR. JOSEPH HEALY - Medical Records #46169	25.000	1.00	25.00
04/29/2015	KMB	DEPO	A. WILLIAM ROBERTS & ASSOCIATES - Deposition Peter P. O'Kelly MD FASC 217947 #46280	205.750	1.00	205.75
06/08/2015	KMB	FF	SC WORKERS' COMPENSATION COMMISSION - Filing Fee #46429	0.000	1.00	25.00

ROA 0153

EX. 36-5

File #: 32117

Stephen Evans

*WC*Stephen M. Evans

Page#: 2
ROA 0154

* indicates work-in-process

07/21/2015 KMB	MR	First Citizens Bank - Medical	26.730	1.00	26.73
		Records: PDOA Recordex 657634-46			
		#46611			
10/15/2015 KMB	MR	First Citizens Bank - Medical	21.820	1.00	21.82
		Records: PDOA #46923			
11/16/2015 KMB	MR	First Citizens Bank - Medical	34.450	1.00	34.45
		Records: Columbia Neurosurgical			
		Associates #47059			
06/20/2016 KMB	COPY	SC WORKERS' COMPENSATION COMMISSION ~	25.000	1.00	25.00
		#47895			

TOTAL COSTS ADVANCED: \$452.97**RETAINER PER AGREEMENT:** 0.00**PAYMENTS ON RETAINER:** 0.00**RETAINER BALANCE DUE:** 0.00**PREVIOUS BALANCE:** 0.00**CURRENT CHARGES:** 452.97**LESS PAYMENTS:** 0.00**TOTAL AMOUNT DUE:** \$452.97

IF YOUR CHECK IS DISHONORED OR RETURNED FOR ANY REASON,
WE WILL ELECTRONICALLY DEBIT YOUR ACCOUNT FOR THE
AMOUNT OF THE CHECK PLUS A PROCESSING FEE OF \$30.00.

ROA 0154

ROA 0155

CONTRACT FOR LEGAL SERVICES

I hereby retain and employ Kevin M. Barth, **ESQUIRE** (hereinafter "Attorney") as my attorney to represent me in the following matter:

WORKERS COMP ACCIDENT vs. NAV-YA

For his services, I agree to pay my Attorney as follows:

A. 33 1/3 percent of whatever may be recovered from the claim if settlement is made without filing suit¹.

B. 33 1/3 percent of whatever may be recovered from the claim after suit is filed. (See footnote 1)

I agree to pay all necessary costs of processing the claim; including, without limitation, filing fees, discovery costs, service of process, court costs and travel, witness fees, medical records, medical reports; investigative costs, telephone and postage. From time to time, I understand that Attorney may advance costs on my behalf. Any such costs not previously paid by me are to be deducted from my share of any recovery as outlined below; however, I understand that costs and expenses must be paid in full whether or not there is any recovery. I will pay these costs as taxed by the court and/or as billed by Attorney.

I further authorize my Attorney, in appropriate cases, to pay from my share of the proceeds of recovery any unpaid amounts due health providers for services rendered in connection with this claim. I further acknowledge that my attorney MUST protect known liens or assignments signed by me, and that if there is a dispute between me and a health care provider, the attorney must hold the money in escrow until that dispute is resolved.

I further understand that I may terminate the services of my Attorney at any time, but that such termination will not relieve me of my obligation to pay him any outstanding balance owed based upon his hourly services computed to the date of such termination. If I terminate the services of my Attorney at any time prior to settlement, then I agree to pay said Attorney \$175.00 per hour for all attorney services rendered in this matter, and \$75.00 per hour for all paralegal services rendered in this matter or the contracted contingency fee percentage on any offers that have been made at the time of termination, **whichever is greater**. Attorney will also be entitled to reimbursement for costs. To secure payment by me to the firm for all expenses, costs and attorney fees I am obligated to pay under this agreement, I hereby grant the firm a charging lien applicable to any and all recoveries in this matter whether by settlement, collection of a judgment or otherwise.

I further understand that unless specified above, my Attorney shall not be required to pursue any appeal in this representation without specific

¹ The contingency fee is to be determined based on the gross recovery. Litigation costs and expenses are to be deducted after the contingency fee is calculated and are to be deducted from the client's portion of the proceeds.

ROA 0155

ROA 0156

further agreement as to the fee, nor shall he be required to provide further services at the conclusion of the case without further agreement as to fees, whether such services relate to the enforcement or modification of the order of judgment obtained in my case. I understand that unless otherwise specified, this agreement only applies through the trial stage, and does not include any form of appellate proceedings, and that my Attorney has the right to terminate this contract at any time, and that if he elects to terminate, he shall still be entitled to payment for his services and costs as set forth in the above paragraph concerning termination by the client.

I acknowledge that NO GUARANTEE of any results, recovery, or outcome has been made to me by my Attorney. Attorney does agree to use his best professional judgment in handling my case and advising me in regard to what actions I am to take.

I further acknowledge and agree, by the signing of this letter, to keep this office advised of my whereabouts at all times, shall appear on reasonable notice at any and all depositions and Court appearances, and shall comply with all reasonable requests of this office in connection with the preparation and presentation of the aforesaid action. I understand my cooperation is a basis of this agreement/contract, and a failure to cooperate, disappearance for 6 months or more without contacting my attorney or leaving a forwarding address, is a material breach, and just and adequate cause for my attorney to withdraw as counsel without further notice to me.

I understand that you reserve the right to destroy all files after 10 years. In the event there are any original documents in my file which I wish to have returned to me upon conclusion of this case, I understand it is my responsibility to request same. Further, if I wish to receive my original file instead of you destroying it, I need to advise you in writing. This notice would be attached to the front of my file and the file would then be provided to me instead of it being destroyed.

I have read and fully understand this contract and I hereby acknowledge receipt of a copy.

NAME: M. W. L.DATED: 12-29-14ACCEPTED BY: Kevin M. Barth

Kevin M. Barth

Signed this 29th day of December 2018

Kevin Barth

ROA 0157

From: Kevin Barth
Sent: Monday, May 9, 2016 10:10 AM
To: 'Bruton, John'
Subject: RE: Stephen Evans

Stephen came to the office to sign the documents. I was out at the time. He blew a gasket and called me this AM. Shock of shocks. He will not sign it and wants me to file a 50 for his surgery. I'm terribly sorry. I was afraid this would happen, and it did. Just wanted to let you know. I'm going to hold the settlement documents a day or two and maybe he'll change his mind.

Kevin M. Barth, Esquire
Barth, Ballenger and Lewis, LLP
Post Office Box 107
Florence, SC 29503
(o) 843-662-6301
(f) 843-664-8384
email: kbarth@hbbh.net

From: Bruton, John [mailto:jbruton@hsblawfirm.com]
Sent: Tuesday, May 03, 2016 10:58 AM
To: Kevin Barth
Subject: FW: Stephen Evans

Kevin,

The check has arrived. I will put it in the mail to you today along with the clincher agreement and Form 19s unless you want to send someone to Columbia to pick it up.

Please let me know. Thanks.

John

From: Bruton, John
Sent: Wednesday, April 27, 2016 9:50 AM
To: 'Kevin Barth'
Subject: RE: Stephen Evans

Kevin,

See below email I just received from the adjuster.

As you can see, the check should be here possibly Friday, no later than Monday. Evans is still receiving his TTD so hopefully that will keep him calmed down until we can get the check to you.

Thanks. John

Hi John,

ROA 0157

The check was finally released and the check went out yesterday. You might have the check by Friday, but definitely by Monday. I'm sorry for the delay, it's a lot of money, so we had to obtain funding prior to release. Mr. Evans continues to receive his weekly checks, I've been making sure they have continued to go out timely.

Please let me know if you have additional questions.

Thanks

Brenda Gay | Senior Resolution Manager | Gallagher Bassett

From: Kevin Barth [<mailto:KBarth@HBBH.net>]
Sent: Wednesday, April 27, 2016 9:26 AM
To: Bruton, John
Subject: RE: Stephen Evans

Thank you thank you

Kevin M. Barth, Esquire
Barth, Ballenger and Lewis, LLP
Post Office Box 107
Florence, SC 29503
(o) 843-662-6301
(f) 843-664-8384
email: kbarth@hbbh.net

From: Bruton, John [<mailto:jbruton@hsblawfirm.com>]
Sent: Wednesday, April 27, 2016 9:24 AM
To: Kevin Barth
Subject: RE: Stephen Evans

I'll call the adjuster asap and let you know. Thanks.

From: Kevin Barth [<mailto:KBarth@HBBH.net>]
Sent: Wednesday, April 27, 2016 9:19 AM
To: Bruton, John
Subject: Stephen Evans

Help!! He is blowing up our phones on this one. Any idea when the check and paperwork will be here? Thanks

Kevin M. Barth, Esquire
Barth, Ballenger and Lewis, LLP
Post Office Box 107
Florence, SC 29503
(o) 843-662-6301
(f) 843-664-8384
email: kbarth@hbbh.net

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Kevin Barth

ROA 0160

From: Bruton, John <jbruton@hsblawfirm.com>
Sent: Thursday, April 7, 2016 9:33 AM
To: Kevin Barth
Subject: RE: Stephen Evans v. Nan Ya

Thanks. I have ordered the check this morning and asked Gallagher Bassett to get it to me asap as we all realize Mr. Evans is extremely volatile, etc. I hope he will hang on because it's going to take a week or more to get the money due to the size of the settlement amount.

From: Kevin Barth [mailto:KBarth@HBBH.net]
Sent: Thursday, April 07, 2016 9:16 AM
To: Bruton, John
Subject: RE: Stephen Evans v. Nan Ya

Here it is. When the check and paperwork are ready, I can have someone drive up there and get it. Evans is a loose cannon and I'll do whatever I can to facilitate this settlement. Thanks again.

Kevin M. Barth, Esquire
 Barth, Ballenger and Lewis, LLP
 Post Office Box 107
 Florence, SC 29503
 (o) 843-662-6301
 (f) 843-664-8384
 email: kbarth@hbbh.net

From: Bruton, John [mailto:jbruton@hsblawfirm.com]
Sent: Wednesday, April 06, 2016 5:46 PM
To: Kevin Barth
Subject: RE: Stephen Evans v. Nan Ya

Kevin,

We can pay \$100K to end this on a clincher. Please email me your firm's tax ID number asap so I can get moving on the check.

Due to the size of the of the check it's probably going to take 10 days or so to get it funded and sent to my office. Hopefully Mr. Evans can hold it together while we're waiting for the check to arrive.

Meanwhile, please call me if you have any questions. Thanks.

John Bruton
 Haynsworth Sinkler Boyd, P.A.
 803.540.7861

From: Kevin Barth [mailto:KBarth@HBBH.net]
Sent: Wednesday, April 06, 2016 2:25 PM
To: Bruton, John
Subject: RE: Stephen Evans v. Nan Ya

ROA 0160

If you can pay 100k, it's a done deal. Hopefully quickly before he changes his mind. Thanks for working with me on this one. ROA 0161

Kevin M. Barth, Esquire
Barth, Ballenger and Lewis, LLP
Post Office Box 107
Florence, SC 29503
(o) 843-662-6301
(f) 843-664-8384
email: kbarth@hbbh.net

From: Bruton, John [<mailto:jbruton@hsblawfirm.com>]
Sent: Wednesday, April 06, 2016 9:09 AM
To: Kevin Barth
Subject: RE: Stephen Evans v. Nan Ya

Kevin,

I don't yet have the authority but I will get \$100K if you can get him to accept it. In other words, if he will agree to \$100K, we will pay it.

Let me know your thoughts. It's doubtful he will see this kind of money again if we have to go forward.

Thanks. John

From: Kevin Barth [<mailto:KBarth@HBBH.net>]
Sent: Tuesday, April 05, 2016 12:12 PM
To: Bruton, John
Subject: RE: Stephen Evans v. Nan Ya

That won't do it. Between you and me, it ought to settle for 100k but I'm not sure I could get him there.

Kevin M. Barth, Esquire
Barth, Ballenger and Lewis, LLP
Post Office Box 107
Florence, SC 29503
(o) 843-662-6301
(f) 843-664-8384
email: kbarth@hbbh.net

From: Bruton, John [<mailto:jbruton@hsblawfirm.com>]
Sent: Tuesday, April 05, 2016 12:07 PM
To: Kevin Barth
Subject: RE: Stephen Evans v. Nan Ya

I hear what you're saying. How about \$75,000 to wrap it up?

From: Kevin Barth [<mailto:KBarth@HBBH.net>]
Sent: Tuesday, April 05, 2016 11:53 AM
To: Bruton, John
Subject: RE: Stephen Evans v. Nan Ya

ROA 0161



Part of the



ROA 0162

Licensed to practice
in South Carolina,
North Carolina,
Georgia and the
District of Columbia

CHAPPELL SMITH & ARDEN, P.A.

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Columbia, SC 29211
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Fax 803.929.3604
800.531.9780

www.CSA-LAW.com

October 1, 2018

Ms. Debbie Backman, Claims Department
South Carolina Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

RE: Stephen Evans v. Nan Ya Plastics
SCWCC File No: 1413115

Dear Debbie:

Enclosed are the original and one copy of the Form 61 and Settlement Ledger regarding the above-referenced matter. Please return the approved documents to us by placing copies in our box.

This matter has been resolved by settlement. Please do not hesitate to contact me if you have any questions.

Thank you for your continuing assistance in this and other matters.

Very truly yours,

C. Daniel Vega

dvega@csa-law.com
Direct Dial: 803-509-5830

CDV/ks
Enclosures

ROA 0162

EX. 37-1

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

Stephen Evans,

Claimant,

vs.

Nan Ya Plastics,

Employer,

New Hampshire Insurance Co.,

Carrier/Defendants.

WCC FILE NO: 1413115

ORDER APPROVING
ATTORNEY'S FEE

After review of the record in the above captioned matter and the controlling legal standards for the award of attorney fees and costs in workers' compensation proceedings under S.C. Reg. 1204-1207 and Rule 1.5(a) of the Code of Professional Conduct, I find the attorney's fee of **\$40,000.00** and costs of **\$7,291.65** in this matter to be reasonable and hereby approve fees and costs as set forth herein.

AND IT IS SO ORDERED.

Date: _____

Commissioner
SCWCC

South Carolina Workers' Compensation Commission

1612 Marion Street
Post Office Box 1715
Columbia, South Carolina 29202-1715
803-737-5723

WCC File #: 1413115Carrier File #: ROA 0164

Carrier Code #: _____

Employer FEIN #: _____

Claimant's Name: Stephen EvansAddress: P.O. Box 597City: Scranton State: SC Zip: _____Home Phone: (843) 373-0526 Work Phone: () -Preparer's Name: C. Daniel VegaLaw Firm: Chappell, Smith & ArdenPreparer's Phone #: 803-929-3600Employer's Name: Nan Ya PlasticsAddress: 140 E. Beulah RoadCity: Lake City State: SC Zip: _____Insurance Carrier: New Hampshire Insurance Co.Date Attorney Was Hired: 6/6/2016Date of Injury: 9/4/2014Compensation Rate: \$ 563.59Does this conclude the case? ☒ Yes ☐ No**PLEASE CHECK AND COMPLETE ONLY ONE: (A, B, C or D)**

☒ **A.** R.67-1205C does not apply to the facts of this case. A 26.6 % fee of the award or settlement (excluding medical costs) and the costs of this action, as shown by the attached Settlement of Costs, are requested for approval.

☐ **B.** The subsection of R. 67-1205C applicable to this claim is (C) (____). A fee of \$ _____ is requested for approval based on the following:

Date of first impairment rating or offer of settlement: _____

Impairment Rating given and/or Settlement amount offered prior to date attorney hired: _____

Impairment Rating given and/or Settlement amount offered after date attorney hired: _____

Authorized Health Care Provider's Name: _____

☐ **C.** Admitted Death Claim - \$2,500.

☐ **D.** Admitted Lifetime Compensation Claim - \$2,500.

I certify that this form and the attached Statement of Costs are accurate.

Attorneys for Claimant

09/28/2018

Date

Johnny Etheridge, Esq.

I agree to pay my attorney the fee and costs stated. I understand the fee and costs are paid out of my compensation and I understand how much money I will receive after I pay my attorney.

Client

Stephen Evans

Date

09.28.18**Summary**

Total Amount of Compensation	\$ 150,000.00
Attorney's Fee	\$ 40,000.00
Costs	\$ 7,291.65
Total Fees and Costs	\$ 47,291.65
Client Will Receive	\$ 102,708.35

A Statement of Costs must be attached before costs may be approved. File this form in duplicate with the Claims Department. Enclose a self-addressed, stamped envelope. For further information, refer to R.67-1203, R.67-1204, R.67-1205, R.67-1206 and Rule 1.5(a), RPC Rule 407, SCACR.

WCC Form # 61

Revised 7/08

ROA 0164**61****ATTORNEY FEE PETITION**

EX. 37-3

Chappell, Smith & Arden

ROA 0165

Stephen Evans
Case Number: 209151

Settlement Memorandum

RECOVERY:

SET Gallagher Bassett

\$ 150,000.00

\$ 150,000.00

DEDUCT AND RETAIN TO PAY:

Chappell, Smith & Arden, P.A.

	\$ 30.60
	\$ 30.60
	\$ 30.60
Brabham, Dr. Robert;	\$ 750.00
Burns White;	\$ 950.00
Ciox Health;	\$ 50.00
Ciox Health; McLeod Regional	\$ 50.00
Copies of Integrity;	\$ 297.76
Copies of Integrity;	\$ 63.18
Data Resources Unlimited, Inc.;	\$ 141.43
Ellis, Mr. Earl;	\$ 1,220.50
HealthPort;	\$ 18.36
Lake City Orthopaedic Clinic;	\$ 20.20
Medical Records Online, Inc.;	\$ 159.14
Medical Records Online, Inc.;	\$ 18.48
Medical Records Online, Inc.;	\$ 110.64
MedQuest Attorney DB SC;	\$ 62.35
MRO;	\$ 60.50
MRO;	\$ 110.64
Palmetto Physical Therapy and Wellness Ctr.;	\$ 30.60
RecordQuest;	\$ 44.23
RecordQuest;	\$ 19.59
RecordQuest;	\$ 47.15
SC Department of Employment and Workforce;	\$ 25.00
ScanSTAT;	\$ 54.00
ScanSTAT;	\$ 54.00
SCWCC;	\$ 25.00
SCWCC;	\$ 20.00
SCWCC;	\$ 25.00
SCWCC;	\$ 11.50
Sharpline Allocations;	\$ 1,830.00
Southeastern Spine Institute;	\$ 900.00
	\$ 30.60

Total Due Chappell, Smith & Arden, P.A.

\$ 7,291.65

DEDUCT AND RETAIN TO PAY TO OTHERS:

Chappell, Smith & Arden	\$ 20,000.00
Etheridge, Esq., Mr. Johnny	\$ 20,000.00

Total Due Others:

\$ 40,000.00

Total Deductions:

ROA 0165

\$ 47,291.65

Total Amount Due to Client
Less Previously Paid to Client
Net Amount Due Client:

\$ 102,708.35

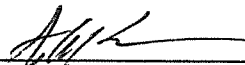
\$ 0.00

ROA 0166

\$ 102,708.35

I hereby approve the above settlement and distribution of proceeds.

09-28-18
Date


Stephen Evans

ROA 0166

STATE OF SOUTH CAROLINA
BEFORE THE WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 1413115

Stephen Evans

Employee/Claimant,

vs.

Nan Ya Plastics,

Employer,

New Hampshire Insurance Co., Ltd.,

Carrier,

Defendants.

**FINAL LUMP SUM
AGREEMENT AND RELEASE AS TO
INDEMNITY, TEMPORARY TOTAL
COMPENSATION AND PERMANENT
DISABILITY COMPENSATION**

RECEIVED
2018 OCT 22 AM 11:59
SETTLEMENT
DIVISION OF CLAIMS
SCWCC

The Claimant, Stephen Evans, while in the employ of Nan Ya Plastics ("Employer"), sustained injuries to his neck and lower back, in an accident arising out of and in the course of his employment on or about September 4, 2014, in the County of Florence, State of South Carolina. At the time of the accident aforementioned, the Claimant and the Employer were subject to the Workers' Compensation Law of South Carolina (hereinafter called "Act") and the Carrier was the Employer's insurer under said Act (Employer and Carrier hereinafter called "Defendants").

Following said accident, the Defendants paid temporary total compensation for Two Hundred Ten (210) weeks in the amount of One Hundred Eighteen Thousand Three Hundred Fifty-Three and 90/100 (\$118,353.91) Dollars. In addition to the temporary total disability benefits, the Defendants paid for or on behalf of the Claimant, medical costs or expenses in the amount of One Hundred Thirty-Five Thousand Six Hundred Ninety-One and 28/100 (\$135,691.28) Dollars.

ROA 0167

EX. 38-1

Disputes exist between the parties as to Claimant's entitlement to further medical care, further payments of temporary disability compensation, and the extent of any causally related permanent disability. The parties hereto now advise that, in view of the aforementioned disputes, an agreement has been reached to settle this matter in its entirety, except as stated herein below, subject to the approval of the South Carolina Workers' Compensation Commission.

Under the proposed settlement, the Defendants have agreed to pay, and the Claimant has agreed to accept, the additional sum of One Hundred Fifty Thousand and No/100 (\$150,000.00) Dollars in full settlement and satisfaction of all claims for indemnity, temporary total compensation and permanent disability compensation growing out of or in any way connected with said injury by accident occurring on or about September 4, 2014.

It is hereby agreed that the settlement amount of One Hundred Fifty Thousand and No/100 (\$150,000.00) Dollars is hereby allocated as follows:

Claimant requests the Commission approve the allocation of the proposed settlement as follows:

- (1) \$40,000.00 as attorney fee and \$7,291.65 as costs; a total of \$47,291.65; and
- (2) \$102,708.35 in compromise settlement of disputed past and future compensation benefits at the rate of \$67.69 per week for a period of 1,517.36 weeks, claimant's life expectancy pursuant to S.C. Code of Law §§ 19-1-150 and 42-9-10, commencing September 15, 2018 as interpreted by the South Carolina Supreme Court in James v. Anne's, Inc., 390 S.C. 188, 701 S.E.2d 730 (2010), and Orr v. Utica-Mohawk Mills, 227 SC 226, 87 SE2d 589 (1955).

As an integral part of this settlement agreement, it is expressly understood and agreed that the Defendants will continue to pay authorized and causally related medical expenses until the Defendants fund a Self-Administered Medicare Set Aside trust account, either by lump sum

ROA 0168

or annuity, approved by the Centers for Medicare Savings (CMS). It is further expressly understood and agreed that if the MSA estimate or amount approved by CMS is greater than Seventy Thousand and no/100 (\$70,000) Dollars, the Defendants will have the option to (1) continue to pay Claimant's authorized and causally related medical expenses as said expenses are incurred or (2) fund a MSA at the greater amount. It is, further, understood and agreed that the Claimant is responsible for any and all other medical expenses of whatsoever nature, and the Defendants shall have no liability therefor.

It is not the intention of the Defendants or Claimant in this case to shift the responsibility for paying future medical expenses related to the Claimant's injuries to the Federal Government. The parties have considered and protected Medicare's interests in this case and will seek approval of the proposed Medicare Set-Aside from CMS.

The Claimant hereby agrees to fully cooperate with the Defendants and its agents regarding any and all requests for information or documentation needed to comply with the Medicare Secondary Payer Act, including, but not limited to, the Claimant's Social Security number and/or Medicare number. The Claimant specifically agrees to provide such documentation and/or information timely and to execute any and all documents necessary for Medicare Secondary Payer Act compliance.

The Claimant hereby asserts that he has been fully advised of all of his rights under the South Carolina Workers' Compensation Act, and is of the opinion that the proposed settlement is reasonable and fair, and in this opinion the Claimant's attorney, C. Daniel Vega, concurs. The Claimant hereby asserts that he recognizes that his consent to, and the approval of, this settlement is a final determination and adjudication of all benefits under the South Carolina Workers' Compensation Act, growing out of, or in any way connected with, the aforesaid injury by accident occurring on or about September 16, 2014 other than Defendants' agreement to

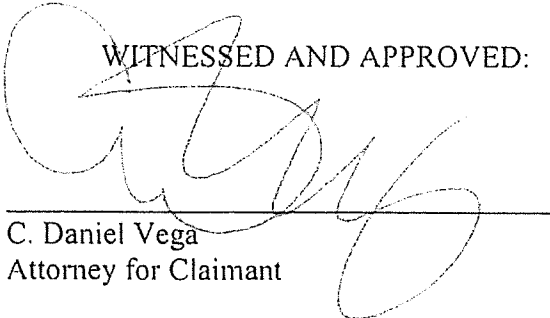
continue to pay all authorized medical expenses casually related to Claimant's neck and lower back injury until a Medicare Set-Aside trust account is approved by CMS and funded by the Defendants unless the Defendants chose the option to continue to pay Claimant's authorized and causally related medical expenses for the life of the Claimant.

NOW, THEREFORE, in consideration of the payment to the Claimant of the sum of One Hundred Fifty Thousand and No/100 (\$150,000.00) Dollars, in addition to the temporary total disability benefits herein mentioned and the authorized medical benefits which have been heretofore provided, and in further consideration of the mutual covenants, stipulations, and releases herein contained, the Claimant hereby releases and discharges the Employer and Carrier, and binds Claimant's heirs, executors, administrators, dependents, next of kin, privies, and assigns under the Act and agrees to release the Employer, the Carrier, and their respective agents, servants, insurers, physicians, privies, and their successors, from any and all debts, claims, demands, causes of action, rights of action, and liabilities under the South Carolina Workers' Compensation Act, with respect to any injury sustained by the Claimant while in the Employer's employ on or about September 4, 2014. A specific exception to above release language is that Defendants will continue to pay authorized and causally related medical expenses related to Claimant's neck and lower back injury until a Medicare Set-Aside trust is approved by CMS and funded by the Defendants, at which time the Claimant shall execute whatever additional documents are requested by Defendants to release any further medical payment obligations of the Defendants.

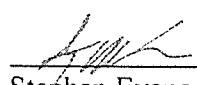
[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed
as of October 12 ~~September~~ _____, 2018.

WITNESSED AND APPROVED:



C. Daniel Vega
Attorney for Claimant

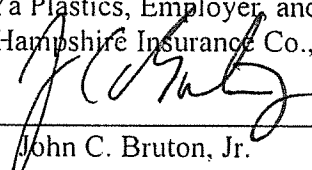


Stephen Evans
Claimant

Nan Ya Plastics, Employer, and
New Hampshire Insurance Co., Ltd, Carrier



Pamela G. Ledbetter
Witness as to Employer and Carrier

By: 

John C. Bruton, Jr.
Attorney for Employer and Carrier

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1413115
Carrier File #: **ROA-0172** 002848-001824-WC-01
Carrier Code #: 00143
Employer FEIN #: 223009119

Claimant's Name: STEPHEN EVANS

Employer's Name: NAN-YA PLASTICS CORP AMERICA

Address: P.O. BOX 597

Address: 140 EAST BEULAH ROAD

City: SCRANTON State: SC Zip: 29591

City: LAKE CITY, State: SC Zip: 29560

Home Phone: (843) 858 - 1496 Work Phone: () -

Insurance Carrier: NEW HAMPSHIRE INSURANCE CO, LTD

Preparer's Name: BRENDA GAY

Law Firm: _____

Preparer's Phone #: (704) 405 - 6687

Compensation Paid:	Number of Weeks	From (m/d/yyyy)	To (m/d/yyyy)	Amount
1. Number of Weeks T.T.	<u>210</u>	<u>9/5/2014</u>	<u>9/13/2018</u>	\$ <u>118,353.90</u>
2. Number of Weeks T.P.	_____	_____	_____	\$ _____
3. Number of Weeks P.P.	_____	_____	_____	\$ _____
4. Disfigurement	_____	_____	_____	\$ _____
5. Agreement and Final Release	_____	_____	_____	\$ <u>150,000.00</u>
Total Compensation Paid				\$ <u>268,353.90</u>
6. Total Medical Benefits* Paid	_____	_____	_____	\$ <u>135,691.28</u>
7. Funeral Benefits	_____	_____	_____	\$ _____

☐ Case Denied

Date of Injury: 9/4/2014
(m/d/yyyy)

By signing this receipt, I acknowledge that I have received the compensation shown above.

By: [Signature]
Claimant

By: [Signature]
Employer's Representative

09/28/2018
Date
(m/d/yyyy)

Print or type the name of the person, other than the claimant, receiving benefits and sign below.

By: _____

Report of Additional Fees and Recoupment

A. Carrier Reimbursement by Third Party	_____	\$ _____
B. Attorney's Fee Paid by Employer	_____	\$ _____
C. Attorney's Fee Paid by Claimant (Non-contingent fees only)	_____	\$ _____

File this form with the Claims Department according to R.67-414 and R.67-1204. A person, other than the claimant, receiving benefits should sign on the line provided. * Do not include as medical costs fees paid for expert testimony, fees for determining carrier's liability, costs of autopsy, birth and death certificates and impartial examination. Form 19 must be filed within 16 days of final payment of compensation. Form 19 must be filed when a claim is denied.

Questionnaire Stephen Evans

WCC File No. 1413115

1. Do you feel attorney Kevin Barth provided competent representation, legal knowledge, skill, thoroughness and preparation necessary to represent you after you retained his services. *No*
2. Do you feel attorney Kevin Barth consulted with you concerning the objectives of representation? *No*
3. Do you feel attorney Kevin Barth was diligent and prompt in his representation? *No*
4. Do you feel attorney Kevin Barth communicated with you reasonably and promptly in order to keep you informed of the status of the claim? *No*
5. Do you feel attorney Kevin Barth abide with your request to seek authorization for surgery as requested by Dr. Gunter? *NO Never discussed this issue.*
6. Did you terminate attorney Kevin Barth by providing him written notice of termination on March 31, 2016? *Yes because I felt he was incompetent.*
7. Did attorney Kevin Barth withdraw from representation within a reasonable time when you discharged him? *No.*
8. Did attorney Kevin Barth seek authorization on your behalf to negotiate settlement of the claim? *Never discussed - NO.*
9. Do you feel attorney Kevin Barth consult with you regarding settlement of the claim? *Never consulted or signed any document supporting settlement.*
10. Do you feel attorney Kevin Barth provide you an explanation of the commuted value of the claim (\$217,100.39) and future medical care and treatment? *Never discussed this monetary value.*
11. Did you authorize attorney to settle your claim for \$100,000.00? *No.*
12. Do you feel attorney Kevin Barth request for a fee of \$33,786.30 is reasonable? *He deserves no fee, he should not have retained a settlement.*
13. Did attorney Kevin Barth inform you that he intended to assert a lien against your claim in the amount of \$33,786.30? *Never heard of such.*
14. Do you feel attorney Kevin Barth settling the claim without your authorization was harmful to you and your claim for benefits? *He not only was harmful to my claim but also to my health and well being, knowing I needed surgeries and never offered them to me. Was not*

15. Did the carrier suspend your benefits as a result of the actions taken by attorney Kevin Barth when he settled your claim without your authorization? *Yes. 12 weeks with no compensation.*
16. Did the carrier postpone approval of your surgery as a result of the actions taken by attorney Kevin Barth when he settled your claim without your authorization? *Yes.*



Stephen Evans

Today, September 28, 2018, before me personally appeared Stephen Evans who executed the forgoing instrument, and acknowledges providing the above written answers, of his own free will, to the questions contained herein.



Kim Spicer, Notary Public for
South Carolina

My Commission Expires 9-27-2027

History						
 843662						
From/To	Name	Phone Number	Start Time	Duration	Call Note	
 From	BARTH BALLENGER	(843) 662-7469	9/19/2018 9:05 AM	04:05		
 Missed	BARTH BALLENGER	(843) 662-7660	9/17/2018 4:25 PM	00:18		
 Transferred	GARDNER LAW FIR	(843) 662-9899	7/23/2018 2:31 PM	02:40		

Q1
Q2

1-11-11-

(1)

* In Your Opinion Will Mr. Evans ~~have~~ live long term, possibly Lifetime complications due to his Bladder and Prostate issues to include the Urethra. Yes/SE.
ROA 0176

It is understood that a Technician ^{due to Catheter procedure} tore Mr. Evans Urethra in the E.R. sending him to an emergency procedure the following morning in which you performed. 9-4-14

Although the ~~Accident~~ Work Related Accident did not cause the Urethral tear. In Your Opinion do you think Mr. Evans ~~that~~ would have had any other reason to have had a catheter placed in him at his E.R. visit.

* In Your Opinion do you have any reason to believe ^{or evidence,} Mr. Evans ever had any damage to his Prostate, Bladder or Urethra prior to his 9-4-14 accident. No/SE.
In Your Opinion, if this Urethral tear was Existent on 9-4-14. Is it possible it would have waited this long to show itself.

In Your Opinion Do you think the work related Accident on 9-4-14 is the reason for his E.R. visit and Catheterization ~~SE~~

In Your Opinion Do you think his prostate Exam goes back to his work related Accident on 9-4-14.

In Your Opinion will Mr. Evans always have to have Medications, ~~Special~~ Diets and or Supplements related to his Prostate, Bladder and Urethral issues.

Q3
Q4
Q5
* In Your Opinion do you think the work related Accident caused damage solely to the Urethral tears. EX. 42-1

② caused me to be ~~be~~ dependent on. You all have bent
of me and you can't break me. Due to this I have
② learned to live without and my faith is strong and
I will bounce back. ROA 0177 ②

With Much Sincerity,
Stephen M. Evans

Mr. O'Kelly only answered the questions in *
on 1-11-17 during my office visit.

Copied by Liz R. in office 1/11/17.

Dr. O'Kelly, ↓

This

the 4 * Questions and Attorney
Daniel Vega additional Question
need verification.

During Mr. Evans last follow up appt.
you were presented 4 Questions you answered
yes to. And there is one additional Question
I have included. Please answer to the best
of your opinion and return. We need this
documentation in order to Thank You.
further assist Mr. Evans
in this matter relating to his work related
incident on 9-4-14. ROA 0177

EX. 42-2

42-9/2
of
1

* In Your Opinion does Mr. Evans tend to follow proper procedure(s) You ~~prescribe~~ prescribe and do you feel he is trying diligently to reach Maximum Medical Improvement. D.E. / YES. ROA 0178

This Document was submitted on 1-11-17 in the Dr. O'Kelly room follow up visit at 10:48 a.m.

There are personally asked Questions presented to Dr. Peter O'Kelly by Stephen M. Evans himself. These answers will be documented and presented to my Atty. Mr. Daniel C. Voge. I feel that these are necessary to establish my Bladder, urethra and prostate issues due to my Work Related Accident on 9-4-14 at Nan Ya Plastics Corporation That happened of no fault of my own. I was smacked by an Automatic Overhead Door. I walked toward Door, it read me and raised up and failed when I got under it. I will stand firm on this and never ever will anyone or entity be able to prove otherwise.

Sincerely,
Stephen M. Evans

* I need my necessary Surgeries, I need Workers Compensation Adjustor and Affiliates to do the proper job for me. I quit not sending my checks, I quit stopping my Therapies and I quit throwing stupid Drug Screens at Me. I am not Dependent on ROA 0178



Claimant's Name: Stephen Evans SSN: 247432885 Employer's Name: Nan Ya Plastics
Address: _____ Address: 140 E. Beulah Road
Lake City, SC
Home Phone: 843-373-0526 wife Work Phone: 843-598-5990 clt Insurance Carrier: New Hampshire Insurance Co.
Preparer's Name: C. Daniel Vega Law Firm: Chappell, Smith & Arden Preparer's Phone #: 803-509-5830

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ Claimant ☐ Employer (check one) Date of Injury or Illness: 9/4/2014 (m/d/yyyy)

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

Please see attached.

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

☐ Mediation

☐ Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to _____ see attached
address _____ on the _____ day of _____, 20____
by _____ first class postage

Preparer's Signature _____ Attorney for Claimant _____ Title _____
dvega@csa-law.com
Email _____

Date

07/19/2019

Check this box if you are not represented by an attorney ☐

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov. If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

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

Steven Evans v. Nan-Ya Plastics Corporation of America

and New Hampshire Insurance Company

W.C.C. FILE NO. 1413115

Pursuant to the Decision and Order of the Single Commissioner in the above referenced matter, received on July 11, 2019, the following questions are presented to the Appellate Panel:

1. Whether the Single Commissioner erred in awarding a *charging lien* to attorney Barth when a *charging lien* is not the proper procedural method for establishing a fee pursuant to the S. C. Workers' Compensation Act, nor the S.C. Workers' Compensation Commission Regulations, and the evidence of record demonstrates attorney Barth failed to establish a lien as required by the South Carolina Workers' Compensation Act and the S.C. Workers' Compensation Commission Regulations.
2. Whether the Single Commissioner erred in the Statement of the Claim in stating the basis of the dispute is the *Glasscock* factors outlined in *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991), when the greater weight and preponderance of law and evidence demonstrates the dispute is not limited to the factors of *Glasscock*, and the dispute in question contains various jurisdictional questions and errors of law not listed in the Statement of the Claim.
3. Whether the Single Commissioner erred in failing to include in her Decision and Order all discoverable materials submitted by the parties of record, including but not limited to discovery obtained pursuant to issuance of subpoenas in relation to the claim, including emails obtained from attorney John Bruton, containing communications between attorneys Kevin Barth and John Bruton, when the greater weight and preponderance of law and evidence demonstrates such were submitted for the Single Commissioner's review.
4. Whether the Single Commissioner erred in her Findings of Fact number one (1) in finding the parties to the proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, when the greater weight and preponderance of law demonstrates a *charging lien* is not the proper procedural method for establishing a fee pursuant to the S. C. Workers' Compensation Act, nor the S.C. Workers' Compensation Commission Regulations, and when the greater weight and preponderance of evidence demonstrates attorney Barth failed to establish a lien as required by the South Carolina Workers' Compensation Act and S.C. Workers' Compensation Commission Regulations.
5. Whether the Single Commissioner erred in her Findings of Fact number four (4) in finding attorney Barth's Contract for Legal Services properly establishes a contingency fee "for any offers that have been made at the time of termination," when the greater weight and preponderance of law and evidence demonstrates attorney Barth's fee and subsequent

charging lien are not reasonable, fail to comply with the requirements of the South Carolina Workers' Compensation Act and S.C. Workers' Compensation Commission Regulations.

6. Whether the Single Commissioner erred in her Findings of Fact number four (4) in finding attorney Barth's Contract for Legal Services properly establishes entitlement to "costs incurred," when the greater weight and preponderance of law and evidence demonstrates attorney Barth's costs are waived, not reasonable, and failed to comply with the requirements of the South Carolina Workers' Compensation Act and S.C. Workers' Compensation Commission Regulations.
7. Whether the Single Commissioner erred in her Findings of Fact number six (6) in finding Claimant and attorney Barth began discussing the possibility of settling the claim, when the greater weight and preponderance of evidence demonstrates Claimant terminated attorney Barth, March 31st, prior to attorney Barth seeking an unauthorized settlement of the claim because Claimant was in need of cervical surgery as recommended by the authorized treating physician.
8. Whether the Single Commissioner erred in her Findings of Fact number six (6) in failing to find Claimant did *not* agree to settle the claim, when the greater weight and preponderance of evidence demonstrates Claimant terminated attorney Barth, March 31st, prior to attorney Barth seeking an unauthorized settlement of the claim.
9. Whether the Single Commissioner erred in her Findings of Fact number six (6) in failing to find Claimant was in need of medically necessary two-level cervical surgery at the time attorney Barth alleges he recommended settlement of the claim, when the greater weight and preponderance of evidence demonstrates claimant did not wish to settle the claim, and was in need of medically necessary surgery, and requested surgery be performed, as recommended by the authorized treating physician.
10. Whether the Single Commissioner erred in her Findings of Fact number seven (7) in finding attorney Barth and attorney Bruton began discussing the possibility of settling the claim, purportedly with Claimant's consent, prior to being terminated by the Claimant, when the greater weight and preponderance of evidence demonstrates Claimant terminated attorney Barth on March 31st, and further demonstrates Claimant did not wish to settle the claim prior to obtaining medically necessary surgery as recommended by the authorized treating physician.
11. Whether the Single Commissioner erred in her Findings of Fact number seven (7) in finding attorney Barth and attorney Bruton settled the claim for one-hundred thousand dollars (\$100,000.00), purportedly with Claimant's consent, as this finding of fact does not state whether Claimant consented to the negotiations, when the greater weight and preponderance of evidence demonstrates Claimant did not consent to the settlement, and terminated attorney Barth on March 31st, and further demonstrates Claimant did not wish to settle the claim prior to obtaining medically necessary surgery as recommended by the authorized treating physician.

12. Whether the Single Commissioner erred in her Findings of Fact number seven (7) in failing to find Claimant did *not* agree to settle the claim, as alleged by attorney Barth, when the greater weight and preponderance of evidence demonstrates Claimant terminated attorney Barth March 31st prior to attorney Barth seeking an unauthorized settlement of the claim.
13. Whether the Single Commissioner erred in her Findings of Fact number seven (7) in failing to find Claimant was in need of medically necessary two-level cervical surgery at the time attorney Barth alleges he recommended settlement of the claim, when the greater weight and preponderance of evidence demonstrates claimant did *not* wish to settle the claim, but was in need of medically necessary surgery, and requested surgery be performed as recommended by the authorized treating physician.
14. Whether the Single Commissioner erred in her Findings of Fact number seven (7) in finding the emails shared between attorney Barth and attorney Bruton are dispositive of a valid settlement, when the greater weight and preponderance of evidence demonstrates Claimant did not consent to the settlement, and terminated attorney Barth on March 31st, and further demonstrates Claimant did not wish to settle the claim prior to obtaining medically necessary surgery as recommended by the authorized treating physician.
15. Whether the Single Commissioner erred in her Findings of Fact number seven (7) in finding the testimony of Christina Graves, attorney Barth's long-time civil paralegal, is dispositive of a valid settlement, purportedly with Claimant's consent, as this finding of fact does not state whether Claimant consented to the negotiations, when the greater weight and preponderance of evidence demonstrates Claimant did not consent to the settlement, and terminated attorney Barth on March 31st, and further demonstrates Claimant did not wish to settle the claim prior to obtaining medically necessary surgery.
16. Whether the Single Commissioner erred in her Findings of Fact number seven (7) in finding the testimony of Christina Graves, attorney Barth's long-time civil paralegal, credible and knowledgeable, when the greater weight and preponderance of evidence demonstrates, and Christina Graves testified, she was not a part of the discussions between Claimant and Barth, and she did not know firsthand what discussions took place between Claimant and Barth prior to the alleged settlement.
17. Whether the Single Commissioner erred in her Findings of Fact number eight (8) in finding there were numerous communications between attorney Barth and attorney Bruton, requesting expediting the settlement, when the order of the Single Commissioner does not contain the entirety of the record of the communications between attorney Barth and attorney Bruton, and when the greater weight and preponderance of evidence demonstrates Claimant did *not* consent to the settlement, terminated attorney Barth on March 31st, and further demonstrates Claimant did not wish to settle the claim prior to obtaining medically necessary surgery as recommended by the authorized treating physician.
18. Whether the Single Commissioner erred in failing to find in her Findings of Fact Claimant was in financial distress as a result of attorney Barth settling the claim without Claimant's consent, and prior to obtaining medically necessary surgery, when the greater weight and

preponderance of evidence of record demonstrates Claimant's exasperation was a result of the claim being settled without consent, *not* receiving weekly indemnity benefits while being under doctors restrictions, and needing medically necessary surgery.

19. Whether the Single Commissioner erred in her Findings of Fact number nine (9) in finding the testimony of Christina Graves, attorney Barth's long-time civil paralegal, credible, when the greater weight and preponderance of evidence demonstrates, and Christina Graves testified, she was not a part of the discussions between Claimant and Barth, and she did not know firsthand what discussions took place between them prior to the alleged settlement, and when the greater weight and preponderance of evidence demonstrates Claimant did not consent to the settlement, and terminated attorney Barth on March 31st, and further demonstrates Claimant did not wish to settle the claim prior to obtaining medically necessary surgery.
20. Whether the Single Commissioner erred in her Findings of Fact number ten (10) in failing to find the settlement meeting between Claimant and Christina Graves was *not* reasonable, and failed to comply with the requirements of the South Carolina Workers' Compensation Act and S.C. Workers' Compensation Commission Regulations, when the greater weight and preponderance of law and evidence demonstrates the meeting between the Claimant and paralegal was *not* reasonable, and failed to comply with the requirements of the South Carolina Workers' Compensation Act and S.C. Workers' Compensation Commission Regulations.
21. Whether the Single Commissioner erred in her Findings of Fact number ten (10) in failing to find Claimant did *not* know why he was scheduled to meet with Christina Graves, at the purported settlement meeting, when the greater weight and preponderance of evidence demonstrates Claimant did not know why the meeting between the Claimant and the paralegal was scheduled.
22. Whether the Single Commissioner erred in her Findings of Fact number eleven (11) in specifically finding Claimant did *not* know why he was scheduled to meet with Christina Graves, at the purported settlement meeting, when the greater weight and preponderance of evidence demonstrates Claimant did *not* know why the meeting between the Claimant and the paralegal was scheduled.
23. Whether the Single Commissioner erred in her Findings of Fact number eleven (11) in finding Claimant's termination of attorney Vega, is synonymous with Claimant's termination of attorney Barth, when the evidence of record demonstrates Claimant underwent two spinal surgeries, was released to maximum medical improvement by the authorized treating physician, and subject to a Form 21 hearing on the merits, at the time the Vega settlement offer was recommended, and, as further demonstrated by the evidence, one-hundred fifty thousand dollars (\$150,000.00) represented the commuted value of the claim, at the time the offer was offered and accepted.

24. Whether the Single Commissioner erred in her Findings of Fact number twelve (12) in finding Claimant terminated attorney Barth on May 31st, 2016, by requesting his file and signing a release the next day, when the greater weight and preponderance of evidence demonstrates Claimant terminated attorney Barth in writing on March 31st, 2016.
25. Whether the Single Commissioner erred in her Findings of Fact number thirteen (13) in failing to find Claimant terminated attorney Barth in writing, with a letter written on March 31st, 2016.
26. Whether the Single Commissioner erred in her Findings of Fact number fourteen (14) in failing to find Claimant terminated attorney Barth in writing, with a letter written on March 31st, 2016.
27. Whether the Single Commissioner erred in her Findings of Fact number fifteen (15) in giving great weight to the testimony of Christina Graves, attorney Barth's long-time civil paralegal, when the greater weight and preponderance of evidence demonstrates, and Christina Graves testified, she was not a part of the discussions between Claimant and Barth, and she did not know firsthand what discussions took place between them prior to the alleged settlement, and when the greater weight and preponderance of evidence demonstrates Claimant did not consent to the settlement, and terminated attorney Barth on March 31st, and further demonstrates Claimant did not wish to settle the claim prior to obtaining medically necessary surgery.
28. Whether the Single Commissioner erred in her Findings of Fact number sixteen (16) in finding Claimant's testimony regarding the time of termination *not* credible, when the greater weight and preponderance of evidence demonstrates Claimant terminated attorney Barth on March 31st, and further demonstrates Claimant did not wish to settle the claim prior to obtaining medically necessary surgery as recommended by the authorized treating physician.
29. Whether the Single Commissioner erred in her Findings of Fact number seventeen (17) in failing to find Claimant terminated attorney Barth in writing, with a letter written on March 31st, 2016.
30. Whether the Single Commissioner erred in her Findings of Fact number seventeen (17) in finding attorney Barth's Contract for Legal Services properly establishes a contingency fee "for any offers that have been made at the time of termination," when the greater weight and preponderance of law and evidence demonstrates attorney Barth's fee and subsequent charging lien are not reasonable, fail to comply with the requirements of the South Carolina Workers' Compensation Act, and fail to comply with the requirements of the S.C. Workers' Compensation Commission Regulations.
31. Whether the Single Commissioner erred in her Findings of Fact number seventeen (17) in granting attorney Barth a *charging lien* for a thirty-three thousand, three-hundred thirty-three dollars and thirty-three cents (\$33,333.33) contingency fee, plus four-hundred, twenty-seven dollars and ninety-seven cents (\$427.97) in costs, "for any offers that have been made at the

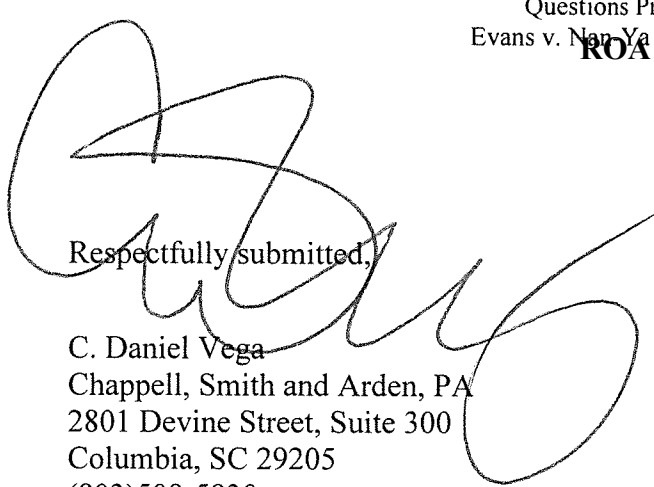
time of termination,” when the greater weight and preponderance of law and evidence demonstrates attorney Barth’s *charging lien* is not reasonable, and fails to comply with the requirements of the South Carolina Workers’ Compensation Act and S.C. Workers’ Compensation Commission Regulations.

32. Whether the Single Commissioner erred in her Findings of Fact number eighteen (18) in awarding benefits based on, the *Glasscock* factors outlined in *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991), when the greater weight and preponderance of law and evidence demonstrates the dispute is not limited to the factors of *Glasscock*, and further demonstrate attorney Barth’s fee and subsequent *charging lien* are not reasonable, and fail to comply with the requirements of the South Carolina Workers’ Compensation Act and S.C. Workers’ Compensation Commission Regulations.
33. Whether the Single Commissioner erred in her Findings of Fact number nineteen (19) in finding attorney Vega’s fee and costs are limited to thirty-three and one-third percent (33.3%) of any settlement amount left over from attorney Barth’s *charging lien*, pursuant to regulation 67-1205(c)(7), upon submission of a Form 61, when the greater weight and preponderance of law and evidence demonstrate Claimant terminated attorney Barth prior to the offer of settlement, and further demonstrates attorney Barth failed to establish he is entitled to a reasonable fee for services, waived his costs, and failed to establish a lien, when attorney Barth failed to comply with the requirements of the South Carolina Workers’ Compensation Act and S.C. Workers’ Compensation Commission Regulations.
34. Whether the Single Commissioner erred in failing to find in her Findings of Fact attorney Vega should receive payment of his attorney fee and costs properly submitted to the Commission, when the law and evidence of record demonstrates attorney Vega earned a fee for services rendered, and properly requested approval of the fee earned, as required by the South Carolina Workers’ Compensation Act and S.C. Workers’ Compensation Commission Regulations.
35. Whether the Single Commissioner erred in her Conclusions of Law number one (1) in concluding a *charging lien* is subject to the South Carolina Workers’ Compensation Act when a *charging lien* is not the proper procedural method for establishing a fee pursuant to the S. C. Workers’ Compensation Act, nor the S.C. Workers’ Compensation Commission Regulations, and the evidence of record demonstrates attorney Barth failed to establish a lien as required by the Act and regulations, which would have given notice to the claimant, the Commission, and, or any subsequent attorney proper notice of attorney Barth’s intent to establish a lien, and given the Commission proper jurisdiction to award such a lien.
36. Whether the Single Commissioner erred in her Conclusions of Law number two (2) in concluding attorney Barth is entitled to a fee for services pursuant to S.C. Code Ann. § 42-15-90 (A) and (B), when the greater weight and preponderance of law and evidence demonstrates attorney Barth failed to obtain approval for a fee for services from the Commission pursuant to S.C. Code Ann. § 42-15-90 (A) and (B).

37. Whether the Single Commissioner erred in her Conclusions of Law number (4) in concluding attorney Vega's fee and costs are limited to thirty-three and one-third percent (33.3%) of any additional settlement amount pursuant to regulation 67-1205(c)(7), when the greater weight and preponderance of law and evidence demonstrate Claimant terminated attorney Barth prior to the offer of settlement, and further demonstrates attorney Barth failed to establish he is entitled to a reasonable fee for services, waived his costs, and failed to establish a lien, when attorney Barth failed to comply with the requirements of the South Carolina Workers' Compensation Act and S.C. Workers' Compensation Commission Regulations.
38. Whether the Single Commissioner erred in her Conclusions of Law number five (5) in concluding pursuant to the following citations, 7 Am. Jur. 2d *Attorneys at Law* § 326 at 338 (1980); 7A C.J.S. *Attorney & Client* § 360 at 717 (1980); *Adair v. First National Bank*, 139 S.C. 1, 6, 137 S.E. 192 (1924); 7A C.J.S. *Attorney & Client* § 360 at 717-18 (1980); and *Eleazer v. Hardaway Concrete*, 281 S.C. 174, 315 S.E. 2d 174 (Ct. App. 1984), in concluding attorney Barth established a decisive *equitable lien* on a *judgement*, when the greater weight and preponderance of law and evidence demonstrates attorney Barth's fee and subsequent *charging lien* are not reasonable, and fail to comply with the requirements of the South Carolina Workers' Compensation Act and S.C. Workers' Compensation Commission Regulations.
39. Whether the Single Commissioner erred in her Conclusions of Law number six (6) in concluding pursuant to *Lester v. Dawson*, 327 S.C. 263, 491 S.E.2d 240 (1997) and *Eleazer v. Hardaway Concrete*, 281 S.C. 174, 315 S.E. 2d 174 (Ct. App. 1984), attorney Barth established an *equitable right* to the fee and costs obtained pursuant to a *judgement*, when the greater weight and preponderance of law and evidence demonstrates attorney Barth's fee and subsequent charging lien are not reasonable, and fail to comply with the requirements of the South Carolina Workers' Compensation Act and S.C. Workers' Compensation Commission Regulations.
40. Whether the Single Commissioner erred in her Conclusions of Law number seven (7) in concluding pursuant to the *Glasscock* factors outlined in *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991), attorney Barth is entitled to a reasonable fee for services, when the greater weight and preponderance of law and evidence demonstrates attorney Barth's fee and subsequent charging lien are not reasonable, and fail to comply with the requirements of the South Carolina Workers' Compensation Act and S.C. Workers' Compensation Commission Regulations.
41. Whether the Single Commissioner erred in her Conclusions of Law in failing to conclude as a matter of law attorney Vega should receive payment of his attorney fee and costs properly submitted to the Commission, when the law and evidence of record demonstrates attorney Vega earned a fee for services rendered, and properly requested approval of the fee and costs earned, as required by the South Carolina Workers' Compensation Act and S.C. Workers' Compensation Commission Regulations.

42. Whether the Single Commissioner erred in her Order number one (1) in ordering payment of attorney Barth's *charging lien*, when a *charging lien* is not the proper procedural method for establishing a fee pursuant to the S. C. Workers' Compensation Act, nor the S.C. Workers' Compensation Commission Regulations, and the greater weight and preponderance of law and evidence of record demonstrates attorney Barth failed to establish a lien as required by the South Carolina Workers' Compensation Act and S.C. Workers' Compensation Commission Regulations.
43. Whether the Single Commissioner erred in her Order number two (2) in ordering payment of a reduced attorney fee to attorney Vega, subsequent to an award for fees to attorney Barth, when the greater weight and preponderance of law and evidence of record demonstrates attorney Barth failed to establish a lien as required by the South Carolina Workers' Compensation Act and S.C. Workers' Compensation Commission Regulations.
44. Whether the Single Commissioner erred in her Order number two (2) in failing to order payment to attorney Vega for payment of the attorney fee and costs properly submitted to the Commission, when the law and evidence of record demonstrates attorney Vega earned a fee for services rendered, and properly requested approval of the fee and costs earned, as required by the South Carolina Workers' Compensation Act and S.C. Workers' Compensation Commission Regulations.

[Signature page attached]



Respectfully submitted,

C. Daniel Vega
Chappell, Smith and Arden, PA
2801 Devine Street, Suite 300
Columbia, SC 29205
(803)509-5830

This day, July 22, 2019.

DECISION AND ORDER OF THE
SOUTH CAROLINA WORKERS= COMPENSATION COMMISSION

WCC FILE NUMBER: 1413115

Stephen Evans,
Employee/Claimant,

vs.

Nan-Ya Plastics Corporation of America,
Employer/Insured,
and

New Hampshire Insurance Company,
Carrier/Defendants.

HEARING CONDUCTED:

HELD IN HARTSVILLE, SOUTH CAROLINA ON 7TH OF FEBRUARY 2019

APPEARANCES:

C. Daniel Vega, Esquire of Chappell Smith & Arden, P.A., of Columbia, South Carolina, for Claimant.

Defendants represented by John C. Bruton, Jr., Esquire of Haynsworth Sinkler & Boyd, P.A., of Columbia, South Carolina, but who did not appear at the hearing.

Kevin M. Barth, Esquire of Barth Ballenger & Lewis, L.L.P. of Florence, South Carolina, appearing as Claimant's former attorney.

SUBJECT OF THE HEARING:

To determine the issues as set forth in the Motion to Enforce Charging Lien filed by Kevin M. Barth, and Motion for Payment of Attorney's Fees filed by C. Daniel Vega.

OPINION AND ORDER:

Aisha Taylor, Commissioner

FILED:

July 10, 2019

STIPULATIONS:

Counsel for all parties stipulated at the hearing to the following issues:

1. The purpose of the hearing is to determine those issues as set forth in the Hearing Notice and issued raised in the Motion to Enforce Charging Lien and the Motion for Payment of Attorney's Fees.

2. Notice of the hearing on this file was timely and properly served upon all parties in interest.

3. The venue was properly set in Hartsville, South Carolina.

4. Claimant's former attorney, Kevin M. Barth, is seeking to enforce a lien upon the settlement proceeds in the sum of \$33,333.33, plus costs in the sum of \$427.97.

5. The attorney for Claimant, C. Daniel Vega, is seeking to have a fee approved pursuant to the Form 61 wherein he is requesting a fee of \$40,000.00 plus costs from the total settlement in this matter.

6. The South Carolina Workers= Compensation Commission has jurisdiction over this case.

SUBMISSIONS

1. SUBMISSIONS BY KEVIN M. BARTH:

- A. Contract for Legal Services between Kevin M. Barth and Stephen M. Evans;
- B. April 6, 2016 email from John Bruton to Kevin M. Barth;
- C. May 9, 2016 email from Kevin M. Barth to John Bruton;

- D. File Release signed by Stephen Evans dated May 31, 2016;
- E. June 1, 2016 letter from Kevin Barth to John Bruton advising of attorney fee lien;
- F. September 11, 2018 letter from Daniel Vega to Kevin Barth;
- G. Letter from Stephen Evans dated March 31, 2016 to Kevin M. Barth terminating representation;
- H. April 5, 2016 email from Kevin M. Barth to John Bruton regarding meeting with the client.2.

SUBMISSIONS BY C. DANIEL VEGA:

EX. #	Date	Description
1	9/25/2014	Form 12A
2	9/25/2014	LOR from Gerald Malloy
3	9/27/2014	Claimant's handwritten notes
4	10/29/2014	Letter from Nan Ya Safety, Health and Environmental Dept. to claimant
5	11/4/2014	LOR from John Bruton to Gerald Malloy
6	11/11/2014	Form 15
7	11/24/2014	Notice of Hearing
8	11/25/2014	Letter from Gerald Malloy to John Bruton
9	11/25/2014	Letter from Gerald Malloy to claimant
10	11/26/2014	Claimant's Form 58 and APA
11	12/2/2014	Employer's Form 58 and APA
12	12/10/2014	Email from John Bruton to Elaine Boyd
13	12/22/2014	Letter from claimant to Gerald Malloy
14	12/22/2014	Letter from Gerald Malloy to claimant
15	12/22/2014	Letter from Gerald Malloy to claimant enclosing a copy of file
16	12/28/2014	Letter from claimant to Gerald Malloy
17	12/28/2014	Gerald Malloy's Motion to Relieve Counsel
18	12/29/2014	Contract for Legal Services between Kevin Barth and claimant
19	6/8/2015	Letter from Barth to SCWCC enclosing Form 50
20	6/24/2015	Letter from Bruton enclosing Form 51
21	8/28/2015	Form 18
22	7/16/2015	Letter to claimant from Barth advising of hearing date
23	10/30/2015	Letter to claimant from Barth enclosing IME report
24	2/10/2016	Email from Nurse Case Manager
25	3/1/2016	Email from Nurse Case Manager to adjuster requesting approval for surgery
26	3/3/2016	Form 18
27	3/3/2016	Claimant letter to Kevin Barth
28	5/13/2016	Letter from Barth to Bruton returning settlement documents
29	6/1/2016	Letter from Barth to Bruton enclosing Motion to Be Relieved
30	1/1/2017	Letter from claimant to Vega
31	1/5/2017	Letter from Vega to claimant

32	1/9/2017	Letter from claimant to Vega
33	7/26/2018	Form 18
34	8/13/2018	Letter from claimant to Vega
35	9/4/2018	Email from Bruton to Vega
36	9/20/2018	Letter from Barth to Vega with enclosures
37	10/1/2018	Vega letter submitting Fee Petition
38	10/12/2018	Final Lump Sum Agreement
39	9/28/2018	Form 19
40	9/28/2018	Questionnaire completed by claimant
41	9/17/2018	Phone call history
42	1/11/2017	Claimant's handwritten notes

The parties stipulated that all of the documents submitted to the Commission as attachments to the two Motion are admitted into evidence. These documents are the ones listed above.

STATEMENT OF THE CASE

This matter is before the Commission to determine the appropriate distribution of attorney's fees and costs that relate to the Claimant's total settlement of \$150,000.00.

Kevin M. Barth contends that the Claimant authorized him to settle this case for the sum of \$100,000.00. Pursuant to the Contract for Legal Services executed by the client and attorney, Mr. Barth, if terminated by the client, would be entitled to receive 33.3% of any settlement offers made in the case, plus costs. Mr. Barth contends that the parties agreed to settle the matter for \$100,000.00 in early April of 2016, and that he should be entitled to 33.3% of that amount plus costs. He further contends that the Claimant declined to execute the settlement documents in May of 2016, and that on May 31, 2016 Claimant retrieved his file from Mr. Barth and handed his office a letter

purporting to have terminated Mr. Barth's representation two months earlier, on March 31, 2016.

Claimant contends that Mr. Barth was never authorized to settle the case and that he knew nothing about any settlement discussions. He further claims that he terminated Mr. Barth's representation on March 31, 2016, the date shown on the letter of termination.

Claimant alternatively contends that Mr. Barth should not be entitled to receive any fee for his services, basing that contention on the factors outlined in the *Glasscock* case.

Mr. C. Daniel Vega was retained as claimant's counsel once Mr. Barth was terminated. Mr. Vega ultimately settled Claimant's case for \$150,000.00. Mr. Vega is requesting that the Commission approve his fee request for \$40,000.00 plus costs.

EVIDENCE OF THE CASE

1. Christina Graves: Ms. Graves testified that she has been the civil paralegal for attorney Kevin M. Barth for approximately 20 years and that she handled all of his civil matters and workers' compensation claims. She further testified that the Claimant hired Mr. Barth to represent him in his workers' compensation claim. She further testified regarding the difficulty surrounding the approval of Claimant's requested surgery.

Ms. Graves then testified that the Claimant agreed to settle his claim for \$100,000.00 on April 5, 2016 because he needed the

money, but that the settlement check and settlement documents were not received from defense counsel until early May 2016. In the month between the settlement and the arrival of the settlement documents, Ms. Graves testified that the Claimant called the office numerous times asking about the status of the settlement check and documents. Once the documents arrived, Ms. Graves testified that she contacted the Claimant to come sign the settlement check and documents. When Claimant arrived to execute the documents and settlement check, he met with Ms. Graves, as Mr. Barth was not in the office. She testified that while he was reviewing the documents, Claimant indicated that he was not going to settle the case for that amount of money as it was not sufficient "for what he had been through" and because he had "lost everything".

Ms. Graves testified that Mr. Barth notified defense counsel that the Claimant would not sign the documents and he ultimately returned the check and settlement documents to the defense attorney. She then testified that in late May, Claimant called the office and wanted his file. The file was copied, and the Claimant appeared at the office on May 31, 2016 to retrieve his file and sign a File Release. She then testified that when Claimant retrieved his file, he handed in a white envelope with a letter enclosed. The letter was a letter terminating Mr. Barth's services and was dated March 31, 2016 (two months earlier). However, Ms. Graves testified that the letter was not received by the office

until May 31, 2016, when it was hand delivered and the file was retrieved.

2. C. Daniel Vega: Mr. Vega testified that he assumed representation of the Claimant and that he represented him through the settlement of his claim. Mr. Vega testified that the Claimant said he had never authorized Mr. Barth to settle his case and as a result, no offer had been made to the Claimant prior to him assuming representation of the Claimant.

3. Stephen Evans: Mr. Evans testified that he is the Claimant in this matter and originally retained attorney Gerald Malloy to represent him. The Claimant then testified that he terminated Malloy's representation in December of 2015 and did so by certified letter.

He then hired Mr. Barth to represent him in his workers' compensation claim in January or February of 2015.

The Claimant also testified that he was in severe pain at the time and that he needed surgery. His surgery was not approved in a timely fashion and the Claimant testified that as a result he was losing faith in Mr. Barth's ability to handle the claim and losing faith in the system. He noted that the insurance carrier "cut off his checks" a number of times causing he and his family to lose everything they had and forced them to live in a motel.

Claimant testified that he never authorized Mr. Barth to engage in settlement discussions with defense counsel and that he never was aware a settlement offer had been made. Claimant also

testified that he never would have authorized settlement discussions until he had received the surgery he needed.

Claimant then testified that the first time he heard that his case had been settled for \$100,000.00 was when Mr. Barth's paralegal contacted him to come and sign the settlement documents.

Claimant testified that he did not know what the documents were, but he went to Mr. Barth's office and met with Ms. Graves, the paralegal, to go over the documents as Mr. Barth was not in the office.

Claimant testified that he had not authorized the settlement and refused to sign the settlement documents. He also testified that because of the purported settlement, his weekly TTD checks were cut off for a number of weeks.

Claimant then testified that he wrote a letter to Mr. Barth terminating his representation and that the letter was written and dated March 31, 2016. He also testified the letter was sent to Mr. Barth by certified mail. In his testimony, Claimant denied delivering the termination letter on May 31, 2016 and denies backdating the letter for March 31, 2016. He testified that he retrieved his file on May 31, 2016 but did not deliver the termination letter at that time. He testified that the letter had been sent on March 31, 2016. Claimant testified that he then contacted attorney John Etheridge about representing him and Mr. Etheridge referred him to Mr. Vega, whom he hired. After retaining Mr. Vega, Claimant testified that his TTD checks were reinstated

and surgery was approved and completed. Claimant testified that in January of 2017, he terminated Mr. Vega's representation of him and did so by certified letter. He testified that he later wrote Mr. Vega and requested that he continue representing him and that Mr. Vega agreed to do so.

He also testified that when Mr. Vega discussed the value of his claim, he was very disappointed. However, Claimant testified that he appeared at a hearing with his attorney and agreed to settle his claim. Claimant then later wrote Mr. Vega indicating that he was dissatisfied with the settlement that had been agreed to. After further discussions between the two, Claimant testified that he agreed to the settlement because his only choices were to settle the claim for that amount or appear at a hearing "and get nothing".

Claimant then testified that he signed the settlement documents and the Form 61. He also testified that he signed a document in Mr. Vega's presence that was designed to ensure that Mr. Barth would not be paid for his services on this claim. Claimant testified that he believes Mr. Vega's paralegal prepared the document and that it was executed in the presence of Mr. Vega and his paralegal.

Claimant testified that even though the case has settled, he believes he is entitled to receive additional surgeries under the workers' compensation claim and that he is going to file an appeal in an attempt to have the future surgeries approved.

FINDINGS OF FACT

Based upon the testimony of Claimant, Christina Graves and C. Daniel Vega and the documentary evidence submitted pursuant to the Administrative Procedures Act, and the Commission file in this matter, I find as facts:

1. That the parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers= Compensation Law, as amended, with Nan-Ya Plastics Corporation of America, as the employer, and New Hampshire Insurance Company, as the carrier.

2. That Stephen Evans was an employee of Nan-Ya Plastics Corporation of America at the time of the accident giving rise to the within claim.

3. That the Claimant was initially represented in this claim by attorney Gerald Malloy. Attorney Malloy filed a Form 50 on Claimant's behalf (Vega Exhibit 7-2), but the issues were resolved, and a hearing was never held. Vega Exhibit 12-7. Claimant fired attorney Mallory and did so by sending him a certified letter dated December 22, 2014. Vega Exhibits 13-1 through 13-11.

4. That Claimant subsequently retained attorney Kevin Barth to represent him. Claimant signed a Contract for Legal Services. Exhibit A to the Motion to Enforce Charging Lien. This Contract for Legal Services provided as follows: "If I terminate the services of my attorney at any time prior to settlement, then I agree to pay said attorney \$175.00 per hour for all attorney

services rendered in this matter, and \$75.00 per hour for all paralegal services rendered in this matter or the contracted contingency fee percentage on any offers that have been made at the time of termination, **whichever is greater.**" (emphasis in original).

The contracted contingency percentage is 33.33%, and Claimant agreed to be responsible for the costs incurred in the prosecution of this claim.

5. Attorney Barth filed a Form 50 on Claimant's behalf requesting additional medical treatment for the Claimant. Vega Exhibits 22-1 and 22-2. The Defendant's attorney, John Bruton, filed a Form 51 (Vega Exhibit 20-1) which included a partial acceptance of the claim and a partial denial. The issues raised in the Form 50 were resolved and a hearing was never held.

6. After a medical deposition was taken, the Claimant submitted to an IME and after receiving recommendations for treatment, Claimant and attorney Barth began discussing the possibility of settling the claim because, as the Claimant testified, he had "lost everything". Transcript p. 61.

7. During the months of March and April of 2016 settlement discussions took place between Barth and Bruton. Claimant contends that these discussions took place without his knowledge or permission. Ultimately, the matter was settled for \$100,000.00 on April 6, 2016. The undersigned bases these findings on a number of documents verifying this finding, including Barth's Exhibit B and the April 5, 2016 email from Mr. Barth to Mr. Bruton which was

submitted to the undersigned at the hearing. These findings are also based on the testimony of Christina Graves, Barth's long-time civil paralegal. I find her to be credible and knowledgeable about dates, times and discussions regarding this claim. She testified that the matter was settled in "late March, early April 2016... I believe it was April the 5th of 2016". Transcript p. 18.

8. Over the course of the next month there were numerous communications between Barth and Bruton requesting that the settlement documents be expedited. Vega Exhibits 36-9 through 36-13 and Barth's Exhibit B.

9. Christina Graves also testified that between the time the claim was settled and early May when the settlement check and documents were sent to Barth, the Claimant contacted the firm numerous times asking about the status of his settlement check and documents. I find this testimony to be credible. Transcript p. 19.

10. When the settlement documents arrived, Ms. Graves contacted the Claimant to come in and sign the settlement documents. He appeared at the office to sign the settlement documents "around May the 8th, 9th." Transcript p. 19. The Claimant confirms that he received a call to come to the office to sign documents, which he did. Transcript pp. 68-69. When asked why he appeared to sign documents in May if he had fired Barth on March 31, 2016, his response was "I don't know. I don't know why she called and told me I had to settle - I mean, had to come and sign a paper." Transcript p. 69.

11. Claimant refused to sign the settlement documents (confirmed by Vega Exhibit 36-9), and they were ultimately returned by Barth to Bruton by letter of May 13, 2016. Vega Exhibit 28-1. Claimant indicated when he began reading the settlement documents that "he had thought about it, and it just wasn't enough for what he had been through". Transcript p. 20. The undersigned specifically finds that the Claimant knew of the settlement offer, appeared at the attorney's office to sign the settlement documents, and then changed his mind. The undersigned notes that the Claimant did the very same thing to Mr. Vega later in the case. He authorized attorney Vega to settle his claim for \$150,000.00 on July 26, 2018 but changed his mind and notified Vega in writing on August 13, 2018 that he disavowed the settlement and would prefer to have a hearing. Vega Exhibits 34-1 through 34-3.

12. In late May of 2016, Claimant called Barth's office and requested a copy of his file. It was made available to him the next day, May 31, 2016. Claimant appeared at the office the next day, where he picked up his file and signed a File Release. Vega Exhibit 27-1. Transcript p. 21.

13. Claimant prepared a letter terminating Barth from representing him in this claim. This letter is dated March 31, 2016 and indicates that the Claimant is not ready to settle his case as he needs more medical attention. Vega Exhibit 27-1.

14. The crux of this matter is when this letter was delivered to Mr. Barth's office. Claimant says it was sent certified on

March 31, 2016, although he could produce no evidence that it was.

Mr. Barth's office contends that it was hand delivered to the office on May 31, 2016 when Claimant picked up his file. Transcript p. 22-23. The undersigned was put in the very difficult position of weighing the testimony of the Claimant against the testimony of an attorney and paralegal.

15. After carefully considering the credibility of the witnesses, the undersigned gives great weight to the testimony of Mr. Barth's paralegal, Christina Graves. She was very knowledgeable about the dates, times and discussions surrounding Claimant's termination of Mr. Barth's representation. Specifically, the undersigned finds Ms. Graves' testimony regarding her receipt of the letter of termination on May 31, 2016 to be very credible. Claimant's letter dated March 31, 2016 was not delivered to Mr. Barth until May 31, 2016. Thus, Mr. Barth's services to Claimant were terminated on May 31, 2016.

16. The undersigned does not find Claimant's testimony regarding an earlier delivery date to be credible, particularly in light of the fact that the record contains numerous references to it being sent by certified mail, but Claimant could produce no evidence of certified mailing or delivery. Transcript p. 67-68.

17. Based on the foregoing findings, Mr. Barth's representation of Claimant was terminated after the settlement offer of \$100,000.00 was made to the Claimant and Mr. Barth. His Contract for Legal Services provides for a 33.33% contingency fee

on all settlement offers made, plus costs. Mr. Barth's Motion to Enforce Charging Lien is granted and he is entitled to receive the sum of \$33,333.33, plus costs of \$427.97 from the proceeds of this settlement.

18. Claimant further contends that Mr. Barth should not be awarded any attorney's fees in this matter because he allegedly did nothing for the Claimant. Transcript p. 57. The undersigned has carefully considered the *Glasscock* factors and finds that Mr. Barth satisfies those factors and is entitled to the fee requested.

19. As it pertains to the Claimant and Vega's Motion for Payment of Attorney's Fees and costs, the undersigned grants the same in part and finds that Mr. Vega is entitled to an attorney's fee up to 33.33% of the additional settlement amount secured by him of \$50,000.00 plus costs pursuant to R. 67-1205(C)(7) upon his submission of a Form 61 and a proposed Order reflecting same.

20. No hearing costs are assessed in this matter.

CONCLUSIONS OF LAW

In view of these findings and facts, I conclude as matters of law:

1. That the parties to this proceeding are subject to and bound by the South Carolina Workers= Compensation Act.

2. That this is dispute over attorney's fees to be paid from the \$150,000.00 settlement of Claimant's claim. Attorney's fees in workers' compensation cases are subject to approval of the Commission. Additionally, no attorney may receive a fee in a workers' compensation claim until it has been approved by the Commission. S.C. Code Ann. § 42-15-90 (A) and (B).

3. A Claimant and attorney can agree on a contingency fee arrangement. However, "an attorney may charge up to, but not more than, 33.3% of the total amount of compensation..." R. 67-1205(C).

4. "When an attorney is employed after the employer's representative makes a written offer of settlement to the claimant, the attorney shall base his or her fee on the amount of compensation secured in excess of the settlement offer. The fee shall not exceed 33.3% of the difference between the offer of settlement and the amount of compensation secured." R. 67-1205(C)(7).

5. "A lien for the payment of an attorney's fee out of the proceeds of a judgment obtained as a result of an attorney's efforts, however, may be created by an express agreement between an attorney and his client. 7 Am. Jur. 2d *Attorneys at Law* § 326 at 338 (1980); 7A C.J.S. *Attorney & Client* § 360 at 717 (1980). Indeed, an agreement between an attorney and his client "that the attorney shall have a lien on the judgment, is decisive as to the existence of the lien and its amount, and constitutes a valid equitable assignment *pro tanto* which attaches to the judgment as

soon as it is entered.'" *Adair v. First National Bank*, 139 S.C. 1, 6, 137 S.E. 192 (1924); see also 7A C.J.S. *Attorney & Client* § 360 at 717-18 (1980). Our courts will recognize an equitable lien created by contract in proper cases. (citations omitted) *Eleazer v. Hardaway Concrete*, 281 S.C. 174, 315 S.E. 2d 174 (Ct. App. 1984)

6. In *Lester v. Dawson*, 327 S.C. 263, 491 S.E.2d 240 (1997), in discussing the Court of Appeals decision in *Eleazer v. Hardaway Concrete*, the Supreme Court stated first that "an attorney's charging lien is an 'equitable right to have the fee and costs due an attorney for services rendered in a legal proceeding secured to him out of any judgment or recovery obtained therein.' . Observing that this kind of lien protects only costs and disbursements, the Court nevertheless found that '[a] lien for the payment of an attorney's fee out of the proceeds of a judgment obtained as a result of an attorney's efforts, however, may be created by an express agreement between an attorney and his client.' Because the attorney and client in *Eleazer* had specifically agreed that the attorneys' fee would be secured by a lien upon the proceeds of any judgment the attorney obtained for the client, the Court found there was an equitable lien. ... We believe the holding in *Eleazer* is correct."

7. In *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (S.C., 1991), the Court outlined the six factors to be considered in determining a reasonable attorney's fee: (1) the nature, extent,

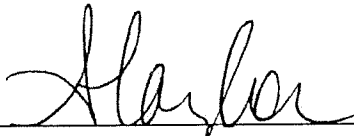
and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.

ORDER

Accordingly, it is therefore ordered as follows:

1. Kevin M. Barth's Motion to Enforce Charging Lien is granted, and he is entitled to receive from the settlement proceeds the sum of \$33,333.33, plus \$427.97, for a total of \$33,760.97.

2. C. Daniel Vega's Motion for Payment of Attorney's fees and costs is granted and upon the submission of a Form 61 as outlined above will be entitled to receive 33.3% of \$50,000.00, plus costs incurred.



Commissioner Aisha Taylor

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.

July 11, 2019

By: Renee Smith, Administrative Assistant to Commissioner
Taylor

error w/postage
re-served by USPS
JCB
CDV(Box 2)
KMB
7-16-19
RJS

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FIRST CLASS MAIL
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1333 MAIN STREET, SUITE 500

P.O. Box 1715

COLUMBIA, SOUTH CAROLINA 29202-1715

RETURN SERVICE REQUESTED

~~C. Daniel Vega (2)
Chappell, Smith & Arden
P O Box 12330
Columbia, SC 29211~~

[illegible]**ROA 0208**

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE APPELLATE PANEL OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 1413115

Ex Parte: C. Daniel Vega of Chappell, Smith & Arden, P.A. Appellant,

v.

Kevin M. Barth of Barth, Ballenger & Lewis LLP Respondent

In Re:

Stephen Evans, ... Claimant,

vs.

Nan-ya Plastics Corp. America Employer,
And New Hampshire Insurance Co. Carrier

NOTICE OF APPEAL

RECEIVED

JAN 14 2020

SC Court of Appeals

Appellant C. Daniel Vega of Chappell, Smith & Arden, P.A. (hereafter "Vega"), counsel for Stephen Evans, (hereafter "Claimant") appeals the decision of the Appellate Panel of the South Carolina Worker's Compensation Commission dated December 13, 2019 and the Order of the Single Commissioner dated July 11, 2019, copies of which are attached hereto. Pursuant to S.C. Code Ann. § 42-17-60, the grounds of appeal are:

1. The Workers Compensation Commission erred in granting attorney's fees to Respondent Barth based on the existence of a lien arising from his fee agreement with Claimant, in that the Workers Compensation Commission is not authorized by law to decide issues of

law arising from contracts between Claimants and their lawyers, nor is it authorized to rule upon division of fees between law firms when the claimant changes counsel during the representation and there is a dispute as to fee division between lawyers.

2. The Workers Compensation Commission erred in granting attorney's fees to Respondent Barth based on his failure to provide sufficient evidence and documentation in the record in order to allow his contract with Claimant to be applied under the facts presented here.
3. The Workers Compensation Commission erred in granting attorney's fees to Respondent Barth based on his degree of work which benefitted Claimant, when Appellant Vega obtained the majority of benefits which were received by the Claimant.
4. The Workers Compensation Commission erred in its application of the *quantum meruit* factors regarding division of attorney's fees and costs incurred by claimant's two lawyers, when Appellant reduced the overall fee charged to the claimant in order to maximize claimant's recovery of benefits.

Respectfully submitted,



Desa Ballard
Harvey M. Watson III
BALLARD & WATSON
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West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
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ATTORNEYS FOR APPELLANT VEGA

January 13, 2020

ROA 0210

Other counsel of record:

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ATTORNEY FOR RESPONDENT BARTH

Counsel below (not involved in appeal)

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Telephone 803.540.7861
jbruton@hsblawfirm.com

COUNSEL FOR EMPLOYER/CARRIER

DECISION AND ORDER OF THE
SOUTH CAROLINA WORKERS= COMPENSATION COMMISSION

WCC FILE NUMBER: 1413115

Stephen Evans,
Employee/Claimant,

vs.

Nan-Ya Plastics Corporation of America,
Employer/Insured,
and
New Hampshire Insurance Company,
Carrier/Defendants.

RECEIVED
JAN 14 2020
SC Court of Appeals

HEARING CONDUCTED:

HELD IN HARTSVILLE, SOUTH CAROLINA ON 7TH OF FEBRUARY 2019

APPEARANCES:

C. Daniel Vega, Esquire of Chappell Smith & Arden, P.A., of Columbia, South Carolina, for Claimant.

Defendants represented by John C. Bruton, Jr., Esquire of Haynsworth Sinkler & Boyd, P.A., of Columbia, South Carolina, but who did not appear at the hearing.

Kevin M. Barth, Esquire of Barth Ballenger & Lewis, L.L.P. of Florence, South Carolina, appearing as Claimant's former attorney.

SUBJECT OF THE HEARING:

To determine the issues as set forth in the Motion to Enforce Charging Lien filed by Kevin M. Barth, and Motion for Payment of Attorney's Fees filed by C. Daniel Vega.

OPINION AND ORDER:

Aisha Taylor, Commissioner

FILED:

July 10, 2019

STIPULATIONS:

Counsel for all parties stipulated at the hearing to the following issues:

1. The purpose of the hearing is to determine those issues as set forth in the Hearing Notice and issued raised in the Motion to Enforce Charging Lien and the Motion for Payment of Attorney's Fees.

2. Notice of the hearing on this file was timely and properly served upon all parties in interest.

3. The venue was properly set in Hartsville, South Carolina.

4. Claimant's former attorney, Kevin M. Barth, is seeking to enforce a lien upon the settlement proceeds in the sum of \$33,333.33, plus costs in the sum of \$427.97.

5. The attorney for Claimant, C. Daniel Vega, is seeking to have a fee approved pursuant to the Form 61 wherein he is requesting a fee of \$40,000.00 plus costs from the total settlement in this matter.

6. The South Carolina Workers= Compensation Commission has jurisdiction over this case.

SUBMISSIONS

1. SUBMISSIONS BY KEVIN M. BARTH:

- A. Contract for Legal Services between Kevin M. Barth and Stephen M. Evans;
- B. April 6, 2016 email from John Bruton to Kevin M. Barth;
- C. May 9, 2016 email from Kevin M. Barth to John Bruton;

ROA 0213

- D. File Release signed by Stephen Evans dated May 31, 2016;
- E. June 1, 2016 letter from Kevin Barth to John Bruton advising of attorney fee lien;
- F. September 11, 2018 letter from Daniel Vega to Kevin Barth;
- G. Letter from Stephen Evans dated March 31, 2016 to Kevin M. Barth terminating representation;
- H. April 5, 2016 email from Kevin M. Barth to John Bruton regarding meeting with the client.2.

SUBMISSIONS BY C. DANIEL VEGA:

EX. #	Date	Description
1	9/25/2014	Form 12A
2	9/25/2014	LOR from Gerald Malloy
3	9/27/2014	Claimant's handwritten notes
4	10/29/2014	Letter from Nan Ya Safety, Health and Environmental Dept. to claimant
5	11/4/2014	LOR from John Bruton to Gerald Malloy
6	11/11/2014	Form 15
7	11/24/2014	Notice of Hearing
8	11/25/2014	Letter from Gerald Malloy to John Bruton
9	11/25/2014	Letter from Gerald Malloy to claimant
10	11/26/2014	Claimant's Form 58 and APA
11	12/2/2014	Employer's Form 58 and APA
12	12/10/2014	Email from John Bruton to Elaine Boyd
13	12/22/2014	Letter from claimant to Gerald Malloy
14	12/22/2014	Letter from Gerald Malloy to claimant
15	12/22/2014	Letter from Gerald Malloy to claimant enclosing a copy of file
16	12/28/2014	Letter from claimant to Gerald Malloy
17	12/28/2014	Gerald Malloy's Motion to Relieve Counsel
18	12/29/2014	Contract for Legal Services between Kevin Barth and claimant
19	6/8/2015	Letter from Barth to SCWCC enclosing Form 50
20	6/24/2015	Letter from Bruton enclosing Form 51
21	8/28/2015	Form 18
22	7/16/2015	Letter to claimant from Barth advising of hearing date
23	10/30/2015	Letter to claimant from Barth enclosing IME report
24	2/10/2016	Email from Nurse Case Manager
25	3/1/2016	Email from Nurse Case Manager to adjuster requesting approval for surgery
26	3/3/2016	Form 18
27	3/3/2016	Claimant letter to Kevin Barth
28	5/13/2016	Letter from Barth to Bruton returning settlement documents
29	6/1/2016	Letter from Barth to Bruton enclosing Motion to Be Relieved
30	1/1/2017	Letter from claimant to Vega

31	1/5/2017	Letter from Vega to claimant
32	1/9/2017	Letter from claimant to Vega
33	7/26/2018	Form 18
34	8/13/2018	Letter from claimant to Vega
35	9/4/2018	Email from Bruton to Vega
36	9/20/2018	Letter from Barth to Vega with enclosures
37	10/1/2018	Vega letter submitting Fee Petition
38	10/12/2018	Final Lump Sum Agreement
39	9/28/2018	Form 19
40	9/28/2018	Questionnaire completed by claimant
41	9/17/2018	Phone call history
42	1/11/2017	Claimant's handwritten notes

The parties stipulated that all of the documents submitted to the Commission as attachments to the two Motion are admitted into evidence. These documents are the ones listed above.

STATEMENT OF THE CASE

This matter is before the Commission to determine the appropriate distribution of attorney's fees and costs that relate to the Claimant's total settlement of \$150,000.00.

Kevin M. Barth contends that the Claimant authorized him to settle this case for the sum of \$100,000.00. Pursuant to the Contract for Legal Services executed by the client and attorney, Mr. Barth, if terminated by the client, would be entitled to receive 33.3% of any settlement offers made in the case, plus costs. Mr. Barth contends that the parties agreed to settle the matter for \$100,000.00 in early April of 2016, and that he should be entitled to 33.3% of that amount plus costs. He further contends that the Claimant declined to execute the settlement documents in May of 2016, and that on May 31, 2016 Claimant retrieved his file from Mr. Barth and handed his office a letter

purporting to have terminated Mr. Barth's representation two months earlier, on March 31, 2016.

Claimant contends that Mr. Barth was never authorized to settle the case and that he knew nothing about any settlement discussions. He further claims that he terminated Mr. Barth's representation on March 31, 2016, the date shown on the letter of termination.

Claimant alternatively contends that Mr. Barth should not be entitled to receive any fee for his services, basing that contention on the factors outlined in the *Glasscock* case.

Mr. C. Daniel Vega was retained as claimant's counsel once Mr. Barth was terminated. Mr. Vega ultimately settled Claimant's case for \$150,000.00. Mr. Vega is requesting that the Commission approve his fee request for \$40,000.00 plus costs.

EVIDENCE OF THE CASE

1. Christina Graves: Ms. Graves testified that she has been the civil paralegal for attorney Kevin M. Barth for approximately 20 years and that she handled all of his civil matters and workers' compensation claims. She further testified that the Claimant hired Mr. Barth to represent him in his workers' compensation claim. She further testified regarding the difficulty surrounding the approval of Claimant's requested surgery.

Ms. Graves then testified that the Claimant agreed to settle his claim for \$100,000.00 on April 5, 2016 because he needed the

money, but that the settlement check and settlement documents were not received from defense counsel until early May 2016. In the month between the settlement and the arrival of the settlement documents, Ms. Graves testified that the Claimant called the office numerous times asking about the status of the settlement check and documents. Once the documents arrived, Ms. Graves testified that she contacted the Claimant to come sign the settlement check and documents. When Claimant arrived to execute the documents and settlement check, he met with Ms. Graves, as Mr. Barth was not in the office. She testified that while he was reviewing the documents, Claimant indicated that he was not going to settle the case for that amount of money as it was not sufficient "for what he had been through" and because he had "lost everything".

Ms. Graves testified that Mr. Barth notified defense counsel that the Claimant would not sign the documents and he ultimately returned the check and settlement documents to the defense attorney. She then testified that in late May, Claimant called the office and wanted his file. The file was copied, and the Claimant appeared at the office on May 31, 2016 to retrieve his file and sign a File Release. She then testified that when Claimant retrieved his file, he handed in a white envelope with a letter enclosed. The letter was a letter terminating Mr. Barth's services and was dated March 31, 2016 (two months earlier). However, Ms. Graves testified that the letter was not received by the office

until May 31, 2016, when it was hand delivered and the file was retrieved.

2. C. Daniel Vega: Mr. Vega testified that he assumed representation of the Claimant and that he represented him through the settlement of his claim. Mr. Vega testified that the Claimant said he had never authorized Mr. Barth to settle his case and as a result, no offer had been made to the Claimant prior to him assuming representation of the Claimant.

3. Stephen Evans: Mr. Evans testified that he is the Claimant in this matter and originally retained attorney Gerald Malloy to represent him. The Claimant then testified that he terminated Malloy's representation in December of 2015 and did so by certified letter.

He then hired Mr. Barth to represent him in his workers' compensation claim in January or February of 2015.

The Claimant also testified that he was in severe pain at the time and that he needed surgery. His surgery was not approved in a timely fashion and the Claimant testified that as a result he was losing faith in Mr. Barth's ability to handle the claim and losing faith in the system. He noted that the insurance carrier "cut off his checks" a number of times causing he and his family to lose everything they had and forced them to live in a motel.

Claimant testified that he never authorized Mr. Barth to engage in settlement discussions with defense counsel and that he never was aware a settlement offer had been made. Claimant also

testified that he never would have authorized settlement discussions until he had received the surgery he needed.

Claimant then testified that the first time he heard that his case had been settled for \$100,000.00 was when Mr. Barth's paralegal contacted him to come and sign the settlement documents.

Claimant testified that he did not know what the documents were, but he went to Mr. Barth's office and met with Ms. Graves, the paralegal, to go over the documents as Mr. Barth was not in the office.

Claimant testified that he had not authorized the settlement and refused to sign the settlement documents. He also testified that because of the purported settlement, his weekly TTD checks were cut off for a number of weeks.

Claimant then testified that he wrote a letter to Mr. Barth terminating his representation and that the letter was written and dated March 31, 2016. He also testified the letter was sent to Mr. Barth by certified mail. In his testimony, Claimant denied delivering the termination letter on May 31, 2016 and denies backdating the letter for March 31, 2016. He testified that he retrieved his file on May 31, 2016 but did not deliver the termination letter at that time. He testified that the letter had been sent on March 31, 2016. Claimant testified that he then contacted attorney John Etheridge about representing him and Mr. Etheridge referred him to Mr. Vega, whom he hired. After retaining Mr. Vega, Claimant testified that his TTD checks were reinstated

and surgery was approved and completed. Claimant testified that in January of 2017, he terminated Mr. Vega's representation of him and did so by certified letter. He testified that he later wrote Mr. Vega and requested that he continue representing him and that Mr. Vega agreed to do so.

He also testified that when Mr. Vega discussed the value of his claim, he was very disappointed. However, Claimant testified that he appeared at a hearing with his attorney and agreed to settle his claim. Claimant then later wrote Mr. Vega indicating that he was dissatisfied with the settlement that had been agreed to. After further discussions between the two, Claimant testified that he agreed to the settlement because his only choices were to settle the claim for that amount or appear at a hearing "and get nothing".

Claimant then testified that he signed the settlement documents and the Form 61. He also testified that he signed a document in Mr. Vega's presence that was designed to ensure that Mr. Barth would not be paid for his services on this claim. Claimant testified that he believes Mr. Vega's paralegal prepared the document and that it was executed in the presence of Mr. Vega and his paralegal.

Claimant testified that even though the case has settled, he believes he is entitled to receive additional surgeries under the workers' compensation claim and that he is going to file an appeal in an attempt to have the future surgeries approved.

FINDINGS OF FACT

Based upon the testimony of Claimant, Christina Graves and C. Daniel Vega and the documentary evidence submitted pursuant to the Administrative Procedures Act, and the Commission file in this matter, I find as facts:

1. That the parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers= Compensation Law, as amended, with Nan-Ya Plastics Corporation of America, as the employer, and New Hampshire Insurance Company, as the carrier.

2. That Stephen Evans was an employee of Nan-Ya Plastics Corporation of America at the time of the accident giving rise to the within claim.

3. That the Claimant was initially represented in this claim by attorney Gerald Malloy. Attorney Malloy filed a Form 50 on Claimant's behalf (Vega Exhibit 7-2), but the issues were resolved, and a hearing was never held. Vega Exhibit 12-7. Claimant fired attorney Mallory and did so by sending him a certified letter dated December 22, 2014. Vega Exhibits 13-1 through 13-11.

4. That Claimant subsequently retained attorney Kevin Barth to represent him. Claimant signed a Contract for Legal Services. Exhibit A to the Motion to Enforce Charging Lien. This Contract for Legal Services provided as follows: "If I terminate the services of my attorney at any time prior to settlement, then I

agree to pay said attorney \$175.00 per hour for all attorney services rendered in this matter, and \$75.00 per hour for all paralegal services rendered in this matter or the contracted contingency fee percentage on any offers that have been made at the time of termination, **whichever is greater.**" (emphasis in original).

The contracted contingency percentage is 33.33%, and Claimant agreed to be responsible for the costs incurred in the prosecution of this claim.

5. Attorney Barth filed a Form 50 on Claimant's behalf requesting additional medical treatment for the Claimant. Vega Exhibits 22-1 and 22-2. The Defendant's attorney, John Bruton, filed a Form 51 (Vega Exhibit 20-1) which included a partial acceptance of the claim and a partial denial. The issues raised in the Form 50 were resolved and a hearing was never held.

6. After a medical deposition was taken, the Claimant submitted to an IME and after receiving recommendations for treatment, Claimant and attorney Barth began discussing the possibility of settling the claim because, as the Claimant testified, he had "lost everything". Transcript p. 61.

7. During the months of March and April of 2016 settlement discussions took place between Barth and Bruton. Claimant contends that these discussions took place without his knowledge or permission. Ultimately, the matter was settled for \$100,000.00 on April 6, 2016. The undersigned bases these findings on a number of

documents verifying this finding, including Barth's Exhibit B and the April 5, 2016 email from Mr. Barth to Mr. Bruton which was submitted to the undersigned at the hearing. These findings are also based on the testimony of Christina Graves, Barth's long-time civil paralegal. I find her to be credible and knowledgeable about dates, times and discussions regarding this claim. She testified that the matter was settled in "late March, early April 2016... I believe it was April the 5th of 2016". Transcript p. 18.

8. Over the course of the next month there were numerous communications between Barth and Bruton requesting that the settlement documents be expedited. Vega Exhibits 36-9 through 36-13 and Barth's Exhibit B.

9. Christina Graves also testified that between the time the claim was settled and early May when the settlement check and documents were sent to Barth, the Claimant contacted the firm numerous times asking about the status of his settlement check and documents. I find this testimony to be credible. Transcript p. 19.

10. When the settlement documents arrived, Ms. Graves contacted the Claimant to come in and sign the settlement documents. He appeared at the office to sign the settlement documents "around May the 8th, 9th." Transcript p. 19. The Claimant confirms that he received a call to come to the office to sign documents, which he did. Transcript pp. 68-69. When asked why he appeared to sign documents in May if he had fired Barth on

March 31, 2016, his response was "I don't know. I don't know why she called and told me I had to settle - I mean, had to come and sign a paper." Transcript p. 69.

11. Claimant refused to sign the settlement documents (confirmed by Vega Exhibit 36-9), and they were ultimately returned by Barth to Bruton by letter of May 13, 2016. Vega Exhibit 28-1. Claimant indicated when he began reading the settlement documents that "he had thought about it, and it just wasn't enough for what he had been through". Transcript p. 20. The undersigned specifically finds that the Claimant knew of the settlement offer, appeared at the attorney's office to sign the settlement documents, and then changed his mind. The undersigned notes that the Claimant did the very same thing to Mr. Vega later in the case. He authorized attorney Vega to settle his claim for \$150,000.00 on July 26, 2018 but changed his mind and notified Vega in writing on August 13, 2018 that he disavowed the settlement and would prefer to have a hearing. Vega Exhibits 34-1 through 34-3.

12. In late May of 2016, Claimant called Barth's office and requested a copy of his file. It was made available to him the next day, May 31, 2016. Claimant appeared at the office the next day, where he picked up his file and signed a File Release. Vega Exhibit 27-1. Transcript p. 21.

13. Claimant prepared a letter terminating Barth from representing him in this claim. This letter is dated March 31,

2016 and indicates that the Claimant is not ready to settle his case as he needs more medical attention. Vega Exhibit 27-1.

14. The crux of this matter is when this letter was delivered to Mr. Barth's office. Claimant says it was sent certified on March 31, 2016, although he could produce no evidence that it was.

Mr. Barth's office contends that it was hand delivered to the office on May 31, 2016 when Claimant picked up his file. Transcript p. 22-23. The undersigned was put in the very difficult position of weighing the testimony of the Claimant against the testimony of an attorney and paralegal.

15. After carefully considering the credibility of the witnesses, the undersigned gives great weight to the testimony of Mr. Barth's paralegal, Christina Graves. She was very knowledgeable about the dates, times and discussions surrounding Claimant's termination of Mr. Barth's representation. Specifically, the undersigned finds Ms. Graves' testimony regarding her receipt of the letter of termination on May 31, 2016 to be very credible. Claimant's letter dated March 31, 2016 was not delivered to Mr. Barth until May 31, 2016. Thus, Mr. Barth's services to Claimant were terminated on May 31, 2016.

16. The undersigned does not find Claimant's testimony regarding an earlier delivery date to be credible, particularly in light of the fact that the record contains numerous references to

it being sent by certified mail, but Claimant could produce no evidence of certified mailing or delivery. Transcript p. 67-68.

17. Based on the foregoing findings, Mr. Barth's representation of Claimant was terminated after the settlement offer of \$100,000.00 was made to the Claimant and Mr. Barth. His Contract for Legal Services provides for a 33.33% contingency fee on all settlement offers made, plus costs. Mr. Barth's Motion to Enforce Charging Lien is granted and he is entitled to receive the sum of \$33,333.33, plus costs of \$427.97 from the proceeds of this settlement.

18. Claimant further contends that Mr. Barth should not be awarded any attorney's fees in this matter because he allegedly did nothing for the Claimant. Transcript p. 57. The undersigned has carefully considered the *Glasscock* factors and finds that Mr. Barth satisfies those factors and is entitled to the fee requested.

19. As it pertains to the Claimant and Vega's Motion for Payment of Attorney's Fees and costs, the undersigned grants the same in part and finds that Mr. Vega is entitled to an attorney's fee up to 33.33% of the additional settlement amount secured by him of \$50,000.00 plus costs pursuant to R. 67-1205(C)(7) upon his submission of a Form 61 and a proposed Order reflecting same.

20. No hearing costs are assessed in this matter.

CONCLUSIONS OF LAW

In view of these findings and facts, I conclude as matters of law:

1. That the parties to this proceeding are subject to and bound by the South Carolina Workers= Compensation Act.

2. That this is dispute over attorney's fees to be paid from the \$150,000.00 settlement of Claimant's claim. Attorney's fees in workers' compensation cases are subject to approval of the Commission. Additionally, no attorney may receive a fee in a workers' compensation claim until it has been approved by the Commission. S.C. Code Ann. § 42-15-90 (A) and (B).

3. A Claimant and attorney can agree on a contingency fee arrangement. However, "an attorney may charge up to, but not more than, 33.3% of the total amount of compensation..." R. 67-1205(C).

4. "When an attorney is employed after the employer's representative makes a written offer of settlement to the claimant, the attorney shall base his or her fee on the amount of compensation secured in excess of the settlement offer. The fee shall not exceed 33.3% of the difference between the offer of settlement and the amount of compensation secured." R. 67-1205(C) (7).

5. "A lien for the payment of an attorney's fee out of the proceeds of a judgment obtained as a result of an attorney's efforts, however, may be created by an express agreement between an

attorney and his client. 7 Am. Jur. 2d *Attorneys at Law* § 326 at 338 (1980); 7A C.J.S. *Attorney & Client* § 360 at 717 (1980). Indeed, an agreement between an attorney and his client "that the attorney shall have a lien on the judgment, is decisive as to the existence of the lien and its amount, and constitutes a valid equitable assignment *pro tanto* which attaches to the judgment as soon as it is entered.'" *Adair v. First National Bank*, 139 S.C. 1, 6, 137 S.E. 192 (1924); see also 7A C.J.S. *Attorney & Client* § 360 at 717-18 (1980). Our courts will recognize an equitable lien created by contract in proper cases. (citations omitted) *Eleazer v. Hardaway Concrete*, 281 S.C. 174, 315 S.E. 2d 174 (Ct. App. 1984)

6. In *Lester v. Dawson*, 327 S.C. 263, 491 S.E.2d 240 (1997), in discussing the Court of Appeals decision in *Eleazer v. Hardaway Concrete*, the Supreme Court stated first that "an attorney's charging lien is an 'equitable right to have the fee and costs due an attorney for services rendered in a legal proceeding secured to him out of any judgment or recovery obtained therein.' . Observing that this kind of lien protects only costs and disbursements, the Court nevertheless found that '[a] lien for the payment of an attorney's fee out of the proceeds of a judgment obtained as a result of an attorney's efforts, however, may be created by an express agreement between an attorney and his client.' Because the attorney and client in *Eleazer* had specifically agreed that the attorneys' fee would be secured by a

lien upon the proceeds of any judgment the attorney obtained for the client, the Court found there was an equitable lien. ... We believe the holding in *Eleazer* is correct."

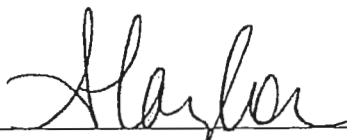
7. In *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (S.C., 1991), the Court outlined the six factors to be considered in determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.

ORDER

Accordingly, it is therefore ordered as follows:

1. Kevin M. Barth's Motion to Enforce Charging Lien is granted, and he is entitled to receive from the settlement proceeds the sum of \$33,333.33, plus \$427.97, for a total of \$33,760.97.

2. C. Daniel Vega's Motion for Payment of Attorney's fees and costs is granted and upon the submission of a Form 61 as outlined above will be entitled to receive 33.3% of \$50,000.00, plus costs incurred.



Commissioner Aisha Taylor

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.

July 11, 2019

By: Renee Smith, Administrative Assistant to Commissioner
Taylor

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BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 1413115

Stephen Evans,

Claimant,

v.

Nan-Ya Plastics Corp. America,
Employer,

and

New Hampshire Insurance Co.,

Carrier.

ORDER OF FULL COMMISSION

HEARING:

Held in Columbia, South Carolina on October 21, 2019

APPEARANCES:

Derrick L. Williams for the Respondent Kevin Barth, and Danny Vega for the Appellant/Claimant;

PURPOSE OF HEARING:

Hearing was set on Appellant/Claimant's request for review (Form 30 appeal)

DECISION AND ORDER:

Commission Panel: Commissioner T. Scott Beck, Commissioner Avery B. Wilkerson, and Commissioner Melody James (chair)

FILED:

December 13, 2019

RECEIVED
JAN 14 2020
SC Court of Appeals

STATEMENT OF THE CASE

The South Carolina Workers' Compensation Commission scheduled the hearing before the undersigned Commissioner on February 7, 2019, pursuant to the Attorney Kevin Barth's Motion to Enforce a Lien and Attorney C. Daniel Vega's Motion for Payment of Attorney's Fees.

Mr. Barth contends that the Claimant authorized him to settle this case for the sum of \$100,000.00. Pursuant to the Contract for Legal Services executed by the client and attorney, Mr. Barth, if terminated by the client, would be entitled to receive 33.3% of any settlement offers made in the case, plus costs. Mr. Barth contends that the parties agreed to settle the matter for \$100,000.00 in early April of 2016, and that he should be entitled to 33.3% of that amount plus costs. He further contends that the Claimant declined to execute the settlement documents in May of 2016, and that on May 31, 2016 Claimant retrieved his file from Mr. Barth and handed his office a letter purporting to have terminated Barth's representation two months earlier, on March 31, 2016.

Claimant contends that Mr. Barth was never authorized to settle the case and that he knew nothing about any settlement discussions. He further claims that he terminated Mr. Barth's representation on March 31, 2016, the date shown on the letter of termination.

Claimant alternatively contends that Mr. Barth should not be entitled to receive any fee for his services basing that contention on the factors outlined in the Glasscock case.

Mr. C. Daniel Vega was retained as claimant's counsel once Mr. Barth was terminated. Mr. Vega ultimately settled Claimant's case for \$150,000.00. Mr. Vega is requesting that the Commission approve his fee request for \$40,000.00 plus costs.

Specifically, the Commissioner ordered the following:

1. Kevin M. Barth's Motion to Enforce Charging Lien is granted, and he is entitled to receive from the settlement proceeds the sum of \$33,333.33, plus \$427.97, for a total of \$33,760.97.

2. C. Daniel Vega's Motion for Payment of Attorney's fees and costs is partially granted and upon the submission of a Form 61 as outlined above will be entitled to receive 33.3% of \$50,000.00, plus costs incurred.

Mr. Vega filed an appeal to the Full Commission.

EVIDENCE OF THE CASE

EVIDENCE OF THE CASE/HEARING TESTIMONY

Testimony of Christina Graves

Ms. Christina Graves testified that she has been the civil paralegal for attorney Kevin M. Barth for approximately 20 years and that she handled all of his civil matters and workers' compensation claims. She further testified that the Claimant hired Mr. Barth to represent him in his workers' compensation claim. She further testified regarding the difficulty surrounding the approval of Claimant's requested surgery.

Ms. Graves then testified that the Claimant agreed to settle his claim for \$100,000.00 on April 5, 2016 because he needed the money, but that the settlement check and settlement documents were not received from defense counsel until early May 2016. In the month between the settlement and the arrival of the settlement documents, Ms. Graves testified that the Claimant called the office numerous times asking about the status of the settlement check and documents. Once the documents arrived, Ms. Graves testified that she contacted the Claimant to come sign the settlement check and documents. When Claimant arrived to execute the documents and check, he met with Ms. Graves as Mr. Barth was not in the office. She testified that while he was reviewing

the documents, he indicated that he was not going to settle the case for that amount of money as it was not sufficient "for what he had been through," and because he had "lost everything".

Ms. Graves testified that Mr. Barth notified defense counsel that the Claimant would not sign the documents and he ultimately returned the check and settlement documents to the defense attorney. She then testified that in late May, Claimant called the office and wanted his file. The file was copied, and the Claimant appeared at the office on May 31, 2016 to retrieve his file and sign a File Release. She then testified that when Claimant retrieved his file, he handed in a white envelope with a letter enclosed. The letter was a letter terminating Mr. Barth's services and was dated March 31, 2016 (two months earlier). However, Ms. Graves testified that the letter was not received by the office until May 31, 2016 when it was hand delivered and the file was retrieved.

Testimony C. Daniel Vega

Mr. Danny Vega testified that he assumed representation of the Claimant and that he represented him through the settlement of his claim. Mr. Vega testified that the Claimant said he had never authorized Mr. Barth to settle his case and as a result, no offer had been made to the Claimant prior to him assuming representation of the Claimant.

Testimony of Stephen Evans

Mr. Stephen Evans testified that he is the Claimant in this matter and originally retained attorney Gerald Malloy to represent him. The Claimant then testified that he terminated Malloy's representation in December of 2015 and did so by certified letter.

He then hired Mr. Barth to represent him in his workers compensation claim in January or February of 2015.

The Claimant also testified that he was in severe pain at the time and that he needed surgery. His surgery was not approved in a timely fashion and the Claimant testified that as a result he was losing faith in Mr. Barth's ability to handle the claim and losing faith in the system. He noted that

the insurance carrier "cut off his checks" a number of times causing he and his family to lose everything they had and forced them to live in a motel.

Claimant testified that he never authorized Mr. Barth to engage in settlement discussions with defense counsel and that he never was aware a settlement offer had been made. Then also testified that he never would have authorized settlement discussions until he had received the surgery he needed.

Claimant then testified that the first time he heard that his case had been settled for \$100,000.00 was when Mr. Barth's paralegal contacted him to come and sign the settlement documents. Claimant testified that he did not know what the documents were, but he went to Mr. Barth's office and met with Ms. Graves, the paralegal, to go over the documents. Mr. Barth was not in the office.

Claimant testified that he had not authorized the settlement and refused to sign the settlement documents. He also testified that because of the purported settlement, his weekly TTD checks were cut off for a number of weeks.

Claimant then testified that he wrote a letter to Mr. Barth terminating his representation and that the letter was written and dated March 31, 2016. He also testified the letter was sent to Mr. Barth by certified mail. In his testimony, Claimant denied delivering the termination letter on May 31, 2016 and denies backdating the letter for March 31, 2016. He testified that he retrieved his file on May 31, 2016 but did not deliver the termination letter at that time. He testified that the letter had been sent on March 31, 2016.

Claimant testified that he then contacted attorney John Etheridge about representing him and Mr. Etheridge referred him to Mr. Vega, whom he hired. After retaining Mr. Vega, Claimant testified that his TTD checks were reinstated, and surgery was approved and completed.

Claimant testified that in January of 2017, he terminated Mr. Vega's representation of him and did so by certified letter. He testified that he then wrote Mr. Vega and requested that he continue representing him and that Mr. Vega agreed to.

He also testified that when Mr. Vega discussed the value of his claim, he was very disappointed. However, Claimant testified that he appeared at a hearing with his attorney and agreed to settle his claim. Claimant then later wrote Mr. Vega indicating that he was dissatisfied with the settlement that had been agreed to. After further discussions between the two, Claimant testified that he agreed to the settlement because his only choices were to settle the claim for that amount or appear at a hearing "and get nothing".

Claimant then testified that he signed the settlement documents and the Form 61. He also testified that he signed a document in Mr. Vega's presence that was designed to ensure that Mr. Barth would not be paid for his services on this claim. Claimant testified that he believes Mr. Vega's paralegal prepared the document and that it was executed in the presence of Mr. Vega and his paralegal.

Claimant testified that even though the case has settled, he believes he is entitled to receive additional surgeries under the workers compensation claim and that he is going to file an appeal in an attempt to have the future surgeries approved.

The matter before the Single Commissioner on February 7, 2019, resulted in a Decision and Order dated July 10, 2019. The Single Commissioner made the following specific Findings of Fact and Conclusions of Law:

1. *That the parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Law, as amended, with Nan-Ya Plastics Corporation of America, as the employer, and New Hampshire Insurance Company, as the carrier.*

2. That Stephen Evans was an employee of Nan-Ya Plastics Corporation of America at the time of the accident giving rise to the within claim.

3. That the Claimant was initially represented in this claim by attorney Gerald Malloy. Attorney Malloy filed a Form 50 on Claimant's behalf (Vega Exhibit 7-2), but the issues were resolved, and a hearing was never held. Vega Exhibit 12-7. Claimant fired attorney Malloy and did so by sending him a certified letter dated December 22, 2014. Vega Exhibits 13-1 through 13-11.

4. That Claimant subsequently retained attorney Kevin Barth to represent him. Claimant signed a Contract for Legal Services. Exhibit A to the Motion to Enforce Charging Lien. This Contract for Legal Services provided as follows: "If I terminate the services of my attorney at any time prior to settlement, then I agree to pay said attorney \$175.00 per hour for all attorney services rendered in this matter, and \$75.00 per hour for all paralegal services rendered in this matter or the contracted contingency fee percentage on any offers that have been made at the time of termination, whichever is greater." (emphasis in original). The contracted contingency percentage is 33.33%, and Claimant agreed to be responsible for the costs incurred in the prosecution of this claim.

5. Attorney Barth filed a Form 50 on Claimant's behalf requesting additional medical treatment for the Claimant. Vega Exhibits 22-1 and 22-2. The Defendant's attorney, John Bruton, filed a Form 51 (Vega Exhibit 20-1) which included a partial acceptance of the claim and a partial denial. The issues raised in the Form 50 were resolved and a hearing was never held.

6. After a medical deposition was taken, the Claimant submitted to an IME and after receiving recommendations for treatment, Claimant and attorney Barth began discussing the possibility of settling the claim because, as the Claimant testified, he had "lost everything". Transcript p. 61.

7. During the months of March and April of 2016 settlement discussions took place between Barth and Bruton. Claimant contends that these discussions took place without his knowledge or permission. Ultimately, the matter was settled for \$100,000.00 on April 6, 2016. The undersigned bases these findings on a number of documents verifying this finding, including Barth's Exhibit B and the April 5, 2016 email from Mr. Barth to Mr. Bruton which was submitted to the undersigned at the hearing. These findings are also based on the testimony of Christina Graves, Barth's long-time civil paralegal. I find her to be credible and knowledgeable about dates, times and discussions regarding this claim. She testified that the matter was settled in "late March, early April 2016... I believe it was April the 5th of 2016". Transcript p. 18.

8. Over the course of the next month there were numerous communications between Barth and Bruton requesting that the settlement documents be expedited. Vega Exhibits 36-9 through 36-13 and Barth's Exhibit B.

9. Christina Graves also testified that between the time the claim was settled and early May when the settlement check and documents were sent to Barth, the Claimant contacted the firm numerous times asking about the status of his settlement check and documents. I find this testimony to be credible. Transcript p. 19.

10. When the settlement documents arrived, Ms. Graves contacted the Claimant to come in and sign the settlement documents. He appeared at the office to sign the settlement documents "around May the 8th, 9th." Transcript p. 19. The Claimant confirms that he received a call to come to the office to sign documents, which he did. Transcript pp. 68-69. When asked why he appeared to sign documents in May if he had fired Barth on March 31, 2016, his response was "I don't know. I don't know why she called and told me I had to settle — I mean, had to come and sign a paper." Transcript p. 69.

11. Claimant refused to sign the settlement documents (Confirmed by Vega Exhibit 36-9), and they were ultimately returned by Barth to Bruton by letter of May 13, 2016. Vega Exhibit 28-1. Claimant indicated when he began reading the settlement documents that "he had thought about it, and it just wasn't enough for what he had been through". Transcript p. 20. The undersigned specifically finds that the Claimant knew of the settlement offer, appeared at the attorney's office to sign the settlement documents, and then changed his mind. (The undersigned notes that the Claimant did the very same thing to Mr. Vega later in the case. He authorized attorney Vega to settle his claim for \$150,000.00 on July 26, 2018 but changed his mind and notified Vega in writing on August 13, 2018 that he disavowed the settlement and would prefer to have a hearing.) Vega Exhibits 34-1 through 34-3.

12. In late May of 2016, Claimant called Barth's office and requested a copy of his file. It was made available to him the next day, May 31, 2016. Claimant appeared at the office the next day, where he picked up his file and signed a File Release. Vega Exhibit 27-1. Transcript p. 21.

13. Claimant prepared a letter terminating Barth from representing him in this claim. This letter is dated March 31, 2016 and indicates that the Claimant is not ready to settle his case as he needs more medical attention. Vega Exhibit 27-1.

14. The crux of this matter is when this letter was delivered to Mr. Barth's office. Claimant says it was sent certified on March 31, 2016, although he could produce no evidence that it was. Mr. Barth's office contends that it was hand delivered to the office on May 31, 2016 when Claimant picked up his file. Transcript p. 22-23. The undersigned was put in the very difficult position of weighing the testimony of the Claimant against the testimony of an attorney and paralegal.

15. After carefully considering the credibility of the witnesses, the undersigned gives great weight to the testimony of Mr. Barth's paralegal, Christina Graves. She was very

knowledgeable about the dates, times and discussions surrounding Claimant's termination of Mr. Barth's representation. Specifically, the undersigned finds Ms. Graves' testimony regarding her receipt of the letter of termination on May 31, 2016 to be very credible. Claimant's letter dated March 31, 2016 was not delivered to Mr. Barth until May 31, 2016. Thus, Mr. Barth's services to Claimant were terminated on May 31, 2016.

16. *The undersigned does not find Claimant's testimony regarding an earlier delivery date to be credible, particularly in light of the fact that the record contains numerous references to it being sent by certified mail, but Claimant could produce no evidence of certified mailing or delivery. Transcript p. 67-68.*

17. *Based on the foregoing findings, Mr. Barth's representation of Claimant was terminated after the settlement offer of \$100,000.00 was made to the Claimant and Mr. Barth. His Contract for Legal Services provides for a 33.33% contingency fee on all settlement offers made, plus costs. Mr. Barth's Motion to Enforce Charging Lien is granted and he is entitled to receive the sum of \$33,333.33, plus costs of \$427.97 from the proceeds of this settlement.*

18. *Claimant further contends that Mr. Barth should not be awarded any attorney's fees in this matter because he allegedly did nothing for the Claimant. Transcript p. 57. The undersigned has carefully considered the Glasscock factors and finds that Mr. Barth satisfies those factors and is entitled to the fee requested.*

19. *As it pertains to the Claimant and Vega's Motion for Payment of Attorney's Fees and costs, the undersigned finds that Mr. Vega is entitled to an attorney's fee up to 33.33% of the additional settlement amount secured by him of \$50,000.00 plus costs pursuant to R. 67-1205(C)(7) upon his submission of a Form 61 and a proposed Order reflecting same.*

20. *No hearing costs are assessed in this matter.*

CONCLUSIONS OF LAW

In view of these findings and facts, I conclude as matters of law:

1. *That the parties to this proceeding are subject to and bound by the South Carolina Workers= Compensation Act.*

2. *That this is dispute over attorney's fees to be paid from the \$150,000.00 settlement of Claimant's claim. Attorney's fees in workers compensation cases are subject to approval of the Commission. Additionally, no attorney may receive a fee in a worker's compensation claim until it has been approved by the Commission. S.C. Code Ann. § 42-15-90 (A) and (B).*

3. *A Claimant and attorney can agree on a contingency fee arrangement. However, "an attorney may charge up to, but not more than, 33.3% of the total amount of compensation..." R. 67-1205(C).*

4. *"When an attorney is employed after the employer's representative makes a written offer of settlement to the claimant, the attorney shall base his or her fee on the amount of compensation secured in excess of the settlement offer. The fee shall not exceed 33.3% of the difference between the offer of settlement and the amount of compensation secured." R. 67-1205(C)(7).*

5. *"A lien for the payment of an attorney's fee out of the proceeds of a judgment obtained as a result of an attorney's efforts, however, may be created by an express agreement between an attorney and his client. 7 Am. Jur. 2d Attorneys at Law § 326 at 338 (1980); 7A C.J.S. Attorney & Client § 360 at 717 (1980). Indeed, an agreement between an attorney and his client "that the attorney shall have a lien on the judgment, is decisive as to the existence of the lien and its amount, and constitutes a valid equitable assignment pro tanto which attaches to the judgment as soon as it is entered." Adair v. First National Bank, 139 S.C. 1, 6, 137 S.E. 192 (1924); see also 7A C.J.S. Attorney & Client § 360 at 717-18 (1980). Our courts will recognize an*

equitable lien created by contract in proper cases. (citations omitted) Eleazer v. Hardaway Concrete, 281 S.C. 174, 315 S.E. 2d 174 (Ct. App. 1984)

6. *In Lester v. Dawson, 327 S.C. 263, 491 S.E.2d 240 (1997) the Supreme Court stated first that "an attorney's charging lien is an 'equitable right to have the fee and costs due an attorney for services rendered in a legal proceeding secured to him out of any judgment or recovery obtained therein.'" Id. at 348, 315 S.E.2d at 177. "Observing that this kind of lien protects only costs and disbursements, the Court nevertheless found that "[a] lien for the payment of an attorney's fee out of the proceeds of a judgment obtained as a result of an attorney's efforts, however, may be created by an express agreement between an attorney and his client." Id. (emphasis added). Because the attorney and client in Eleazer had specifically agreed that the attorneys' fee would be secured by a lien upon the proceeds of any judgment the attorney obtained for the client, the Court found there was an equitable lien....We believe the holding in Eleazer is correct."*

7. *In Glasscock v. Glasscock, 304 S.C. 158, 403 S.E.2d 313 (S.C., 1991) the Court outlined the six factors to be considered in determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.*

STANDARD OF REVIEW

The Full Commission is the ultimate fact finder in Workers' Compensation cases and is not bound by the Single Commissioner's findings of fact. Ross v. American Red Cross, 298 S.C. 490, 381 S.E.2d 728 (1989). *See also* Hoxit v. Michelin Tire Corp., 304 S.C. 461, 405 S.E.2d 407 (1991) (Full Commission is fact finder and it is not within Supreme Court's province to reverse

Commission's findings if they are supported by substantial evidence). Although it is logical for the Full Commission, which did not have the benefit of observing the witnesses, to give weight to the Single Commissioner's opinion, the Full Commission is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the Single Commissioner. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 414 S.E.2d 162 (1992). "From time immemorial, the Courts of this State have said that it is the duty of a reviewing body, in examining a record, to carefully review the entire record and to give due weight to the fact that the original fact finder 'saw the witnesses, heard the testimony delivered from the stand, and had the benefit of that personal observation of and contact with parties and witnesses which may be of peculiar value in arriving at a correct result.'" Barr's Next of Kin v. Cherokee, Inc., 220 S.C. 447, 68 S.E.2d 440, 442 (1951) *citing* Baylor et. al. Bath et. al., 189 S.C. 269, 1 S.E.2d 139, 143 (1938).

APPLICABLE LAW, REGULATIONS, AND ARGUMENT.

S.C. Regulation, Section 67-1205(7) provides as follows: "When an attorney is employed after the employer's representative makes a written offer of settlement to the claimant, the attorney shall base his or her fee on the amount of compensation secured in excess of the settlement offer. The fee shall not exceed 33.3% of the difference between the offer of settlement and the amount of compensation secured."

This lien arises as a result of a contract between the Claimant and Barth and is enforceable pursuant to the Court's ruling in Eleazer v. Hardaway Concrete, 281 S.C. 174, 315 S.E. 2d 174 (Ct. App. 1984).

In Eleazer, the Court of Appeals found:

A lien for the payment of an attorney's fee out of the proceeds of a judgment obtained as a result of an attorney's efforts, however, may be created by an express agreement between an attorney and his client. 7 Am. 349 Jur. 2d *Attorneys at Law* § 326 at 338 (1980); 7A C.J.S. *Attorney & Client* § 360 at 717 (1980). Indeed, an agreement between an attorney and his client "that the attorney shall have a lien on the judgment, is decisive as to the existence of the lien and its amount, and constitutes a valid equitable assignment *pro tanto* which attaches to the judgment as soon as it is entered." Adair

v. First National Bank, 139 S.C. 1, 6, 137 S.E. 192 (1924); see also 7A C.J.S. *Attorney & Client* § 360 at 717-18 (1980). Our courts will recognize an equitable lien created by contract in proper cases. See Adair v. First National Bank, *supra*; Simmons v. Reid, *supra*; cf. Black v. B.B. Kirkland Seed Co., 163 S.C. 222, 161 S.E. 489 (1931); In re Wells, 43 S.C. 477, 21 S.E. 334 (1895); Georgia-Carolina Gravel Co. v. Blassingame, 129 S.E. 18, 123 S.E. 324 (1924). (emphasis added)

The South Carolina Supreme Court reaffirmed this position in Lester v. Dawson, 327 S.C. 263, 491 S.E.2d 240 (1997) wherein they found:

“It found first that an attorney's charging lien is an “equitable right to have the fee and costs due an attorney for services rendered in a legal proceeding secured to him out of any judgment or recovery obtained therein.” *Id.* at 348, 315 S.E.2d at 177. Observing that this kind of lien protects only costs and disbursements, the Court nevertheless found that “[a] lien for the payment of an attorney's fee out of the proceeds of a judgment obtained as a result of an attorney's efforts, however, may be created by an express agreement between an attorney and his client.” *Id.* (emphasis added). Because the attorney and client in *Eleazer* had specifically agreed that the attorneys' fee would be secured by a lien upon the proceeds of any judgment the attorney obtained for the client, the Court found there was an equitable lien....**We believe the holding in *Eleazer* is correct.** (emphasis added)”.

As a result of a hearing held in the front of the Appellate Panel, the Appellate Panel has considered the matter and has **Affirmed the Order of the Single Commissioner in Full**. The Appellate Panel makes the following Findings of Fact and Conclusions of Law:

1. That the parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Law, as amended, with Nan-Ya Plastics Corporation of America, as the employer, and New Hampshire Insurance Company, as the carrier.
2. That Stephen Evans was an employee of Nan-Ya Plastics Corporation of America at the time of the accident giving rise to the within claim.
3. That the Claimant was initially represented in this claim by attorney Gerald Malloy. Attorney Malloy filed a Form 50 on Claimant's behalf (Vega Exhibit 7-2), but the issues were resolved, and a hearing was never held. Vega Exhibit 12-7. Claimant fired attorney Malloy and

did so by sending him a certified letter dated December 22, 2014. Vega Exhibits 13-1 through 13-11.

4. That Claimant subsequently retained attorney Kevin Barth to represent him. Claimant signed a Contract for Legal Services. Exhibit A to the Motion to Enforce Charging Lien. This Contract for Legal Services provided as follows: "If I terminate the services of my attorney at any time prior to settlement, then I agree to pay said attorney \$175.00 per hour for all attorney services rendered in this matter, and \$75.00 per hour for all paralegal services rendered in this matter or the contracted contingency fee percentage on any offers that have been made at the time of termination, **whichever is greater.**" (emphasis in original). The contracted contingency percentage is 33.33%, and Claimant agreed to be responsible for the costs incurred in the prosecution of this claim.

5. Attorney Barth filed a Form 50 on Claimant's behalf requesting additional medical treatment for the Claimant. Vega Exhibits 22-1 and 22-2. The Defendant's attorney, John Bruton, filed a Form 51 (Vega Exhibit 20-1) which included a partial acceptance of the claim and a partial denial. The issues raised in the Form 50 were resolved and a hearing was never held.

6. After a medical deposition was taken, the Claimant submitted to an IME and after receiving recommendations for treatment, Claimant and attorney Barth began discussing the possibility of settling the claim because, as the Claimant testified, he had "lost everything". Transcript p. 61.

7. During the months of March and April of 2016 settlement discussions took place between Barth and Bruton. Claimant contends that these discussions took place without his knowledge or permission. Ultimately, the matter was settled for \$100,000.00 on April 6, 2016. The undersigned bases these findings on a number of documents verifying this finding, including
ROA 0245
Barth's Exhibit B and the April 5, 2016 email from Mr. Barth to Mr. Bruton which was submitted

to the undersigned at the hearing. These findings are also based on the testimony of Christina Graves, Barth's long-time civil paralegal. We find her to be credible and knowledgeable about dates, times and discussions regarding this claim. She testified that the matter was settled in "late March, early April 2016... I believe it was April the 5th of 2016". Transcript p. 18.

8. Over the course of the next month there were numerous communications between Barth and Bruton requesting that the settlement documents be expedited. Vega Exhibits 36-9 through 36-13 and Barth's Exhibit B.

9. Christina Graves also testified that between the time the claim was settled and early May when the settlement check and documents were sent to Barth, the Claimant contacted the firm numerous times asking about the status of his settlement check and documents. We find this testimony to be credible. Transcript p. 19.

10. When the settlement documents arrived, Ms. Graves contacted the Claimant to come in and sign the settlement documents. He appeared at the office to sign the settlement documents "around May the 8th, 9th." Transcript p. 19. The Claimant confirms that he received a call to come to the office to sign documents, which he did. Transcript pp. 68-69. When asked why he appeared to sign documents in May if he had fired Barth on March 31, 2016, his response was "I don't know. I don't know why she called and told me I had to settle — I mean, had to come and sign a paper." Transcript p. 69.

11. Claimant refused to sign the settlement documents (Confirmed by Vega Exhibit 36-9), and they were ultimately returned by Barth to Bruton by letter of May 13, 2016. Vega Exhibit 28-1. Claimant indicated when he began reading the settlement documents that "he had thought about it, and it just wasn't enough for what he had been through". Transcript p. 20. The undersigned specifically finds that the Claimant knew of the settlement offer, appeared at the attorney's office to sign the settlement documents, and then changed his mind. (The undersigned

notes that the Claimant did the very same thing to Mr. Vega later in the case. He authorized attorney Vega to settle his claim for \$150,000.00 on July 26, 2018 but changed his mind and notified Vega in writing on August 13, 2018 that he disavowed the settlement and would prefer to have a hearing.) Vega Exhibits 34-1 through 34-3.

12. In late May of 2016, Claimant called Barth's office and requested a copy of his file. It was made available to him the next day, May 31, 2016. Claimant appeared at the office the next day, where he picked up his file and signed a File Release. Vega Exhibit 27-1. Transcript p. 21.

13. Claimant prepared a letter terminating Barth from representing him in this claim. This letter is dated March 31, 2016 and indicates that the Claimant is not ready to settle his case as he needs more medical attention. Vega Exhibit 27-1.

14. The crux of this matter is when this letter was delivered to Mr. Barth's office. Claimant says it was sent certified on March 31, 2016, although he could produce no evidence that it was. Mr. Barth's office contends that it was hand delivered to the office on May 31, 2016 when Claimant picked up his file. Transcript p. 22-23. The undersigned was put in the very difficult position of weighing the testimony of the Claimant against the testimony of an attorney and paralegal.

15. After carefully considering the credibility of the witnesses, the undersigned gives great weight to the testimony of Mr. Barth's paralegal, Christina Graves. She was very knowledgeable about the dates, times and discussions surrounding Claimant's termination of Mr. Barth's representation. Specifically, the undersigned finds Ms. Graves' testimony regarding her receipt of the letter of termination on May 31, 2016 to be very credible. Claimant's letter dated March 31, 2016 was not delivered to Mr. Barth until May 31, 2016. Thus, Mr. Barth's services to Claimant were terminated on May 31, 2016.

16. The undersigned does not find Claimant's testimony regarding an earlier delivery date to be credible, particularly in light of the fact that the record contains numerous references to it being sent by certified mail, but Claimant could produce no evidence of certified mailing or delivery. Transcript p. 67-68.

17. Based on the foregoing findings, Mr. Barth's representation of Claimant was terminated after the settlement offer of \$100,000.00 was made to the Claimant and Mr. Barth. His Contract for Legal Services provides for a 33.33% contingency fee on all settlement offers made, plus costs. Mr. Barth's Motion to Enforce Charging Lien is granted and he is entitled to receive the sum of \$33,333.33, plus costs of \$427.97 from the proceeds of this settlement.

18. Claimant further contends that Mr. Barth should not be awarded any attorney's fees in this matter because he allegedly did nothing for the Claimant. Transcript p. 57. The undersigned has carefully considered the *Glasscock* factors and finds that Mr. Barth satisfies those factors and is entitled to the fee requested.

19. As it pertains to the Claimant and Vega's Motion for Payment of Attorney's Fees and costs, the undersigned finds that Mr. Vega is entitled to an attorney's fee up to 33.33% of the additional settlement amount secured by him of \$50,000.00 plus costs pursuant to R. 67-1205(C)(7) upon his submission of a Form 61 and a proposed Order reflecting same.

20. No hearing costs are assessed in this matter.

CONCLUSIONS OF LAW

**IN VIEW OF THESE FINDINGS OF FACT, AND AS PROVIDED BY S.C. CODE ANN.
§ 42-17-40 AS AMENDED, WE CONCLUDE AS MATTERS OF LAW:**

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

2. That this is dispute over attorney's fees to be paid from the \$150,000.00 settlement of Claimant's claim. Attorney's fees in workers compensation cases are subject to approval of the Commission. Additionally, no attorney may receive a fee in a worker's compensation claim until it has been approved by the Commission. S.C. Code Ann. § 42-15-90 (A) and (B).

3. A Claimant and attorney can agree on a contingency fee arrangement. However, "an attorney may charge up to, but not more than, 33.3% of the total amount of compensation..." R. 67-1205(C).

4. "When an attorney is employed after the employer's representative makes a written offer of settlement to the claimant, the attorney shall base his or her fee on the amount of compensation secured in excess of the settlement offer. The fee shall not exceed 33.3% of the difference between the offer of settlement and the amount of compensation secured." R. 67-1205(C)(7).

5. "A lien for the payment of an attorney's fee out of the proceeds of a judgment obtained as a result of an attorney's efforts, however, may be created by an express agreement between an attorney and his client. 7 Am. Jur. 2d Attorneys at Law § 326 at 338 (1980); 7A C.J.S. Attorney & Client § 360 at 717 (1980). Indeed, an agreement between an attorney and his client "that the attorney shall have a lien on the judgment, is decisive as to the existence of the lien and its amount, and constitutes a valid equitable assignment pro tanto which attaches to the judgment as soon as it is entered." Adair v. First National Bank, 139 S.C. 1, 6, 137 S.E. 192 (1924); see also 7A C.J.S. Attorney & Client § 360 at 717-18 (1980). Our courts will recognize an equitable lien created by contract in proper cases. (citations omitted) Eleazer v. Hardaway Concrete, 281 S.C. 174, 315 S.E. 2d 174 (Ct. App. 1984)

6. In Lester v. Dawson, 327 S.C. 263, 491 S.E.2d 240 (1997) the Supreme Court stated first that “an attorney’s charging lien is an ‘equitable right to have the fee and costs due an attorney for services rendered in a legal proceeding secured to him out of any judgment or recovery obtained therein.’” Id. at 348, 315 S.E.2d at 177. “Observing that this kind of lien protects only costs and disbursements, the Court nevertheless found that “[a] lien for the payment of an attorney’s fee out of the proceeds of a judgment obtained as a result of an attorney’s efforts, however, may be created by an express agreement between an attorney and his client.” Id. (emphasis added). Because the attorney and client in Eleazer had specifically agreed that the attorneys’ fee would be secured by a lien upon the proceeds of any judgment the attorney obtained for the client, the Court found there was an equitable lien.... We believe the holding in Eleazer is correct.”

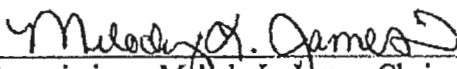
7. In Glasscock v. Glasscock, 304 S.C. 158, 403 S.E.2d 313 (S.C., 1991) the Court outlined the six factors to be considered in determining a reasonable attorney’s fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.

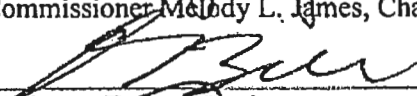
IT IS THEREFORE ORDERED AS FOLLOWS:

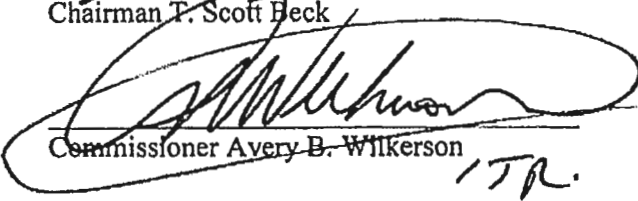
THEREFORE, IT IS HEREBY ORDERED that Kevin M. Barth’s Motion to Enforce Charging Lien is granted, and he is entitled to receive from the settlement proceeds the sum of \$33,333.33, plus \$427.97, for a total of \$33,760.97.

THEREFORE, IT IS HEREBY ORDERED that C. Daniel Vega’s Motion for Payment of Attorney’s fees and costs is partially granted and upon the submission of a Form 61 as outlined above will be entitled to receive 33.3% of \$50,000.00, plus costs incurred.

**BY FULL AFFIRMATION OF THE SINGLE COMMISSIONER'S
DECISION & ORDER, IT IS SO ORDERED**


Commissioner Melody L. James, Chair


Chairman T. Scott Beck


Commissioner Avery B. Wilkerson

17R.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on December 13, 2019

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1413115

EMPLOYEE/CLAIMANT: STEPHEN EVANS

EMPLOYER: NAN-YA PLASTICS CORPORATION OF AMERICA

CARRIER: NEW HAMPSHIRE INSURANCE COMPANY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 7TH DAY OF
FEBRUARY, 2019, COMMENCING AT THE HOUR OF 2:25 P.M., IN
HARTSVILLE, SOUTH CAROLINA, BEFORE THE HONORABLE AISHA
TAYLOR, ATTENDED BY COUNSEL AS FOLLOWS:

**TIMMI A. PARRISH
VERBATIM REPORTER**

TIMMI A. PARRISH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, SC 29376
864-921-8743
ROA 0252

APPEARANCES

C. DANIEL VEGA, ESQUIRE, OF THE FIRM
CHAPPELL SMITH & ARDEN, P.A.
2801 DEVINE STREET, SUITE 300
COLUMBIA, SOUTH CAROLINA 29205

ATTORNEY FOR THE CLAIMANT,

KEVIN M. BARTH, ESQUIRE,
NICHOLAS W. LEWIS, ESQUIRE, OF THE FIRM
BARTH, BALLENGER & LEWIS, LLP
215 NORTH IRBY STREET
FLORENCE, SOUTH CAROLINA 29501

FORMER ATTORNEYS FOR THE CLAIMANT.

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

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

6 **BY COMMISSIONER TAYLOR:**

7 TODAY IS THURSDAY, FEBRUARY 7TH, 2019. WE ARE
8 HERE IN WORKERS' COMPENSATION FILE NUMBER 1413115.
9 THE UNDERLYING CLAIM IS THE CLAIMANT, MR. STEPHEN
10 EVANS, WHO IS PRESENT HERE TODAY AND REPRESENTED BY
11 MR. C. DANIEL VEGA. THE EMPLOYER IS NAN-YA PLASTICS
12 CORPORATION OF AMERICA, AND THE CARRIER IS NEW
13 HAMPSHIRE INSURANCE COMPANY. THE EMPLOYER AND
14 CARRIER ARE REPRESENTED BY MR. JOHN BRUTON. MR.
15 BRUTON IS NOT PRESENT HERE TODAY BECAUSE WE ARE SET
16 HERE TODAY ON MOTIONS.

17 THE FIRST MOTION IS THE MOTION TO ENFORCE
18 CHARGING LIEN BROUGHT TODAY BY MR. KEVIN M. BARTH,
19 WHO WAS PREVIOUSLY CLAIMANT'S COUNSEL IN THIS MATTER
20 BUT WAS RELIEVED AS COUNSEL BY ORDER OF THIS
21 COMMISSION. THE SECOND MOTION FOR WHICH WE ARE HERE
22 TODAY IS A MOTION FOR PAYMENT OF ATTORNEYS' FEES AND
23 COSTS BROUGHT BY MR. DANIEL VEGA, WHO IS PRESENT
24 HERE TODAY.

25 I WILL ALLOW THE PARTIES TO ARGUE THE

1 RESPECTIVE MOTIONS AND RESPONSES ON THE RECORD, AS
2 WELL AS TAKE TESTIMONY REGARDING THE ISSUES THE
3 MOTIONS ARE BASED UPON. PRIOR TO DOING THAT, I WILL
4 NOTE THAT BOTH MOTIONS WERE FILED WITH THE
5 COMMISSION, AND THERE ARE SEVERAL ATTACHMENTS TO THE
6 MOTIONS THAT HAVE BEEN RECEIVED INTO EVIDENCE AS
7 SUBMISSIONS PURSUANT TO THIS HEARING TODAY.

8 IT IS MY UNDERSTANDING THAT MR. BARTH HAS ALSO
9 SUBMITTED FOR THE COMMISSION TO CONSIDER A
10 MEMORANDUM IN SUPPORT OF MOTION TO SUPPORT CHARGING
11 LIEN. I HAVE RECEIVED A COPY OF IT TODAY. I
12 BELIEVE MR. VEGA JUST RECEIVED A COPY OF IT TODAY AS
13 WELL. MR. VEGA, IF YOU WOULD LIKE TIME AFTER
14 TODAY'S HEARING TO SUBMIT EITHER ANOTHER MEMORANDUM
15 OR A RESPONSE TO THE MEMORANDUM, I'LL BE HAPPY TO
16 GIVE YOU ADDITIONAL TIME TO DO SO. JUST LET ME KNOW
17 BEFORE WE CLOSE THE RECORD.

18 **BY MR. VEGA:**

19 THANK YOU, YOUR HONOR.

20 **BY THE COMMISSIONER:**

21 YOU'RE WELCOME. ARE THERE ANY OBJECTIONS TO
22 ANY OF THE DOCUMENTS RECEIVED PURSUANT TO TODAY'S
23 HEARING? MR. BARTH?

24 **BY MR. BARTH:**

25 NO, MA'AM.

1 BY THE COMMISSIONER:

2 ALL RIGHT. MR. VEGA?

3 BY MR. VEGA:

4 NO, YOUR HONOR.

5 BY THE COMMISSIONER:

6 ALL RIGHT. WITHOUT OBJECTION THE COMMISSION
7 FILE -- THE COMMISSION'S FILE, AS IT PERTAINS TO THE
8 MOTIONS AND ANY REFERENCES TO OTHER COMMISSION
9 ORDERS OR FORMS, BECOME A PART OF TODAY'S RECORD,
10 WITH THE EXCEPTION OF ANY SELF-SERVING DECLARATIONS
11 AND UNSTIPULATED MEDICAL REPORTS.

12 MR. BARTH, YOUR MOTION.

13 BY MR. BARTH:

14 MAY IT PLEASE THE COURT, YOUR HONOR. WOULD YOU
15 PREFER LIVE TESTIMONY FIRST AND THEN ARGUMENT?

16 BY THE COMMISSIONER:

17 NO, ARGUMENTS FIRST.

18 BY MR. BARTH:

19 ARGUMENT FIRST?

20 BY THE COMMISSIONER:

21 YES.

22 BY MR. BARTH:

23 OKAY. MAY IT PLEASE THE COURT. OUR POSITION
24 IN THIS MATTER IS THAT AFTER FIRING SENATOR MALLOY
25 AS HIS FIRST LAWYER, MR. EVANS RETAINED ME, SIGNED A

1 FEE CONTRACT WHEREIN HE AGREED TO PAY ONE-THIRD OF
2 ANY SETTLEMENT OFFER THAT HAD BEEN MADE OR PAID BY
3 THE HOUR, WHICHEVER IS GREATER. IN MARCH AND APRIL
4 THERE WERE SOME DISCUSSIONS BETWEEN US, MY CLIENT
5 AND I, ABOUT SETTLING THE MATTER OR GETTING A
6 HEARING. JOHN BRUTON AND I WENT BACK AND FORTH
7 ABOUT IT. THEY OFFERED \$100,000 TO SETTLE THE
8 CLAIM. I CONVEYED TO JOHN BRUTON THAT MY CLIENT HAD
9 ACCEPTED THAT OFFER, AND YOU'LL SEE SOME EMAILS IN
10 THERE THAT CONFIRM THAT AND CONFIRM THAT,
11 UNFORTUNATELY, IT TOOK MR. BRUTON'S ADJUSTER A MONTH
12 TO GET THE PAPERWORK, AND WE WERE CALLING BRUTON,
13 THE CLAIMANT WAS CALLING US. WHEN HE SHOWED UP TO
14 SIGN THE SETTLEMENT DOCUMENTS, HE REFUSED TO SIGN
15 THEM, AND THEN ON MAY THE 31ST LET ME KNOW HE WANTED
16 HIS FILE COPIED. WE COPIED THE FILE. HE PICKED UP
17 THE FILE AND SIGNED FOR IT ON MAY THE 31ST, 2016, AT
18 WHICH TIME HE DELIVERED A HANDWRITTEN LETTER
19 TERMINATING ME. HOWEVER, IT WAS DATED MARCH THE
20 31ST.

21 I WOULD NOTE THAT IN SOME OF THE DOCUMENTS THAT
22 MR. VEGA HAS SUBMITTED MR. EVANS CONTENDS THAT WHEN
23 HE FIRED MALLOY THAT WAS BY CERTIFIED MAIL, AND I
24 BELIEVE THAT'S ATTACHED AS ONE OF THE EXHIBITS.
25 WHEN HE FIRED MR. VEGA, THAT WAS ALSO BY CERTIFIED

1 MAIL. THOSE EXHIBITS ARE ATTACHED. MR. EVANS, IN
2 SOME DOCUMENT, I THINK IT WAS SOMETHING HE WROTE TO
3 MR. VEGA, SAYS THAT HE SERVED ME WITH THE SAME KIND
4 OF LETTER TERMINATING ME BY CERTIFIED MAIL. HE
5 DOESN'T HAVE ANY PROOF OF THAT, AND OUR POSITION IS
6 BECAUSE IT DIDN'T HAPPEN. HE HANDED US THIS DATED
7 TWO MONTHS EARLIER, PICKED UP HIS FILE, AND THAT WAS
8 THE LAST WE HEARD.

9 I IMMEDIATELY NOTIFIED MR. BRUTON MY CLIENT HAD
10 RENEGED ON SETTLEMENT. I RETURNED THE CHECK AND THE
11 DOCUMENTS TO JOHN AND TOLD HIM THAT -- I SENT HIM A
12 COPY OF THE CONTRACT AND SAID WE ARE ASSERTING A
13 LIEN FOR ONE-THIRD OF THE HUNDRED THAT WAS ON THE
14 TABLE AND THE \$432 OR \$23 IN COSTS. THAT'S PRETTY
15 MUCH THE LAST I HEARD OF IT. I SIGNED AN ORDER. I
16 CAN'T REMEMBER IF IT WAS RELIEVING COUNSEL OR
17 SUBSTITUTING COUNSEL. MR. VEGA CAME IN AND TOOK
18 OVER REPRESENTATION AT THAT POINT. ACCORDING TO THE
19 DOCUMENTS WE HAD, HE -- MR. VEGA WAS IMMEDIATELY
20 NOTIFIED THAT WE HAD -- WE WERE CLAIMING A LIEN ON
21 THE PROCEEDS UNDER OUR CONTRACT FOR SERVICES, AND
22 MR. VEGA RESPONDED, "WELL, WE'LL JUST HAVE A HEARING
23 ABOUT THE LIEN AT THE END OF THE CASE." SO THAT WAS
24 IT FOR ME UNTIL I GET A LETTER OUT OF THE BLUE THIS
25 YEAR -- THIS YEAR FROM VEGA SAYING THEY AREN'T GOING

1 TO HONOR THE LIEN. THEY PAID THE \$432 IN COSTS BUT
2 WERE NOT GOING TO HONOR THE LIEN. SO, AS YOU SEE,
3 WE FILED OUR MOTION TO ENFORCE THE LIEN, TRIED TO
4 RESOLVE IT TO NO AVAIL, AND HERE WE ARE.

5 **BY THE COMMISSIONER:**

6 OKAY. WAS A NOTICE OF THE LIEN EVER FILED WITH
7 THE COMMISSION?

8 **BY MR. BARTH:**

9 I DON'T -- NO, MA'AM. I DON'T THINK ANYTHING
10 WAS FILED WITH THE COMMISSION. JOHN BRUTON NOTIFIED
11 THE LAWYER, AND AT THE HEARING TO APPROVE THE
12 SETTLEMENT -- I DON'T HAVE THE TRANSCRIPT, BUT FROM
13 WHAT I UNDERSTAND, ACCORDING TO MR. BRUTON, AT THE
14 HEARING ON THE SETTLEMENT, WHEN THEY ULTIMATELY
15 SETTLED IT ON A CLINCHER BASIS, THAT PART OF THE
16 ORDER IS THAT THIS ISSUE WOULD BE ADDRESSED BY A
17 SUBSEQUENT ORDER, WHETHER OR NOT -- YEAH, OUR LIEN
18 WOULD BE ADDRESSED AT THAT TIME. AND YOU WILL SEE
19 IN ONE OF THE THINGS, YOUR HONOR, JOHN BRUTON EVEN
20 NOTE -- EVEN MENTIONS THAT HE DOESN'T KNOW IF GERALD
21 MALLOY HAS A LIEN FOR ANYTHING HE MAY HAVE DONE ON
22 THE FILE PRIOR TO ME BECOMING INVOLVED. BUT I
23 WASN'T EVER NOTIFIED OF THE LIEN, AND I DON'T THINK
24 GERALD IS ASSERTING ANYTHING, AND I CERTAINLY
25 HAVEN'T SEEN ANYTHING.

1 **BY THE COMMISSIONER:**

2 AND THERE'S NOTHING IN THE COMMISSION, JUST FOR
3 THE RECORD.

4 **BY MR. BARTH:**

5 AND THE -- I'LL BE GLAD TO ARGUE IT WHEN THAT
6 TIMES COME. BUT THE BOTTOM LINE IS WHAT -- YOU
7 KNOW, WHAT MR. EVANS DID IS SETTLE THE CASE, BACKED
8 OUT ON IT, WANTED HIS FILE BACK, BACKDATED A LETTER
9 TO THE WEEK BEFORE THE CASE WAS SETTLED, AND THEN
10 APPARENTLY ATTEMPTS TO SAY WE'RE NOT ENTITLED TO A
11 FEE AND THAT MR. VEGA IS, EVEN IF MR. VEGA SETTLED
12 IT FOR 150 TWO YEARS LATER MAYBE.

13 AND OUR OTHER POINT IN ALL OF THIS, YOU HONOR,
14 IS THAT EVEN IF FOR SOME REASON OUR LIEN IS NOT
15 APPROVED OR ENFORCED, MR. VEGA SUBMITTED AN ATTORNEY
16 FEE APPLICATION TO THE COMMISSION ASKING FOR A
17 \$40,000 FEE ON A \$150,000 SETTLEMENT. HE DID THAT
18 CHECKING THE BLOCK "A" ON THE ATTORNEY FEE PETITION,
19 WHICH INDICATED THAT NO SETTLEMENT OFFERS HAD BEEN
20 MADE PRIOR TO HIM BEING RETAINED, EVEN THOUGH HE
21 CLEARLY KNEW FROM DAY ONE THERE WAS A LIEN AND AN
22 OFFER MADE. THE FEE HE'S ASKING FOR, ACTUALLY, IS
23 40,000 OF THE 50,000 ADDITIONAL DOLLARS HE OBTAINED
24 FOR MR. EVANS, WHICH WOULD BE AN 80 PERCENT FEE.
25 SO, EVEN IF YOUR HONOR DOESN'T ENFORCE OURS, WHICH

1 WE THINK THE LAW IS CLEAR ON IT THAT IT'S
2 ENFORCEABLE, YOU KNOW, MR. VEGA APPARENTLY WANTS A
3 \$40,000 FEE WHEN THE BENEFITS ARE \$50,000. SO, I
4 DON'T KNOW HOW HE WOULD BE ENTITLED TO THAT NO
5 MATTER WHAT. AND THAT'S -- I MEAN, THAT'S WHERE WE
6 ARE. I MEAN, THE KEY TO -- THE KEY TO ALL OF IT,
7 YOUR HONOR, IS WHETHER OR NOT YOUR HONOR BELIEVES
8 MR. EVANS BACKDATED THIS LETTER TO THE WEEK BEFORE
9 ANY SETTLEMENT OFFERS OR DEMANDS WERE MADE.

10 **BY THE COMMISSIONER:**

11 ALL RIGHT. THANK YOU, SIR.

12 **BY MR. BARTH:**

13 THANK YOU.

14 **BY THE COMMISSIONER:**

15 MR. VEGA?

16 **BY MR. VEGA:**

17 THANK YOU. MAY IT PLEASE THE COMMISSION. OUR
18 FIRST ORDER OF BUSINESS IS THAT WE -- AS WE NOTED IN
19 OUR PREHEARING BRIEF, WE SUBMITTED A SUBPOENA TO
20 JOHN BRUTON FOR THE COMMUNICATIONS, AND MR. BRUTON
21 HAS NOT RESPONDED AND NOT PROVIDED THAT INFORMATION.
22 AND SO, AS THE FIRST ORDER OF BUSINESS, I WOULD LIKE
23 AN ORDER FROM THE COMMISSION COMPELLING PRODUCTION
24 OF THAT, OF THE DOCUMENTS REQUESTED IN THAT
25 SUBPOENA.

1 **BY MR. BARTH:**

2 MR. VEGA, I HATE TO -- I DON'T MEAN TO
3 INTERRUPT. HE PRODUCED THEM TO ME. I ASSUMED HE
4 PRODUCED THEM TO YOU. BUT I HAVE THEM IF YOU WANT
5 THEM. IT'S THE EMAIL STRING BETWEEN THE TWO OF US.

6 **BY MR. VEGA:**

7 YOUR HONOR, I HAVE NOT RECEIVED ANY
8 DOCUMENTATION FROM MR. BRUTON. ALL RIGHT. SECOND,
9 FEES ARE GOVERNED BY THE LEGISLATION, THE
10 COMMISSION, AND THE RULES OF ETHICS. THEY ARE NOT
11 GOVERNED BY THE CONTRACT SIGNED BY THE CLAIMANT AND
12 THE ATTORNEY.

13 THE LAWS AND REGULATIONS AND THE RULES OF
14 ETHICS REQUIRE THAT THE FEE BE EARNED. OUR FIRST
15 CONTENTION IS THAT THE FEE WAS NOT EARNED. IN
16 SUPPORT OF THAT, WE WOULD NOTE THAT THE CLAIMANT, AT
17 THE TIME THE SETTLEMENT WAS ARRANGED, WAS UNDER
18 MEDICAL CARE AND TREATMENT, HAD RECEIVED A
19 RECOMMENDATION FOR SURGERY TO THE CERVICAL SPINE,
20 HAD NOT BEEN PLACED AT MAXIMUM MEDICAL IMPROVEMENT,
21 AND WAS NOT -- DID NOT HAVE AN IMPAIRMENT RATING.
22 IF YOU LOOK AT THE COMMUTED VALUE OF THE CLAIM AT
23 THE TIME THAT THE OFFER WAS MADE AND ACCEPTED BY MR.
24 FULTON (SIC), YOU'RE TALKING ABOUT LESS THAN 50
25 PERCENT OF THE COMMUTED VALUE OF THE CLAIM. SO OUR

1 FIRST CONTENTION IS THAT IT'S A DE MINIMIS FEE.
2 \$100,000 MAY SOUND LIKE A LOT, BUT IT'S A LOT LESS
3 THAN WHAT THE CLAIMANT WAS ENTITLED TO AT THAT TIME.
4 IT WAS NOT EARNED.

5 SECOND, THE RULES, REGULATIONS IN THE ACT, AND
6 THE RULE OF ETHICS REQUIRE THAT MR. EVANS SETTLE HIS
7 CASE, AND MR. EVANS WILL TESTIFY TODAY THAT HE NEVER
8 AUTHORIZED A SETTLEMENT. THERE ARE EMAILS CONTAINED
9 WITHIN THE EXHIBIT THAT SHOW THAT WHEN MR. EVANS WAS
10 AT THE DOCTOR'S OFFICE THE DOCTOR TOLD HIM THAT HE
11 NEEDED SURGERY, THAT IT WAS IMMINENT FOR HIM TO HAVE
12 IT, AND THERE'S A RECORD OF THE NURSE CASE MANAGER
13 SENDING THAT INFORMATION TO THE PARTIES, INCLUDING
14 MR. FULTON'S (SIC) OFFICE, REQUESTING APPROVAL FOR
15 SURGERY. THAT SURGERY WAS NEVER APPROVED. AND MR.
16 EVANS, SUBSEQUENT TO HIRING ME, UNDERWENT TWO
17 SURGERIES, ONE FOR THE CERVICAL SPINE AND ONE FOR
18 THE LUMBAR SPINE, AND HAS PERMANENT DAMAGE, WHICH,
19 PURSUANT TO DR. GUNTER'S DEPOSITION AND THE RECORDS,
20 WAS MADE WORSE BY THE FACT THAT SURGERY WAS DELAYED
21 FOR SUCH A LONG PERIOD OF TIME.

22 OUR THIRD CONTENTION IS THAT EVEN IF YOU TAKE
23 AT FACE VALUE SOME OF THESE ALLEGATIONS MADE BY MR.
24 FULTON (SIC), HE DID NOT FILE -- HE DID NOT FOLLOW
25 THE PROPER REGULATORY PROCEDURE IN WHICH HE'S

1 SUPPOSED TO NOTIFY THE CLAIMANT, GET THE CLAIMANT TO
2 EITHER SIGN THE FORM 61, OR SEND A FORM 61 TO THE
3 COMMISSION NOTIFYING THE COMMISSION THAT THE
4 CLAIMANT REFUSED TO SIGN THE FORM 61 AND THAT THEY
5 INTENDED TO ASSERT A LIEN.

6 **BY THE COMMISSIONER:**

7 AND I DON'T -- I JUST WANT TO CORRECT THE
8 RECORD. I THINK YOU SAID MR. FULTON'S OFFICE. YOU
9 MEAN MR. BARTH'S OFFICE?

10 **BY MR. VEGA:**

11 I'M SORRY, YOUR HONOR. YES.

12 **BY THE COMMISSIONER:**

13 OKAY. ALL RIGHT.

14 **BY MR. VEGA:**

15 MR. MALLOY CLEARLY STATED IN HIS RELEASE THAT
16 HE WAS NOT ASSERTING A LIEN.

17 AND OUR LAST CONTENTION, I THINK THE FACTS LEND
18 THEMSELVES -- MR. EVANS, AT TIMES, HAS BEEN UPSET
19 ABOUT HOW HIS CASE HAS BEEN HANDLED, BUT HE HAS
20 ALWAYS BEEN VERY UP FRONT ABOUT IT. THERE ARE
21 SEVERAL LETTERS WITHIN THE RECORD. MR. MALLOY
22 RECEIVED TWO LETTERS. HE WROTE LETTERS TO HIS
23 EMPLOYER. WHEN HE TERMINATED ME, HE WROTE LETTERS.
24 WHEN HE REHIRED ME, HE WROTE A LETTER. WHEN HE WAS
25 DISSATISFIED WITH HIS SETTLEMENT, HE WROTE ME A

1 LETTER. MR. EVANS IS NOT THE TYPE OF PERSON WHO
2 HIDES HIS FEELINGS, GOES BEHIND YOUR BACK, POSTDATES
3 LETTERS. HE WRITES THE LETTER. HE GIVES YOU THE
4 LETTER. HE SPEAKS HIS MIND. AND THAT, I THINK,
5 WILL BEAR OUT IN THE TESTIMONY.

6 AND WITH REGARDS TO -- WHEN I SETTLED THIS CASE
7 FOR \$150,000, THAT IS MORE THAN THE COMMUTED VALUE
8 OF THE CLAIM AT THE TIME OF THE SETTLEMENT. THE
9 REASON THE SETTLEMENT IS ONLY \$150,000 IS THAT MR.
10 EVANS' CLAIM WAS DELAYED FOR SO LONG, AND HE WENT
11 FOR SUCH A LONG PERIOD OF TIME WITHOUT T.T.D.
12 BENEFITS AND WITHOUT PROPER MEDICAL CARE AND
13 TREATMENT.

14 AND WITH REGARDS TO MY FORM 61, MR. BARTH HAS
15 NO STANDING TO MAKE THAT ARGUMENT. HE CANNOT ARGUE
16 THAT I'M NOT ENTITLED TO A FEE. HE CAN ARGUE THAT
17 HE'S ENTITLED TO A FEE. HE CANNOT ARGUE THAT I'M
18 NOT ENTITLED TO A FEE. THAT FORM 61 WAS FILLED OUT
19 WITH THE FULL CONSENT AND KNOWLEDGE OF THE CLAIMANT,
20 AND IT WAS FILLED OUT BECAUSE THE CLAIMANT, AS HE
21 WILL TESTIFY TODAY, TOLD ME THAT HE HAD NEVER
22 AUTHORIZED A PRIOR SETTLEMENT OFFER. AND THAT'S WHY
23 THAT FORM 61 WAS FILLED OUT THAT WAY. AND I CAN
24 DEMONSTRATE, BY MY WORK PRODUCT, THAT I EARNED MY
25 FEE, AND THAT'S OUR CONTENTIONS TODAY.

1 BY THE COMMISSIONER:

2 ALL RIGHT. THANK YOU, SIR. ALL RIGHT. MR.
3 BARTH, DO YOU WANT TO RESPOND OR JUST CALL YOUR
4 FIRST WITNESS?

5 BY MR. BARTH:

6 I'M GLAD TO JUST CALL MY FIRST WITNESS. WILL
7 YOUR HONOR GIVE US A CHANCE AT THE END TO ADDRESS
8 ---

9 BY THE COMMISSIONER:

10 SURE.

11 BY MR. BARTH:

12 --- IN A SHORT CLOSING?

13 BY THE COMMISSIONER:

14 NO PROBLEM.

15 BY MR. BARTH:

16 THEN I'LL CALL CHRISTINA GRAVES, PLEASE.

17 BY THE COMMISSIONER:

18 OKAY. MADAM COURT REPORTER, PLEASE SWEAR MS.
19 GRAVES.

20 BY THE COURT REPORTER:

21 MA'AM, IF YOU WOULD RAISE YOUR RIGHT HAND,
22 PLEASE.

23 * * * * * * * * * * * * * *

24 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
25 WHOLE TRUTH AND NOTHING BUT THE TRUTH CONCERNING THE

1 MATTER HEREIN:

2 CHRISTINA GRAVES,

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

5 BY THE COMMISSIONER:

6 MR. BARTH.

7 BY MR. BARTH:

8 THANK YOU. MAY IT PLEASE THE COURT.

9 DIRECT EXAMINATION BY MR. BARTH:

10 Q. WOULD YOU GIVE ME YOUR FULL NAME, PLEASE.

11 A. CHRISTINA GRAVES.

12 Q. CHRISTY, YOU WORK FOR ME?

13 A. I DO.

14 Q. WHAT'S YOUR POSITION AT MY OFFICE?

15 A. PARALEGAL FOR CIVIL CASES.

16 Q. FOR CIVIL CASES?

17 A. MM-HMM.

18 Q. ALL RIGHT. AND HOW LONG HAVE YOU BEEN AT MY OFFICE?

19 A. TWENTY YEARS.

20 Q. AND HAVE YOU BEEN INVOLVED IN THE HANDLING OF A
21 NUMBER OF CIVIL CASES, WORKERS' COMP, PERSONAL
22 INJURY CASES?

23 A. YES, SIR.

24 Q. AND WOULD THERE BE ANYBODY, ANY OTHER PARALEGAL THAT
25 WOULD HAVE DEALT WITH IT OTHER THAN YOU OR ME?

1 A. NO, SIR.

2 Q. YOU REMEMBER -- DO YOU REMEMBER MR. EVANS?

3 A. I DO.

4 Q. ALL RIGHT. AND YOU REMEMBER WHEN WE SETTLED HIS
5 CASE?

6 A. I DO.

7 Q. CAN YOU TELL ME WHEN THAT WAS?

8 A. IT WOULD HAVE BEEN LATE MAY, EARLY APRIL OF 2016.

9 Q. LATE -- EARLY APRIL?

10 A. I MEAN LATE MARCH, EARLY APRIL 2016.

11 Q. ALL RIGHT. AT THAT POINT IN TIME WHEN THE CASE WAS
12 SETTLED, HAD YOU OR ME HEARD ANYTHING FROM MR. EVANS
13 ABOUT BEING TERMINATED OR ANYTHING SUCH AS THAT?

14 A. NO. IF HE HAD TERMINATED YOU, WE WOULDN'T HAVE BEEN
15 TRYING TO DISCUSS A SETTLEMENT.

16 Q. AT THE TIME -- DO YOU KNOW WHAT DAY WE ACTUALLY
17 RECEIVED A \$100,000 OFFER FROM JOHN BRUTON?

18 A. I BELIEVE IT WAS APRIL THE 5TH OF 2016.

19 Q. ALL RIGHT. AND YOU DO KNOW ABOUT HOW LONG BETWEEN
20 THEN -- HOW LONG IT WAS BETWEEN THAT POINT AND WHEN
21 THE CHECK AND SETTLEMENT DOCUMENTS ACTUALLY CAME IN?

22 A. IT WAS CLOSE TO A MONTH.

23 Q. OKAY. AND IN BETWEEN THE TIME THE CASE SETTLED FOR
24 \$100,000 AND THE TIME THE PAPERWORK CAME IN, DID YOU
25 HEAR FROM MR. EVANS?

1 A. YES, SIR.

2 Q. ABOUT HOW OFTEN?

3 A. I'D SAY AT THE VERY LEAST EVERY OTHER DAY, IF NOT
4 EVERY DAY.

5 Q. OKAY. AND DID YOU TALK TO HIM A NUMBER OF TIMES?

6 A. I DID.

7 Q. AND DID YOU HEAR ME TALK TO HIM A NUMBER OF TIMES?

8 A. YES, SIR.

9 Q. AND CAN YOU TELL ME WHAT HE WANTED ON THOSE CALLS?

10 A. HE WANTED TO KNOW WHEN HIS SETTLEMENT PAPERWORK AND
11 CHECK WOULD BE IN.

12 Q. OKAY. AND DO YOU KNOW ABOUT WHEN THE PAPERWORK CAME
13 IN?

14 A. IT CAME IN THE FIRST PART OF MAY 2016.

15 Q. NOW, AS OF THE FIRST PART OF MAY, HAD MR. EVANS SAID
16 ANYTHING TO YOU OR ANYONE IN OUR OFFICE THAT WE HAD
17 BEEN TERMINATED?

18 A. NO, SIR.

19 Q. OKAY. WHEN THE SETTLEMENT DOCUMENTATION CAME IN,
20 DID YOU NOTIFY MR. EVANS THE DOCUMENTS WERE IN?

21 A. I DID. I CALLED HIM.

22 Q. ALL RIGHT. AND DID HE APPEAR AT OUR OFFICE?

23 A. HE DID.

24 Q. ALL RIGHT. DO YOU REMEMBER WHEN THAT WAS?

25 A. MAY -- PROBABLY AROUND MAY THE 8TH, 9TH.

1 Q. OKAY. AND WHO DISCUSSED THE SETTLEMENT DOCUMENTS
2 WITH MR. EVANS?

3 A. I DID. HE CAME IN AND WE ---

4 Q. WHERE WAS I?

5 A. I BELIEVE YOU WERE IN COURT.

6 Q. OKAY.

7 A. YOU WERE NOT IN THE OFFICE THAT DAY.

8 Q. ALL RIGHT. AND WHEN MR. EVANS CAME IN TO READ OVER
9 THE DOCUMENTS AND GO OVER THEM WITH YOU, TELL US
10 ABOUT THAT MEETING.

11 A. HE CAME IN, AND WE SAT DOWN. I SHOWED HIM ALL THE
12 DOCUMENTS, AND HE SAID THAT IT JUST WASN'T ENOUGH,
13 HE HAD THOUGHT ABOUT IT, AND IT JUST WASN'T ENOUGH
14 FOR WHAT HE HAD BEEN THROUGH. HE HAD LOST HIS HOUSE
15 AND LOST EVERYTHING, AND THAT JUST WASN'T ENOUGH,
16 AND I TOLD HIM THAT I WOULD LET YOU KNOW AND HAVE
17 YOU GIVE HIM A CALL.

18 Q. OKAY. AND AFTER THAT, WHAT HAPPENED TO THE
19 SETTLEMENT DOCUMENTS?

20 A. THEY EVENTUALLY WERE SENT BACK TO MR. BRUTON.

21 Q. TO MR. BRUTON?

22 A. MM-HMM.

23 Q. ALL RIGHT. AND THROUGH ALL OF THAT TIME, WAS THERE
24 ANY CONVERSATION ABOUT MR. EVANS ALLEGEDLY
25 TERMINATING OUR REPRESENTATION?

1 A. NOT TO MY KNOWLEDGE.

2 Q. ALL RIGHT. NOW, DO YOU REMEMBER WHEN HE CALLED AND
3 SAID HE WANTED A COPY OF HIS FILE?

4 A. I DO.

5 Q. ALL RIGHT. WHEN WAS THAT?

6 A. IT WAS THE END OF MAY.

7 Q. OKAY. AND WHEN HE CALLED AND REQUESTED THE FILE,
8 WHAT DID YOU DO AS A RESULT OF THAT?

9 A. I COPIED IT IMMEDIATELY.

10 Q. THAT SAME DAY, NEXT DAY?

11 A. YEAH. AT THE VERY LATEST IT WOULD HAVE BEEN THE
12 FOLLOWING DAY.

13 Q. ALL RIGHT. AND HOW DID MR. EVANS KNOW THE FILE WAS
14 READY?

15 A. WE CALLED HIM AND TOLD HIM.

16 Q. CALLED AND TOLD HIM IT WAS READY?

17 A. MM-HMM.

18 Q. AND DID HE APPEAR AT THE OFFICE ---

19 A. YES, SIR.

20 Q. --- TO PICK UP HIS FILE? AND YOU WERE THERE? WERE
21 YOU AT THE OFFICE WHEN HE CAME?

22 A. YES.

23 Q. ALL RIGHT. AND DID HE SIGN ANY DOCUMENTS THAT DAY?

24 A. HE SIGNED THE FILE RELEASE ACKNOWLEDGING THAT HE WAS
25 RECEIVING A COPY OF HIS FILE.

1 Q. OKAY. AND WHAT'S THE DATE ON THAT?

2 A. MAY 31ST, 2016.

3 Q. IS THAT THE DAY HE PICKED IT UP?

4 A. IT IS.

5 Q. PICKED UP HIS FILE?

6 A. MM-HMM.

7 Q. ALL RIGHT. AND WHEN HE SIGNED THIS FILE RELEASE,
8 DID HE LEAVE SOMETHING AT OUR OFFICE FOR ME?

9 A. HE DID. HE LEFT A LETTER IN A PLAIN WHITE ENVELOPE.

10 Q. OKAY. CAN YOU LOOK AT THAT LETTER. IS THAT THE
11 LETTER?

12 A. YES, SIR.

13 Q. IS THAT THE ORIGINAL?

14 A. MM-HMM.

15 Q. ALL RIGHT. AND WHAT'S THE DATE ON IT, PLEASE?

16 A. IT SAYS 3/31/16.

17 Q. OKAY. AND WHAT DAY WAS THAT HAND DELIVERED TO MY
18 OFFICE?

19 A. ON MAY 31ST OF 2016.

20 Q. TWO MONTHS LATER?

21 A. YES, SIR.

22 Q. IS THERE ANY DOUBT IN YOUR MIND ABOUT THOSE DATES?

23 A. NO, SIR.

24 Q. WHY IS THAT?

25 A. I SPECIFICALLY REMEMBER THE RECEPTIONIST BRINGING ME

1 THE FILE RELEASE, AND SHE SAID, "MR. EVANS PICKED UP
2 HIS FILE AND HE LEFT THIS FOR KEVIN."

3 Q. ALL RIGHT. AND WHAT DID YOU DO WITH IT?

4 A. PUT IT ON YOUR DESK.

5 Q. ALL RIGHT. AND WE BOTH LOOKED AT IT SHORTLY AFTER
6 THAT?

7 A. YEAH.

8 Q. ALL RIGHT. DID WE GET THE LETTER AT ANY POINT -- OR
9 GET ANY INFORMATION THAT WE -- I HAD BEEN TERMINATED
10 PRIOR TO THAT LETTER?

11 A. NO. THE ONLY NOTICE WE GOT WAS WHEN HE CALLED AND
12 ASKED FOR HIS FILE, AND I COPIED IT.

13 Q. OKAY. ALL RIGHT.

14 **BY MR. BARTH:**

15 IF YOU WOULD, CHRISTY, ANSWER ANY QUESTIONS THE
16 COMMISSIONER OR MR. VEGA MIGHT HAVE FOR YOU.

17 **BY THE COMMISSIONER:**

18 MR. VEGA.

19 **BY MR. VEGA:**

20 THANK YOU, YOUR HONOR. BRIEFLY, A MINUTE?

21 **BY THE COMMISSIONER:**

22 SURE.

23 **CROSS EXAMINATION BY MR. VEGA:**

24 Q. MS. GRAVES, DO YOU KNOW WHEN MR. EVANS WROTE THIS
25 LETTER?

1 A. THE LETTER THAT HE DROPPED OFF AT OUR OFFICE?

2 Q. THE 3/31/16.

3 A. I HAVE NO IDEA WHEN HE WROTE IT. ALL I CAN TELL YOU
4 IS WHEN WE GOT IT.

5 Q. THAT'S RIGHT. YOU WERE NOT PRESENT WITH HIM WRITING
6 THE LETTER; YOU DON'T KNOW WHEN HE WROTE IT. I'M
7 GOING TO ASK YOU TO PLEASE READ THE LETTER TO THE
8 COMMISSIONER.

9 A. "TO WHOM IT MAY CONCERN: I, STEPHEN M. EVANS, HAVE
10 DECIDED TO RELEASE KEVIN BARTH FROM MY CASE. I HAVE
11 HAD KEVIN REPRESENT ME FOR OVER A YEAR NOW, AND I
12 FEEL THAT MY ATTORNEY IS NOT CAPABLE OF HANDLING
13 WORKMAN'S COMP. I MADE THIS DECISION BECAUSE I FEEL
14 MY CASE IS STUCK. I HAVE NEVER BEEN RELEASED FROM
15 ANY DOCTOR, AND I WANT THE SURGERIES NEEDED TO
16 BETTER MY BODY. I AM IN NO WAY, SHAPE, OR FORM EVEN
17 READY TO CONSIDER A SETTLEMENT. I WANT MY
18 SURGERIES. WHEN MY SURGERIES ARE DONE AND I AM
19 RELEASED FROM MY DOCTOR'S CARE, THEN I WILL WORRY
20 ABOUT A SETTLEMENT. MY BODY NEEDS REPAIR. I FEEL
21 MY CASE HAS STOPPED, AND I DON'T UNDERSTAND. IF YOU
22 CAN'T HANDLE A PARTICULAR TYPE OF CASE, DON'T TAKE
23 IT. I HAVE A BUSINESS AND FROM -- I HAVE A BUSINESS
24 CARD FROM KEVIN BARTH THAT DOESN'T EVEN HAVE
25 WORKERS' COMP LISTED ON IT. THE NEWER ONES I HAVE

1 DO HAVE IT ON IT. THAT TELLS ME HE NEVER DID A
2 WORKMAN'S COMP CASE. I HAVE NO PROBLEM PERSONALLY
3 WITH MR. BARTH, BUT I DO NOT TRUST THAT HE IS THE
4 LAWYER FOR ME."

5 Q. AND IF YOU'LL READ THE SECOND PAGE AS WELL, PLEASE.

6 A. "INDICATES PARTS NOT CHECKED: ROTATOR CUFF NOT
7 CHECKED, NECK, LOWER BACK, NEED ANOTHER OPINION,
8 HEAD INJURY, DR. HEALY, BLADDER, O'KELLY."

9 **BY MR. BARTH:**

10 MAY IT PLEASE THE COURT, YOUR HONOR. MAY I SEE
11 THAT? WE DIDN'T GET THAT.

12 **BY THE WITNESS:**

13 UH-UH. WE DO NOT HAVE THAT.

14 **BY MR. VEGA:**

15 IT'S IN THE -- PART OF THE EXHIBIT.

16 **BY THE COMMISSIONER:**

17 I'LL ALLOW MR. BARTH A CHANCE TO LOOK THAT
18 OVER.

19 **BY MR. BARTH:**

20 THANK YOU.

21 **BY THE COMMISSIONER:**

22 ALL RIGHT.

23 **WITNESS RESUMES:**

24 A. AND THE LAST PART IS "HIPS, KNEES, AND
25 MISCELLANEOUS." IT LOOKS LIKE, "CRACKED TEETH."

1 AND THAT'S IT.

2 **CROSS EXAMINATION RESUMED BY MR. VEGA:**

3 Q. IN READING THAT LETTER, WHAT DO YOU UNDERSTAND MR.
4 EVANS' CONCERNS TO BE?

5 A. I ASSUME HE'S CONCERNED THAT HIS -- DIDN'T FEEL LIKE
6 HIS CASE WAS BEING HANDLED PROPERLY.

7 Q. AND WHAT SPECIFIC -- SPECIFICALLY WAS HE ASKING FOR?

8 A. SURGERY.

9 Q. WERE YOU INVOLVED IN THE DAY-TO-DAY HANDLING OF THE
10 WORKERS' COMPENSATION CLAIM?

11 A. I WAS.

12 Q. DID YOU HANDLE IT FROM THE TIME ---

13 A. YEAH.

14 Q. --- HE WAS RETAINED ALL THE WAY THROUGH?

15 A. I SURE DID.

16 Q. CAN YOU EXPLAIN TO THE COMMISSIONER WHY THAT SURGERY
17 WAS NOT APPROVED?

18 A. WELL, THAT WOULD BE A QUESTION FOR THE ADJUSTER TO
19 ANSWER BECAUSE SHE WOULD HAVE BEEN THE ONE TO
20 APPROVED IT. I CAN TELL YOU WE FILED A FORM 50 AND
21 REQUESTED A HEARING, AND IT WAS WITHDRAWN WHEN HE
22 ACCEPTED HIS SETTLEMENT OFFER. WE HAD NUMEROUS
23 EMAILS BACK AND FORTH TO MR. BRUTON, TO THE NURSE
24 CASE MANAGER WHERE WE ASKED AND BEGGED, AND WE HAD
25 EMAILS FROM THE NURSE CASE MANAGER TO THE ADJUSTER

1 SAYING WHY WON'T YOU RESPOND TO ME; THEY'RE TRYING
2 TO GET THE SURGERY. I MEAN, I DON'T KNOW WHY THE
3 ADJUSTER DIDN'T...

4 Q. WHERE ARE THOSE EMAILS?

5 A. IN OUR FILE.

6 Q. THEY WEREN'T SUBMITTED TO THE COMMISSION. DO YOU
7 KNOW WHY THEY WERE NOT SUBMITTED TO THE COMMISSION?

8 A. I DO NOT.

9 Q. DO YOU KNOW WHY THEY WERE NOT SUBMITTED?

10 A. NO. I SAID I DO NOT.

11 Q. YOUR TESTIMONY TODAY IS THAT YOU WERE ACTIVELY
12 SEEKING TO HAVE APPROVAL OF THAT SURGERY?

13 A. WE WERE.

14 Q. AND WHO WOULD HAVE FILLED OUT THAT FORM 50?

15 A. I DID.

16 Q. AND DO YOU KNOW IF THAT FORM 50 HAS BEEN SUBMITTED
17 TO THE COMMISSION?

18 A. I DON'T KNOW. I MEAN, IT WAS SUBMITTED IN THE CASE
19 WHEN WE FILED IT.

20 Q. NOT ACCORDING TO MY REVIEW OF THE COMMISSION FILE.

21 **BY MR. BARTH:**

22 I OBJECT. THAT'S ARGUMENTATIVE. THAT'S NOT A
23 QUESTION, YOUR HONOR.

24 **BY THE COMMISSIONER:**

25 SUSTAINED.

1 **CROSS EXAMINATION RESUMED BY MR. VEGA:**

2 Q. WHEN MR. EVANS WAS SPEAKING WITH MR. BARTH, WERE YOU
3 ALWAYS PRESENT?

4 A. NO.

5 Q. SO, IF MR. EVANS TESTIFIES TODAY THAT HE HAD
6 TERMINATED MR. BARTH PRIOR TO APRIL THE 5TH, YOU
7 WOULD NOT BE ABLE TO DISPUTE THAT?

8 A. WELL, I WOULDN'T BE ABLE TO TELL YOU I HEARD HIM SAY
9 IT.

10 Q. CORRECT; YOU WOULD NOT BE ABLE TO DISPUTE THAT?

11 A. I WOULDN'T BE ABLE TO TELL YOU I HEARD HIM SAY THAT.
12 I NEVER HEARD HIM.

13 **BY MR. VEGA:**

14 ALL RIGHT. THOSE ARE ALL THE QUESTIONS I HAVE,
15 YOUR HONOR.

16 **BY THE COMMISSIONER:**

17 ALL RIGHT. THANK YOU.

18 **BY MR. BARTH:**

19 BRIEF RECROSS, YOUR HONOR?

20 **BY THE COMMISSIONER:**

21 SURE.

22 **REDIRECT EXAMINATION BY MR. BARTH:**

23 Q. CHRISTY, WHEN MR. EVANS WAS CALLING THE OFFICE
24 BETWEEN APRIL AND WHEN THE SETTLEMENT DOCUMENTS CAME
25 IN, WHAT WAS HE CALLING ABOUT?

1 A. HE WAS ASKING WHEN HIS CHECK WOULD BE IN.

2 Q. WAS HE ASKING ABOUT SURGERY?

3 A. NO. HE WAS ASKING WHEN HIS CHECK WOULD BE HERE.

4 Q. OKAY. AND DID HE TELL YOU WHY HE NEEDED HIS MONEY?

5 A. HE SAID HE HAD LOST EVERYTHING, THEY LOST HIS HOUSE,
6 THEY WERE LIVING IN THEIR CAR, AND HE NEEDED MONEY.

7 Q. OKAY. NOW, THAT PAGE THAT MR. VEGA HANDED YOU, THE
8 CHECKLIST, HAVE YOU SEEN THAT BEFORE?

9 A. NO, SIR; I HAVE NOT.

10 Q. WAS THAT INCLUDED IN THE LETTER THAT WAS DELIVERED
11 TO OUR OFFICE?

12 A. NO, SIR.

13 Q. OKAY. DO YOU KNOW THAT FOR SURE?

14 A. I DO KNOW. I KNOW ABSOLUTELY SURE; I'VE NEVER SEEN
15 THIS.

16 Q. WHAT WAS IN THE ENVELOPE THAT MR. EVANS DROPPED OFF?

17 A. IT WAS PAGE ONE THAT WAS THE LETTER THAT HE SIGNED
18 AT THE BOTTOM.

19 Q. WAS THERE ANYTHING ELSE?

20 A. THERE WAS NOTHING ELSE IN THE ENVELOPE WHEN I
21 RECEIVED IT.

22 **BY MR. BARTH:**

23 THANK YOU, CHRISTY. I DON'T HAVE ANYTHING
24 ELSE.

25 **BY MR. VEGA:**

1 BRIEFLY, YOUR HONOR.

2 **BY THE COMMISSIONER:**

3 SURE.

4 **RE CROSS EXAMINATION BY MR. VEGA:**

5 Q. MS. GRAVES, I'M GOING TO ASK YOU TO LOOK AT THESE
6 EMAILS.

7 **BY MR. VEGA:**

8 THIS WOULD BE EXHIBIT 24, FOR THE RECORD, YOUR
9 HONOR.

10 **BY THE COMMISSIONER:**

11 OKAY.

12 **RE CROSS EXAMINATION RESUMED BY MR. VEGA:**

13 Q. IS THIS YOUR EMAIL ADDRESS?

14 A. IT WAS.

15 Q. AND YOU DO NOT DISPUTE THAT DR. GUNTER RECOMMENDED
16 THE SURGERY, CORRECT?

17 A. CORRECT.

18 Q. YOU DO NOT DISPUTE THAT THE NURSE CASE MANAGER WAS
19 ACTIVELY SEEKING APPROVAL OF THE SURGERY?

20 A. SHE WAS.

21 Q. IT'S YOUR TESTIMONY TODAY THAT YOU AND YOUR OFFICE
22 JUST COULD NOT GET APPROVAL OF IT?

23 A. WE COULD NOT GET A RESPONSE FROM THE ADJUSTER.

24 EVERY TIME WE SPOKE WITH MR. BRUTON, HE SAID, "I'VE
25 CONTACTED MY ADJUSTER; I'M WAITING ON A RESPONSE."

1 EVERY TIME I SPOKE WITH THE NURSE CASE MANAGER, SHE
2 SAID SHE WAS WAITING ON A RESPONSE FROM THE
3 ADJUSTER.

4 Q. SO, YOU WEREN'T DEALING DIRECTLY WITH THE ADJUSTER?

5 A. ONCE THE ATTORNEY IS HIRED, WE DEAL THROUGH THE
6 ATTORNEY'S OFFICE NORMALLY.

7 Q. THAT'S WHAT YOU WOULD NORMALLY DO. BUT MY QUESTION
8 IS, SPECIFICALLY TO THIS CASE, YOU WERE NOT DEALING
9 WITH THE ADJUSTER?

10 A. NO. WE WERE DEALING WITH MR. BRUTON AND THE NURSE
11 CASE MANAGER.

12 Q. MAY I HAVE MY DOCUMENTS BACK?

13 A. SURE.

14 Q. HOW LONG HAVE YOU BEEN DOING WORKERS' COMP?

15 A. SINCE I STARTED, 20 YEARS AGO.

16 Q. AND IT'S YOUR TESTIMONY THAT YOU'RE NOT ABLE -- YOU
17 WEREN'T ABLE TO GET THE SURGERY APPROVED? EVEN
18 THOUGH THE DOCTOR RECOMMENDED IT, THE NURSE CASE
19 MANAGER RECOMMENDED IT, THE ADJUSTER JUST WOULDN'T
20 APPROVE IT?

21 A. WELL, I'M NOT SAYING SHE DIDN'T APPROVE IT. I'M
22 SAYING -- IT'S NOT LIKE SHE DENIED IT. WE JUST
23 COULD NEVER GET A FIRM RESPONSE FROM ANYBODY.

24 Q. DO YOU UNDERSTAND HOW THAT MAY BE VERY FRUSTRATING
25 TO A CLIENT?

1 A. I ABSOLUTELY DO.

2 Q. YOU TESTIFIED A MOMENT AGO THAT MR. EVANS WAS
3 DESPERATE FOR MONEY?

4 A. THAT'S WHAT HE TOLD US WHEN HE CALLED. HE TOLD US
5 THAT FROM DAY ONE.

6 Q. ISN'T IT TRUE THAT HE WAS RECEIVING A T.T.D. CHECK
7 AT THAT TIME?

8 A. HE CERTAINLY WAS.

9 Q. AND THE T.T.D. CHECK IS WHAT PERCENTAGE OF HIS
10 SALARY?

11 A. SIXTY-SIX AND TWO-THIRDS.

12 **BY MR. VEGA:**

13 NOTHING FURTHER, YOUR HONOR.

14 **BY THE COMMISSIONER:**

15 ALL RIGHT. THANK YOU.

16 **BY MR. BARTH:**

17 NOTHING ELSE FOR THIS WITNESS, YOUR HONOR.

18 **BY THE WITNESS:**

19 ALL RIGHT. THANK YOU.

20 **BY THE COMMISSIONER:**

21 MR. BARTH, ANY OTHER WITNESSES?

22 **BY MR. BARTH:**

23 YES, MA'AM.

24 **BY MR. LEWIS:**

25 YOUR HONOR, AT THIS TIME -- I'M NICK LEWIS;

1 I'M ONE OF MR. BARTH'S PARTNERS -- I'D LIKE TO CALL
2 MR. VEGA.

3 BY THE COMMISSIONER:

4 OKAY. AS AN ADVERSE WITNESS. THAT'S FINE.
5 MR. VEGA.

6 BY MR. VEGA:

7 HE CAN ASK ME A QUESTION.

8 BY THE COMMISSIONER:

9 OKAY.

10 BY MR. VEGA:

11 I DON'T HAVE TO SWEAR IN. I'M AN OFFICER OF
12 THE COURT.

13 BY THE COMMISSIONER:

14 YOU DON'T. YOU'RE AN OFFICER OF THE COURT.
15 YOU'RE RIGHT; YOU DON'T. Y'ALL ARE JUST THROWING ME
16 NICE CURVE BALLS TODAY. I APPRECIATE IT. ALL
17 RIGHT. TELL ME YOUR NAME AGAIN.

18 BY MR. LEWIS:

19 NICK LEWIS.

20 BY THE COMMISSIONER:

21 OKAY, MR. LEWIS.

22 BY MR. LEWIS:

23 MAY IT PLEASE THE COURT.

24 DIRECT EXAMINATION BY MR. LEWIS:

25 Q. MR. VEGA, YOU -- IN YOUR ARGUMENT TO THE

1 COMMISSIONER, TO BEGIN WITH, YOU INDICATED THAT IT'S
2 YOUR BELIEF AND IT'S YOUR POSITION THAT FEES ARE
3 GOVERNED BY REGULATION, STATUTE, CASE LAW, THE RULES
4 OF ETHICS, NOT A CONTRACT. IS THAT YOUR POSITION?

5 A. MY POSITION IS THAT THE LAW IS THE LAW.

6 Q. THE LAW IS THE LAW. AND YOU ARE AWARE OF CASE LAW
7 IN THIS STATE THAT ENFORCES CONTRACTS, IS THAT
8 RIGHT?

9 **BY MR. VEGA:**

10 YOUR HONOR, IF THIS IS A DEBATE ON THE LAW, I'M
11 NOT REQUIRED TO ANSWER QUESTIONS UNDER OATH.

12 **BY THE COMMISSIONER:**

13 AND I KNOW, BECAUSE THIS IS A UNIQUE
14 CIRCUMSTANCE. TYPICALLY, I JUST LIKE TO CUT RIGHT
15 TO IT AND NOT -- WE DON'T NEED TO LAY EXTENSIVE
16 FOUNDATIONS LIKE WE WOULD FOR A JURY. OKAY.

17 **BY MR. LEWIS:**

18 AND SO I'LL MOVE ONTO MY NEXT ISSUE.

19 **BY THE COMMISSIONER:**

20 SURE.

21 **DIRECT EXAMINATION RESUMED BY MR. LEWIS:**

22 Q. MR. VEGA, YOU INDICATED THAT WE'D FOLLOW
23 REGULATIONS. ARE YOU FAMILIAR WITH 67-1205 OF THE
24 WORKERS' COMP ---

25 **BY MR. VEGA:**

1 YOUR HONOR, ONCE AGAIN ---

2 BY THE COMMISSIONER:

3 WELL, THAT'S ---

4 BY MR. LEWIS:

5 THIS GOES TO SUBSTANTIVE, YOU HONOR.

6 BY THE COMMISSIONER:

7 THAT'S PROPER.

8 BY MR. LEWIS:

9 THIS IS A PARTICULAR ISSUE.

10 BY THE COMMISSIONER:

11 PLEASE ANSWER.

12 BY MR. VEGA:

13 WELL, I HAVE NOT BEEN ALLOWED TO STATE MY
14 OBJECTION.

15 BY THE COMMISSIONER:

16 OKAY.

17 BY MR. VEGA:

18 MY OBJECTION IS, IS THAT THIS IS ARGUMENTATIVE.
19 IT'S PART OF A LEGAL ARGUMENT. IT'S NOT A FACTUAL
20 QUESTION.

21 BY MR. LEWIS:

22 YOUR HONOR, IF I MAY. WHAT I'M GETTING TO IS
23 HIS ARGUMENT IN THIS CASE IS THAT HE WORKED REALLY
24 HARD IN THIS CASE AND HE DESERVES THIS FEE AND MR.
25 BARTH DOES NOT. HE ALSO, AS PART OF THIS POSITION,

1 FILED A 61 WITH THIS COMMISSION THAT INDICATED THAT
2 THERE WERE NO OFFERS MADE, AND 1205 SPECIFICALLY
3 SAYS THAT IF AN OFFER IS MADE HE HAS TO DISCLOSE IT.

4 **BY THE COMMISSIONER:**

5 WELL, I KNOW. BUT NOW IT APPEARS YOU'RE TRYING
6 TO PROSECUTE HIS FORM 61. THAT'S ACTUALLY FOR ME TO
7 -- ONCE I GET THE 61 AND THE SUPPORTING DOCUMENTS,
8 THEN I REVIEW THE FILE TO MAKE SURE THAT WHAT IS
9 PLED ON THAT FORM 61 MEETS WITH THE ACTUAL
10 SETTLEMENT DOCUMENTS. IT'S NOT FOR OPPOSING -- FOR
11 ANOTHER COUNSEL TO MAKE THAT ARGUMENT.

12 **BY MR. LEWIS:**

13 AND I UNDERSTAND IT'S A STANDING ARGUMENT, YOUR
14 HONOR, BUT THERE'S NO RECORD HERE THAT YOU WOULD
15 HAVE BEFORE YOU THAT THERE WAS AN OFFER MADE.

16 **BY MR. VEGA:**

17 THEY DO NOT HAVE STANDING TO MAKE THIS
18 ARGUMENT, ONE, AND I WOULD ALSO SAY THAT IT SHOWS A
19 DISREGARD FOR THE REGULATION ITSELF. THAT
20 REGULATION IS DRAFTED TO PROTECT UNREPRESENTED
21 CLAIMANTS, AND I'M VERY AWARE OF THAT, AND A REVIEW
22 OF MY FILING AT THE COMMISSION WILL DEMONSTRATE THAT
23 I HAVE ROUTINELY FOLLOWED THE REGULATION. THERE IS
24 A DISPUTE AS TO THE FEE. IT'S A VALID DISPUTE. MR.
25 EVANS CONTENDS HE NEVER AUTHORIZED THE AGREEMENT,

1 AND IF HE DID NOT AUTHORIZE THE AGREEMENT, THEN
2 THERE WAS NEVER AN OFFER MADE.

3 BY MR. LEWIS:

4 LET ME JUST SPECIFICALLY ASK HIM ABOUT THAT.

5 BY THE COMMISSIONER:

6 OKAY. THAT'S FAIR.

7 BY MR. LEWIS:

8 WITH REGARD -- YOU SEEM TO TAKE THE POSITION
9 ABOUT WHETHER OR NOT A SETTLEMENT HAD BEEN REACHED.
10 YOUR UNDERSTANDING OF THE REGULATION IS WHETHER AN
11 OFFER WAS MADE. WOULDN'T YOU AGREE THAT AN OFFER
12 WAS MADE IN THIS CASE ON APRIL 6TH?

13 BY MR. VEGA:

14 I DISAGREE WITH YOU. THAT'S WHY WE'RE IN THE
15 MIDDLE OF A MOTION'S HEARING.

16 BY MR. LEWIS:

17 YOU DISAGREE AN OFFER WAS MADE IN WRITING?

18 BY MR. VEGA:

19 I ---

20 BY THE COMMISSIONER:

21 WELL, LET ME INTERJECT. THE ISSUE IS NOT --
22 THERE HAS TO BE SOME INFERENCE. THE ISSUE WHETHER
23 AN OFFER WAS MADE, THE OFFER HAS TO BE MADE -- MR.
24 VEGA IS CORRECT. IT IS ACTUALLY FOR THE CLAIMANT.
25 AND SO THE ISSUE THAT WE'RE HERE FOR IS ESSENTIALLY

1 WHETHER THE OFFER WAS MADE BETWEEN THE ATTORNEYS
2 WITH OR WITHOUT THE CLAIMANT'S AUTHORIZATION. AND
3 SO, EVEN THOUGH AN OFFER WAS MADE, THEY'RE DISPUTING
4 THAT IT WAS MADE TO THE CLAIMANT.

5 BY MR. LEWIS:

6 I UNDERSTAND. THANK YOU, YOUR HONOR. NOTHING
7 FURTHER, YOUR HONOR.

8 BY THE COMMISSIONER:

9 ALL RIGHT. THANK YOU, SIR. ANY OTHER
10 WITNESSES FOR MR. BARTH ON YOUR MOTION?

11 BY MR. BARTH:

12 NO, MA'AM.

13 BY THE COMMISSIONER:

14 OKAY. ALL RIGHT. MR. VEGA.

15 BY MR. VEGA:

16 WE CALL MR. EVANS.

17 BY THE COMMISSIONER:

18 MR. EVANS.

19 BY MR. VEGA:

20 YOU DON'T HAVE TO STAND, MR. EVANS. YOU CAN
21 SIT DOWN.

22 BY THE COMMISSIONER:

23 YOU CAN SIT. IF YOU CAN SPEAK LOUDLY, YOU CAN
24 STAY SEATED, OR YOU CAN HAVE A SEAT HERE.

25 BY THE CLAIMANT:

1 I'M FINE.

2 **BY THE COMMISSIONER:**

3 ALL RIGHT. MADAM COURT REPORTER, PLEASE SWEAR
4 THE WITNESS.

5 **BY THE COURT REPORTER:**

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

8 * * * * * * * * * * * * * * *

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

12 **STEPHEN EVANS,**

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

15 **DIRECT EXAMINATION BY MR. VEGA:**

16 Q. MR. EVANS, DID YOU HAVE AN INJURY BY ACCIDENT IN THE
17 COURSE AND SCOPE OF YOUR EMPLOYMENT AT YOUR JOB
18 WORKING FOR NAN-YA PLASTICS?

19 A. YES, MULTIPLE INJURIES.

20 **BY THE COMMISSIONER:**

21 MR. EVANS, YOU'VE GOT TO SPEAK UP LOUDER, OKAY?

22 **WITNESS ANSWERS:**

23 A. YES, MULTIPLE INJURIES. I JUST TALK LOW. SORRY.

24 **DIRECT EXAMINATION RESUMED BY MR. VEGA:**

25 Q. I'LL COME OVER HERE. THIS WAY YOU CAN DIRECT YOUR

1 ANSWERS TOWARDS THE COMMISSIONER. AS A RESULT OF
2 THAT, DID YOU SEEK BENEFITS UNDER THE WORKERS' COMP
3 ACT?

4 A. I SEEKED THEM REPEATEDLY, AND IT TOOK QUITE A WHILE
5 TO GET THINGS GOING. THEN THEY CUT ME OFF QUITE A
6 FEW TIMES. IT'S BEEN A RACKET THE WHOLE TIME FROM
7 DAY ONE.

8 Q. YOU'VE HAD A DIFFICULT TIME WITH YOUR CLAIM?

9 A. STILL HAVING A DIFFICULT TIME. I'VE ALREADY HAD TWO
10 SURGERIES SINCE I'VE HAD MY SETTLEMENT. ALL THIS
11 SHOULD HAVE BEEN TOOK CARE OF UNDER MY WORKERS'
12 COMP. YOU'VE GOT THE NOTES RIGHT THERE. YOU JUST
13 READ THEM, ABOUT MY KNEES AND STUFF. I JUST HAD A
14 HERNIA REMOVED. I JUST HAD ARTHROSCOPIC KNEE
15 SURGERY IN NOVEMBER. ALL THAT STUFF SHOULD HAVE
16 BEEN LOOKED AT. MY ROTATOR CUFF -- JUST WENT TO THE
17 DOCTOR DAY BEFORE YESTERDAY. I'VE STILL GOT A BAND-
18 AID ON MY SHOULDER. A LOT OF STUFF WASN'T TOOK CARE
19 OF, AND -- ANYWAY, GO AHEAD. I DON'T WANT TO GET
20 TOO CARRIED AWAY.

21 Q. WELL, WHY DO YOU THINK THOSE THINGS WEREN'T TAKEN
22 CARE OF UNDER YOUR CLAIM?

23 A. 'CAUSE SIMPLY, LIKE I SAID IN THE LETTER I WROTE TO
24 MR. BARTH -- AND I'M NOT TAKING NOTHING AWAY FROM
25 HIM, I WAS BEING HONEST IN THAT LETTER. THERE'S NO

1 WAY IN GOD'S GREEN EARTH I'D HAVE THE MENTALITY TO
2 BACKDATE A LETTER FROM A FEW MONTHS BEFORE KNOWING
3 -- HOW DID I KNOW ANYTHING LIKE THIS WAS GOING TO
4 HAPPEN? THAT LETTER WAS DATED FOR 3/31. HE CLAIMED
5 THEY DONE SOME -- WE -- HE'S GOT HER TRAINED SAY WE
6 HAD DONE A SETTLEMENT. WHERE DID WE GO DO A
7 SETTLEMENT AT? I DIDN'T KNOW NOTHING ABOUT NO
8 HEARING OR NOTHING. WHERE IS MY INFORMATION? WHY
9 DIDN'T I KNOW ABOUT A HEARING?

10 **BY THE WITNESS:**

11 YOU WENT TO A HEARING WITHOUT ME AND SETTLED
12 THE CASE? I'M ASKING YOU. THAT WHAT YOU'RE DOING?
13 Y'ALL WENT TO A HEARING AND SETTLED, RIGHT?

14 **BY THE COMMISSIONER:**

15 MR. EVANS, YOU CAN'T ASK QUESTIONS RIGHT NOW,
16 OKAY?

17 **BY THE WITNESS:**

18 OKAY. WELL, I WANT THAT QUESTION ANSWERED.

19 **BY THE COMMISSIONER:**

20 PLEASE ANSWER MR. VEGA'S QUESTIONS.

21 **DIRECT EXAMINATION RESUMED BY MR. VEGA:**

22 Q. NOW, THE FIRST ATTORNEY YOU WENT TO WAS MR. MALLOY,
23 CORRECT?

24 A. CORRECT.

25 Q. AND YOU HAD SOME DIFFICULTIES GETTING ALONG WITH MR.

1 MALLOY?

2 A. MR. MALLOY WAS FINE AS FAR AS A PERSON. BUT HE CAME
3 IN, HE GOT A MAN, PRESTON McDANIEL, FROM COLUMBIA,
4 TOLD ME HE DID NOT HAVE TIME TO DO MY CASE 'CAUSE HE
5 HAD TO GO BACK TO SENATE. I BLEW UP. I SAID,
6 "LOOK, WHY DID YOU EVEN TAKE MY CASE ON THIS STUFF?
7 I KNOW WELL -- YOU KNOW, I DON'T DO WORKMAN'S COMP.
8 I KNOW IT DON'T END OVERNIGHT. YOU SHOULD KNOW THIS
9 WAS GONNA BE A LONG HAUL. I'VE GOT TO HAVE
10 SURGERIES AND ALL KIND OF STUFF."

11 AND, ANYWAY, I WROTE A CERTIFIED LETTER TO HIM,
12 AND I DELIVERED ONE TO HIM THAT NIGHT. I THINK IT
13 WAS DECEMBER THE 18TH OR EITHER THE 22ND, BUT I PUT
14 IT OVER HIS DOOR, AND I CERTIFIED IT THE NEXT DAY
15 AND SENT IT TO HIM. AND HE SENT ME A LETTER BACK
16 SAYING HE DIDN'T WANT ANY COMMISSION OR ANYTHING,
17 JUST PLEASE SIGN THE RELIEF OF COUNSEL, AND THAT'S
18 EXACTLY WHAT THE LETTER SAYS. AND I'VE SINCE SPOKEN
19 TO HIM HERE AT THIS PLACE, AND, I MEAN, WE DON'T
20 HAVE AN ISSUE. BUSINESS IS BUSINESS; PERSONAL STUFF
21 IS PERSONAL. SO OUR BUSINESS RELATIONSHIP ENDED.
22 I'M STILL HIS FRIEND. JUST LIKE MR. BARTH, I HAVE
23 NO PERSONAL -- I DON'T HAVE A PROBLEM WITH HIM.

24 Q. ALL RIGHT. BUT MR. MALLOY HONORED YOUR REQUEST TO
25 CEASE REPRESENTATION?

1 A. YES, SIR.

2 Q. AND HE DID NOT ASSERT A LIEN AGAINST YOUR FILE?

3 A. NO, SIR.

4 Q. AND YOU PUT THAT IN WRITING?

5 A. YES, SIR.

6 Q. NOW, WHEN DID YOU RETAIN MR. BARTH?

7 A. IT WAS -- I DON'T REMEMBER HOW MUCH LONGER -- HOW
8 LONG IT WAS AFTER THAT, BUT MY ---

9 Q. IT WAS RIGHT AT THE FIRST OF THE YEAR?

10 A. I WOULD SAY AROUND JANUARY OR FEBRUARY.

11 Q. OF 2015?

12 A. YEAH. YES, SIR.

13 Q. WHEN DID YOU GO SEE DR. GUNTER?

14 A. I DON'T EVEN REMEMBER WHEN I WENT AND SEEN HIM. I
15 KNOW IT WAS -- I HAD A SURGERY APRIL OF 2016, SO I
16 MUST NOT HAVE SEEN GUNTER UNTIL ABOUT AUGUST OR
17 SEPTEMBER, JUST OFF THE TOP OF MY HEAD. DO YOU KNOW
18 WHEN I SEEN HIM?

19 Q. WELL, WHEN DID HE RECOMMEND YOU HAVE THE SURGERY?

20 A. WELL, WHEN I -- THE FIRST TIME I SEEN HIM, HE TOLD
21 ME I NEEDED THE SURGERY, BACK WHEN I FIRST GOT HURT,
22 THAT THIS THING WAS ONGOING AND HE PROBABLY COULDN'T
23 REPAIR ANY OF MY NERVE DAMAGE OR NOTHING. AND WHEN
24 I HAD THE SURGERY, NOW MY NERVE DAMAGE AND MY PAIN
25 IS EVEN WORSE THAN IT WAS PRIOR TO THE SURGERY. THE

1 ONLY RELIEF I GOT OUT OF IT IS I KNOW I DON'T HAVE
2 CRACKED BONES IN MY BACK AND MY NECK ANYMORE, AND I
3 DO HAVE A LITTLE BETTER RANGE OF MOTION.

4 Q. ALL RIGHT. SO AT THE TIME THAT YOU WERE SEEING DR.
5 GUNTER, WERE YOU IN PAIN?

6 A. ALL THE TIME.

7 Q. WERE YOU NEEDING THE SURGERY?

8 A. YES, SIR.

9 Q. AND WERE YOU WANTING THE SURGERY?

10 A. YES, SIR; BEGGING FOR IT.

11 Q. ALL RIGHT.

12 A. EVEN THE NURSE CASE MANAGER TOLD ME WHEN WE WERE UP
13 THERE TWO OR THREE TIMES, I DON'T KNOW ---

14 BY MR. BARTH:

15 I OBJECT; IT'S HEARSAY.

16 BY THE COMMISSIONER:

17 SUSTAINED.

18 BY MR. VEGA:

19 I WILL NOTE FOR THE RECORD THAT THE NURSE CASE
20 MANAGER'S EMAILS ARE IN THE RECORD AND WHAT SHE IS
21 REQUESTING THE SURGERY FOR.

22 DIRECT EXAMINATION RESUMED BY MR. VEGA:

23 Q. SO, TO THE BEST OF YOUR KNOWLEDGE, THE DOCTOR WAS
24 SEEKING AUTHORIZATION AND THE NURSE WAS SEEKING
25 AUTHORIZATION?

1 A. YES.

2 Q. SO, WHAT HAPPENED? WHY DIDN'T YOU HAVE THE SURGERY
3 BACK IN 2016?

4 A. I DON'T KNOW WHAT HAPPENED. I WAITED AND WAITED.
5 I WAS READY TO GO HAVE THE SURGERY. I NEEDED THE
6 SURGERY. I MEAN, I WAS IN -- I'M IN BAD ENOUGH
7 SHAPE NOW, BUT THAT WAS FOUR YEARS AGO AND THAT WAS
8 A WHOLE DIFFERENT SITUATION.

9 Q. YOU WERE IN A BAD SPOT?

10 A. YES, SIR.

11 Q. AND SO, WERE YOU CONTACTING MR. BARTH'S OFFICE?

12 A. WELL, I CONTACTED THEM MULTIPLE TIMES AND -- WAY
13 BEFORE ANY OF THIS STUFF COME UP ABOUT A SETTLEMENT
14 AND ALL, BECAUSE I CONTACTED HIM MULTIPLE TIMES
15 'CAUSE THERE WAS NO COMMUNICATION. I'D CALL, AND I
16 MIGHT GET HER ONCE EVERY TWO WEEKS, NEVER WOULD GET
17 HIM, AND THEN JUST, YOU KNOW, NEVER HAD NO
18 COMMUNICATION.

19 Q. WERE YOU LOSING FAITH IN THEIR ABILITY TO HANDLE
20 YOUR CLAIM?

21 A. I WAS LOSING IN FAITH IN THEM. I WAS LOSING FAITH
22 IN THE SYSTEM, BECAUSE THEY KEPT CUTTING MY CHECK
23 OFF, FIVE WEEKS ONE TIME, TWELVE WEEKS ONE TIME,
24 NINE WEEKS ONE TIME, DIDN'T OFFER ME NO SURGERIES.
25 ME AND MY WIFE, WE LOST EVERYTHING THAT WE'VE EVER

1 HAD, AND WE ENDED UP IN A MOTEL AND EVERYTHING ELSE
2 FOR 11 MONTHS DURING THIS HERE SITUATION WITH A
3 CHILD AND, YOU KNOW, ANIMALS AND STUFF.

4 Q. AND WHAT IS YOUR TESTIMONY TODAY WITH REGARDS TO
5 THIS SETTLEMENT THAT WAS OFFERED AND ACCEPTED? WERE
6 YOU AWARE THAT MR. BARTH WAS SEEKING A \$100,000
7 SETTLEMENT?

8 A. NO, SIR. NEVER -- NEVER DONE ANYTHING TO AUTHORIZE
9 NO SETTLEMENT, NEVER HEARD ANYTHING ABOUT A HEARING
10 THAT THEY TALKING ABOUT. I NEVER WENT TO A HEARING,
11 NEVER GOT NOTICE OF A HEARING OR ANYTHING.

12 Q. WHEN WAS THE ---

13 A. AND I WOULD NEVER HAVE SETTLED AT THAT TIME ANYWAY,
14 'CAUSE I HAD NO SURGERIES. WHY WOULD I SETTLE AND
15 NOT HAVE ANY SURGERIES, GET NO MONEY, AND BE FORCED
16 TO GO BACK TO WORK WHEN I WASN'T EVEN ABLE? I
17 MEAN...

18 Q. DID ANYBODY EVER SIT DOWN WITH YOU AND TELL YOU WHAT
19 WAS THE VALUE OF YOUR CASE?

20 A. NO, NEVER. WHEN I SEEN THE VALUE OF THE CASE, THE
21 ONLY FIRST TIME I SEEN THE VALUE OF THE CASE IS WHEN
22 YOU SHOWED ME THAT PAPERWORK ON SEPTEMBER 6TH, LAST
23 YEAR AFTER I SETTLED, AND SHOWED ME THAT AT THAT
24 TIME THAT MY CASE WAS WORTH \$268,000, WHEN HE
25 SETTLED IT FOR \$100,000 WITH NO SURGERIES. SO, I

1 DON'T UNDERSTAND NONE OF IT, BUT, YOU KNOW, AFTER I
2 SETTLED AND ALL, THEN FIND THIS STUFF OUT. SO IT'S
3 JUST A -- THIS IS ONE HECK OF A SYSTEM. THAT'S ALL
4 I CAN SAY. IT IS GARNISHED NOT TO HELP THE WORKING
5 MAN.

6 Q. DID YOU -- WHEN WAS THE FIRST TIME THAT YOU LEARNED
7 THAT YOUR CASE HAD BEEN SETTLED FOR \$100,000?

8 A. CHRISTY CALLED ME AND TOLD ME SHE HAD SOME PAPERWORK
9 FOR ME TO SIGN, AND I WENT UP THERE. MR. BARTH SAID
10 WAS IN COURT. HE WASN'T IN COURT.

11 **BY THE WITNESS:**

12 YOU WERE ON VACATION THAT WEEK, 'CAUSE WHEN I
13 GOT THERE, SHE TOLD ME YOU WERE ON VACATION. AND,
14 ANYWAY, DID I RIP THE CHECK UP? DID I TEAR THE
15 LETTER UP?

16 **BY THE COMMISSIONER:**

17 MR. EVANS, I'M SORRY; YOU CAN'T ASK ANY
18 QUESTIONS AT THIS TIME.

19 **WITNESS RESUMES:**

20 A. NO. I CAN'T REMEMBER. I STARTED TO. I KNOW I KIND
21 OF WENT BLANK WHEN I GOT THERE, AND I STARTED TO RIP
22 THE CHECK UP. I DON'T KNOW IF I DID OR NOT. I GAVE
23 HER A FEW CHOICE WORDS. I SAID, YOU KNOW, "I WISH
24 MR. BARTH WAS HERE. THEN AGAIN, I'M PROBABLY GLAD
25 HE'S NOT HERE 'CAUSE I'D PROBABLY GET MYSELF IN

1 TROUBLE TODAY." HE'S PUT MY WHOLE LIFE IN A BIND,
2 SITTING HERE TRYING TO AUTHORIZE SETTLEMENT AND I
3 DIDN'T EVEN HAVE THE SURGERY. I MEAN, THAT'S -- IT
4 DON'T MAKE ANY SENSE.

5 **DIRECT EXAMINATION RESUMED BY MR. VEGA:**

6 Q. SO AS A RESULT OF THAT, WHAT HAPPENED TO YOUR WEEKLY
7 CHECKS?

8 A. THEY GOT CUT OFF, AND AS FAR AS MY BODY, MY BODY GOT
9 IN WORSE SHAPE BY THE DAY 'CAUSE I COULDN'T -- I
10 MEAN, I WAS GETTING WORSE AND WORSE NOT HAVING NONE
11 OF THE SURGERIES DONE. IT HAD BEEN ALREADY OVER A
12 YEAR SINCE I'D BEEN HURT, A YEAR AND A HALF.

13 Q. RIGHT. SO, DID YOU RECEIVE CHECKS IN APRIL?

14 A. I'M NOT SURE WHEN THEY...

15 Q. ALL RIGHT. BUT AT SOME POINT BETWEEN APRIL AND MAY,
16 YOUR CHECKS GOT CUT OFF?

17 A. YES.

18 Q. ABOUT HOW LONG DID YOU GO WITHOUT?

19 A. I THINK I WENT -- THAT TIME WAS WHEN I WENT 12
20 WEEKS. I'VE GOT A LIST OF THEM AT THE HOUSE.
21 THERE'S FIVE, NINE, TWELVE, THREE, TWO, MULTIPLE,
22 MULTIPLE WEEKS, MULTIPLE WEEKS. AND, I MEAN, WE --
23 MY STEPFATHER -- YOU CAN ASK MY WIFE. I MEAN, IF IT
24 WASN'T FOR HIM I'D BE STILL, YOU KNOW, ON THE STREET
25 OR IN A MOTEL.

1 Q. SO THEN, AFTER YOU TERMINATED MR. BARTH, DID YOU
2 COME HIRE ME?

3 A. YES, SIR. I THINK -- I'M NOT SURE WHEN I HIRED YOU.
4 I KNOW I WENT TWO OR THREE WEEKS, MAYBE A MONTH
5 WITHOUT AN ATTORNEY, AND I WENT AND TALKED TO MR.
6 JOHN ETHRIDGE (PHONETIC), A GOOD FRIEND OF MINE, AND
7 I'VE KNOWN JOHN FOR ABOUT 34 OR 35 YEARS, AND HE
8 TOLD ME, HE SAID, "WELL, STEPHEN, I DON'T DO
9 WORKMAN'S COMPENSATION, BUT I HAVE A GENTLEMAN I LET
10 HANDLE THAT FOR ME." I CALLED MR. VEGA, AND I TOOK
11 HIM THIS MASSIVE CASELOAD, WHICH I DON'T KNOW HOW HE
12 WADED THROUGH IT AND GOT DONE WHAT HE DID GET DONE
13 ON IT. I COMMEND HIM ON THAT. HE WORKED HARD FOR
14 ME.

15 Q. WERE YOUR CHECKS RESTARTED?

16 A. YES, SIR.

17 Q. DID YOUR SURGERY GET APPROVED?

18 A. YES, SIR.

19 Q. DID WE HAVE TO GO TO A HEARING TO DO THAT?

20 A. NO, SIR. WE HAD A HEARING LINED UP, AND THEY
21 CANCELED IT, IF I'M NOT MISTAKEN.

22 Q. RIGHT. AFTER YOU CAME TO ME, ABOUT HOW MUCH LONGER
23 BEFORE YOU GOT YOUR CHECKS RESTARTED?

24 A. IT WASN'T LONG, JUST NOT PROBABLY A COUPLE OF WEEKS.
25 IT WASN'T LONG. BUT ANOTHER THING THAT THREW ME IS

1 THE ADJUSTER GOT OFF THE CASE SOMEHOW, MR. GIL
2 BRADDOCK (PHONETIC). SOMEHOW HE ENDED UP OFF OUR
3 CASE, AND WE ENDED UP WITH ANOTHER ADJUSTER.

4 Q. ALL RIGHT. SUBSEQUENT TO YOU HIRING ME, HOW MANY
5 SURGERIES HAVE YOU HAD?

6 A. I'VE HAD ---

7 Q. WELL, WITHIN THE COMP? I KNOW YOU'VE HAD SOME OTHER
8 STUFF DONE.

9 A. WELL, WHAT I HAD AS FAR AS THE COMP IS MY BACK AND
10 MY NECK.

11 Q. AND WHAT DID YOU HAVE DONE TO YOUR NECK?

12 A. I HAD SOME DISCS CHANGED IN MY NECK, AND I HAD FOUR
13 DISCS CHANGED IN MY BACK, AND I'VE GOT RODS AND
14 DISCS AND ALL THAT. I'VE GOT COMPOSITE DISCS IN MY
15 NECK.

16 Q. ALL RIGHT. NOW, AT ONE TIME, I BELIEVE IN JANUARY
17 OF '17, YOU EVEN TERMINATED ME?

18 A. YES, SIR.

19 Q. DID YOU DO IT IN WRITING?

20 A. YES, SIR.

21 Q. WHAT DID I DO WHEN YOU TERMINATED ME?

22 A. YOU -- WE TALKED, AND YOU -- WE ENDED UP TALKING A
23 FEW WEEKS, I BELIEVE ABOUT A WEEK OR SO LATER.

24 Q. RIGHT.

25 A. AND I CAME BACK TO YOU AND TOLD YOU THAT I KNEW YOU

1 WERE HELPING ME. IT'S JUST ALL THIS OTHER STUFF
2 THAT HAPPENED PRIOR TO YOU, IT'S JUST GOT ME WHERE I
3 CAN'T TRUST ANYBODY. AND IT WAS ALMOST TWO YEARS
4 INTO THE CASE. SO, I MEAN, YOU WERE THE ONLY ONE
5 WITH THE KNOWLEDGE AT THE TIME, AND WITH MY
6 INFORMATION AND ALL, AND I SAID, YOU KNOW, THE BEST
7 THING I CAN DO IS GO AHEAD AND LET DANNY TAKE CARE
8 OF IT. I KNOW YOU WERE WORKING HARD FOR ME.

9 Q. WHEN YOU REHIRED ME, DID YOU DO IT IN WRITING?

10 A. YES, SIR.

11 Q. YOU WROTE ME A LETTER AND SAID, "I'M GOING TO REHIRE
12 YOU"?

13 A. YES, SIR. I WROTE YOU A LETTER ASKING YOU IF YOU
14 WOULD TAKE MY CASE BACK ON. I DIDN'T SAY I WANT TO
15 REHIRE YOU. I SAID, "WILL YOU TAKE MY CASE BACK
16 ON?"

17 Q. RIGHT. AND I AGREED TO CONTINUE REPRESENTING YOU?

18 A. YES, SIR.

19 Q. ALL RIGHT. NOW, AT ONE TIME WHEN WE WERE TRYING TO
20 SETTLE THE CASE, DID YOU HAVE A HARD TIME ACCEPTING
21 THE VALUE OF THE CASE?

22 A. YES, SIR.

23 Q. DID YOU FEEL LIKE YOU WERE GOING TO GET A GOOD
24 SETTLEMENT OUT OF IT?

25 A. WELL, NOT REALLY. THINGS JUST DRUG OUT SO LONG AND

1 THE SURGEONS AND ALL -- LIKE I SAY, ALL THAT STUFF
2 SHOULD HAVE HAPPENED A WHOLE LOT SOONER AND I
3 PROBABLY WOULDN'T EVEN BE DISABLED. I MAY HAVE BEEN
4 ABLE TO GO BACK TO WORK AND STUFF. AND I'M A PIPE
5 WELDER AND A PIPE FITTER, AND I'M THE ONLY PERSON TO
6 THIS DAY THAT GRADUATED TECH THAT HAS BOTH
7 CREDENTIALS, AND I GOT THOSE IN 2010. NOBODY ELSE
8 HAS BOTH CREDENTIALS. YOU CAN CALL THEM AND ASK
9 THEM.

10 Q. AND YOU WERE EARNING ---

11 A. AND NOW I CAN'T USE IT.

12 Q. AND YOU WERE EARNING GOOD MONEY AS A PIPE FITTER?

13 A. I WAS MAKING GOOD MONEY. I WAS A PIPE FITTER AND A
14 PIPE WELDER, AND I WORKED OVER 60 HOURS EVERY WEEK
15 WHEN I WAS AT NAN-YA. THEY HAD -- WHERE I WORKED AT
16 WAS UNLIMITED OVERTIME, BECAUSE WE HAD 14 USED
17 MACHINES THAT RUN SIX MONTHS AT A TIME, AND YOU HAVE
18 TO KEEP THE MAINTENANCE UP ON THEM. SO THEY WOULD
19 ALLOW ME TO COME IN ANYTIME, EARLY MORNING, LATE
20 EVENINGS, STAY AT WORK, OR THE WEEKENDS, AND I --
21 YOU CAN ASK MY WIFE. I WORKED SEVEN DAYS A WEEK FOR
22 A COUPLE OF YEARS.

23 Q. ALL RIGHT. WHEN WE WENT TO SETTLE THE CASE, DID I
24 EXPLAIN TO YOU CLEARLY WHAT THE VALUE OF YOUR CASE
25 WAS?

1 A. YES, WHICH I -- YES, SIR, AND I WAS VERY
2 DISAPPOINTED.

3 Q. RIGHT. WE ACTUALLY CAME TO A HEARING, AND WE WERE
4 GOING TO SETTLE THE CASE, AND THEN WHAT DID YOU DO
5 AFTER THE HEARING?

6 A. THEY DIDN'T WANT TO OFFER MY MEDICARE SET ASIDE. I
7 THINK THAT WAS IN JUNE. AND I TOLD THEM I WOULD NOT
8 SETTLE WITHOUT THE MEDICARE SET ASIDE. SO WE CAME
9 BACK IN AUGUST, AND THEN MR. BRUTON CAME IN HERE AND
10 SAID HE WOULD HONOR THE SET ASIDE, AND I CAN'T
11 REMEMBER THE PERSON'S NAME THAT WAS HERE, DANNY, BUT
12 SHE SAID THAT SHE COULDN'T MAKE THEM PAY THE SET
13 ASIDE, BUT SHE WOULD ENFORCE THE FACT THAT HE HAD TO
14 OFFER A SET ASIDE. SO -- AND THAT WAS SUPPOSED TO
15 BE DONE IN THREE TO SIX MONTHS. WELL, NOW WE'RE IN
16 THE SIXTH MONTH. I HAVEN'T HEARD ONE WORD.

17 Q. ALL RIGHT. THERE WAS ONE HEARING YOU AGREED TO
18 SETTLE YOUR CASE. DID YOU WRITE ME A LETTER AFTER
19 THAT HEARING AND TELL ME THAT YOU WERE DISSATISFIED
20 WITH THE SETTLEMENT?

21 A. I DID.

22 Q. ALL RIGHT. DID YOU AND I GET BACK TOGETHER AND TALK
23 ABOUT IT?

24 A. YES, SIR.

25 Q. AND THAT'S WHEN WE CAME BACK IN AUGUST?

1 A. YES, SIR.

2 Q. AND AT THAT TIME YOU AGREED TO RESOLVE THE CASE, AND
3 YOU'RE WAITING FOR YOUR MEDICARE SET ASIDE, CORRECT?

4 A. YES, SIR.

5 Q. ALL RIGHT. WHEN I TALKED TO YOU ABOUT THE VALUE OF
6 THE CASE AND EXPLAINED THINGS TO YOU, DID YOU
7 UNDERSTAND ME? WAS I WILLING TO ANSWER YOUR
8 QUESTIONS AND DEAL WITH YOU IN AN OPEN AND HONEST
9 MANNER?

10 A. YES, SIR.

11 Q. DID I EXPLAIN TO YOU THE SETTLEMENT MEMORANDUM WHEN
12 YOU SIGNED IT?

13 A. YES, SIR.

14 Q. AND WHY THE AMOUNT OF THE SETTLEMENT WAS WHAT IT
15 WAS, WHY THE FEE WAS WHAT IT WAS, WHY THE COSTS
16 WERE? DID I SIT DOWN AND EXPLAIN ALL THOSE THINGS
17 TO YOU?

18 A. YES, SIR. I WAS JUST UNDER THE UNDERSTANDING THAT
19 YOU GET PAID SO MANY WEEKS, SO MY MONEY WAS, YOU
20 KNOW, AT THE POINT IT WAS AT, SO THAT'S WHAT I HAD
21 TO SETTLE FOR.

22 Q. RIGHT.

23 A. I DIDN'T HAVE NO CHOICE, EITHER SETTLE FOR THAT OR
24 ELSE COME IN FRONT OF THE COMMISSIONER AND NOT
25 GETTING ANYTHING.

1 Q. AND THEN YOU SIGNED A FORM 61.

2 **BY MR. VEGA:**

3 WHICH IS IN THE RECORD AS WELL, YOUR HONOR.

4 **DIRECT EXAMINATION RESUMED BY MR. VEGA:**

5 Q. DID I EXPLAIN THE TERMS OF THE SETTLEMENT TO YOU AND
6 EXPLAIN -- DID I SHOW YOU THIS? DID YOU SIGN THIS
7 PIECE OF PAPER, EXHIBIT 37, PAGE THREE? IS THAT
8 YOUR SIGNATURE?

9 A. YES, SIR.

10 Q. AND YOU DID THAT WILLINGLY AND VOLUNTARILY WITHOUT
11 COERCION?

12 A. YES, SIR.

13 Q. ALL RIGHT. THERE'S A QUESTIONNAIRE, EXHIBIT 40. IS
14 THIS YOUR HANDWRITING?

15 A. IT IS MY HANDWRITING.

16 Q. AND DID YOU ANSWER THOSE QUESTIONS FREELY AND
17 VOLUNTARILY AND WITHOUT COERCION?

18 A. YES, SIR.

19 Q. DID YOU MEAN WHAT YOU SAID WHEN YOU WROTE ON THOSE?

20 A. YES, SIR.

21 Q. AND WHAT IS THE GIST OF WHAT'S ON THIS PIECE OF
22 PAPER?

23 A. THE GIST OF WHAT'S ON THIS PIECE OF PAPER IS JUST
24 WHAT I'VE GOT WROTE DOWN HERE. NOT ONLY WAS IT
25 HARMFUL TO MY CLAIM, BUT ALSO TO MY HEALTH AND

1 WELLBEING, KNOWING I NEEDED SURGERIES AND NEVER
2 OFFERING THEM TO ME.

3 Q. AND THAT'S WHAT YOU FEEL HAPPENED AT MR. BARTH'S
4 OFFICE?

5 A. THAT'S EXACTLY WHAT HAPPENED, 'CAUSE I WOULD HAVE
6 BEEN IN BETTER SHAPE IF I HAD HAD MY SURGERY WHEN I
7 WAS SUPPOSED TO HAVE THEM. I SHOULD HAVE HAD THEM
8 WHEN THEY WERE AUTHORIZED.

9 **BY MR. VEGA:**

10 NOTHING FURTHER AT THIS TIME, YOUR HONOR.

11 **BY THE COMMISSIONER:**

12 THANK YOU. MR. BARTH.

13 **BY MR. BARTH:**

14 MAY IT PLEASE THE COURT.

15 **CROSS EXAMINATION BY MR. BARTH:**

16 Q. MR. EVANS, WHO PREPARED THAT QUESTIONNAIRE FOR YOU?

17 A. I DON'T KNOW.

18 Q. YOU DIDN'T PREPARE IT, THOUGH, DID YOU?

19 A. NO, SIR. I JUST ANSWERED THE QUESTIONS ON IT GLADLY
20 BECAUSE THE QUESTIONS ON THERE NEEDED TO BE
21 ANSWERED. SOMEBODY NEEDED TO KNOW ABOUT IT.

22 Q. ALL RIGHT. AND WHO GAVE YOU THE QUESTIONNAIRE?

23 A. I THINK THE PARALEGAL DID.

24 Q. SOMEBODY AT MR. VEGA'S OFFICE?

25 A. YES.

1 Q. ALL RIGHT. AND WHO WERE YOU SITTING WITH WHEN YOU
2 FILLED IT OUT?

3 A. I'M PRETTY SURE I WAS PROBABLY SITTING WITH BOTH OF
4 THEM.

5 Q. OKAY. SO YOU FILLED IT OUT IN FRONT OF YOUR LAWYER
6 AND HIS PARALEGAL?

7 A. YES, SIR.

8 Q. ALL RIGHT. AND YOU KNEW THE PURPOSE OF IT WAS TO
9 MAKE SURE THAT I DIDN'T GET PAID ANYTHING, RIGHT?

10 A. RIGHT.

11 Q. OKAY. NOW, YOU INDICATED THAT YOU SETTLED IT FOR
12 150, RIGHT?

13 A. RIGHT.

14 Q. YOU DON'T THINK THAT'S ENOUGH, DO YOU?

15 A. BUT I HAD MY SURGERIES, THOUGH.

16 Q. OKAY. YOU DON'T THINK THAT'S ENOUGH, THOUGH, DO
17 YOU?

18 A. IT AIN'T NEAR ENOUGH. NO, SIR.

19 Q. ALL RIGHT. AND YOU JUST SAID A LITTLE WHILE AGO
20 THAT YOU GOT MORE SURGERIES YOU THINK NEED TO BE
21 DONE?

22 A. YES, SIR.

23 Q. AS THEY RELATE TO THE WORKERS' COMP CLAIM?

24 A. I'M GOING TO FILE AN APPEAL AND TRY TO GET THEM
25 DONE, TOO.

1 Q. ALL RIGHT. AND IF I UNDERSTAND YOU CORRECTLY, YOU
2 CAME AND SETTLED IT AT A HEARING?

3 A. YES, SIR.

4 Q. THEN CHANGED YOUR MIND LATER?

5 A. I HAVEN'T CHANGED MY MIND. I SETTLED IT. WE
6 SETTLED IN AUGUST. THE ONLY THING I'M CHANGING MY
7 MIND ABOUT IS I'M TIRED OF JUMPING THROUGH HOOPS FOR
8 WORKMAN'S COMP AND MR. JOHN BRUTON WHEN HE'S NOT
9 DOING WHAT HE'S SUPPOSED TO DO. AND THIS WHOLE
10 TIME, I'VE BEEN GOING FOR FOUR YEARS WITHOUT PAIN
11 MANAGEMENT. THEY HAVEN'T PAID FOR MY MEDICINE OR
12 ANYTHING. I GOT MY DISABILITY. MY MEDICARE HAS
13 BEEN PAYING FOR ALL MY MEDICINE AND EVERYTHING.
14 WORKMAN'S COMP AIN'T DONE NOTHING FOR ME BUT HINDER
15 ME.

16 Q. AND THE SAME PROBLEM THAT YOU'RE DESCRIBING NOW IS
17 THE PROBLEM YOU AND I HAD WHEN I REPRESENTED YOU,
18 RIGHT?

19 A. YES, SIR. WELL, THE PROBLEM I HAVE IS
20 (UNINTELLIGIBLE STATEMENT).

21 Q. OKAY. YOUR LAWYER SUBMITTED EXHIBIT 19, WHICH IS A
22 LETTER OF JUNE '15 WHERE WE FILED FOR A FORM 50. WE
23 FILED A FORM 50 AND REQUESTED A HEARING; DO YOU SEE
24 THAT?

25 A. YES, SIR.

1 Q. AND MR. BRUTON FILED A 51 AND ANSWERED IT, RIGHT?

2 A. OKAY.

3 Q. A HEARING WAS SET; DO YOU KNOW?

4 A. I DON'T KNOW NOTHING ABOUT A HEARING.

5 Q. ALL RIGHT. WELL, HOW ABOUT THIS LETTER WRITTEN TO
6 YOU THAT SAYS THERE'S A HEARING SET FOR SEPTEMBER 1
7 AT 2:00; DO YOU REMEMBER THAT?

8 A. WELL, FIRST OFF, THIS IS DATED JULY '16. I HAVEN'T
9 LIVED THERE SINCE '15, AND THAT'S AT THAT ADDRESS.

10 Q. THAT'S JULY OF 2015.

11 A. '15. WELL, I DON'T THINK I WAS THERE IN JULY.

12 Q. OKAY. SO YOU'RE TELLING ME YOU DIDN'T GET ---

13 A. I KNEW NOTHING ABOUT NO HEARING. I WOULD REMEMBER
14 -- WHY WOULD I LET YOU GO TO A HEARING ON MY
15 LIVELIHOOD AND ME NOT EVEN SHOW UP? NO, SIR, DIDN'T
16 KNOW NOTHING ABOUT NO HEARING.

17 Q. HOW ABOUT THIS LETTER, WHERE IT SAYS HERE'S THE
18 I.M.E. FOR DR. STORICK. HE'S RECOMMENDING SURGICAL
19 EVALUATION. WE ARE REQUESTING IT BE SCHEDULED. DID
20 YOU KNOW THAT?

21 A. I DIDN'T KNOW THAT. I SEEN MR. STORICK, BUT I
22 DIDN'T KNOW NOTHING ABOUT THAT.

23 **BY THE COMMISSIONER:**

24 MR. BARTH, WHICH PAGE WAS THAT ONE, WITH THE
25 I.M.E.?

1 **BY MR. BARTH:**

2 THE I.M.E., YOUR HONOR, WAS 23-1.

3 **BY THE COMMISSIONER:**

4 THANK YOU.

5 **BY MR. BARTH:**

6 YOU'RE WELCOME.

7 **CROSS EXAMINATION RESUMED BY MR. BARTH:**

8 Q. AND THEN KATHY FORSYTHE, WHO IS SHE?

9 A. THAT'S THE NURSE CASE MANAGER.

10 Q. OKAY. AND SHE'S STILL TALKING ABOUT YOUR BLOOD
11 PRESSURE ON 24-2, RIGHT?

12 A. YES, SIR.

13 Q. AND IT HAS TO BE CONTROLLED BEFORE SURGERY; REMEMBER
14 THAT?

15 A. YES, SIR.

16 Q. THAT'S TRUE, WASN'T IT?

17 A. YES, SIR.

18 Q. ALL RIGHT. AND THEN YOU GOT A LETTER IN MARCH.

19 HERE'S A NOTE FROM KATHY FORSYTHE MARCH THE 1ST, 25-
20 1; DO YOU REMEMBER THAT?

21 A. I DON'T REMEMBER IT.

22 Q. "PLEASE ADVISE IF THE SURGERY FOR DISC REPLACEMENT
23 HAS BEEN APPROVED." DO YOU SEE THAT?

24 A. OKAY.

25 Q. AND THAT'S WHEN I WAS REPRESENTING YOU, WASN'T IT?

1 A. I GUESS SO.

2 Q. ALL RIGHT.

3 A. IF IT WAS BEFORE 3-31.

4 Q. ALL RIGHT. AND THEN DO YOU REMEMBER LOSING YOUR
5 HOUSE?

6 A. YEAH, I REMEMBER LOSING EVERYTHING. I CAN'T FORGET
7 THAT.

8 Q. OKAY. AND YOU TOLD ME THAT, DIDN'T YOU?

9 A. YES, SIR.

10 Q. OKAY. AND AS MATTER OF FACT, AT ONE POINT YOU SAID
11 YOU NEEDED MONEY AND YOU WERE WILLING TO SETTLE; YOU
12 REMEMBER THAT?

13 A. NO, SIR.

14 Q. YOU DENY THAT?

15 A. YES, SIR.

16 Q. ALL RIGHT.

17 A. AND I WASN'T GETTING PAID DURING THIS TIME EITHER.

18 Q. YOU SURE YOU ---

19 A. WHEN I CALLED YOU ABOUT MY HOUSE AND STUFF.

20 Q. DO YOU REMEMBER MEETING WITH ME ON APRIL 5TH, 2015?

21 A. NO, SIR.

22 Q. ALL RIGHT. I WANT YOU TO TAKE A LOOK AT AN EMAIL
23 THAT I THINK IS IN YOUR LAWYER'S PACKET. IT SAYS,
24 "I MET WITH STEPHEN THIS MORNING FOR A WHILE," FROM
25 ME TO JOHN BRUTON. DO YOU REMEMBER THAT MEETING?

1 A. NO, SIR.

2 Q. IT SAID YOU WERE UPSET, GETTING MORE BY THE DAY.
3 THAT'S TRUE, ISN'T IT?

4 A. IT NEVER ENDS. I'M UPSET EVERY DAY STILL.

5 Q. ALL RIGHT. AND I SAID THAT YOU HAD GIVEN ME
6 AUTHORITY IN THAT MEETING TO DEMAND 150, GET YOUR
7 SCHEDULED SURGERY -- GET YOUR SURGERY SCHEDULED, OR
8 FILE A FORM 50. DID YOU TELL ME THAT?

9 A. I NEVER TOLD YOU ANYTHING ABOUT SETTTLING. ALL I
10 EVER TOLD YOU IS JUST WHAT I GOT IN THAT LETTER,
11 THAT I NEEDED MY SURGERY.

12 Q. ALL RIGHT.

13 A. I NEVER DISCUSSED A SETTLEMENT, AND I NEVER
14 DISCUSSED GOING TO A HEARING. AND YOU SAID THAT'S
15 APRIL 5TH. AND WHAT SHE SAID A WHILE AGO WAS WE, AS
16 IN YOU AND HER, WENT APRIL THE 6TH, IF I'M NOT
17 MISTAKEN. IS THAT WHAT SHE SAID? WHAT WAS APRIL
18 THE 6TH?

19 **BY THE COMMISSIONER:**

20 MR. EVANS, YOU CAN'T ASK QUESTIONS, AGAIN, JUST
21 NOT AT THIS POINT. YOUR ATTORNEY MAY FOLLOW UP ON
22 THAT.

23 **BY THE WITNESS:**

24 ALL RIGHT.

25 **CROSS EXAMINATION RESUMED BY MR. BARTH:**

1 Q. THIS IS YOUR -- THIS IS YOUR LETTER. "I AM IN NO
2 WAY, SHAPE, OR FORM READY TO CONSIDER A SETTLEMENT"?

3 A. UH-HUH.

4 Q. YOU WROTE THAT?

5 A. YES, SIR.

6 Q. AND ISN'T THAT AS A RESULT OF CONVERSATIONS WE HAD
7 ABOUT TRYING TO SETTLE IT?

8 A. I WASN'T IN NO WAY, SHAPE, OR FORM READY TO SETTLE.
9 I WASN'T ABOUT TO SETTLE WITH NO ---

10 Q. MY QUESTION WAS, WASN'T THAT AS A RESULT OF THE FACT
11 THAT YOU AND I HAD TALKED AND KNOCKED AROUND
12 POTENTIALLY TRYING TO SETTLE YOUR CLAIM?

13 A. I DON'T UNDERSTAND EXACTLY WHAT ARE YOU SAYING.
14 REFRESH ME WHAT YOU'RE REFERRING TO, 'CAUSE I DON'T
15 KNOW WHAT YOU...

16 Q. WHERE YOU SAID IN THAT LETTER, "I'M NOT READY IN ANY
17 WAY, SHAPE, OR FORM TO CONSIDER A SETTLEMENT,"
18 RIGHT?

19 A. THAT'S RIGHT.

20 Q. AND YOU AND I WERE TALKING ABOUT A SETTLEMENT,
21 WEREN'T WE?

22 A. WE DIDN'T -- WE DIDN'T TALK ABOUT A SETTLEMENT. WHY
23 WOULD I TALK TO YOU ABOUT A SETTLEMENT? I HADN'T
24 HAD NO SURGERIES.

25 Q. DO YOU REMEMBER AUTHORIZING ME TO MAKE A \$150,000

1 DEMAND BECAUSE YOU NEEDED THE MONEY?

2 A. NO, SIR. WHERE DID WE TALK ABOUT THIS AT?

3 Q. IN MY OFFICE.

4 A. NO, SIR.

5 Q. OKAY. YOU DENY THAT?

6 A. WELL, JUST A WHILE AGO YOU WERE SAYING REMEMBER OUR
7 CONVERSATION ON THE PHONE WHERE WE TALKED ABOUT A
8 SETTLEMENT.

9 Q. I DID.

10 A. NOW YOU'RE TALKING ABOUT THIS. I WOULD NEVER
11 DISCUSS A SETTLEMENT OVER THE PHONE ANYWAY. THAT'S
12 NOT PROFESSIONAL. I WOULD DO JUST LIKE I DO WITH MY
13 ATTORNEY. I MEET HIM FACE TO FACE WHEN IT COMES TO
14 SOMETHING LIKE THAT.

15 Q. ALL RIGHT. AND YOU DENY SITTING THERE TALKING TO ME
16 ---

17 A. YES, SIR.

18 Q. --- THAT DAY AND TELLING ME THAT?

19 A. YES, SIR.

20 Q. ALL RIGHT. NOW, DID YOU COME IN AND LOOK AT THE
21 SETTLEMENT DOCUMENTS?

22 A. I CAME IN TO SIGN A PAPER. SHE HANDED ME THE THING
23 AND STARTED READING IT OFF, AND SHE CAN TELL YOU, I
24 GOT PRETTY UPSET, AND I TOLD HER THE BEST THING I
25 CAN DO IS -- I'LL BE BACK TO GET MY CASE FILE, AND

1 THE BEST THING I KNEW IS LEAVE, AND I LEFT. AND
2 THAT'S WHAT I DID.

3 Q. OKAY. WHAT HAPPENED TO THE PAPERWORK?

4 A. I'M NOT SURE.

5 Q. DO YOU REMEMBER WHEN THAT WAS THAT YOU SAID YOU
6 SUPPOSEDLY CAME IN AND WOULDN'T SIGN?

7 A. I DON'T REMEMBER EXACTLY WHEN.

8 Q. YOU SAID YOU WANTED YOUR CASE FILE WHEN YOU CAME IN
9 TO SIGN THE PAPERS? YOU TOLD CHRISTY THAT YOU
10 WEREN'T GOING TO SIGN THEM, YOU WANTED YOUR CASE
11 FILE? HOW WOULD YOU DO THAT IN MARCH IF WE DIDN'T
12 EVEN GET THE SETTLEMENT PAPERS 'TIL MAY?

13 A. WHAT'S THAT GOT TO DO WITH FIRING YOU? IF YOU'RE
14 NOT DOING YOUR JOB AND I FELT LIKE YOU WERE
15 INCOMPETENT OF HANDLING THE WORKMAN'S COMP, WHICH IS
16 WHAT I PUT IN MY LETTER, THAT ANSWERS ITSELF. I WAS
17 READY TO TRY TO FIND SOMEONE INSTEAD OF ALREADY
18 BUMPING INTO TWO PEOPLE THAT HADN'T HELPED ME WITH
19 NO SURGERIES, MADE STUFF WORSE, MADE STUFF
20 PROLONGED. I HAD TO FIND -- I WAS IN DESPERATE NEED
21 OF GETTING SOME HELP.

22 Q. DO YOU REMEMBER TAKING A DEPOSITION? REMEMBER
23 CLAIMING YOU HAD SOME NEUROLOGY PROBLEMS AS A RESULT
24 OF THE COMP CLAIM?

25 A. YEAH. I GOT -- I GOT SURGERIES AND ALL DONE. I

1 JUST HAD SURGERY TWO WEEKS AGO AGAIN.

2 Q. ON WORKERS' COMP?

3 A. WELL, THEY DIDN'T PUT IT INTO WORKMAN'S COMP, BUT
4 JUST LIKE THAT STUFF I GOT WROTE DOWN, THEY DIDN'T
5 NEVER LET ME CHECK IT. I HAD SEVEN APPOINTMENTS TO
6 CHECK MY KNEES THAT I HAD TO CANCEL, AND I JUST HAD
7 KNEE SURGERY.

8 Q. DO YOU REMEMBER YOU AND ME GOING TO A DEPOSITION ---

9 A. I DO.

10 Q. --- IN MARCH ---

11 A. YES, SIR. I DO.

12 Q. --- OF '15?

13 A. YES, SIR.

14 Q. OKAY. WE WENT AND TOOK THE DEPOSITION OF DR.

15 O'KELLY, TRYING TO CONNECT UP THAT CONDITION WITH
16 THIS CLAIM?

17 A. YEAH. HE DID HAVE IT CONNECTED, BUT Y'ALL
18 OVERLOOKED IT, 'CAUSE HE TOLD YOU STRAIGHT OUT THAT
19 THE TECHNICIAN DID TEAR MY URETHRA WHEN I WAS IN THE
20 EMERGENCY ROOM. BUT AS A RESULT OF THE ACCIDENT, I
21 WOULD NEVER HAVE BEEN CATHERED IN THE FIRST PLACE.
22 THAT'S WHY I WAS CATHERED. THAT'S WHY MY URETHRA
23 GOT TORE.

24 Q. AND WE WORKED HARD ---

25 A. 'CAUSE I HAD BEEN MASHED BY THIS DOOR.

1 Q. WE WORKED HARD TO TRY TO CONNECT IT, DIDN'T WE?

2 A. KEVIN, I DON'T REALLY KNOW WHAT HAPPENED. MR.

3 KEVIN, I DON'T KNOW WHAT HAPPENED.

4 Q. YOU FIRED SENATOR MALLOY?

5 A. YES, SIR.

6 Q. BY CERTIFIED MAIL?

7 A. YES, SIR.

8 Q. AND YOU HAND DELIVERED ONE TO HIS OFFICE, AND YOU
9 SENT ONE BY CERTIFIED MAIL?

10 A. YES, SIR.

11 Q. OKAY. AND AT ONE POINT YOU FIRED MR. VEGA?

12 A. YES, SIR.

13 Q. AND YOU DID THAT BY CERTIFIED MAIL?

14 A. YES, SIR.

15 Q. OKAY. AND I BELIEVE YOU HANDED IN -- OR YOUR
16 LAWYERS HANDED IN PROOF WHERE YOU SENT THEM
17 CERTIFIED?

18 A. YES, SIR.

19 Q. ALL RIGHT. SHOW ME THE ONE WHERE YOU FIRED ME IN
20 MARCH.

21 A. WELL, ALL I GOT -- ALL YOU GOT IS THE ORIGINAL COPY.
22 I DON'T -- I THOUGHT I HAD CERTIFIED IT AND SENT YOU
23 ONE, BUT APPARENTLY I DIDN'T. BUT HOW COULD -- I
24 MEAN, I AIN'T WENT BACK AND BACKDATED IT. THE DATE
25 WOULD HAVE HAD TO BE ERASED AND STUFF ON IT. COME

1 ON, IT'S PLAIN AND CLEAR. THAT PIECE OF PAPER YOU
2 GOT THERE IS CLEAR ENOUGH. AIN'T NO SCRIBBLING ON
3 THAT PAPER. THAT'S THE DAY I WROTE THAT LETTER.
4 THAT'S WHEN IT WAS TOOK TO YOUR OFFICE. YOU DON'T
5 HAVE ANOTHER LETTER FROM ME?

6 Q. NO, SIR. DO YOU REMEMBER WHEN YOU SENT IT?

7 A. NO, SIR.

8 Q. WELL, JUST TELL ME THEN, IF YOU FIRED ME ON MARCH
9 THE 31ST, WHY IS IT ALL THROUGH APRIL AND ALL THE
10 WAY UP 'TIL MAY YOU WERE CALLING THE OFFICE WANTING
11 TO KNOW WHERE YOUR CHECK WAS?

12 A. THAT WASN'T THE CASE. THE ONLY TIME -- WHEN I
13 CALLED YOUR OFFICE MULTIPLE TIMES, IT WAS BECAUSE I
14 COULD NEVER GET NO STRAIGHT ANSWER FROM Y'ALL.

15 Q. WHAT WERE YOU LOOKING FOR?

16 A. I WAS LOOKING TO GET MY SURGERY AND LOOKING TO GET
17 MY LIFE STRAIGHTENED BACK OUT AND START OVER. I HAD
18 ALREADY GAVE YOU MY CASE FOR ALMOST A YEAR. WE GOT
19 NOWHERE.

20 Q. ALL RIGHT.

21 A. WE GOT NOWHERE.

22 Q. WHY WERE YOU COMING INTO MY OFFICE TO SIGN
23 SETTLEMENT DOCUMENTS, OR ANY KIND OF DOCUMENT, THE
24 FIRST WEEK IN MAY IF YOU FIRED ME FIVE WEEKS BEFORE
25 THAT?

1 A. I DON'T KNOW. I DON'T KNOW WHY SHE CALLED ME AND
2 TOLD ME I HAD TO SETTLE -- I MEAN, HAD TO COME AND
3 SIGN A PAPER. I FIGURED, WELL, MAYBE IT'S SOMEWHERE
4 RELIEVING YOU COUNSEL, OR WHATEVER. I DIDN'T KNOW
5 WHAT I WAS COMING TO SIGN. SHE DIDN'T TELL ME OVER
6 THE PHONE.

7 Q. AND YOU CLAIM YOU TOLD HER THAT DAY YOU WANTED TO
8 FIRE US?

9 A. YES, SIR.

10 Q. ALL RIGHT. AND WHEN DID YOU PICK UP YOUR FILE?

11 A. IMMEDIATELY AFTER. I DON'T KNOW EXACTLY WHEN. BUT
12 BEFORE THAT DAY, I HAD TALKED TO HER MULTIPLE TIMES
13 ON THE PHONE ABOUT THE LETTER AND ALL THAT I HAD
14 SENT.

15 Q. YOU TALKED TO WHO?

16 A. TO HER. I CALLED THE OFFICE PLENTY OF TIMES TRYING
17 TO GET MY CASE FILE.

18 BY MR. BARTH:

19 OKAY. I THINK THAT'S ALL I HAVE, COMMISSIONER.
20 THANK YOU.

21 BY THE COMMISSIONER:

22 MR. VEGA, ANYTHING FURTHER?

23 BY MR. VEGA:

24 BRIEFLY, YOUR HONOR.

25 BY THE COMMISSIONER:

1 SURE.

2 **REDIRECT EXAMINATION BY MR. VEGA:**

3 Q. MR. EVANS, THERE'S QUITE A FEW LETTERS IN THE
4 RECORD. WHEN DID YOU START WRITING LETTERS AND
5 STUFF LIKE THAT? I DON'T MEAN IN THIS CASE, BUT...

6 A. WELL, I ALWAYS -- YOU KNOW, YOU GOT TO GET STUFF ON
7 PAPER, GET IT IN BLACK AND WHITE TO HAVE IT LEGAL.
8 AND ANYTIME IT CAME UP WITH AN ISSUE, I WROTE -- I
9 MEAN, I WROTE THE COMMISSION. I WROTE MALLOY, I
10 WROTE MR. BARTH, I WROTE YOU. WHEN IT CAME UP AN
11 ISSUE, I FELT LIKE IT NEEDED TO BE PUT ON PAPER.
12 IT'S JUST A HABIT I GOT, AND, YOU KNOW, I'M PRETTY
13 GOOD AT EXPRESSING MYSELF ON PAPER.

14 Q. AND YOU -- AT THE BEGINNING OF THE CASE, YOU WERE
15 WRITING LETTERS TO THE DOCTOR EVEN?

16 A. YES, SIR.

17 Q. YOU WROTE ONE TO DR. O'KELLY?

18 A. YES.

19 Q. AND YOU WROTE SOME NOTES THAT YOU TOOK TO YOUR
20 EMPLOYER, I BELIEVE, WHEN YOU WENT TO TALK TO YOUR
21 EMPLOYER ABOUT THE CASE AND WHAT WAS GOING ON WITH
22 THE CASE. IS THAT A HABIT YOU DEVELOPED AT WORK,

23 ---

24 A. NO.

25 Q. --- WRITING REPORTS, OR...

1 A. NO, I JUST -- I WROTE -- IT'S JUST SOMETHING THAT
2 KIND OF COMES NATURALLY. IF I FEEL LIKE I NEED TO
3 BE EXPRESSED, I'M GOING TO PUT IT ON PAPER AND
4 EXPRESS IT.

5 Q. DO YOU HAVE A HARD TIME EXPRESSING YOURSELF?

6 A. NO, SIR.

7 Q. DO YOU HAVE A HARD TIME CONFRONTING PEOPLE?

8 A. NO, SIR.

9 Q. IF YOU FEEL LIKE SOMEBODY IS DOING YOU WRONG, DO YOU
10 WORRY ABOUT IT AND FEEL AFRAID TO CONFRONT THEM?

11 A. NOT AFRAID AT ALL. I WORRY ABOUT IT, BUT I'M NOT
12 AFRAID TO CONFRONT ANYONE, ESPECIALLY WHEN IT'S
13 ABOUT MY LIVELIHOOD AND MY WELLBEING AND MY HEALTH.

14 Q. AND YOU'LL SPEAK YOUR MIND IF YOU NEED TO?

15 A. YES, SIR.

16 Q. AND YOU BELIEVE THAT YOU SPOKE YOUR MIND TO MR.
17 BARTH?

18 A. YES, SIR. AND AFTER READING THESE EMAILS AND ALL, I
19 KNOW I MADE THE BEST DECISION, BECAUSE IN THE EMAILS
20 HE'S CALLING ME A LOOSE CANNON AND THINGS LIKE THAT.
21 THAT'S NOT HOW A FIDUCIARY IS SUPPOSED TO DO. HE'S
22 MY ATTORNEY. HE REPRESENTS ME. IF HE DIDN'T HAVE A
23 GOOD ATTITUDE ABOUT ME, HE SHOULD HAVE DROPPED ME
24 BEFORE I DROPPED HIM. WE SHOULD HAVE DISCUSSED
25 THAT, 'CAUSE I SEE -- I MEAN, IT'S RIGHT HERE IN

1 BLACK AND WHITE WHAT HE SAYS ABOUT ME, AND BRUTON.
2 HE'S THE ONE THAT NEEDS TO BE IN HERE. HE'S THE ONE
3 THAT'S HAD MY CASE MESSED UP FROM DAY ONE.

4 Q. SO YOU DON'T APPRECIATE THAT THEY WERE TALKING ABOUT
5 YOU IN THE EMAILS?

6 A. NO, SIR. AND I'M GONNA FOLLOW UP IT, ALSO.

7 **BY MR. VEGA:**

8 NOTHING FURTHER AT THIS TIME, YOUR HONOR.

9 **BY THE COMMISSIONER:**

10 ALL RIGHT.

11 **BY MR. BARTH:**

12 NOTHING ELSE, COMMISSIONER.

13 **BY THE COMMISSIONER:**

14 ALL RIGHT. THANK YOU. MR. VEGA, ANY OTHER
15 WITNESSES?

16 **BY MR. VEGA:**

17 NO FURTHER WITNESSES, YOUR HONOR.

18 **BY THE COMMISSIONER:**

19 ALL RIGHT. I WILL NOTE FOR THE RECORD THAT I
20 HAVE THE ACTUAL MOTION, AS WELL AS THE EXHIBITS
21 THROUGH EXHIBIT 42-3.

22 MR. BARTH, BEFORE WE CLOSE THE RECORD, I THINK
23 YOU REFERRED TO AN EMAIL FROM YOU TO MR. BRUTON
24 WHEREIN YOU ADVISED THAT THE CLAIMANT HAD BEEN IN
25 YOUR OFFICE THAT DAY?

1 **BY MR. BARTH:**

2 YES, MA'AM.

3 **BY THE COMMISSIONER:**

4 WHAT PAGE IS THAT, PLEASE, SIR?

5 **BY MR. BARTH:**

6 IT WAS NOT SUBMITTED, YOUR HONOR. I JUST
7 SUBMITTED THE CONTRACT AND A COUPLE OF DOCUMENTS. I
8 CAN LOOK AND SEE -- WE CAN LOOK AND SEE IF IT'S ONE
9 OF THEM THAT MR. VEGA...

10 **BY THE COMMISSIONER:**

11 OKAY. BUT IT MAY NOT BE?

12 **BY MR. BARTH:**

13 IT MIGHT BE IN THE STRING, BUT I'LL CHECK AND
14 SEE, COMMISSIONER.

15 **BY THE COMMISSIONER:**

16 OKAY. THAT'S ALL. WE CAN DO THAT AFTERWARDS.
17 I JUST WANTED TO MAKE SURE I HAD EVERYTHING.
18 ALL RIGHT. THAT CONCLUDES THIS MATTER. THANK
19 YOU VERY MUCH.

20 **(OFF THE RECORD)**

21 **BY THE COMMISSIONER:**

22 BACK ON THE RECORD IN WORKERS' COMP FILE NUMBER
23 1413115. DURING THE OPENING ARGUMENTS, MR. VEGA DID
24 INDICATE THERE WAS AN OUTSTANDING SUBPOENA THAT WAS
25 NOT -- THAT HAD NOT BEEN REPLIED TO, AND HE DID

1 REQUEST THIS COMMISSION ISSUE AN ORDER COMPELLING
2 THE PRODUCTION OF THE REQUESTED DOCUMENTS FROM MR.
3 BRUTON, THE DEFENSE ATTORNEY IN THIS MATTER. I WILL
4 HOLD THE RECORD OPEN FOR ISSUANCE OF THAT DISCOVERY
5 ORDER, AND THEN I WILL ALSO ALLOW ADDITIONAL TIME
6 FOR RECEIPT OF THAT ACTUAL RECORD, AND I'D JUST ASK
7 THAT THE PARTIES ENSURE THAT THE WHOLE PACKET IS
8 UPLOADED TO ME ONCE IT'S RECEIVED PURSUANT TO THAT
9 ORDER.

10 THAT CONCLUDES THIS MATTER.

11 **(THERE BEING NO FURTHER QUESTION, THE HEARING WAS**
12 **CONCLUDED AT THE HOUR OF 3:38 P.M.)**

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1413115

EMPLOYEE/CLAIMANT: STEPHEN EVANS

EMPLOYER: NAN-YA PLASTICS CORPORATION OF AMERICA

CARRIER: NEW HAMPSHIRE INSURANCE COMPANY

I, TIMMI A. PARRISH, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING **74** PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF **STEPHEN EVANS**, TAKEN ON THE 7TH DAY OF FEBRUARY, 2019.

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

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

IN WITNESS WHEREOF, I HAVE SET MY HAND AND OFFICIAL SEAL THIS 25TH DAY OF APRIL, 2019.

Timmi A. Parrish

TIMMI A. PARRISH
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 5/20/2018

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

R08 File
Copied -
7/26/2016

SROBINSON

7/26/2016

8:50 AM licensed to practice
in South Carolina,

AM North Carolina,
File Georgia and the
District of Columbia

been
copied
and sent
out.

1413115

Scanned

Part of the

CSA-LAW
NETWORK

ROA 0327



PO Box 12330
Columbia, SC 29211
803.929.3600
Fax 803.929.3604
800.531.9780

www.CSA-LAW.com

CHECK DATE	07/14/2016
CHECK #	117188
ID #	321289
COPY FILE: _____	
COPY MAILED: _____	
TO BE INVOICED: _____	
ATTY ENTERED: _____	
PREV. COPY: _____	
END # _____	
BEG. # _____	
TOTAL 43-20-23	

July 14, 2016

Mr. Grant Duffield
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202-1715

COPY

Re: Stephen Evans v. Nan Ya Plastics
SCWCC File # 1413115

SCWCC

JUL 18 2016

INSURANCE &
MEDICAL SERVICE

Dear Mr. Duffield:

Enclosed is our firm check for \$20.00 - please furnish us a complete copy of the Commission file in this matter at your earliest opportunity.

Thank you for your continuing cooperation in this and other matters.

Very truly yours,

C. Daniel Vega
dvega@csa-law.com
Direct Dial: 803-509-5830

6935

CDV/ks
Enclosure

Barth, Ballenger & Lewis, LLP

ROA 0328

Attorneys At Law
205 North Irby Street
Post Office Box 107
Florence, South Carolina 29503
Phone: 843-662-6301
Fax: 843-664-8384
Web: bblawsc.com

Kevin M. Barth
E. Guy Ballenger
Nicholas W. Lewis
Brendan P. Barth

Michael Ballenger (Retired)

June 20, 2016

SC Workers' Compensation Commission
Claims Dept.
P.O. Box 1715
Columbia, SC 29202

Re: Stephen W. Evans v. Nan Ya Plastics
Case No. 1413115

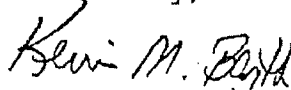
Dear Sir/Madam:

Enclosed herewith, please find an original and one copy of a Consent Order Relieving Counsel in regard to the above matter, along with the \$25.00 filing fee. Please forward the Order to the appropriate Commissioner for his or her consideration and filing and return the filed copy to me in the envelope provided for your convenience.

Should you have any questions or concerns, please do not hesitate to contact me or Christy with my office.

With best regards, I am

Sincerely,



Kevin M. Barth
kbarth@hbbh.net

KMB/chg
enclosure
cc: John C. Bruton, Jr.

315098

SCWCC
JUN 23 2016
JUDICIAL

ROA 0328

South Carolina Workers' Compensation Commission
1612 Marion St.
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1413115
Carrier File #: 002848-001824-WC-01
Carrier Code #: 00143
Employer EIN #: 22-3009119

Claimant's Name: STEPHEN EVANS SSN: - - 2885 Employer's Name: NAN-YA PLASTICS CORP. AMERICA
Address: 121 CLYDE MCGEE RD/ LOT 7 Address: 140 EAST BEULAH RD.
City: TIMMONSVILLE State: SC Zip: 29161 City: LAKE CITY State: SC Zip: 29560
Home Phone: (843) 731-7669 Work Phone: () - Insurance Carrier: Gallagher Bassett Services
Preparer's Name: Gail Bullock Law Firm: _____ Preparer's Phone #: (704) 405-6710

Date of injury: 9/4/2014 (m/d/yyyy)
(m/d/yyyy)

Date of Notice to Employer of Injury: 9/4/2014

I. **Payment of Temporary Compensation** Check one: ☒ Initial period ☐ Additional period ☐ Corrected compensation rate
(choose A, B, or C)

☒ A. Temporary Total at the compensation rate of \$563.59 per week. For this period of disability, disability began on 9/5/2014 (m/d/yyyy) and the date of first

payment was 9/24/2014 (m/d/yyyy).

☐ B. Temporary Partial at the compensation rate of \$_____ per week. Note: When the Temporary Partial compensation rate will vary, report the first payment here. Supplement this report throughout the period of Temporary Partial compensation by filing a **Form 15S** with the **Form 18**, which shall be filed six months after the date of injury and each six months thereafter until the file is closed.
For this period of disability, disability began on _____ (m/d/yyyy), and the date of first payment was _____ (m/d/yyyy).

Calculation of Temporary Partial Rate:

Average weekly wage before injury	\$
- Current weekly wage	\$
= Difference in wages before injury and now	\$ 0.00
x .5667	\$ 0.00
Temporary Partial Compensation Rate	\$ 0.00

☐ C. Salary in lieu of Temporary ☐ Total ☐ Partial (choose one) compensation in the amount of \$_____ per week. For this period of disability, disability began on _____ (m/d/yyyy) and the date of first payment of salary in lieu of temporary compensation was _____ (m/d/yyyy).

THIS SECTION MAY BE USED ONLY WITHIN 150 DAYS AFTER NOTICE TO EMPLOYER OF INJURY. ATTACH DOCUMENTATION AS TO THE REASON OF THE TERMINATION.

II. **Termination of Temporary Compensation** Temporary compensation payments were stopped on _____ (m/d/yyyy) for the following reason:

- ☐ Claimant has returned to work at least 15 days and no temporary partial compensation is due.
- ☐ Claimant agrees he/she is able to return to work and has signed a **Form 17**.
- ☐ Based on a good faith investigation, the claim is denied. Reason for denial: _____
- ☐ Claimant has been released to return to work without restrictions and employment has been offered.
- ☐ Claimant has been released to work at limited duty and employer has provided limited duty work consistent with the terms upon which the Employee has been released.
- ☐ Claimant has refused medical treatment, examination, or evaluation. Note: Benefits must be resumed if claimant accepts the treatment, examination, or evaluation. Additional report must be filed if compensation is resumed.

I certify that this form has been served on the claimant per R.67-211.

Signature of Claims Administrator _____

Date _____ (m/d/yyyy)

III. **Notice to Injured Worker or Legal Representative when Temporary Compensation Has Been Stopped:**

The employer's representative may stop temporary compensation within 150 days of the date of notice of injury for the above reasons. However, if you believe that the temporary compensation should not have been stopped, you may request a hearing by signing below and returning this form to SCWCC Judicial Department at the address at the top of this form. A hearing will be held within 60 days of receipt of your request to determine if temporary compensation has been properly terminated.

MY SIGNATURE BELOW INDICATES THAT I DO NOT AGREE WITH THE TERMINATION OF TEMPORARY COMPENSATION.
I REQUEST A HEARING TO DETERMINE WHETHER I AM ENTITLED TO FURTHER TEMPORARY COMPENSATION PAYMENTS.

Check one: **Form 15(II)** ☐ Has ☐ Has not been received.

Employer's representative must complete and file **Form 15** with Claims Department within ten days after compensation begins or is terminated. Employer's representative must serve the **Form 15** on the claimant when compensation begins per R.67-211. Employer's representative must prepare and serve **Form 20** within thirty days of beginning compensation per R.67-1003. Employer's representative must serve per R.67-211 two copies of the **Form 15** on claimant immediately on termination of compensation with documentation attached as to the reason for the termination. Injured worker may contest termination of compensation by completing section III of the **Form 15** and filing it with Judicial Department.

WCC Form # 15
Rev. 10/04

15

TEMPORARY COMPENSATION REPORT

ROA 0329

Part of the



ROA 0330

CHAPPELL, SMITH & ARDEN
ATTORNEYS AT LAW

Licensed to practice
in South Carolina,
North Carolina,
Georgia and the
District of Columbia

PO Box 12330
Columbia, SC 29211
803.929.3600
Fax 803.929.3604
800.531.9780

www.CSA-LAW.com

June 7, 2016

Ms. Sonji Spann
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Via Hand Delivery

Re: WCC File No.: 1413115
Employee: Stephen Evans, 1556 West Old No. 4, Scranton, SC 29591
Employee's Phone: (843) 373-0526
SSN #: 247-43-2885
Employer: Nan Ya Plastics, 140 E. Beulah Road, Lake City, SC
Insurance Carrier: New Hampshire Insurance Co.
Request for Hearing: No
Date of Incident: 9/4/2014
County of Incident: Florence
Nature of Incident: Claimant was crushed by industrial pneumatic door

Dear Ms. Spann:

Pursuant to Rule 67-206 and in accordance with §42-15-40, the purpose of this letter is to establish a claim prior to the running of the statute of limitations. Attached is a Form 50 filing this claim officially; however, this case is not yet ready for a hearing. We will request a hearing at the appropriate time if necessary.

By copy of this letter, I am notifying the insurance carrier of my representation and providing them with a copy of the Form 50 filing the claim.

RECEIVED

JUN 08 2016

Division of Claims
Claims Administrator
"C" Workers' Comp. Comm.

Very truly yours,

C. Daniel Vega
dvega@csa-law.com
Direct Dial: 803-509-5830

CDV/ks

Enclosure

cc: New Hampshire Insurance Co.
Stephen Evans
John C. Bruton, Jr.



WCC File #: 1413115
Carrier File #: **ROA 0331**
Carrier Code #:
Employer FEIN #:

Claimant's Name: Stephen Evans SSN: 247-43-2885 Employer's Name: Nan Ya Plastics
Address: 1556 West Old No. 4 Address: 140 E. Beulah Road
City: Scranton State: SC Zip: 29591 City: Lake City State: SC Zip:
Home Phone: (843) 373-0526 Work Phone: Insurance Carrier: New Hampshire Insurance Co.
Preparer's Name: C. Daniel Vega Law Firm: Chappell, Smith and Arden, PA Preparer's Phone #: 803-929-3600

- A claim for workers' compensation benefits is made based on the following grounds:** Date of Injury or Illness: 9/4/2014
- ☒ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction
1. The claimant sustained an injury to head, neck, back, shoulders, hips, knees, bladder (Part(s) of Body Injured) on 9/4/2014 (Month/Day/Year) in Florence county, state of SC. Body part(s) affected are: head, neck, back, shoulders, hips, knees, bladder
2. Briefly describe how the accident occurred: Claimant was crushed by industrial pneumatic door
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 9/4/2014 (Month/Day/Year) in the following manner:
- ☒ 7. Due to injury, the claimant is in need of (check one):
☐ (a) medical examination and treatment for:
☒ (b) additional medical examination and treatment for: head, neck, back, shoulders, hips, knees, bladder
- ☒ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: As provided for under the Act.
- ☒ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
☒ (1) General Disability: ☒ Total ☒ Partial ☐ (2) Specific Disability: ☐ Total ☐ Partial ☐ (3) Wage Loss
- ☐ 9a. ☐ A determination of permanent disability is premature at this time.
- ☐ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:
- 10a. At the time of the injury, the Claimant was paid weekly wages of , and demands accounting of days worked and wages earned as provided by law.
- 10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
Nan Ya Plastics
11. Further grounds or unusual aspects of claim:
Claimant reserves the right to amend the form 50.
- 11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
- 11b. To the best of your knowledge, did you have any prior permanent disability?
If yes, describe:
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- ☒ 13a. I am filing a claim. I am not requesting a hearing at this time. 14. Estimated time needed for hearing:
- ☐ 13b. I am requesting a hearing. A \$25 fee is required.
- ☐ Mediation
☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.
- Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to address on the day of 20, by ☒ first class postage ☐ certified mail ☐ personal service.

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

Preparer's Signature C. Daniel Vega Title Attorney vega@csa-law.com Date 6-7-16

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

JUN 08 2016

50
Division of Claims
Claims Administrator
Workers' Comp. Comm.

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

South Carolina Workers' Compensation Commission

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

ACC File #: **1413115**Carrier File #: **002848-001824-WC-01**Carrier Code #: **00143** **ROA 0332**Employer FEIN #: **223009119**Claimant's Name: STEPHEN EVANSEmployer's Name: NAN-YA PLASTICS CORP AMERICAAddress: 1556 W. OLD NO 4 HWYAddress: 140 EAST BEULAH ROADCity: SCRANTON State: SC Zip: 29591City: LAKE CITY State: SC Zip: 29560Home Phone: 843-858-1496

Work Phone: _____

Insurance Carrier: NEW HAMPSHIRE INSURANCE CO, LTDPreparer's Name: BRENDA GAY

Law Firm: _____

Preparer's Phone #: 704 405 66871. Date of injury: 9/4/2014
(m/d/yyyy)2. Total Weeks Compensation Paid: 78 weeks

3. Type of Compensation Paid (TP or TT)/Periods of Payment:

Type: TT From: 9/5/2014 To: 3/3/2016
(m/d/yyyy) (m/d/yyyy)Type: N/A From: _____ To: _____Type: N/A From: _____ To: _____4. Date of First Payment: 9/24/2014
(m/d/yyyy)

5. Total Amount Paid

(a) Compensation:

\$ 43960.02

(b) Medical (Include Nursing, Hospital, Drugs, Etc.):

\$ 41524.84

6. Informal Conference is Requested:

☐ Yes ☒ No (check one)

Use these lines to send a memo to the Commission:

Filing Form 18 to maintain file in compliance.BRENDA GAY

Employer's Representative

704 405 6687

Phone

3/3/2016

Date

Type or print all information. File this form six months after the alleged injury date and each six 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.

12/07/15
FILEID034191

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION R08
EDI DATED/UPDATED FIRST REPORT

CONTAINS ALL ITEMS REQUIRED BY OSHA FORM 101 (Enter all dates in MM/DD/YY format)

EMPLOYER: NAN-YA PLASTICS CORP AMERICA
140 EAST BEULAH ROAD
LAKE CITY, SC 29560

CARRIER CLAIM#: 002848001824WC01
SCWCC CLAIM#: 1413115 9999

ROA 0333

NAICS CODE: 326191
FED. TAX I.D. NO.: 223009119

INSURANCE NEW HAMPSHIRE INSURANCE CO, LT
CARRIER: AIGCS-WC Board Mail
PO BOX 27007
SHAWNEE MISSION, KS 66225-
CARRIER ID: 00143 CARRIER FEIN: 020172170

CLAIMS GALLAGHER BASSETT SERVICES INC
ADMIN: 8731 RED OAK BLVD
CHARLOTTE, NC 28217-4062

EMPLOYEE NAME (Last, First, Middle)
EVANS, STEPHEN

SOCIAL SECURITY NUMBER
247-43-2885

PHONE NO.
() -

ADDRESS: 1556 W. OLD NO 4 HWY
SCRANTON, SC 29591

DATE OF BIRTH: 02/02/1968

MARITAL STATUS:
MALE/FEMALE: M # DEPENDENT CHILDREN: 0

DATE OF HIRE: 02/13/12
OCCUPATION:

WAGE INFORMATION
RATE: \$845.34
FULL DAY PAY FOR DAY OF INJURY: N

WAGE PERIOD:

DATE RETURNED TO WORK:
DID SALARY CONTINUE: N

OCCURRENCE
PLACE OF ACCIDENT OR OCCURRANCE: 29560-7915

DATE OF INJ: 09/04/14

TIME OF INJ: 00:00 AM

EMPLOYER'S PREMISES: N LAST WORKDATE: DATE EMPLOYER NOTIFIED: 09/04/14

DESCRIBE NATURE OF INJURY OR ILLNESS IN DETAIL

CAUSE: 68 STATIONARY OBJECT
NATURE: 10 CONTUSION
LOCATION: 10 Multiple Head Injury

DESCRIBE EMPLOYEE'S ACTIVITIES WHEN INJURY OCCURED WITH DETAILS OF HOW EVENT OCCURED

MR. EVANS WAS WALKING FROM THE DTY PRODUCTION FLOOR TO THE YAC TO RETRIEVE
SOME MATERIAL. WHILE WALKING HE ATTEMPTED TO PASS THROUGH THE ROLL UP DOOR
AT THE SOUTH EAST CORNER OF DTY. AT THIS TIME THE DOOR WAS LOWERED DOWN ON
MR. EVANS. THE DOOR HIT HIM IN THE HEAD.

IF FATAL GIVE DATE OF DEATH:

** Amended **
ELECTRONIC FILING
TRADING PARTNER: Gallagher Bassett Services
Two Pierce Place
Itasca, IL 60143

ORIGINAL DATE SENT:

| |

<1>: <2>:
DATE PROCESSED: 12/07/15

11/23/15
FILEID033641

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION R08
EDI RATED/UPDATED FIRST REPORT

CONTAINS ALL ITEMS REQUIRED BY OSHA FORM 101 (Enter all dates in MM/DD/YY format)

EMPLOYER: NAN-YA PLASTICS CORP AMERICA
140 EAST BEULAH ROAD
LAKE CITY, SC 29560

CARRIER CLAIM#: 002848001824WC01
SCWCC CLAIM#: 1413115 9999

ROA 0334

NAICS CODE: 326191
FED. TAX I.D. NO.: 223009119

INSURANCE NEW HAMPSHIRE INSURANCE CO, LT
CARRIER: AIGCS-WC Board Mail
POB 305903
NASHVILLE, TN 37230-5903
CARRIER ID: 00143 CARRIER FEIN: 020172170

CLAIMS GALLAGHER BASSETT SERVICES INC
ADMIN: 8731 RED OAK BLVD
CHARLOTTE, NC 28217-4062

EMPLOYEE NAME (Last, First, Middle)
EVANS, STEPHEN

SOCIAL SECURITY NUMBER
247-43-2885

PHONE NO.
() -

ADDRESS: 1559 W. OLD NO 4 HWY
SCRANTON, SC 29591

DATE OF BIRTH: 02/02/1968

MARITAL STATUS:

MALE/FEMALE: M # DEPENDENT CHILDREN: 0

DATE OF HIRE: 02/13/12
OCCUPATION:

WAGE INFORMATION
RATE: \$845.34
FULL DAY PAY FOR DAY OF INJURY: N

WAGE PERIOD:

DATE RETURNED TO WORK:
DID SALARY CONTINUE: N

OCCURRENCE
PLACE OF ACCIDENT OR OCCURRANCE: 29560-7915

DATE OF INJ: 09/04/14

TIME OF INJ: 00:00 AM

EMPLOYER'S PREMISES: N LAST WORKDATE: DATE EMPLOYER NOTIFIED: 09/04/14

DESCRIBE NATURE OF INJURY OR ILLNESS IN DETAIL

CAUSE: 68 STATIONARY OBJECT
NATURE: 10 CONTUSION
LOCATION: 10 Multiple Head Injury

DESCRIBE EMPLOYEE'S ACTIVITIES WHEN INJURY OCCURED WITH DETAILS OF HOW EVENT OCCURED

MR. EVANS WAS WALKING FROM THE DTY PRODUCTION FLOOR TO THE YAC TO RETRIEVE
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AT THE SOUTH EAST CORNER OF DTY. AT THIS TIME THE DOOR WAS LOWERED DOWN ON
MR. EVANS. THE DOOR HIT HIM IN THE HEAD.

IF FATAL GIVE DATE OF DEATH:

** Amended **

ELECTRONIC FILING ORIGINAL DATE SENT:
TRADING PARTNER: Gallagher Bassett Services
Two Pierce Place
Itasca, IL 60143

<1>: <2>:
DATE PROCESSED: 11/23/15

||

CONTAINS ALL ITEMS REQUIRED BY OSHA FORM 101 (Enter all dates in MM/DD/YY format)

EMPLOYER: NAN-YA PLASTICS CORP AMERICA 140 EAST BEULAH ROAD LAKE CITY, SC 29560	CARRIER CLAIM#: 002848001824WC01 SCWCC CLAIM#: 1413115 9999	ROA 0335
NAICS CODE: 326191	FED. TAX I.D. NO.: 223009119	

INSURANCE NEW HAMPSHIRE INSURANCE CO, LT CARRIER: AIGCS-WC Board Mail POB 305903 NASHVILLE, TN 37230-5903 CARRIER ID: 00143 CARRIER FEIN: 020172170	CLAIMS GALLAGHER BASSETT SERVICES INC ADMIN: 8731 RED OAK BLVD CHARLOTTE, NC 28217-4062

EMPLOYEE NAME (Last, First, Middle) EVANS, STEPHEN	SOCIAL SECURITY NUMBER 247-43-2885	PHONE NO. () -
ADDRESS: 121 CLYDE MCGEE RD LOT 7 TIMMONSVILLE, SC 29161-7746	DATE OF BIRTH: 02/02/1968	MARITAL STATUS: MALE/FEMALE: M # DEPENDENT CHILDREN: 0

DATE OF HIRE: 02/13/12
OCCUPATION:

WAGE INFORMATION RATE: \$845.34 FULL DAY PAY FOR DAY OF INJURY: N	WAGE PERIOD:	DATE RETURNED TO WORK: DID SALARY CONTINUE: N

OCCURRENCE PLACE OF ACCIDENT OR OCCURRANCE: 29560-7915 EMPLOYER'S PREMISES: N LAST WORKDATE:	DATE OF INJ: 09/04/14	TIME OF INJ: 00:00 AM DATE EMPLOYER NOTIFIED: 09/04/14

DESCRIBE NATURE OF INJURY OR ILLNESS IN DETAIL

CAUSE: 68 STATIONARY OBJECT
NATURE: 10 CONTUSION
LOCATION: 10 Multiple Head Injury

DESCRIBE EMPLOYEE'S ACTIVITIES WHEN INJURY OCCURED WITH DETAILS OF HOW EVENT OCCURED

MR. EVANS WAS WALKING FROM THE DTY PRODUCTION FLOOR TO THE YAC TO RETRIEVE
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AT THE SOUTH EAST CORNER OF DTY. AT THIS TIME THE DOOR WAS LOWERED DOWN ON
MR. EVANS. THE DOOR HIT HIM IN THE HEAD.

IF FATAL GIVE DATE OF DEATH:

** Amended ** ELECTRONIC FILING TRADING PARTNER: Gallagher Bassett Services Two Pierce Place Itasca, IL 60143	ORIGINAL DATE SENT: DATE PROCESSED: 10/12/15



Claimant's Name: STEPHEN EVANS Employer's Name: NAN-YA PLASTICS CORP AMERICA
Address: 121 CLYDE MCGEE RD LOT 7 Address: 140 EAST BEULAH ROAD
City: TIMMONSVILLE State: SC Zip: 29161 City: LAKE CITY State: SC Zip: 29560
Home Phone: 843-731-7669 Work Phone: _____ Insurance Carrier: NEW HAMPSHIRE INSURANCE CO, LTD
Preparer's Name: BRENDA GAY Law Firm: _____ Preparer's Phone #: 704 405 6687

1. Date of injury: 9/4/2014 2. Total Weeks Compensation Paid: 51 weeks
(m/d/yyyy)

3. Type of Compensation Paid (TP or TT)/Periods of Payment:

Type:	(m/d/yyyy)	From:	(m/d/yyyy)	To:
<u>TT</u>		<u>9/5/2014</u>		<u>8/27/2015</u>
<u>N/A</u>		_____		_____
<u>N/A</u>		_____		_____

4. Date of First Payment: 9/24/2014
(m/d/yyyy)

5. Total Amount Paid (a) Compensation: \$ 28743.09
(b) Medical (Include Nursing, Hospital, Drugs, Etc.): \$ 24182.27

6. Informal Conference is Requested: ☐ Yes ☒ No (check one)

Use these lines to send a memo to the Commission: Filing Form 18 to maintain file in compliance.

BRENDA GAY 704 405 6687 8/28/2015
Employer's Representative Phone Date

Type or print all information. File this form six months after the alleged injury date and each six 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.

From: Christy Graves <christy@hbbh.net>
Sent: Thursday, August 20, 2015 2:32 PM
To: Morris, Tamara
Cc: jbruton@hsblawfirm.com
Subject: WCC# 1413115: Evans v. Nan Ya

This matter is scheduled for hearing on September 1, 2015. Please be advised that the parties have settled the issues raised in our Form 50 and we are therefore withdrawing same and asking that the hearing be canceled.

Thank you.

Christy Graves

Assistant to Kevin M. Barth
and Brendan P. Barth
Barth, Ballenger & Lewis
P.O. Box 107
Florence, SC 29503
(843)662-6301
(843)664-8384 fax

Confidentiality Notice This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (843-662-6301) or reply to this e-mail and delete all copies of this message. To ensure compliance with the requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including the attachments) is not intended or written to be used, for the purpose of (a) avoiding penalties under the Internal Revenue Code or (b) promoting, marketing or recommending to another party any transaction or tax-related matter[s]. To provide you with a communication that could be used to avoid penalties under the Internal Revenue Code will necessarily entail additional investigations, analysis and conclusions on our part. {BBHLLaw2013}

South Carolina Workers' Compensation Commission

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



WCC File #: 1413115 **ROA 0338**
Carrier File #: 002848001824WC01
July 7, 2015

NOTICE OF HEARING

STEPHEN EVANS v. NAN-YA PLASTICS CORP AMERICA

Subject: To determine issues as set forth on Forms 50 and 51.
Date: September 1, 2015 at 02:00 PM
Location: Southeastern Inst. of Manufacturing & Business Incubator, 1951 Pisgah Road,
Boardroom 102
Florence, SC 29501

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 Melody L. James
803-737-5668, tmorris@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: Tamara Morris, SC Workers' Compensation, July 7, 2015

Party

Employee: STEPHEN EVANS

Employer: NAN-YA PLASTICS CORP AMERICA
Carrier: New Hampshire Insurance Co

Attorney

Kevin Mitchell Barth
kbarth@hbbh.net
843-662-6301

John C. Bruton, Jr.
jbruton@hsblawfirm.com
803-779-3080

ROA 0338

ROA 0339

Haynsworth
Sinkler Boyd, PA

ATTORNEYS AND COUNSELORS AT LAW

1201 MAIN STREET, 22ND FLOOR (29201-3226)
POST OFFICE BOX 11889 (29211-1889)
COLUMBIA, SOUTH CAROLINA
TELEPHONE 803.779.3080
FACSIMILE 803.765.1243
WEBSITE www.hsblawfirm.com

JOHN C. BRUTON, JR.
EMAIL jbruton@hsblawfirm.com

June 24, 2015

SC Workers' Compensation Commission
Attention: Judicial Department
P.O. Box 1715
Columbia, SC 29202-1715

RE: *Stephen Evans v. Nan Ya Plastics*
WCC File No.: 1413115
Date of Accident: 09/04/2014
HSB File No.: 01973.0721

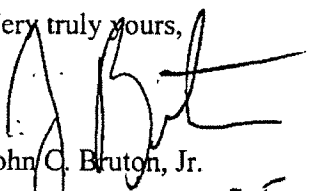
Dear Sir or Madam:

I am enclosing a duly executed Form 51, constituting the Answer of Nan Ya Plastics to the Form 50, in connection with the above-referenced workers' compensation claim, with the request that the same be filed with the other papers in this action.

By copy of this letter to the Claimant, I am serving a copy of our Answer, as required by the Rules of the Commission.

With kind regards, I remain

Very truly yours,


John C. Bruton, Jr.

JCBjrppl
Enclosure

cc: Kevin M. Barth, Esq. (w/encl.)

SCWCC
JUN 26 2015
JUDICIAL

South Carolina Workers' Compensation Commis.

1333 Main Street, Suite 500 • Post Office Box 1715

Columbia, South Carolina 29202-1715

(803) 737-5739 www.wcc.sc.govWCC File # **1413115**Carrier File #: **002848-000182-wc-01**

Carrier Code #:

Employer FEIN #:

ROA 0340Claimant's Name: Stephen Evans SSN: 247-43-2885Address: 121 Clyde McGee Rd., Lot 7City: Timmonsville State: SC Zip: 29161Home Phone: _____ Work Phone: () -Date of Injury: 9/4/14Employer's Name: Nan Ya Plastics CorporationAddress: 140 E. Beulah RdCity: Lake City State: SC Zip: 29560Insurance Carrier: Gallagher Bassett ServicesPreparer's Name: John C. Bruton, Jr. Law Firm: Haynsworth Sinkler Boyd, PA Preparer's Phone #: (803) 779-1243**Date of Injury or Illness: 9/4/14****Estimated time for hearing: One hour****Complete each information blank. Clearly specify when contentions are admitted in part and denied in part. The Employer/Carrier in answer to the claim, respectfully shows:**

1. It is ☒ Admitted ☐ Denied the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
Defendants admit accident occurred. Defendants deny extent of injury as claimed by employee.
2. It is ☒ Admitted ☐ Denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:

3. It is ☒ Admitted ☐ Denied the relationship of employer and employee existed at the time in question. The reasons for denial are:

4. It is ☒ Admitted ☐ Denied at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:

5. It is ☒ Admitted ☐ Denied notice of injury was given the employer. The reasons for denial are:

6. It is ☐ Admitted ☒ Denied the employee ☐ Needs ☒ **Is Entitled to Additional** medical care as a result of injury or illness. The reasons for denial are:
Medical care is being provided.
7. It is ☒ Admitted ☐ Denied the employee is entitled to temporary total disability for the period(s) of :
Temporary total disability is being provided.
8. It is ☐ Admitted ☒ Denied the employee is permanently disabled. The reasons for denial are:

9. It is ☐ Admitted ☒ Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ _____ applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐ b. Mediation is required pursuant to Reg. 67-1802.
- ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.**I verify the contents of this form are accurate and true to the best of my knowledge.**

Preparer's Signature

Attorney
Titleibruton@hsblawfirm.com
Email

Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.**WCC Form # 51**

Revised 07/13

51**Employer's Answer to Request for Hearing****ROA 0340**

CERTIFICATE OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A. do hereby certify that I have caused the foregoing to be served via U.S. mail, postage prepaid, *or by other delivery as indicated*, to all parties of record at the addresses shown below.

Document(s): Form 51 Employer's Answer to Request for Hearing

Parties of Record

Kevin M. Barth, Esq.
Barth, Ballenger & Lewis
P.O. Box 107
205 North Irby Street, Florence, SC (29501)
Florence, SC 29503

HAYNSWORTH SINKLER BOYD, P.A.

By: *Pamela G. Ledbetter*
Pamela G. Ledbetter
Legal Secretary

June 24, 2015

Barth, Ballenger & Lewis, LLP

ROA 0342

Attorneys At Law
205 North Irby Street
Post Office Box 107
Florence, South Carolina 29503
Phone: 843-662-6301
Fax: 843-664-8384
Web: bbhlawfirm.com

Kevin M. Barth
E. Guy Ballenger
Nicholas W. Lewis
Brendan P. Barth

Michael Ballenger (Retired)

June 8, 2015

SC Workers' Compensation Commission
Division of Claims
P.O. Box 1715
Columbia, SC 29202

Re: Stephen W. Evans v. Nan Ya Plastics
Case No. 1413115

Dear Sir/Madam:

Enclosed herewith, please find my Form 50 requesting a hearing in regard to the above matter, along with the appropriate filing fee.

By copy of this letter, I am serving the Form 50 on John C. Bruton, Jr., attorney for the employer/carrier.

With best regards, I am

Sincerely,

Kevin M. Barth

Kevin M. Barth
kbarth@hbbh.net

KMB/chg
enclosure
cc: John C. Bruton, Jr.

0211
SCWCC
JUN 12 2015
JUDICIAL

7-8
ROA 0342

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500 • Post Office Box 1715

Columbia, South Carolina 29202-1715

(803) 737-5723 www.wcc.sc.govWCC #: **1413115**

Carrier File #:

Carrier Code #:

ROA 0343

Employer FEIN #:

Claimant's Name: Stephen Evans SSN: 247-43-2885Employer's Name: Nan Ya PlasticsAddress: 121 Clyde McGee Rd., Lot 7Address: 140 E. Beulah Rd.City: Timmonsville State: SC Zip: 29161City: Lake City State: SC Zip: 29560

Home Phone: () - Work Phone: () -

Insurance Carrier:

Preparer's Name: Kevin M. BarthLaw Firm: Barth, Ballenger & Lewis,
LLPPreparer's Phone #: (843) 662 - 6301**A claim for workers' compensation benefits is made based on the following grounds:****Date of Injury or Illness:**☒ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction1. The claimant sustained an injury to head, neck, back, bladder (Part(s) of Body Injured) on 9/4/14 (Month/Day/Year) in Florence county, state of SC.2. Body part(s) affected are: head, neck, back, bladderBriefly describe how the accident occurred: Claimant was struck on the head by an overhead door

3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.

4. The relationship of employer and employee existed at the time of injury.

5. At the time of the injury the claimant was performing services arising out of and in the course of employment.

6. Notice of the accidental injury was given to the Employer on 9/4/14 (Month/Day/Year) in the following manner:
Supervisor notified personally.

7. Due to injury, the claimant is in need of (check one):

☐ (a) medical examination and treatment for: _____☒ (b) additional medical examination and treatment for: neck, back, head and bladder8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
TBD

9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

☐ (1) General Disability: ☐ Total ☐ Partial☐ (2) Specific Disability: ☐ Total ☐ Partial☐ (3) Wage Loss9a. ☒ A determination of permanent disability is premature at this time.

10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

10a. At the time of the injury, the Claimant was paid weekly wages of \$ 845.34, and demands accounting of days worked and wages earned as provided by law.10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
None.

11. Further grounds or unusual aspects of claim:

Claimant's is owed one week of TTD that was missed due to a clerical error in late March/early April 2015. Claimant's attorney has repeatedly requested that he be paid for this week, but he has not received that payment. Likewise, Claimant's attorney submitted his mileage reimbursement request to the adjuster for payment on April 17, 2015 and claimant has not received that payment after repeated requests.11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Dr. Timothy R. Wagner, 330 Mercy Street, Lake City, SC 29560, Dr. Anthony Alexander, 901 E. Cheves Street, Ste. 100, Florence, SC 29506, Dr. Peter O'Kelly, 805 Pamplico Highway, Ste. B310, Florence, SC 29505.11b. To the best of your knowledge, did you have any prior permanent disability? _____
If yes, describe: _____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☐ 13a. I am filing a claim. I am not requesting a hearing at this time.14. Estimated time needed for hearing: 30 minutes☒ 13b. I am requesting a hearing. A \$25 fee is required.☐ **Mediation**☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.☐ b. Mediation is required pursuant to Reg. 67-1802.☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.Questions regarding mediation may be submitted to mediation@wcc.sc.gov.I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to John C. Bruton, Jr., address P.O. Box 11889, Columbia, SC 29211 on the 8th day of June 2015 by ☒ first class postage ☐ certified mail ☐ personal service.

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

Preparer's Signature:

Attorney for Claimant
Titlekbarth@hbbh.net
EmailJune 8, 2015
Date

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

WCC Form # 50
Revised 7/13ROA 0343
50Employee's Notice of Claim and/or
Request for Hearing

Barth, Ballenger & Lewis, LLP

ROA 0344

Attorneys At Law
205 North Irby Street
Post Office Box 107
Florence, South Carolina 29503
Phone: 843-662-6301
Fax: 843-664-8384
Web: bbhlawfirm.com

Kevin M. Barth
E. Guy Ballenger
Nicholas W. Lewis
Brendan P. Barth

Michael Ballenger (Retired)

March 9, 2015

SC Workers' Compensation Commission
Judicial Dept.
P.O. Box 1715
Columbia, SC 29202

Re: Stephen W. Evans v. Nan Ya Plastics
Case No. 1413115

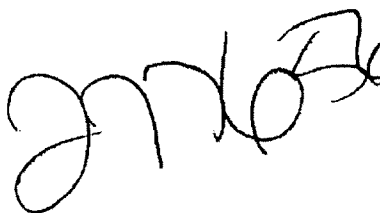
Dear Sir/Madam:

Enclosed herewith, please find an original and one copy of an Order Substituting Counsel in regard to the above matter, along with the \$25.00 filing fee. Please forward the Order to the appropriate Commissioner for his or her consideration and filing and return the filed copy to me in the envelope provided for your convenience.

Should you have any questions or concerns, please do not hesitate to contact me or Christy with my office.

With best regards, I am

Sincerely,


Kevin M. Barth
kbarth@hbbh.com

KMB/chg
enclosure

REC-11
MAR 14 2015
JUDICIAL

ROA 0344

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File No. 1413115

Stephen W. Evans,
Claimant,

V.

Nan Ya Plastics,

Employer,

and

Gallagher Bassett Services,

Carrier.

ORDER SUBSTITUTING COUNSEL

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Shawn Debruhl on March 31, 2015

The above-entitled action is presently pending before the South Carolina Workers' Compensation Commission.

The Employee/Claimant was heretofore represented by Gerald Malloy.

It now appears that the Employee/Claimant no longer desires the services of Gerald Malloy in this matter and desires to retain the service of Kevin M. Barth, Esquire, it is therefore, based on the above and with the consent of all parties signing below,

ORDERED, ADJUDGED AND DECREED that Gerald Malloy be released as counsel for the Employee/Claimant, Stephen W. Evans, and from further representation in this matter, and that Kevin M. Barth be, and hereby is, substituted as attorney for Employee/Claimant.


T. Scott Beck, Commissioner

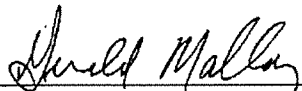
March 31, 2015

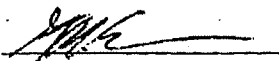
ON COMMISSION

January 06, 2015

WE CONSENT:


Kevin M. Barth


Gerald Malloy


Stephen W. Evans

State of South Carolina

1333 Main St, Suite 500
P.O. Box 1715
Columbia, S.C. 29202-1715



ROA 0346

Tel: (803) 737-5700
Fax: (803) 737-1281
www.wcc.sc.gov

Workers' Compensation Commission

March 5, 2015

Kevin Mitchell Barth
Attorney at Law
P O Box 107
Florence, SC 29503

Carrier Code No. 00143

Carrier File No. 002848001824WC01

Re: WCC File No. 1413115
STEPHEN EVANS v. NAN-YA PLASTICS CORP AMERICA
Date of Injury: 09/04/2014

The enclosed Motion is being returned for the following reason(s):

Effective December 16, 2013; a \$25 filing fee must accompany each request for Relief of Counsel.

Please complete and resubmit with the necessary changes.

Sincerely,

Robin R. Strama
Administrative Assistant
803-737-5740

ROA 0346

State of South Carolina

1333 Main St, Suite 500
P.O. Box 1715
Columbia, S.C. 29202-1715



ROA 0347

Tel: (803) 737-5700
Fax: (803) 737-1281
www.wcc.sc.gov

Workers' Compensation Commission

March 5, 2015

Gerald Malloy
Malloy Law Firm
P O Box 1200
HARTSVILLE, SC 29551

Carrier Code No. 00143

Carrier File No. 002848001824WC01

Re: WCC File No. 1413115
STEPHEN EVANS v. NAN-YA PLASTICS CORP AMERICA
Date of Injury: 09/04/2014

The enclosed Motion is being returned for the following reason(s):

Effective December 16, 2013; a \$25 filing fee must accompany each request for Relief of Counsel.

Please complete and resubmit with the necessary changes.

Sincerely,

Robin R. Strama
Administrative Assistant
803-737-5740

ROA 0347

State of South Carolina

1333 Main St, Suite 500
P.O. Box 1715
Columbia, S.C. 29202-1715



ROA 0348

Tel: (803) 737-5700
Fax: (803) 737-1281
www.wcc.sc.gov

Workers' Compensation Commission

March 5, 2015

S.C.W.C.C. File Copy

Carrier Code No. 00143
Carrier File No. 002848001824WC01

Re: WCC File No. 1413115
STEPHEN EVANS v. NAN-YA PLASTICS CORP AMERICA
Date of Injury: 09/04/2014

The enclosed Motion is being returned for the following reason(s):

Effective December 16, 2013; a \$25 filing fee must accompany each request for Relief of Counsel.

Please complete and resubmit with the necessary changes.

Sincerely,

Robin R. Strama
Administrative Assistant
803-737-5740

ROA 0348

From: Bruton, John <jbruton@hsblawfirm.com>
Sent: Wednesday, December 10, 2014 12:29 PM
To: Boyd, Elaine; Gerald Malloy; Greta Elliotte
Subject: RE: 1413115 Evans

Sounds good. I'll send you a proposed consent order.

Thanks.

From: Boyd, Elaine [<mailto:EBoyd@wcc.sc.gov>]
Sent: Wednesday, December 10, 2014 12:25 PM
To: Bruton, John; Gerald Malloy; Greta Elliotte
Subject: RE: 1413115 Evans

I will take it off the docket for tomorrow, but the Commissioner will need a consent order for that.

Thanks!!

From: Bruton, John [<mailto:jbruton@hsblawfirm.com>]
Sent: Wednesday, December 10, 2014 12:22 PM
To: Boyd, Elaine; Gerald Malloy; Greta Elliotte
Subject: RE: 1413115 Evans

Elaine,

Thanks for the email.

I just got off the telephone with claimant's attorney Gerald Malloy and we have agreed that we do not need to go forward with the hearing tomorrow. The hearing was set based upon the employer (my client) filing a Form 15 terminating TTD payments to which the claimant did not agree.

Within the last week the employer received some additional information on this claim (which we did not previously have) in which we learned a treating physician has been holding the claimant out of work. As a result, the employer has now agreed to start the claimant back on weekly TTD checks and also issue a check to catch up his past TTD that had been stopped over the last 4-5 weeks.

Please let me know if you need any additional information. Thanks for your help.

John Bruton
803.540.7861

From: Boyd, Elaine [<mailto:EBoyd@wcc.sc.gov>]
Sent: Wednesday, December 10, 2014 11:15 AM
To: Bruton, John; Gerald Malloy; Greta Elliotte
Subject: 1413115 Evans
Importance: High

I am just double checking that this case is still going forward tomorrow at 9:30 in Florence.

Please let me know.

ROA 0350

CONFIDENTIAL & PRIVILEGED

The preceding email message, including any attachments, may be confidential and/or protected by the attorney-client or other applicable privileges. It is intended for the sole use of the individual or entity named above. If the reader of this transmission is not the intended recipient, please notify the sender immediately and destroy any copies, electronic, paper or otherwise, that you may have of this communication. Any unauthorized review, use, disclosure or distribution is strictly prohibited and may be unlawful.

CONFIDENTIALITY NOTICE: *This e-mail and any files transmitted with it are confidential and may contain information which is legally privileged or otherwise exempt from disclosure. They are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this message in error, please immediately notify the sender and delete this message immediately from your computer. Any other use, retention, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited.*

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

STEPHEN EVANS)
Employee/Claimant,)
)
vs.)
)
NAN YA PLASTICS CORPORATION,)
Employer)
and)
)
GALLAGHER BASSETT,)
Carrier.)
)
Defendants.)
_____)

CONSENT ORDER
WCC File No.: 1413115

THIS MATTER was scheduled to be heard before the undersigned Commissioner on December 11, 2014, upon the filing of a S.C. Workers' Compensation Form 15. Claimant is represented by Gerald Malloy and the Defendants are represented by John C. Bruton, Jr. Prior to the scheduled hearing, the parties advised the Commission that an agreement had been reached regarding the issues presented for determination at the hearing. The parties now desire the agreement to be embodied into a Consent Order of the Commission. Therefore, the agreement of the parties is as follows:

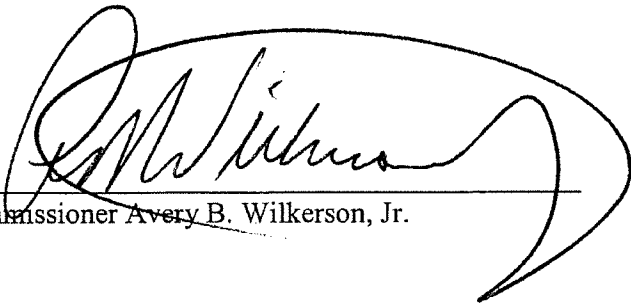
1. The South Carolina Workers' Compensation Commission has jurisdiction over the parties and subject matter of this claim.
2. The Employer/Carrier has agreed to re-start the weekly temporary total disability payments to Claimant and bring current the amount of payments not made during the time period the payments were stopped.
3. Accordingly, the parties agree that this claim will be returned to the general files until such time as a hearing request by letter or pleading is made by either party.

NOW, THEREFORE, on joint motion of Gerald Malloy, attorney for the Claimant, and John C. Bruton, attorney for the Defendants, it is

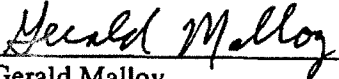
HEREBY ORDERED, ADJUDGED AND DECREED that the agreement of the parties as set forth above is hereby adopted as an Order of this Commission as if fully set forth herein.

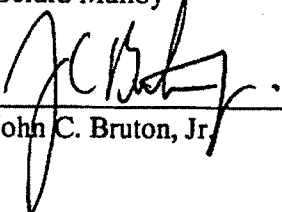
IT IS SO ORDERED.

December __, 2014


Commissioner Avery B. Wilkerson, Jr.

We consent:


Gerald Malloy


John C. Bruton, Jr.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By eboyd on January 7, 2015

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

ONE NORTH MAIN, 2ND FLOOR (29601-2772)
POST OFFICE BOX 2048 (29602-2048)
GREENVILLE, SOUTH CAROLINA
TELEPHONE 864.240.3200
FACSIMILE 864.240.3300
WEBSITE www.hsblawfirm.com

JOHN C. BRUTON, JR.
DIRECT DIAL NUMBER 803.540.7861
EMAIL jbruton@hsblawfirm.com

December 2, 2014

Via eCase

Commissioner Avery B. Wilkerson, Jr.
SC Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

Re *Stephen Evans v. Nan Ya Plastics*
WCC File No.: 1414115
Date of Accident: 9/04/14
HSB File No.: 01973.0721

Dear Commissioner Wilkerson:

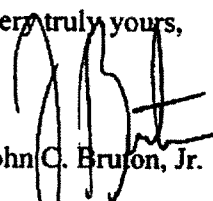
I represent the Employer/Carrier in regard to the above matter.

Enclosed herewith for filing is an original and one copy of Form 58 Pre-Hearing Brief and Notice of Witnesses and Written Report(s)/Physician or Other Evidence on Behalf of Employer/Carrier.

By copy of this letter I am providing Gerald Malloy, Esquire, Claimant's attorney a copy of the same as required by the Rules and Regulations of the Commission, together with copies of the submissions under the Administrative Procedures Act.

With kind regards, I remain

Very truly yours,



John C. Bruton, Jr.

JCBjt/pgl
Enclosures

cc: Gerald Malloy, Esq. (w/encl. via email)



Claimant's Name: Stephen Evans

Employer's Name: Nan Ya Plastics Corporation

Address: 121 Clyde McGee Road, Lot 7

Address: 140 E. Beulah Road

City: Timmonsville State: SC Zip: 29161

City: Lake City State: SC Zip: 29560

Home Phone: 843-845-4842 Work Phone: () -

Carrier: New Hampshire Insurance Company

Preparer's Name: John C. Bruton, Jr., Esq.,

Preparer's Phone #: (803) 779-3080

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$563.00 2. AWW: \$845.34 Date of Injury: 9/04/14
3. Type of injury and body part(s): Neck and back; alleged bladder, urethral tear
4. Facts in controversy: Employer's termination of TTD pursuant to WCC Form 15 as Employee was released to light duty and Employer had light duty work available consistent with the terms upon which Employee had been released.
5. Legal issues involved: same
6. Unusual aspects: _____
7. Witnesses (designate if expert): Adrian Harris; Dana Welch; Claimant's supervisor; Claimant's co-worker
8. Exhibits: Letters to Employee from Employer; Photographs
9. Medical evidence (Indicate report pursuant to R.67-612; deposition or appearance): Reports pursuant to R. 67-612. All medical records not yet received.
10. Name, address, and specialty, if any, of the treating physician: Dr. Anthony Alexander, 901 E. Cheves St., Suite 100, Florence, SC 29506, Orthopedic; Dr. Peter O'Kelly, 805 Pamplico Hwy., Medical Mail B., Suite 310, Florence, SC, 29505, Urologist;
11. Impairment rating(s); body part(s); physician and date of opinion: None
12. I am amending my Form 50/51 in the following manner: _____

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐ b. Mediation is required pursuant to Reg. 67-1802.
- ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Gerald Malloy, Esquire at

Address P.O. Box 1200, Hartsville, SC 29551 on the _____ day of December, 2014 by: ☐ first class postage ☐ certified mail ☐ personal service ☒ email.

Signature: [Signature]
Date of hearing: December 11, 2014

Email: jbruton@hsblawfirm.com

Time needed for hearing: 60 minutes

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

WCC Form # 58
Revised 7/13

58

PRE-HEARING BRIEF

STATE OF SOUTH CAROLINA
BEFORE THE WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 1413115

Stephen Evans

Employee/Claimant,

vs.

Nan Ya Plastics,

Employer,

Gallagher Bassett Services,

Carrier,

Defendants.

**NOTICE OF WITNESSES AND WRITTEN
REPORT(S)/PHYSICIAN OR OTHER
EVIDENCE ON BEHALF OF
EMPLOYER/CARRIER**

**TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
GERALD MALLOY, ESQUIRE, ATTORNEY FOR CLAIMANT**

YOU ARE HEREBY NOTIFIED THAT THE Employer/Carrier, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330 (1976, as amended), herewith submits the following reports/physician or other evidence on behalf of the Employer/Carrier, to wit:

TAB NO.	NAME OF REPORT(S) / PHYSICIAN	DATE OF REPORT(S)	PAGE NUMBERS
3.	Anthony Alexander, M.D., Pee Dee Orthopaedics	10-7-14	38
4.	Letter from Nan Ya Plastics to Stephen Evans with attached return to work note from Dr. O'Kelly	10-29-14	39-40
5.	Photographs of area where accident occurred		41-42

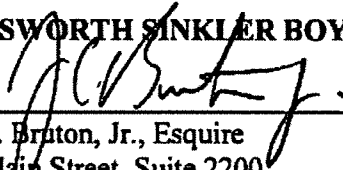
YOU ARE FURTHER NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the deposition(s) of any of the physicians or other person(s), whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred herein, or photocopies received from said physicians/others, shall be filed with the Commissioner, for

insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Employer/Carrier.

YOU ARE FURTHER NOTIFIED, that the following witnesses may be called on behalf of the Employer/Carrier: Adrian Harris; Dana Welch; Claimant's Supervisor; Claimant's Co-worker.

HAYNSWORTH SINKLER BOYD, P.A.

By: 

John C. Bruton, Jr., Esquire

1201 Main Street, Suite 2200

Post Office Box 11889 (29211-1889)

Columbia, South Carolina 29201

(803) 779.3080 telephone

(803) 765.1243 fax

Email Address: jbruton@hsblawfirm.com

Date: December 2, 2014

Attorneys for Employer and Carrier

STATE OF SOUTH CAROLINA
BEFORE THE WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 1413115

Stephen Evans

Employee/Claimant,

vs.

CERTIFICATE OF SERVICE

Nan Ya Plastics,

Employer,

Gallagher Bassett Services,

Carrier,

Defendants.

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have caused the foregoing to be served via U.S. mail, postage prepaid, or by other delivery as indicated, to all parties of record at the addresses shown below.

Document(s): Form 58 Pre-Hearing Brief and Notice of Witnesses and Written Report(s)/Physician or Other Evidence on Behalf of Employer/Carrier

Parties of Record

Gerald Malloy
Post Office Box 1200
Hartsville, SC 29551
Attorney for Claimant

HAYNSWORTH SINKLER BOYD, P.A.

By: *Parneel B Ledbetter*

Date: December 2, 2014

GERALD MALLOY

ATTORNEY AT LAW

108 CARGILL WAY
HARTSVILLE, SOUTH CAROLINA 29550

TELEPHONE (843) 339-3000
FASCIMILE (843) 332-4646
EMAIL: GMALLOY@BELLSOUTH.NET

POST OFFICE BOX 1200
HARTSVILLE, SOUTH CAROLINA 29551

November 26, 2014

Commissioner Avery B. Wilkerson
S.C. WORKERS' COMPENSATION COMMISSION
1333 Main Street, Suite 500
Columbia, South Carolina 29201

Re: Stephen Evans v. Nan Ya Plastics
WCC File No.: 1413115
Date of Accident: 9-4-14

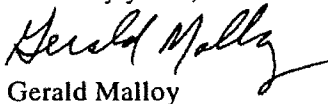
Dear Commissioner Wilkerson:

Enclosed please find Claimant's Pre-Hearing Brief and Notice of Witnesses and Written Medical Reports for filing in the above captioned matter.

By copy of this letter to John Bruton, Esquire, attorney for the Employer/Carrier, I am notifying him of these submissions and serving copies of the same upon him by mail.

With kind regards, I am,

Sincerely yours,


Gerald Malloy

GM/gre
Enclosure

cc: John C. Bruton, Jr., Esquire
Haynsworth Sinkler Boyd, P.A.
Post Office Box 11889
Columbia, South Carolina 29211-1889

RECEIVED

DEC 01 2014

S.C. WORKER'S COMP COMM
Commissioner Wilkerson



Claimant's Name: Stephen Evans
Address: 121 Clyde McGee Road, Lot 7
City: Timmonsville State: SC Zip: 29161
Home Phone: (843) 845-4841 Work Phone: () -
Preparer's Name: Gerald Malloy

Employer's Name: Nan-Ya Plastics
Address: 140 E. Baulah Road
City: Lake City State: SC Zip: 29560
Carrier: New Hampshire Insurance Co.
Preparer's Phone #: (843) 339-3000

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$563.00 2. AWW: \$845.34 Date of Injury: 9-4-14
3. Type of injury and body part(s): Back, urethral tear, bladder, head
4. Facts in controversy: 1. Whether or not Claimant has been released to work at limited duty 2. Whether or not termination of Claimant's Benefits was proper
5. Legal issues involved: _____
6. Unusual aspects: Employer terminated Claimant's benefits even though Claimant has not been released by all treating physicians to return to work
7. Witnesses (designate if expert):* 1. Claimant 2. Tara Evans (claimant's wife) 3. Dr. Peter O'Kelley
8. Exhibits: 1. Medical Report of Dr. Peter O'Kelley 2. Report of Carolinas Hospital System
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
1. Medical Report of Dr. Peter O'Kelley 2. Medical Records of Carolinas Hospital System
ALL MEDICAL RECORDS NOT RECEIVED YET
10. Name, address, and specialty, if any, of the treating physician: 1. Dr. Timothy Wagner, 300 Mercy St., Lake City, SC 29560, Orthopedic;
2. Dr. Peter O'Kelley, 805 Pamplico Highway, Medical Mall B, Suite 310, Florence, SC 29505, Urologist; 3. Dr. Anthony Alexander, 901 E. Cheves
St., Suite 100, Florence, SC 29506, Orthopedic.
11. Impairment rating(s); body part(s); physician and date of opinion: Not applicable at this time.
12. I am amending my Form 50/51 in the following manner: _____

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to John Bruton, Esquire, P.O. Box 11889, Columbia, SC 29211 on the 26th day of November 2014 by: ☒ first class postage ☐ certified mail ☐ personal service.

Signature: Gerald Malloy
Date of hearing: December 11, 2014

Email: gmalloy@bellsouth.net
Time needed for hearing: 30 min.

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1413115

STEPHEN EVANS,

Employee,

Claimant,

vs.

NAN-YA PLASTICS

Employer,

AND

NEW HAMPSHIRE INSURANCE CO.,

Carrier,

Defendants.

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

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
JOHN BRUTON, ESQUIRE:

YOU ARE NOTIFIED that the Claimant, pursuant to the provisions of the South
Carolina Workers' Compensation Act and Section 1-23-330 of the South Carolina Code of Laws
(Cum. Supp. 1988) submit the following medical records and other documents as evidence:

APA #:	MEDICAL PROVIDER:	DATES:	PAGES:
1.	Carolinas Hospital System	9-24-14 – 9-26-14	1 - 19
2.	Dr. Peter O'Kelley	9-24-14 – 11-2-14	20 - 37

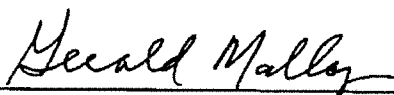
YOU ARE FURTHER NOTIFIED that you have the right to cross-examine or otherwise
oppose this evidence and, should you desire to exercise this right, you are to promptly schedule
the deposition of any provider whose records are submitted, for the purposes of cross-

examination, or otherwise promptly submit opposing medical records into evidence.

YOU ARE FURTHER NOTIFIED that these records, or photocopies of the same, will be provided to the South Carolina Workers' Compensation Commission for insertion in their file and for consideration as evidence on behalf of the Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant: 1. Claimant 2. Tara Evans 3. Dr. Peter O'Kelly.

MALLOY LAW FIRM



GERALD MALLOY
Post Office Box 1200
Hartsville, South Carolina 29551
843-339-3000
Attorney for Claimant

Hartsville, South Carolina
25 day of November, 2014

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1413115

STEPHEN EVANS,

Employee,

Claimant,

vs.

NAN YA PLASTICS,

Employer,

AND

NEW HAMPSHIRE INSURANCE CO.,

Carrier,

Defendants.

CERTIFICATE
OF
SERVICE

The undersigned certifies that she is an employee at MALLOY LAW FIRM, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of the same in the United States Mail, postage prepaid, addressed to:

John C. Bruton, Esquire
Haynsworth Sinkler Boyd, P.A.
Post Office Box 11889
Columbia, SC 29211-1889

Commissioner Avery B. Wilkerson
SC WCC
1333 Main Street, Suite 500
Columbia, SC 29201

Claimant's Pre-Hearing Brief and Notice of Witnesses and Written Medical Reports
Date Mailed: November 26, 2014


Greta Elliotte, Paralegal

South Carolina Workers' Compensation Commission

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



WCC File #: 1413115 **ROA 0363**
Carrier File #: 002848001824WC01
November 21, 2014

NOTICE OF HEARING

STEPHEN EVANS v. NAN-YA PLASTICS CORP AMERICA

Subject: To determine if claimant's temporary compensation was legally terminated.
Date: December 11, 2014 at 09:30 AM
Location: Southeastern Inst. of Manufacturing & Business Incubator, 1951 Pisgah Road,
Boardroom 102
Florence, SC 29501

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 Avery B. Wilkerson Jr.
803-737-5697, eboyd@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: Elaine Boyd, SC Workers' Compensation, November 21, 2014

Party

Employee: STEPHEN EVANS

Attorney

Gerald Malloy
gmalloy@bellsouth.net
843-339-3000

Employer: NAN-YA PLASTICS CORP AMERICA
Carrier: New Hampshire Insurance Co

John C. Bruton, Jr.
jbruton@hsblawfirm.com
803-779-3080

ROA 0363

GERALD MALLOY
ATTORNEY AT LAW

105 CARGILL WAY
HARTSVILLE, SOUTH CAROLINA 29550

TELEPHONE (843) 339-3000
FASCIMILE (843) 332-4646
EMAIL: G.MALLOY@REILSOUTH.NET

POST OFFICE BOX 1200
HARTSVILLE, SOUTH CAROLINA 29551

November 13, 2014

Amy Bracey
SC Workers' Compensation Commission
Judicial Department
Post Office Box 1715
Columbia, SC 29202-1715

Re: Stephen Evans vs. Nan-Ya Plastics
WCC File #: 1413115

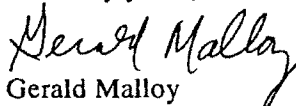
Dear Ms. Bracey:

Enclosed please find WCC Form 15, Employee's Request for Hearing regarding the termination of Temporary Compensation Payments and attached Certificate of Service. By copy of this letter, I am providing John Bruton, Jr., attorney for the Employer/Carrier, with a copy of the same.

Please do not hesitate to contact me should you have any questions regarding this matter.

With kind regards, I am,

Sincerely yours,


Gerald Malloy

GM/gre
Enclosure

5348

cc: John Bruton, Jr., Esquire
Haynsworth, Sinkler Boyd, PA
Post Office Box 11889
Columbia, SC 29211-1889

Stephen Evans
121 Clyde McGee Road, Lot 7
Timmons ville, SC 29161

267979

SCWCC
NOV 14 2014
JUDICIAL

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1413115

Carrier File #: 00284800182WC01

Carrier Code #: ROA 0365

Employer FEIN #:

Claimant's Name: Stephen Evans

Employer's Name: Nan-Ya Plastics

Address: 121 Clyde McGee Road, Lot 7

Address: 140 E. Beulah Rd

City: Timmons ville State: SC Zip: 29161-7746

City: Lake City State: SC Zip: 29560

Home Phone: 803-731-7669

Work Phone: ()

Insurance Carrier: New Hampshire Insurance Co.

Preparer's Name: John C. Bruton, Jr.

Law Firm: Haynsworth Sinkler Boyd, P.A.

Preparer's Phone #: 803-779-3080

Date of Injury: 09/04/14

Date of Notice to Employer of Injury: 09/04/2014

I. Payment of Temporary Compensation Check one: ☐ Initial period ☐ Additional period ☐ Corrected compensation rate
(choose A, B, or C)

- ☐ A. Temporary Total at the compensation rate of \$_____ per week. For this period of disability, disability began on _____ (m/d/yyyy) and the date of first payment was _____ (m/d/yyyy).
- ☐ B. Temporary Partial at the compensation rate of \$_____ per week. Note: When the Temporary Partial compensation rate will vary, report the first payment here. Supplement this report throughout the period of Temporary Partial compensation by filing a Form 15S with the Form 18, which shall be filed six months after the date of injury and each six months thereafter until the file is closed. For this period of disability, disability began on _____ (m/d/yyyy), and the date of first payment was _____ (m/d/yyyy).

Calculation of Temporary Partial Rate:

Average weekly wage before injury	\$
- Current weekly wage	\$
= Difference in wages before injury and now	\$ 0.00
x .6667	\$ 0.00
Temporary Partial Compensation Rate	\$ 0.00

- ☐ C. Salary in lieu of Temporary ☐ Total ☐ Partial (choose one) compensation in the amount of \$_____ per week. For this period of disability, disability began on _____ (m/d/yyyy) and the date of first payment of salary in lieu of temporary compensation was _____ (m/d/yyyy).

THIS SECTION MAY BE USED ONLY WITHIN 150 DAYS AFTER NOTICE TO EMPLOYER OF INJURY. ATTACH DOCUMENTATION AS TO THE REASON OF THE TERMINATION.

II. Termination of Temporary Compensation Temporary compensation payments were stopped on 10/31/14 (m/d/yyyy) for the following reason:

- ☐ Claimant has returned to work at least 15 days and no temporary partial compensation is due.
- ☐ Claimant agrees he/she is able to return to work and has signed a Form 17.
- ☐ Based on a good faith investigation, the claim is denied. Reason for denial: _____
- ☐ Claimant has been released to return to work without restrictions and employment has been offered.
- ☒ Claimant has been released to work at limited duty and employer has provided limited duty work consistent with the terms upon which the Employee has been released.
- ☐ Claimant has refused medical treatment, examination, or evaluation. Note: Benefits must be resumed if claimant accepts the treatment, examination, or evaluation. Additional report must be filed if compensation is resumed.

I certify that this form has been served on the claimant per R.67-211.

Signature of Claims Administrator

Date 11/7/14 (m/d/yyyy)

III. Notice to Injured Worker or Legal Representative when Temporary Compensation Has Been Stopped:

The employer's representative may stop temporary compensation within 150 days of the date of notice of injury for the above reasons. However, if you believe that the temporary compensation should not have been stopped, you may request a hearing by signing below and returning this form to SCWCC Judicial Department at the address at the top of this form. A hearing will be held within 60 days of receipt of your request to determine if temporary compensation has been properly terminated.

MY SIGNATURE BELOW INDICATES THAT I DO NOT AGREE WITH THE TERMINATION OF TEMPORARY COMPENSATION.
I REQUEST A HEARING TO DETERMINE WHETHER I AM ENTITLED TO FURTHER TEMPORARY COMPENSATION PAYMENTS.

Check one: Form 15(II) ☒ Has ☐ Has not been received.

Signature of Claimant or Legal Representative

Date 11-11-14 (m/d/yyyy)

Employer's representative must complete and file Form 15 with Claims Department within ten days after compensation begins or is terminated. Employer's representative must serve the Form 15 on the claimant when compensation begins per R.67-211. Employer's representative must prepare and serve Form 20 within thirty days of beginning compensation per R.67-1803. Employer's representative must serve per R.67-211 two copies of the Form 16 on claimant immediately on termination of compensation with documentation attached as to the reason for the termination. Injured worker may contest termination of compensation by completing section III of the Form 16 and filing it with Judicial Department.

WCC Form # 15
Rev. 01/2014

15

TEMPORARY COMPENSATION REPORT

ROA 0365

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1413115

STEPHEN EVANS,

Employee,

Claimant,

vs.

NAN-YA PLASTICS,

Employer,

AND

NEW HAMPSHIRE INSURANCE CO.

Carrier,

Defendants.

CERTIFICATE
OF
SERVICE

The undersigned certifies that she is an employee at MALLOY LAW FIRM, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of the same in the United States Mail, postage prepaid, addressed to:

John Bruton, Jr., Esquire
Haynsworth, Sinkler Boyd, PA
Post Office Box 11889
Columbia, SC 29211-1889

Form 15(III), Employee's Request for Hearing
Date Mailed: November 13, 2014


Greta Elliott, Paralegal

R08 File
Copied -
9/26/2014
SROBINSON
9/26/2014
11:07:38

ROA 0367

GERALD MALLOY
ATTORNEY AT LAW

AM
File has
been
copied
and sent
out.

108 CARGILL WAY
HARTSVILLE, SOUTH CAROLINA 29550

TELEPHONE (843) 339-3000
FASCIMILE (843) 332-4646
EMAIL: GMALLOY@BELLSOUTH.NET

POST OFFICE BOX 1200
HARTSVILLE, SOUTH CAROLINA 29551

September 25, 2014

South Carolina Workers' Compensation Commission
Attention: Judicial Department
Post Office Box 1715
Columbia, South Carolina 29202-1715

Re: Claimant:
Address:

SSN:
DOB:
Date of Injury:
Location of Accident:
Description of Accident:
Nature of Injury:
Employer:
Insurance Carrier:

Stephen Evans
121 Clyde McGee Road, Lot 7
Timmonsville, SC
247-43-2885
2-2-68
9-4-14
Lake City, South Carolina
Door came down on head and back
head and back
Nan Ya Plastics
Gallagher Bassett

CHECK REC: 9/20/14
4894
263609B
COPY FILE: Lot 7
COPY MAILED
TO BE INVOICED:
ATTY ENTERED:
END #
BEG #
TOTAL

Dear Sir/Madam:

Pursuant to South Carolina Section 42-14-40, this letter is to advise the Workers' Compensation Commission of my representation, of the above named claimant for injuries covered by the Workers' Compensation Act, and to establish a claim prior to the running of the Statute of Limitations. I have enclosed a check for \$20 and would request that you provide our office with a copy of the entire Workers' Compensation File for Mr. Evans.

With kind regards, I am,

Sincerely yours,

Gm / gre
Gerald Malloy

GM(gre)
Enclosure

5348

SCWCC
SEP 26 2014
JUDICIAL

ROA 0367

09/25/14
FILEID017986

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION R08
EDI DATED/UPDATED FIRST REPORT

CONTAINS ALL ITEMS REQUIRED BY OSHA FORM 101 (Enter all dates in MM/DD/YY format)

EMPLOYER: NAN-YA PLASTICS CORP AMERICA
140 EAST BEULAH ROAD
LAKE CITY, SC 29560

CARRIER CLAIM#: 002848001824WC01

SCWCC CLAIM#: 1413115 9999

ROA 0368

NAICS CODE: 326191

FED. TAX I.D. NO.: 223009119

INSURANCE NEW HAMPSHIRE INSURANCE CO, LT

CLAIMS GALLAGHER BASSETT SERVICES INC

CARRIER: Chartis Claims, Inc.

ADMIN: GAIL BULLOCK

PO Box 4230

8731 RED OAK BLVD

Alpharetta, GA 30023-4230

SUITE 240

CARRIER ID: 00143

CARRIER FEIN: 020172170

CHARLOTTE, NC 28217-4062

EMPLOYEE NAME (Last, First, Middle)

SOCIAL SECURITY NUMBER

PHONE NO.

EVANS, STEPHEN

247-43-2885

(843) 731-7669

ADDRESS: 121 CLYDE MCGEE RD LOT 7
TIMMONSVILLE, SC 29161-7746

DATE OF BIRTH: 02/02/1968 MARITAL STATUS: M

MALE/FEMALE: M # DEPENDENT CHILDREN: 0

DATE OF HIRE: 02/13/12

OCCUPATION: MECHANICAL MAINTENANCE TECHNIC

WAGE INFORMATION

RATE: \$845.34

WAGE PERIOD:

DATE RETURNED TO WORK:

FULL DAY PAY FOR DAY OF INJURY: N

DID SALARY CONTINUE: N

OCCURRENCE

PLACE OF ACCIDENT OR OCCURRENCE: 29560-7915

DATE OF INJ: 09/04/14

TIME OF INJ: 00:01 AM

EMPLOYER'S PREMISES: N

LAST WORKDATE: 09/04/14

DATE EMPLOYER NOTIFIED: 09/04/14

DESCRIBE NATURE OF INJURY OR ILLNESS IN DETAIL

CAUSE: 68 STATIONARY OBJECT

NATURE: 10 CONTUSION

LOCATION: 10 Multiple Head Injury

DESCRIBE EMPLOYEE'S ACTIVITIES WHEN INJURY OCCURED WITH DETAILS OF HOW EVENT OCCURED

MR. EVANS WAS WALKING FROM THE DTY PRODUCTION FLOOR TO THE YAC TO RETRIEVE
SOME MATERIAL. WHILE WALKING HE ATTEMPTED TO PASS THROUGH THE ROLL UP DOOR
AT THE SOUTH EAST CORNER OF DTY. AT THIS TIME THE DOOR WAS LOWERED DOWN ON
MR. EVANS. THE DOOR HIT HIM IN THE HEAD.

IF FATAL GIVE DATE OF DEATH:

** Created **

ELECTRONIC FILING

ORIGINAL DATE SENT:

<1>: <2>:

DATE PROCESSED: 09/25/14

TRADING PARTNER: Gallagher Bassett Services

Two Pierce Place

Itasca, IL 60143

||

ROA 0368

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 1413115
Carrier File # _____
Carrier Code # _____
Employer FEIN _____

Claimant's Name Stephen J. Evans SSN 247-43-2885 Employer's Name Van Zee Plastics Corp.
Address 121 Clyde M. Lee Rd Lot #7 Jinxville City _____ State _____ Zip _____
Home Phone # 843-231-7669 Work Phone # 843-389-7800 Zip 29161
Insurance Carrier Gallagher Bassett Services
Preparer's Name _____ Phone # _____

A. Total Wages Paid

1. Check Applicable Method:

Date of injury: 09-04-14

- ☐ Report of earnings of injured employee based on four completed quarters.
☐ Report of earnings of injured employee who did not complete four quarters based on actual time worked.
☐ Report of earnings of similar employee. Injured employee did not work sufficient time before alleged injury. Hire Date: 2-13-12
☐ Report of earnings of injured employee based on alternative method because Form 20 results in a compensation rate that is not fair and just. (Attach documentation to show how average weekly wage and compensation rate were calculated.)

2. List total wages paid as reported to Employment Security Commission on the Employer Quarterly Contribution and Wage Reports during the four quarters immediately preceding the quarter in which the injury occurred. Do not include the quarter during which the injury occurred.

Quarter	Ending Date	Total Wages Paid
1st	<u>6.19.14</u>	<u>9410.87</u>
2nd	<u>3.27.14</u>	<u>10,087.01</u>
3rd	<u>12.19.13</u>	<u>11,918.49</u>
4th	<u>9.26.13</u>	<u>12,241.46</u>

Total Paid 2. _____

3. List total value of other allowances of any character made in lieu of wages during four quarters above.

3. _____

4. Add lines 2 and 3.

TOTAL WAGES PAID:

4. 43,957.83

5. List total number of weeks paid to employee during the four quarters immediately preceding the quarter in which the injury occurred.

5. 52

B. Average Weekly Wage

6. To calculate average weekly wage, divide total wages (line 4) by total weeks paid (line 5).

AVERAGE WEEKLY WAGE: 6. 845.34

C. Compensation Rate

7. The general rule for calculating the compensation rate is to multiply average weekly wage (line 6) by .6667.

Estimate compensation rate by multiplying average weekly wage (line 6) by .6667. See part B below to determine the actual compensation rate.

7. _____

8. The compensation rate is as follows (choose one):

- ☐ When average weekly wage (line 6) is less than \$75.00, the compensation rate is the average weekly wage. Enter average weekly wage on line 8.
- ☐ When the estimated compensation rate (line 7) is less than \$75.00 and average weekly wage (line 6) is more than \$75.00, the compensation rate is \$75.00. Enter \$75.00 on line 8.
- ☐ When the estimated compensation rate (line 7) is more than the maximum compensation rate for the year in which the injury occurred, enter the maximum compensation rate for the year in which the injury occurred on line 8.
- ☐ Employee is within the exceptions listed in S.C. Code Ann. Section 42-7-65. List applicable exception here and enter appropriate compensation rate on line 8: _____
- ☐ The calculated compensation rate (line 7) applies. Enter amount from line 7 on line 8.

WEEKLY COMPENSATION RATE: 8. \$563.59

Employer's representative shall prepare a Form 20 and serve per R.67-211 a copy on the claimant within thirty days of beginning temporary compensation. See R.67-1603 when no temporary compensation is paid. NOTE: Average weekly wage represents average gross pay before taxes and other deductions. WHEN THE CLAIMANT DOES NOT AGREE WITH THE COMPENSATION RATE ON LINE 8, HE OR SHE SHOULD CONTACT THE EMPLOYER'S REPRESENTATIVE TO TRY TO REACH AN AGREEMENT AS TO THE COMPENSATION RATE. IF NO AGREEMENT CAN BE REACHED THE CLAIMANT SHOULD CONTACT THE CLAIMS DEPARTMENT AT (803)737-5723.

P.O. Box 995
1550 Gadsden Street
Columbia, SC 29202
dew.sc.gov



Nikki R. Haley **ROA 0370**
Governor

Cheryl M. Stanton
Executive Director

July 22, 2016

Mr. C. Daniel Vega
Chappell, Smith and Arden
Attorneys at Law
P.O. Box 12330
Columbia, SC 29211

Re: Stephen Evans vs. Nan Ya Plastics
WCC File No.: 1413115

Dear Mr. Vega:

This is in response to your subpoena received on July 15, 2016, which included check # 117140 in the amount of \$25.00 and a request for wage and earning records pertaining to your client, Stephen Evans.

Enclosed is a certified copy of the records.

Please be advised that the documents produced to you may contain information that is protected under state and federal law including but not limited to 20 C.F.R. Part 603, from unauthorized access or redisclosure.

Please do not hesitate to contact us if you need additional information.

Sincerely,

Shannon Brosey
SC Department of Employment and Workforce
803.737.2662
sbrosey@dew.sc.gov

Enclosures

ROA 0370



**SOUTH CAROLINA DEPARTMENT
OF EMPLOYMENT AND WORKFORCE
Post Office Box 995
Columbia, South Carolina 29202**

To the best of my knowledge & belief, I certify that the attached is a true copy of the responsive records pertaining to Stephen Evans.

A handwritten signature in cursive script, reading "Shannon Brosey". The signature is written in black ink and is positioned above a horizontal line.

Shannon Brosey, Paralegal
SC Department of Employment & Workforce

**Columbia, South Carolina
July 22, 2016**

SSN Wage Record Inquiry

ROA 0372

SSN [REDACTED] 2885

Name	Acct #	Employer Name	Report Type	Year	Qtr - 1	Qtr - 2	Qtr - 3	Qtr - 4
STEPHEN MURRAY EVANS	255748	NAN YA PLASTICS CORPORATION AMERICA	Original	2015	\$103.00			\$8.46
STEPHEN MURRAY EVANS	255748	NAN YA PLASTICS CORPORATION AMERICA	Original	2014	\$10,024.55	\$9,348.41	\$9,538.11	\$2,191.68
STEPHEN MURRAY EVANS	255748	NAN YA PLASTICS CORPORATION AMERICA	Original	2013	\$9,092.61	\$10,067.82	\$12,479.00	\$11,856.03
STEPHEN MURRAY EVANS	255748	NAN YA PLASTICS CORPORATION AMERICA	Original	2012	\$4,063.58	\$7,763.22	\$8,545.52	\$11,715.34
STEPHEN MURRAY EVANS	395051	THREE D MACHINERY INSTALLERS LLC	Original	2009	\$7,997.50	\$1,687.00		
STEPHEN MURRAY EVANS	395051	THREE D MACHINERY INSTALLERS LLC	Original	2008			\$4,060.00	\$9,719.50
STEPHEN MURRAY EVANS	429691	STEPHENS COMPANY OF FLORENCE SC LLC THE	Original	2008	\$2,465.31	\$6,693.95	\$3,605.83	

D/A
9/4/14

40767.10

783.98

522.13

ROA 0372

BEFORE THE SOUTH CAROLINA
WORKER'S COMPENSATION COMMISSION

WCC FILE NO.: 1413115

Stephen Evans,

Claimant,

v.

Nan Ya Plastics Corp.,

Employer,

**CONSENT ORDER
RELIEVING COUNSEL**

CERTIFICATE OF SERVICE

and

Gallagher Bassett Services,

Carrier.

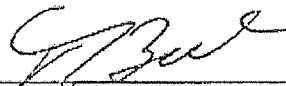
This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Shawn Debruhl on July 6, 2016

It appears to the Court that the Claimant no longer desires to use the services of Kevin M. Barth as his attorney, and that Kevin M. Barth, as attorney for Claimant, hereby consents to being relieved as counsel. It is therefore,

ORDERED, ADJUDGED AND DECREED that Kevin M. Barth be hereby relieved as counsel for Claimant and that he be relieved of any further obligation or responsibility in regard to the within action.

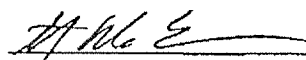
AND IT IS SO ORDERED!


T. Scott Beck, Commissioner

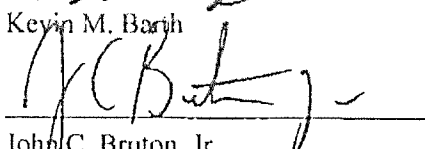
Columbia, South Carolina

July 6, 2016

WE CONSENT TO THE TERMS OF THIS ORDER:


Stephen Evans
Claimant


Kevin M. Barth


John C. Bruton, Jr.

ROA 0373 Attorney for Employer/Carrier

Barth, Ballenger & Lewis, LLP

Attorneys At Law
205 North Irby Street
Post Office Box 107
Florence, South Carolina 29503
Phone: 843-662-6301
Fax: 843-664-8384
Web: bblawsc.com

Kevin M. Barth
E. Guy Ballenger
Nicholas W. Lewis
Brendan P. Barth

Michael Ballenger (Retired)

June 20, 2016

SC Workers' Compensation Commission
Claims Dept.
P.O. Box 1715
Columbia, SC 29202

Re: Stephen W. Evans v. Nan Ya Plastics
Case No. 1413115

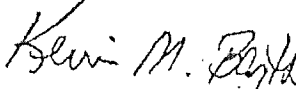
Dear Sir/Madam:

Enclosed herewith, please find an original and one copy of a Consent Order Relieving Counsel in regard to the above matter, along with the \$25.00 filing fee. Please forward the Order to the appropriate Commissioner for his or her consideration and filing and return the filed copy to me in the envelope provided for your convenience.

Should you have any questions or concerns, please do not hesitate to contact me or Christy with my office.

With best regards, I am

Sincerely,



Kevin M. Barth
kbarth@hbbh.net

KMB/chg
enclosure
cc: John C. Bruton, Jr.

315098

SCWCC
JUN 23 2016
JUDICIAL

ROA 0375

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # _____
Carrier File # _____
Carrier Code # _____
Employer FEIN # _____

Claimant's Name Stephen Evans SSN 247-43-2885 Employer's Name Van Ya Plastics Corp.
Address 121 Clyde Mc Gee Rd Lot #7 Jinningsville City _____ State _____ Zip 29161
Home Phone # 843-231-7669 Work Phone # 843-389-7800 Insurance Carrier Gallagher Bassett Services
(Cell) 843-340-7699 Preparer's Name _____ Phone # _____

A. Total Wages Paid

1. Check Applicable Method:

Date of injury: 09-04-14
month day year

- ☐ Report of earnings of Injured employee based on four completed quarters.
☐ Report of earnings of injured employee who did not complete four quarters based on actual time worked.
☐ Report of earnings of similar employee. Injured employee did not work sufficient time before alleged injury. Hire Date: 2-13-12
☐ Report of earnings of Injured employee based on alternative method because Form 20 results in a compensation rate that is not fair and just. (Attach documentation to show how average weekly wage and compensation rate were calculated.)

2. List total wages paid as reported to Employment Security Commission on the Employer Quarterly Contribution and Wage Reports during the four quarters immediately preceding the quarter in which the injury occurred. Do not include the quarter during which the injury occurred.

Quarter	Ending Date	Total Wages Paid
1st	<u>6.19.14</u>	<u>9410.87</u>
2nd	<u>3.27.14</u>	<u>10,087.01</u>
3rd	<u>12.19.13</u>	<u>11,918.49</u>
4th	<u>9.26.13</u>	<u>12,541.46</u>

Total Paid 2. _____

3. List total value of other allowances of any character made in lieu of wages during four quarters above.

3. _____

4. Add lines 2 and 3.

TOTAL WAGES PAID:

4. _____

5. List total number of weeks paid to employee during the four quarters immediately preceding the quarter in which the injury occurred.

5. _____

B. Average Weekly Wage

6. To calculate average weekly wage, divide total wages (line 4) by total weeks paid (line 5).

AVERAGE WEEKLY WAGE: 6. _____

C. Compensation Rate

7. The general rule for calculating the compensation rate is to multiply average weekly wage (line 6) by .6667. Estimate compensation rate by multiplying average weekly wage (line 6) by .6667. See part 8 below to determine the actual compensation rate.

7. _____

8. The compensation rate is as follows (choose one):

- ☐ When average weekly wage (line 6) is less than \$75.00, the compensation rate is the average weekly wage. Enter average weekly wage on line 8.
- ☐ When the estimated compensation rate (line 7) is less than \$75.00 and average weekly wage (line 6) is more than \$75.00, the compensation rate is \$75.00. Enter \$75.00 on line 8.
- ☐ When the estimated compensation rate (line 7) is more than the maximum compensation rate for the year in which the injury occurred, enter the maximum compensation rate for the year in which the injury occurred on line 8.
- ☐ Employee is within the exceptions listed in S.C. Code Ann. Section 42-7-65. List applicable exception here and enter appropriate compensation rate on line 8: _____
- ☐ The calculated compensation rate (line 7) applies. Enter amount from line 7 on line 8.

WEEKLY COMPENSATION RATE: 8. _____

Employer's representative shall prepare a Form 20 and serve per R.67-211 a copy on the claimant within thirty days of beginning temporary compensation. See R.67-1603 when no temporary compensation is paid. NOTE: Average weekly wage represents average gross pay before taxes and other deductions. WHEN THE CLAIMANT DOES NOT AGREE WITH THE COMPENSATION RATE ON LINE 8, HE OR SHE SHOULD CONTACT THE EMPLOYER'S REPRESENTATIVE TO TRY TO REACH AN AGREEMENT AS TO THE COMPENSATION RATE. IF NO AGREEMENT CAN BE REACHED THE CLAIMANT SHOULD CONTACT THE CLAIMS DEPARTMENT AT (803)737-5723.

CHAPPELL, SMITH & ARDEN
ATTORNEYS AT LAW**ROA 0376**

Licensed to practice
in South Carolina,
North Carolina,
Georgia and the
District of Columbia

PO Box 12330
Columbia, SC 29211
803.929.3600
Fax 803.929.3604
800.531.9780
www.CSA-LAW.com

June 7, 2016

Ms. Sonji Spann
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Via Hand Delivery

Re: WCC File No.: 1413115
Employee: Stephen Evans, 1556 West Old No. 4, Scranton, SC 29591
Employee's Phone: (843) 373-0526
SSN #: 247-43-2885
Employer: Nan Ya Plastics, 140 E. Beulah Road, Lake City, SC
Insurance Carrier: New Hampshire Insurance Co.
Request for Hearing: No
Date of Incident: 9/4/2014
County of Incident: Florence
Nature of Incident: Claimant was crushed by industrial neumatic door

Dear Ms. Spann:

Pursuant to Rule 67-206 and in accordance with §42-15-40, the purpose of this letter is to establish a claim prior to the running of the statute of limitations. Attached is a Form 50 filing this claim officially; however, this case is not yet ready for a hearing. We will request a hearing at the appropriate time if necessary.

By copy of this letter, I am notifying the insurance carrier of my representation and providing them with a copy of the Form 50 filing the claim.

Very truly yours,


C. Daniel Vega
dvega@csa-law.com
Direct Dial: 803-509-5830

CDV/ks
Enclosure

cc: New Hampshire Insurance Co.
Stephen Evans
John C. Bruton, Jr.

ROA 0376

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723 www.wcc.sc.gov



vCC File #: 1413115

Carrier File #:

Carrier Code #:

Employer FEIN #:

ROA 0377Claimant's Name: Stephen EvansSSN: 247-43-2885Employer's Name: Nan Ya PlasticsAddress: 1556 West Old No. 4Address: 140 E. Beulah RoadCity: ScrantonState: SCZip: 29591City: Lake CityState: SC

Zip: _____

Home Phone: (843) 373-0526

Work Phone: _____

Insurance Carrier: New Hampshire Insurance Co.Preparer's Name: C. Daniel VegaLaw Firm: Chappell, Smith and Arden, PAPreparer's Phone #: 803-929-3600**A claim for workers' compensation benefits is made based on the following grounds:**Date of Injury or Illness: 9/4/2014
☒ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to head, neck, back, shoulders, hips, knees, bladder (Part(s) of Body Injured) on 9/4/2014 (Month/Day/Year) in Florence county, state of SC. Body part(s) affected are: head, neck, back, shoulders, hips, knees, bladder

2. Briefly describe how the accident occurred. Claimant was crushed by industrial pneumatic door

3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.

4. The relationship of employer and employee existed at the time of injury.

5. At the time of the injury the claimant was performing services arising out of and in the course of employment.

6. Notice of the accidental injury was given to the Employer on 9/4/2014 (Month/Day/Year) in the following manner:

☒ 7. Due to injury, the claimant is in need of (check one):

☐ (a) medical examination and treatment for: _____

☒ (b) additional medical examination and treatment for: head, neck, back, shoulders, hips, knees, bladder

☒ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: _____ As provided for under the Act.

☒ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

☒ (1) General Disability: ☒ Total ☒ Partial

☐ (2) Specific Disability: ☐ Total ☐ Partial

☐ (3) Wage Loss

☐ 9a. ☐ A determination of permanent disability is premature at this time.

☐ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

10a. At the time of the injury, the Claimant was paid weekly wages of _____, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:

Nan Ya Plastics

11. Further grounds or unusual aspects of claim:

Claimant reserves the right to amend the form 50.

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:

11b. To the best of your knowledge, did you have any prior permanent disability?

If yes, describe:

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☒ 13a. I am filing a claim. I am not requesting a hearing at this time.

14. Estimated time needed for hearing: _____

☐ 13b. I am requesting a hearing. A \$25 fee is required.

Mediation

☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.

☐ b. Mediation is required pursuant to Reg. 67-1802.

☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to _____

address _____ on the _____ day of _____ 20____, by ☒ first class postage ☐ certified mail ☐ personal service.

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

Preparer's Signature

Attorney

dvega@csa-law.com

Title

Email

Date

Questions about the use of this form should be directed to the Claims Department at 803-737-5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

WCC Form # 50

Revised 7/13

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



WCC File #: **1413115**
Carrier File #: **002848-000182-wc-01**
Carrier Code #: **ROA 0378**
Employer FEIN #:

Claimant's Name: Stephen Evans SSN: 247-43-2885
Address: 121 Clyde McGee Rd., Lot 7
City: Timmonsville State: SC Zip: 29161
Home Phone: _____ Work Phone: () -
Date of Injury: 9/4/14

Employer's Name: Nan Ya Plastics Corporation
Address: 140 E. Beulah Rd
City: Lake City State: SC Zip: 29560
Insurance Carrier: Gallagher Bassett Services

Preparer's Name: John C. Bruton, Jr. Law Firm: Haynsworth Sinkler Boyd, PA Preparer's Phone #: (803) 779-1243

Date of Injury or Illness: 9/4/14

Estimated time for hearing: One hour

Complete each information blank. Clearly specify when contentions are admitted in part and denied in part. The Employer/Carrier in answer to the claim, respectfully shows:

1. It is ☒ Admitted ☐ Denied the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
Defendants admit accident occurred. Defendants deny extent of injury as claimed by employee.
2. It is ☒ Admitted ☐ Denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
3. It is ☒ Admitted ☐ Denied the relationship of employer and employee existed at the time in question. The reasons for denial are:
4. It is ☒ Admitted ☐ Denied at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
5. It is ☒ Admitted ☐ Denied notice of injury was given the employer. The reasons for denial are:
6. It is ☐ Admitted ☒ Denied the employee ☐ Needs ☒ Is Entitled to Additional medical care as a result of injury or illness. The reasons for denial are:
Medical care is being provided.
7. It is ☒ Admitted ☐ Denied the employee is entitled to temporary total disability for the period(s) of :
Temporary total disability is being provided.
8. It is ☐ Admitted ☒ Denied the employee is permanently disabled. The reasons for denial are:
9. It is ☐ Admitted ☒ Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ _____ applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐ b. Mediation is required pursuant to Reg. 67-1802.
- ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

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

Preparer's Signature: John C. Bruton, Jr. Attorney Title: John C. Bruton, Jr. Email: jbruton@hsblawfirm.com

Date: 6/24/15

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.



Claimant's Name: Stephen Evans SSN: 247-43-2885 Employer's Name: Nan Ya Plastics
Address: 121 Clyde McGee Rd., Lot 7 Address: 140 E. Beulah Rd.
City: Timmons ville State: SC Zip: 29161 City: Lake City State: SC Zip: 29560
Home Phone: () - Work Phone: () - Insurance Carrier: _____
Preparer's Name: Kevin M. Barth Law Firm: Barth, Ballenger & Lewis, LLP Preparer's Phone #: (843) 662 - 6301

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

Date of Injury or Illness:

- ☒ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction
1. The claimant sustained an injury to head, neck, back, bladder (Part(s) of Body Injured) on 9/4/14 (Month/Day/Year) in Florence county, state of SC.
2. Body part(s) affected are: head, neck, back, bladder
Briefly describe how the accident occurred. Claimant was struck on the head by an overhead door
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 9/4/14 (Month/Day/Year) in the following manner:
Supervisor notified personally.
7. Due to injury, the claimant is in need of (check one):
☐ (a) medical examination and treatment for: _____
☒ (b) additional medical examination and treatment for: neck, back, head and bladder
8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
TBD
9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
☐ (1) General Disability: ☐ Total ☐ Partial ☐ (2) Specific Disability: ☐ Total ☐ Partial ☐ (3) Wage Loss
9a. ☒ A determination of permanent disability is premature at this time.
10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:
10a. At the time of the injury, the Claimant was paid weekly wages of \$ 845.34, and demands accounting of days worked and wages earned as provided by law.
10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
None.
11. Further grounds or unusual aspects of claim:
Claimant's is owed one week of TTD that was missed due to a clerical error in late March/early April 2015. Claimant's attorney has repeatedly requested that he be paid for this week, but he has not received that payment. Likewise, Claimant's attorney submitted his mileage reimbursement request to the adjuster for payment on April 17, 2015 and claimant has not received that payment after repeated requests.
- 11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Dr. Timothy R. Wagner, 330 Mercy Street, Lake City, SC 29560, Dr. Anthony Alexander, 901 E. Cheves Street, Ste. 100, Florence, SC 29506, Dr. Peter O'Kelly, E Pamplico Highway, Ste. B310, Florence, SC 29505.
- 11b. To the best of your knowledge, did you have any prior permanent disability? _____
If yes, describe: _____
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- 13a. ☐ I am filing a claim. I am not requesting a hearing at this time. 14. Estimated time needed for hearing: 30 minutes
- 13b. ☒ I am requesting a hearing. A \$25 fee is required.
- ☐ Mediation
☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to John C. Bruton, Jr., address P.O. Box 11889, Columbia, SC 29211 on the 8th day of June 2015, by ☒ first class postage ☐ certified mail ☐ personal service.

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

Preparer's Signature: [Signature] Attorney for ROA 0379 Title: kbarth@hbbh.net Email: June 8, 2015 Date: _____

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulation 67-601 through 67-615 as well as Reg. 67-1801.

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

STEPHEN EVANS)
Employee/Claimant,)
)
vs.)
)
NAN YA PLASTICS CORPORATION,)
Employer)
and)
)
GALLAGHER BASSETT,)
Carrier.)
)
Defendants.)
_____)

CONSENT ORDER
WCC File No.: 1413115

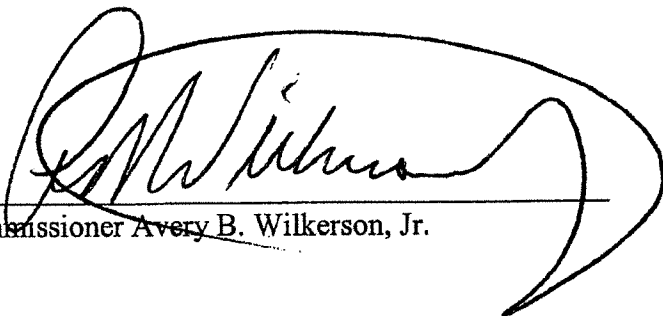
THIS MATTER was scheduled to be heard before the undersigned Commissioner on December 11, 2014, upon the filing of a S.C. Workers' Compensation Form 15. Claimant is represented by Gerald Malloy and the Defendants are represented by John C. Bruton, Jr. Prior to the scheduled hearing, the parties advised the Commission that an agreement had been reached regarding the issues presented for determination at the hearing. The parties now desire the agreement to be embodied into a Consent Order of the Commission. Therefore, the agreement of the parties is as follows:

1. The South Carolina Workers' Compensation Commission has jurisdiction over the parties and subject matter of this claim.
2. The Employer/Carrier has agreed to re-start the weekly temporary total disability payments to Claimant and bring current the amount of payments not made during the time period the payments were stopped.
3. Accordingly, the parties agree that this claim will be returned to the general files until such time as a hearing request by letter or pleading is made by either party.

NOW, THEREFORE, on joint motion of Gerald Malloy, attorney for the Claimant, and John C. Bruton, attorney for the Defendants, it is
HEREBY ORDERED, ADJUDGED AND DECREED that the agreement of the parties as set forth above is hereby adopted as an Order of this Commission as if fully set forth herein.

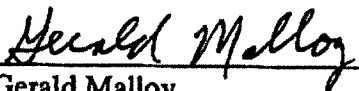
IT IS SO ORDERED.

December __, 2014

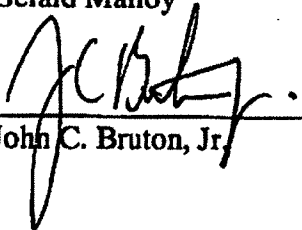


Commissioner Avery B. Wilkerson, Jr.

We consent:



Gerald Malloy



John C. Bruton, Jr.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By eboyd on January 7, 2015



Claimant's Name: Stephen Evans Employer's Name: Nan Ya Plastics Corporation
Address: 121 Clyde McGee Road, Lot 7 Address: 140 E. Beulah Road
City: Timmonsville State: SC Zip: 29161 City: Lake City State: SC Zip: 29560
Home Phone: 843-845-4842 Work Phone: () - Carrier: New Hampshire Insurance Company
Preparer's Name: John C. Bruton, Jr., Esq., Preparer's Phone #: (803) 779-3080

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$563.00 2. AWW: \$845.34 Date of Injury: 9/04/14
3. Type of injury and body part(s): Neck and back; alleged bladder, urethral tear
4. Facts in controversy: Employer's termination of TTD pursuant to WCC Form 15 as Employee was released to light duty and Employer had light duty work available consistent with the terms upon which Employee had been released.
5. Legal issues involved: same
6. Unusual aspects: _____
7. Witnesses (designate if expert): Adrian Harris; Dana Welch; Claimant's supervisor; Claimant's co-worker
8. Exhibits: Letters to Employee from Employer; Photographs
9. Medical evidence (Indicate report pursuant to R.67-612; deposition or appearance): Reports pursuant to R. 67-612. All medical records not yet received.
10. Name, address, and specialty, if any, of the treating physician: Dr. Anthony Alexander, 901 E. Cheves St., Suite 100, Florence, SC 29506, Orthopedic; Dr. Peter O'Kelly, 805 Pampllico Hwy., Medical Mall B., Suite 310, Florence, SC, 29505, Urologist;
11. Impairment rating(s); body part(s); physician and date of opinion: None
12. I am amending my Form 50/51 in the following manner: _____

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Gerald Malloy, Esquire at

Address P.O. Box 1200, Hartsville, SC 29551 on the _____ day of December, 2014 by; ☐ first class postage ☐ certified mail ☐ personal service ☒ Email.

Signature: [Signature] Email: jbruton@hsblawfirm.com
Date of hearing: December 11, 2014 Time needed for hearing: 60 minutes

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

WCC Form # 58
Revised 7/13

58

PRE-HEARING BRIEF



Claimant's Name: Stephen Evans Employer's Name: Nan-Ya Plastics
Address: 121 Clyde McGee Road, Lot 7 Address: 140 E. Beulah Road
City: Timmonsville State: SC Zip: 29161 City: Lake City State: SC Zip: 29560
Home Phone: (843) 845-4841 Work Phone: () Carrier: New Hampshire Insurance Co.
Preparer's Name: Gerald Malloy Preparer's Phone #: (843) 339-3000

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$563.00 2. AWW: \$845.34 Date of Injury: 9-4-14
3. Type of injury and body part(s): Back, urethral tear, bladder, head
4. Facts in controversy: 1. Whether or not Claimant has been released to work at limited duty 2. Whether or not termination of Claimant's Benefits was proper
5. Legal issues involved: _____
6. Unusual aspects: Employer terminated Claimant's benefits even though Claimant has not been released by all treating physicians to return to work
7. Witnesses (designate if expert): 1. Claimant 2. Tara Evans (claimant's wife) 3. Dr. Peter O'Kelley
8. Exhibits: 1. Medical Report of Dr. Peter O'Kelley 2. Report of Carolinas Hospital System
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
1. Medical Report of Dr. Peter O'Kelley 2. Medical Records of Carolinas Hospital System
ALL MEDICAL RECORDS NOT RECEIVED YET
10. Name, address, and specialty, if any, of the treating physician: 1. Dr. Timothy Wagner, 300 Mercy St., Lake City, SC 29560, Orthopedic
2. Dr. Peter O'Kelley, 805 Pamplico Highway, Medical Mall B, Suite 310, Florence, SC 29505, Urologist; 3. Dr. Anthony Alexander, 901 E. Cheves St., Suite 100, Florence, SC 29506, Orthopedic.
11. Impairment rating(s); body part(s); physician and date of opinion: Not applicable at this time.
12. I am amending my Form 50/51 in the following manner: _____

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to John Bruton, Esquire, P.O. Box 11889, Columbia, SC 29211 on the 26th day of November 2014 by: ☒ first class postage ☐ certified mail ☐ personal service.

Signature: Gerald Malloy Email: gmalloy@bellsouth.net
Date of hearing: December 11, 2014 Time needed for hearing: 30 min.

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-611 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1413115

STEPHEN EVANS,	)	
	)	
Employee,	)	
	)	
Claimant,	)	
	)	
vs.	)	
	)	
NAN-YA PLASTICS	)	NOTICE OF WITNESSES AND
	)	WRITTEN MEDICAL REPORTS
Employer,	)	TO BE INTRODUCED AS
	)	DIRECT EVIDENCE ON BEHALF
AND	)	OF CLAIMANT
	)	
NEW HAMPSHIRE INSURANCE CO.,	)	
	)	
Carrier,	)	
	)	
Defendants.	)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
JOHN BRUTON, ESQUIRE:

YOU ARE NOTIFIED that the Claimant, pursuant to the provisions of the South Carolina Workers' Compensation Act and Section 1-23-330 of the South Carolina Code of Laws (Cum. Supp. 1988) submit the following medical records and other documents as evidence:

<u>APA #:</u>	<u>MEDICAL PROVIDER:</u>	<u>DATES:</u>	<u>PAGES:</u>
1.	Carolinas Hospital System	9-24-14 – 9-26-14	1 - 19
2.	Dr. Peter O'Kelley	9-24-14 – 11-2-14	20 - 37

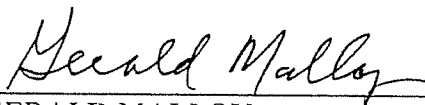
YOU ARE FURTHER NOTIFIED that you have the right to cross-examine or otherwise oppose this evidence and, should you desire to exercise this right, you are to promptly schedule the deposition of any provider whose records are submitted, for the purposes of cross-

examination, or otherwise promptly submit opposing medical records into evidence.

YOU ARE FURTHER NOTIFIED that these records, or photocopies of the same, will be provided to the South Carolina Workers' Compensation Commission for insertion in their file and for consideration as evidence on behalf of the Claimant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Claimant: 1. Claimant 2. Tara Evans 3. Dr. Peter O'Kelly.

MALLOY LAW FIRM



GERALD MALLOY

Post Office Box 1200

Hartsville, South Carolina 29551

843-339-3000

Attorney for Claimant

Hartsville, South Carolina

25 day of November, 2014

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1413115

STEPHEN EVANS,	)	
	)	
Employee,	)	
	)	
Claimant,	)	
	)	
vs.	)	
	)	
NAN YA PLASTICS,	)	CERTIFICATE
	)	OF
Employer,	)	SERVICE
	)	
AND	)	
	)	
NEW HAMPSHIRE INSURANCE CO.,	)	
	)	
Carrier,	)	
	)	
Defendants,	)	

The undersigned certifies that she is an employee at MALLOY LAW FIRM, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Section 15-9-930 and Section 15-9-940 of the Code of Laws of South Carolina, 1976, by depositing a copy of the same in the United States Mail, postage prepaid, addressed to:

John C. Bruton, Esquire
 Haynsworth Sinkler Boyd, P.A.
 Post Office Box 11889
 Columbia, SC 29211-1889

Commissioner Avery B. Wilkerson
 SC WCC
 1333 Main Street, Suite 500
 Columbia, SC 29201

Claimant's Pre-Hearing Brief and Notice of Witnesses and Written Medical Reports
Date Mailed: November 26, 2014



 Greta Elliott, Paralegal