

The State of South Carolina
In the Court of Appeals

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SC Court of Appeals

Appeal from the South Carolina
Workers' Compensation Commission

T. Scott Beck, Commissioner
Avery B. Wilkerson, Jr., Commissioner
Gene McCaskill, Commissioner

Appellate Case No.: 2020-000739

Jorge Lopez-Celestin.....Claimant, Appellant,

v.

Reeves Young, LLC, and
Holder Construction Group.....Employers,

And

Amerisure Insurance Company, and
American Zurich Insurance Company.....Carriers, Defendants

of whom Reeves Young, LLC, and
Amerisure Insurance Company are the Respondents.

Record on Appeal

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INDEX

Order of the S.C. Workers' Compensation Commission's Appellate Panel, 4/7/20.....	2-21
Order of Commissioner R. Michael Campbell, II, 9/6/19.....	22-45
Form 50, Claimant's Request for Hearing, 8/14/18.....	46-47
Form 51, Employer's Answer to Request for Hearing, 9/6/18.....	48
Transcript of hearing before the Appellate Panel of 2/10/20.....	49-69
Transcript of hearing before Commissioner R. Michael Campbell of 3/21/19.....	70-183
- Direct examination of Mr. Lopez-Celestin.....	94-112
- Cross-examination of Mr. Lopez-Celestin.....	112-128
- Redirect examination of Mr. Lopez-Celestin.....	128-131
- Direct examination of Mr. Ochoa.....	132-142
- Cross-examination of Mr. Ochoa.....	142-156
- Direct examination of Mr. Reeves.....	158-165
- Cross-examination of Mr. Reeves.....	165-173
- Cross-examination of Mr. Reeves.....	173-174
- Direct examination of Mr. McCormack.....	175-181
Claimant's 3/6/19 Pre-Hearing Brief, Exhibits i, j, k.....	184-194
Defendants' 3/11/19 Pre-Hearing Brief.....	195-197
William Reeves Deposition of 3/5/18.....	198-240
Matthew McCormack Deposition of 3/5/18.....	241-256
Juan Ochoa Deposition of 3/5/18.....	257-300
Jorge Lopez-Celestine Deposition.....	301-360
Certificate of Appellant.....	361

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1706639

Jorge Lopez-Celestin,
vs.

CLAIMANT
APPELLANT,

Reeves Young, LLC.,
Holder Construction Group, LLC,

EMPLOYERS,

AND

Amerisure Insurance Company,
American Zurich Insurance Company

CARRIER,
DEFENDANTS/RESPONDENTS

Appellate Panel Review held in Columbia, South Carolina,
on February 10, 2020, per notices timely and properly served
upon all parties of interest.

Appellate Panel Decision and Order filed
_____, 2020

APPEARANCES:

Appellant Jorge Lopez-Celestin, Claimant of Gainesville,
Georgia represented by C. Daniel Vega, Esquire, of
Columbia, South Carolina.

Defendants Reeves Young and Amerisure Insurance
Company represented by Jason A. Griggs, Esquire of Willson
Jones Carter & Baxley, P.A., Greenville, South Carolina.

Defendants Holder Construction Company and American
Zurich Insurance Company represented by W. James Flynn,
Esquire of Goodman McGuffey, LLP, Columbia, South
Carolina.

STATEMENT OF THE CASE

The parties were heard by Commissioner R. Michael Campbell, II, on March 21, 2019, in Ninety Six, South Carolina. On September 6, 2019, Commissioner Campbell issued his Decision and Order, which included the following Findings of Fact, Conclusions of Law, and Order:

Single Commissioner's Findings of Fact

It is found as fact:

1. On January 5, 2017, Claimant was involved in motor vehicle accident after he left his job site in Clemson, South Carolina and was driving to his home in Gainesville, Georgia. Defendants denied compensability of the claim under the "going and coming" rule. This finding of fact is based on the evidence as a whole.
2. Claimant underwent various evaluations and treatments for his alleged work-related injuries. Claimant treated at AnMed Health beginning on January 5, 2017, and underwent multiple surgeries. His care was later transferred to orthopaedist Dr. Scott Barbour, who treated him for neck, left shoulder, left knee, left ankle, and right elbow problems. Dr. Barbour performed left shoulder arthroscopic surgery on May 2, 2017. On July 20, 2017, Dr. Barbour performed a left knee total arthroplasty. Claimant also treated with Dr. Vidyadhar Chitale at Premier Neurosurgical Institute for his neck pain and tingling/numbness in his upper extremities. Dr. Chitale diagnosed Claimant with a brachial plexus injury. According to his hearing testimony, Claimant continues to treat with Dr. Barbour. This finding of fact is based on the evidence as a whole, including Claimant's medical records and hearing testimony.
3. Claimant was doing construction work at the Earle Street Apartment Complex in Clemson on the day of his motor vehicle accident on January 5, 2017, and left for his home in Gainesville from the apartment job. Reeves Young had insurance through Amerisure for the Earle Street Apartment Complex. Claimant lived in Gainesville, Georgia at the time he

was working in Clemson and chose to drive back and forth from Clemson to his home in Gainesville to take care of his sick wife. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony and William Reeves' hearing testimony.

4. Reeves Young is based out of Sugar Hill, Georgia. Matt McCormack testified that the Clemson project was one of the first out of state construction jobs for Reeves Young. Reeves Young provided housing in Clemson for the out of state workers so they would not have to travel back and forth to Georgia. Reeves Young made the decision to pay these out of state workers \$2.00 more an hour and a \$175.00 weekly per diem to make the Clemson job more attractive and to cover the cost of their meals for being out of town. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony, testimony of Juan Ochoa, testimony of William Reeves, and testimony of Matt McCormack.
5. Every Reeves Young employee from out of state working on the Clemson job site received the \$175.00 per diem regardless of where they drove from to get to the job site. Reeves Young did not require Claimant or any employees to keep receipts for what they spent the \$175.00 per diem on, nor did they require them to keep mileage logs. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony, testimony of William Reeves, and testimony of Matt McCormack.
6. Claimant was paid \$2.00 more an hour than his normal hourly wage and also received the \$175.00 weekly per diem while he was working in Clemson. Claimant received \$175.00 regardless of how many days he worked a week. Claimant did not receive the \$175.00 per diem when he worked in Georgia. Claimant testified that the \$175.00 did not fluctuate with his time worked or the distance he traveled. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony.

7. After working at the Clemson job site, Claimant was moved to a job in Atlanta with his supervisor, Juan Ochoa's, crew for a couple of weeks. Claimant was called back to the Clemson site by Shane Burrell, the Clemson site superintendent. Juan wanted Claimant to come back to Atlanta, but Shane told him Claimant could stay in Clemson if he wanted. Claimant testified that he chose to stay and work in Clemson because he was making more money. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony and testimony of Juan Ochoa.
8. Claimant was not paid his hourly wage while driving to and from the Clemson job site. Reeves Young did not pay his car insurance, any of his car maintenance, or give him a gas card. Claimant was not doing any errands for Reeves Young nor was he charged with any tasks by Reeves Young on his way to and from the Clemson job site from his home in Gainesville. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony.
9. Claimant presented no evidence of the cost it took to fill up his gas tank. He also had no evidence of the maintenance cost of operating his vehicle. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony.
10. Juan Ochoa, Foreman for Reeves Young on the Clemson site and Claimant's supervisor, lived in Gainesville, Georgia when he worked on the Clemson job. He drove to and from Clemson everyday in his company truck and used a company gas card. Juan received the per diem of \$175.00 a week when he worked at the Clemson job site and received the \$175.00 regardless of the amount of time he worked during the week. This finding of fact is based on the evidence as a whole, including Juan's hearing testimony.
11. Juan transported other employees, Julio Abrego, Isidro Silva, and Mario Romero, who lived near the Gainesville area in his company truck most days to work at Clemson. Julio,

Isidro, and Mario also received the \$175.00 per diem even though they carpooled with Juan. This finding of fact is based on the evidence as a whole, including Juan Ochoa's hearing testimony.

12. Juan offered Claimant and other employees the option of staying in housing in Clemson free of charge. Claimant chose to drive back to Gainesville to take care of his sick wife. Juan testified that Claimant would have still received the \$175.00 per diem if he had decided to stay in the housing. Every employee would have received the per diem, regardless if they chose to stay in the provided housing or to drive back home. This finding of fact is based on the evidence as a whole, including Juan Ochoa's hearing testimony.
13. William Reeves, the Vice President of Reeves Young, testified that \$175.00 weekly per diem was given to Reeves Young employees working on the Clemson project that traveled from out of state. He testified that the employees received the per diem for being out of town, for meal money, and because of industry standard, which dictated that generally people working out of state are given per diems. William testified that some workers stayed overnight in company provided housing in Clemson. William explained that this was an option for all employees to stay overnight, and that all employees would still receive the per diem regardless if they chose to stay or go home. This finding of fact is based on the evidence as a whole, including William Reeves' hearing testimony.
14. The \$175.00 per diem bore no relation to travel time, travel distance, or actual transportation expenses incurred by Reeves Young employees. Employees received the same \$175.00 amount irrespective of travel time, distance travelled, or transportation expense actually incurred by the employee. The \$175.00 amount did not fluctuate with and increases or decreases in the actual distance or time travelled and the claimant was not required to file any receipts, mileage logs, or vouchers with Reeves Young regarding

- mileage, expenses, or travel time. This finding of fact is based on the evidence as a whole.
15. William further testified that Reeves Young did not derive any benefit from Claimant driving to and from Clemson from Gainesville. In fact, Reeves Young tried to avoid workers from having to drive to and from Gainesville to Clemson by providing housing free of charge. The \$175.00 weekly per diem was provided to offset the cost of extra meals the workers would have to buy when they stayed overnight if Clemson. This finding of fact is based on the evidence as a whole, including William Reeves' hearing testimony.
 16. William did not place any restrictions on Claimant after he left the job site, and Claimant did not carry out any errands on the way home from Clemson or the way in. This finding of fact is based on the evidence as a whole, including William Reeves' hearing testimony.
 17. Claimant's employment was separated in December of 2017, after he could not come back to work for a certain period of time. From his accident in January of 2017 until December of 2017, William Reeves testified that Reeves Young kept Claimant on their group health policy and paid his premiums. This finding of fact is based on the evidence as a whole, including William Reeves' hearing testimony.
 18. Based on the sworn testimony of Claimant, William Reeves, Matt McCormack, Juan Ochoa, and payroll records, I hereby find Claimant was an employee of Reeves Young LLC on the date of his motor vehicle accident. In addition, I hereby find that Reeves Young LLC had coverage provided by Amerisure Insurance Company on the date of Claimant's accident, as stipulated to by the parties at the hearing before the undersigned Commissioner. It is also determined that Claimant spent the large majority of January 5, 2017, working on the apartment job and left for his home in Gainesville from this site. Therefore, Holder Construction Group LLC and American Zurich Insurance Company are hereby dismissed as parties to this claim. This finding of fact is based on the evidence as a whole.

19. However, given that Claimant had been at the Holder Construction Group LLC site of their dormitory project earlier on the date of his accident, I hereby find it was not unreasonable for Claimant to have initially added Holder Construction Group LLC as a potential party to this claim, therefore Defendants Holder Construction Group LLC and American Zurich Insurance Company's motion for costs and fees is hereby denied. This finding of fact is based on the evidence as a whole.
20. Based on a preponderance of the evidence, including the sworn testimony of Claimant and representatives for the employer (Juan Ochoa, William Reeves, and Matt McCormack), it is apparent that Claimant on his own chose not to stay in the housing provided by the employer, but rather elected to travel back and forth to work from his home in Gainesville, Georgia. In addition, I find that no part of Claimant's travel to and from his home included performing any duties related to his employment. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony, testimony of William Reeves, testimony of Juan Ochoa, and the testimony of Matt McCormack.
21. Furthermore, I am persuaded that the \$175.00 per diem that was provided to Claimant and to other employees was intended to offset the cost of meals for the week for the employees working in Clemson and was not for travel expenses or "gas money," as housing was provided for them and daily travel was not required. This is further supported by the fact that employees working on job sites other than Clemson were not provided the same per diem. Additionally, Juan Ochoa, also received the \$175.00 per diem even though he drove a company truck and had a company gas card. Members of Juan's crew, who carpooled with Juan in his company truck from around Gainesville to Clemson also received the \$175.00 per diem. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony, testimony of William Reeves, testimony of Juan Ochoa, and the

testimony of Matt McCormack.

22. Therefore, I hereby find Claimant has not met his burden with regard to the requisite standard for the going and coming exception. This finding of fact is based on the evidence as a whole.

23. Claimant's request for benefits under the Act is hereby denied.

Single Commissioner's Conclusions of Law

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

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under § 42-1-160, Claimant did not sustain a compensable injury by accident arising out of and in the course of his employment on January 5, 2017.

3. Under § 42-15-60, Claimant is not entitled to any benefits.

Single Commissioner's Order

IT IS, HEREBY, ORDERED that Claimant did not sustain a compensable injury by accident arising out of and in the course of his employment on January 5, 2017. Claimant is not entitled to any benefits under the Act.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

On September 19, 2019, within the statutory period, counsel for Claimant filed an application for review in the case setting forth his grounds for review, copies of which were furnished to all interested parties, prior to oral argument presented to the Appellate Panel on February 10, 2020. All proffered testimony has been taken. Such, together with all documentary evidence, has been

delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration. By appeal, Claimant submitted the following grounds for review:

1. Whether the Single Commissioner erred during the hearing in sustaining the objection of defense counsel, when defense counsel objected to the use of deposition testimony of officers, directors, and managing agents of Reeves Young, LLC, as they testified on behalf of the corporation, when SCRCP Rule 32, explicitly permits the use of deposition testimony of officers, directors and managing agents of corporations by the adverse party for any purpose.
2. Whether the Single Commissioner erred in his Finding of Fact 1, in finding the evidence of record as a whole supports a denial of benefits under the “going and coming” rule, when the evidence of record demonstrates claimant’s injury by accident meets the exception to the general rule pursuant to *McMillan v. Huntington & Guerry Electric Co.*, 277 S.C. 552, 290 S.E.2d 810 and other legal authority.
3. Whether the Single Commissioner erred in his Finding of Fact 4, in failing to find claimant’s motor vehicle accident and injuries were in the course and scope of employment, when the evidence of record demonstrates claimant was paid two (\$2.00) additional dollars per hour worked and thirty-five (\$35.00) dollars per diem for working out of state, the error being the evidence of record demonstrates claimant’s injury by accident meets the exceptions to the general rule pursuant to *McMillan v. Huntington & Guerry Electric Co.*, 277 S.C. 552, 290 S.E.2d 810 and other legal authority.
4. Whether the Single Commissioner erred in his Finding of Fact 3, in failing to find claimant’s motor vehicle injury by accident was not within the course and scope of employment, when the evidence of record demonstrated claimant’s injury by accident was suffered in the course and scope of employment.
5. Whether the Single Commissioner erred in his Finding of Fact 4, in failing to find claimant’s motor vehicle accident and injuries were in the course and scope of employment, when the evidence of record demonstrates claimant was paid (\$2.00) additional dollars per hour worked and thirty-five (\$35.00) dollars per diem for working out of state, the error being the evidence of record demonstrates claimant’s injury by accident meets the exception to the general rule pursuant to *McMillan v. Huntington & Guerry Electric Co.*, 277 S.C. 552, 290 S.E.2d 810 and other legal authority.
6. Whether the Single Commissioner erred in his Finding of Fact 5, in failing to find claimant’s motor vehicle accident and injuries were in the course and scope of employment, when the evidence of record demonstrates claimant was paid (\$2.00) additional dollars per hour worked and thirty-five (\$35.00) dollars per diem for working out of state, the error being the evidence of record demonstrates claimant’s injury by accident meets the exception to the general rule pursuant to *McMillan v. Huntington & Guerry Electric Co.*, 277 S.C. 552, 290 S.E.2d 810 and other legal authority.
7. Whether the Single Commissioner erred in his Finding of Fact 6, in failing to find

claimant's motor vehicle accident and injuries were in the course and scope of employment, when the evidence of record demonstrates claimant was paid (\$2.00) additional dollars per hour worked and thirty-five (\$35.00) dollars per diem for working out of state, the error being the evidence of record demonstrates claimant's injury by accident meets the exception to the general rule pursuant to *McMillan v. Huntington & Guerry Electric Co.*, 277 S.C. 552, 290 S.E.2d 810 and other legal authority.

8. Whether the Single Commissioner erred in his Finding of Fact 7, in failing to find claimant's motor vehicle injury by accident was not within the course and scope of employment, when the evidence of record demonstrates claimant's injury by accident was suffered in the course and scope of employment.
9. Whether the Single Commissioner erred in his Finding of Fact 8, in failing to find claimant's motor vehicle injury by accident was not within the course and scope of employment, when the evidence of record demonstrates claimant's injury by accident was suffered in the course and scope of employment.
10. Whether the Single Commissioner erred in his Finding of Fact 9, in failing to find claimant's motor vehicle injury by accident was not within the course and scope of employment, when the evidence of record demonstrates claimant's injury by accident was suffered in the course and scope of employment.
11. Whether the Single Commissioner erred in his Finding of Fact 10, in failing to find claimant's motor vehicle injury by accident was not within the course and scope of employment, when the evidence of record demonstrates claimant's injury by accident was suffered in the course and scope of employment.
12. Whether the Single Commissioner erred in his Finding of Fact 11, in failing to find claimant's motor vehicle injury by accident was not within the course and scope of employment, when the evidence of record demonstrates claimant's injury by accident was suffered in the course and scope of employment.
13. Whether the Single Commissioner erred in his Finding of Fact 12, in failing to find claimant's motor vehicle injury by accident was not within the course and scope of employment, when the evidence of record demonstrates claimant's injury by accident was suffered in the course and scope of employment.
14. Whether the Single Commissioner erred in his Finding of Fact 13, in failing to find claimant's motor vehicle injury by accident was not within the course and scope of employment, when the evidence of record demonstrates claimant's injury by accident was suffered in the course and scope of employment.
15. Whether the Single Commissioner erred in his Finding of Fact 14, in failing to find claimant's motor vehicle accident and injuries were in the course and scope of employment, when the evidence of record demonstrates claimant was paid (\$2.00) additional dollars per hour worked and thirty-five (\$35.00) dollars per diem for working out of state, the error being the evidence of record demonstrates claimant's injury by accident meets the exception to the general rule pursuant to *McMillan v. Huntington &*

Guerry Electric Co., 277 S.C. 552, 290 S.E.2d 810 and other legal authority.

16. Whether the Single Commissioner erred in his Finding of Fact 15, in failing to find claimant's motor vehicle accident and injuries were in the course and scope of employment, when the evidence of record demonstrates claimant was paid (\$2.00) additional dollars per hour worked and thirty-five (\$35.00) dollars per diem for working out of state, the error being the evidence of record demonstrates claimant's injury by accident meets the exception to the general rule pursuant to *McMillan v. Huntington & Guerry Electric Co.*, 277 S.C. 552, 290 S.E.2d 810 and other legal authority.
17. Whether the Single Commissioner erred in his Finding of Fact 16, in failing to find claimant's motor vehicle injury by accident was not within the course and scope of employment, when the evidence of record demonstrates claimant's injury by accident was suffered in the course and scope of employment.
18. Whether the Single Commissioner erred in his Finding of Fact 18, in dismissing Holder Construction Group, LLC and American Zurich Insurance Company from the claim, when the evidence of record demonstrates claimant performed work for Holder on the day of the injury by accident.
19. Whether the Single Commissioner erred in his Finding of Fact 20, in failing to find claimant's motor vehicle accident and injuries were in the course and scope of employment, when the evidence of record demonstrates claimant was paid (\$2.00) additional dollars per hour worked and thirty-five (\$35.00) dollars per diem for working out of state, the error being the evidence of record demonstrates claimant's injury by accident meets the exception to the general rule pursuant to *McMillan v. Huntington & Guerry Electric Co.*, 277 S.C. 552, 290 S.E.2d 810 and other legal authority.
20. Whether the Single Commissioner erred in his Finding of Fact 21, in failing to find claimant's motor vehicle accident and injuries were in the course and scope of employment, when the evidence of record demonstrates claimant was paid (\$2.00) additional dollars per hour worked and thirty-five (\$35.00) dollars per diem for working out of state, the error being the evidence of record demonstrates claimant's injury by accident meets the exception to the general rule pursuant to *McMillan v. Huntington & Guerry Electric Co.*, 277 S.C. 552, 290 S.E.2d 810 and other legal authority.
21. Whether the Single Commissioner erred in his Finding of Fact 22, in failing to find claimant's motor vehicle accident and injuries were in the course and scope of employment, when the evidence of record demonstrates claimant was paid (\$2.00) additional dollars per hour worked and thirty-five (\$35.00) dollars per diem for working out of state, the error being the evidence of record demonstrates claimant's injury by accident meets the exception to the general rule pursuant to *McMillan v. Huntington & Guerry Electric Co.*, 277 S.C. 552, 290 S.E.2d 810 and other legal authority.
22. Whether the Single Commissioner erred in his Finding of Fact 23, in denying claimant's request for benefits, the error being the evidence of record demonstrates claimant's injury by accident meets the exception to the general rule pursuant to *McMillan v. Huntington & Guerry Electric Co.*, 277 S.C. 552, 290 S.E.2d 810 and other legal authority, and the

claim is, therefore, compensable.

23. Whether the Single Commissioner erred in his Conclusions of Law 2, in finding claimant did not suffer an injury by accident in the course and scope of employment pursuant to S.C. Ann. § 42-1-160, when the evidence of record demonstrates claimant's injury by accident was suffered in the course and scope of employment.
24. Whether the Single Commissioner erred in his Conclusions of Law 3, in finding claimant is not entitled to benefits pursuant to § 42-25-60, when the evidence of record demonstrates claimant suffered injury by accident in the course and scope of employment pursuant to S.C. Code Ann. § 42-1-160.
25. Whether the Single Commissioner erred in failing to conclude in his Conclusions of Law, claimant's injury falls within the exceptions to the general rule an employee going to or coming from the place where his work is to be performed is not engaged in performing any service growing out of and incidental to his employment, when the evidence of record demonstrates claimant's injury by accident meets the exception to the general rule pursuant to *McMillan v. Huntington & Guerry Electric Co.*, 277 S.C. 552, 290 S.E.2d 810 and other legal authority.
26. Whether the Single Commissioner erred in ordering claimant did not sustain a compensable injury by accident arising out of and in the course of his employment on January 5, 2017 and is therefore not entitled to benefits, when the greater weight and preponderance of evidence support a legal conclusion that claimant suffered an injury by accident in the course and scope of employment and this, therefore, entitled to an order awarding benefits.

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. Section 42-17-50 (1985), review the Award, weigh the evidence as presented at the initial hearing, and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with, or inconsistent with, those of the Single Commissioner. After careful review in the instant case, the Appellate Panel, by unanimous vote, has determined that all of the Single Commissioner's Findings of Facts and Conclusions of Law are correct as stated. As such, the Appellate Panel of the South Carolina Workers' Compensation Commission, by unanimous vote, fully affirms the Single Commissioner's Order, and issues the following Findings of Fact and Conclusions of Law, which shall become, and hereby are, the law of the case.

FINDINGS OF FACT

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

1. On January 5, 2017, Claimant was involved in motor vehicle accident after he left his job site in Clemson, South Carolina and was driving to his home in Gainesville, Georgia. Defendants denied compensability of the claim under the "going and coming" rule. This finding of fact is based on the evidence as a whole.
2. Claimant underwent various evaluations and treatments for his alleged work-related injuries. Claimant treated at AnMed Health beginning on January 5, 2017, and underwent multiple surgeries. His care was later transferred to orthopaedist Dr. Scott Barbour, who treated him for neck, left shoulder, left knee, left ankle, and right elbow problems. Dr. Barbour performed left shoulder arthroscopic surgery on May 2, 2017. On July 20, 2017, Dr. Barbour performed a left knee total arthroplasty. Claimant also treated with Dr. Vidyadhar Chitale at Premier Neurosurgical Institute for his neck pain and tingling/numbness in his upper extremities. Dr. Chitale diagnosed Claimant with a brachial plexus injury. According to his hearing testimony, Claimant continues to treat with Dr. Barbour. This finding of fact is based on the evidence as a whole, including Claimant's medical records and hearing testimony.
3. Claimant was doing construction work at the Earle Street Apartment Complex in Clemson on the day of his motor vehicle accident on January 5, 2017, and left for his home in Gainesville from the apartment job. Reeves Young had insurance through Amerisure for the Earle Street Apartment Complex. Claimant lived in Gainesville, Georgia at the time he was working in Clemson and chose to drive back and forth from Clemson to his home in Gainesville to take care of his sick wife. This finding of fact is based on the evidence as a

whole, including Claimant's hearing testimony and William Reeves' hearing testimony.

4. Reeves Young is based out of Sugar Hill, Georgia. Matt McCormack testified that the Clemson project was one of the first out of state construction jobs for Reeves Young. Reeves Young provided housing in Clemson for the out of state workers so they would not have to travel back and forth to Georgia. Reeves Young made the decision to pay these out of state workers \$2.00 more an hour and a \$175.00 weekly per diem to make the Clemson job more attractive and to cover the cost of their meals for being out of town. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony, testimony of Juan Ochoa, testimony of William Reeves, and testimony of Matt McCormack.
5. Every Reeves Young employee from out of state working on the Clemson job site received the \$175.00 per diem regardless of where they drove from to get to the job site. Reeves Young did not require Claimant or any employees to keep receipts for what they spent the \$175.00 per diem on, nor did they require them to keep mileage logs. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony, testimony of William Reeves, and testimony of Matt McCormack.
6. Claimant was paid \$2.00 more an hour than his normal hourly wage and also received the \$175.00 weekly per diem while he was working in Clemson. Claimant received \$175.00 regardless of how many days he worked a week. Claimant did not receive the \$175.00 per diem when he worked in Georgia. Claimant testified that the \$175.00 did not fluctuate with his time worked or the distance he traveled. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony.
7. After working at the Clemson job site, Claimant was moved to a job in Atlanta with his supervisor, Juan Ochoa's, crew for a couple of weeks. Claimant was called back to the

Clemson site by Shane Burrell, the Clemson site superintendent. Juan wanted Claimant to come back to Atlanta, but Shane told him Claimant could stay in Clemson if he wanted. Claimant testified that he chose to stay and work in Clemson because he was making more money. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony and testimony of Juan Ochoa.

8. Claimant was not paid his hourly wage while driving to and from the Clemson job site. Reeves Young did not pay his car insurance, any of his car maintenance, or give him a gas card. Claimant was not doing any errands for Reeves Young nor was he charged with any tasks by Reeves Young on his way to and from the Clemson job site from his home in Gainesville. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony.
9. Claimant presented no evidence of the cost it took to fill up his gas tank. He also had no evidence of the maintenance cost of operating his vehicle. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony.
10. Juan Ochoa, Foreman for Reeves Young on the Clemson site and Claimant's supervisor, lived in Gainesville, Georgia when he worked on the Clemson job. He drove to and from Clemson every day in his company truck and used a company gas card. Juan received the per diem of \$175.00 a week when he worked at the Clemson job site and received the \$175.00 regardless of the amount of time he worked during the week. This finding of fact is based on the evidence as a whole, including Juan's hearing testimony.
11. Juan transported other employees, Julio Abrego, Isidro Silva, and Mario Romero, who lived near the Gainesville area in his company truck most days to work at Clemson. Julio, Isidro, and Mario also received the \$175.00 per diem even though they carpooled with Juan. This finding of fact is based on the evidence as a whole, including Juan Ochoa's

hearing testimony.

12. Juan offered Claimant and other employees the option of staying in housing in Clemson free of charge. Claimant chose to drive back to Gainesville to take care of his sick wife. Juan testified that Claimant would have still received the \$175.00 per diem if he had decided to stay in the housing. Every employee would have received the per diem, regardless if they chose to stay in the provided housing or to drive back home. This finding of fact is based on the evidence as a whole, including Juan Ochoa's hearing testimony.
13. William Reeves, the Vice President of Reeves Young, testified that \$175.00 weekly per diem was given to Reeves Young employees working on the Clemson project that traveled from out of state. He testified that the employees received the per diem for being out of town, for meal money, and because of industry standard, which dictated that generally people working out of state are given per diems. William testified that some workers stayed overnight in company provided housing in Clemson. William explained that this was an option for all employees to stay overnight, and that all employees would still receive the per diem regardless if they chose to stay or go home. This finding of fact is based on the evidence as a whole, including William Reeves' hearing testimony.
14. The \$175.00 per diem bore no relation to travel time, travel distance, or actual transportation expenses incurred by Reeves Young employees. Employees received the same \$175.00 amount irrespective of travel time, distance travelled, or transportation expense actually incurred by the employee. The \$175.00 amount did not fluctuate with and increases or decreases in the actual distance or time travelled and the claimant was not required to file any receipts, mileage logs, or vouchers with Reeves Young regarding mileage, expenses, or travel time. This finding of fact is based on the evidence as a whole.
15. William further testified that Reeves Young did not derive any benefit from Claimant

driving to and from Clemson from Gainesville. In fact, Reeves Young tried to avoid workers from having to drive to and from Gainesville to Clemson by providing housing free of charge. The \$175.00 weekly per diem was provided to offset the cost of extra meals the workers would have to buy when they stayed overnight if Clemson. This finding of fact is based on the evidence as a whole, including William Reeves' hearing testimony.

16. William did not place any restrictions on Claimant after he left the job site, and Claimant did not carry out any errands on the way home from Clemson or the way in. This finding of fact is based on the evidence as a whole, including William Reeves' hearing testimony.
17. Claimant's employment was separated in December of 2017, after he could not come back to work for a certain period of time. From his accident in January of 2017 until December of 2017, William Reeves testified that Reeves Young kept Claimant on their group health policy and paid his premiums. This finding of fact is based on the evidence as a whole, including William Reeves' hearing testimony.
18. Based on the sworn testimony of Claimant, William Reeves, Matt McCormack, Juan Ochoa, and payroll records, we hereby find Claimant was an employee of Reeves Young LLC on the date of his motor vehicle accident. In addition, I hereby find that Reeves Young LLC had coverage provided by Amerisure Insurance Company on the date of Claimant's accident, as stipulated to by the parties at the hearing before the undersigned Commissioner. It is also determined that Claimant spent the large majority of January 5, 2017, working on the apartment job and left for his home in Gainesville from this site. Therefore, Holder Construction Group LLC and American Zurich Insurance Company are hereby dismissed as parties to this claim. This finding of fact is based on the evidence as a whole.
19. However, given that Claimant had been at the Holder Construction Group LLC site of their dormitory project earlier on the date of his accident, we hereby find it was not unreasonable

for Claimant to have initially added Holder Construction Group LLC as a potential party to this claim, therefore Defendants Holder Construction Group LLC and American Zurich Insurance Company's motion for costs and fees is hereby denied. This finding of fact is based on the evidence as a whole.

20. Based on a preponderance of the evidence, including the sworn testimony of Claimant and representatives for the employer (Juan Ochoa, William Reeves, and Matt McCormack), it is apparent that Claimant on his own chose not to stay in the housing provided by the employer, but rather elected to travel back and forth to work from his home in Gainesville, Georgia. In addition, we find that no part of Claimant's travel to and from his home included performing any duties related to his employment. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony, testimony of William Reeves, testimony of Juan Ochoa, and the testimony of Matt McCormack.
21. Furthermore, we are persuaded that the \$175.00 per diem that was provided to Claimant and to other employees was intended to offset the cost of meals for the week for the employees working in Clemson and was not for travel expenses or "gas money," as housing was provided for them and daily travel was not required. This is further supported by the fact that employees working on job sites other than Clemson were not provided the same per diem. Additionally, Juan Ochoa, also received the \$175.00 per diem even though he drove a company truck and had a company gas card. Members of Juan's crew, who carpooled with Juan in his company truck from around Gainesville to Clemson also received the \$175.00 per diem. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony, testimony of William Reeves, testimony of Juan Ochoa, and the testimony of Matt McCormick.
22. Therefore, we hereby find Claimant has not met his burden with regard to the requisite

standard for the going and coming exception. This finding of fact is based on the evidence as a whole.

23. Claimant's request for benefits under the Act is hereby denied.

CONCLUSIONS OF LAW

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

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.
2. Under § 42-1-160, Claimant did not sustain a compensable injury by accident arising out of and in the course of his employment on January 5, 2017.
3. Under § 42-15-60, Claimant is not entitled to any benefits.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS, THEREFORE, ORDERED that the Order of the Single Commissioner filed in the above-captioned matter on September 6, 2019, is hereby affirmed by the Appellate Panel, and the above Findings of Fact and Conclusions of Law shall constitute the Decision and Order of the Appellate Panel.

IT IS FURTHER ORDERED that Claimant's claim for benefits under the South Carolina Workers' Compensation Act be, and hereby is, denied.

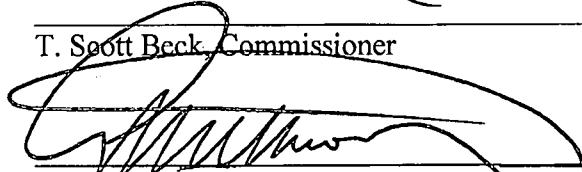
No hearing costs are assessed in this instance.

AND IT IS SO ORDERED.

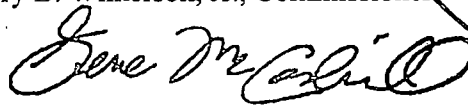
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



T. Scott Beck, Commissioner



Avery B. Wilkerson, Jr., Commissioner



Gene McCaskill, Commissioner

DECISION AND ORDER OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1706639

Jorge Lopez-Celestin,
Employee,
Claimant,

vs.

Reeves Young, LLC,
Holder Construction Group, LLC
Employers,

and

Amerisure Insurance Company,
American Zurich Insurance Company

Carriers,
Defendants.

DECISION AND ORDER

HEARING:

Held in Ninety Six, South Carolina on March 21, 2019.

APPEARANCES:

Claimant represented by C. Daniel Vega, Esquire of Columbia, South Carolina.

Defendants Reeves Young and Amerisure Insurance Company represented by Jason A. Griggs, Esquire of Willson Jones Carter & Baxley, P.A., Greenville, South Carolina.

Defendants Holder Construction Company and American Zurich Insurance Company represented by Andrew D. Smith, Esquire of Goodman McGuffey Lindsey & Johnson, LLP, Charleston, South Carolina.

PURPOSE OF HEARING:

To determine the issues on the Forms 50 and 51.

DECISION AND ORDER:

By **R. Michael Campbell, II, Commissioner**

FILED:

September 6, 2019.

I. APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence at the time of the hearing:

Claimant's APA Submissions:

- APA #1: Records of Scott Barbour, M.D., dated 4/5/2017-10/3/2018, consisting of pages 1-249.
- APA #2: Records of Benchmark Physical Therapy, dated 5/25/2017-8/31/2018, consisting of pages 250-292.
- APA #3: Records of Vidyadhar Chitale, M.D., dated 9/27/2017-10/4/2017, consisting of pages 293-297.
- APA #4: Records of Amedisys Home Health Care, dated 1/24/2017 – 3/21/2017, consisting of pages 298-446.
- APA #5: Records of AnMed Health, dated 1/5/2017-1/21/2017, consisting of pages 447-548.
- APA #6: Records of Pendleton Area Rescue Squad/EMS, dated 1/5/2017, consisting of pages 549-553.
- APA #7: Records of Philip G. Simoneaux, II, CPA Report, dated 7/25/2018, consisting of pages 554-564.

Claimant's Exhibits:

- Exhibit A: Claimant's Driver's License
- Exhibit B: Accident Report
- Exhibit C: Map
- Exhibit D: Photos of Wrecked Vehicle
- Exhibit E: Bank Transaction History
- Exhibit F: Medical Bills
- Exhibit G: Cancellation/termination of health insurance letters
- Exhibit H: 2016 W-2

- Exhibit I: Gasbuddy.com – Clemson
Exhibit J: Gasbuddy.com – Atlanta
Exhibit K: Wage records of Reeves Young, LLC
Exhibit L: AP Vender Payment History

Defendants' (American Zurich Insurance Company) Exhibits:

- Exhibit M: Contractor Controlled Insurance Program, dated 3/31/2016, consisting of pages 1-37.
Exhibit N: Daily Activity for Earle Street Apartments, dated 1/5/2017, consisting of page 38.
Exhibit O: Reeves Time Card Entry for Claimant, dated 1/5/2017, consisting of page 39.
Exhibit P: Claimant's Deposition, dated 1/16/2018, consisting of pages 40-41.
Exhibit Q: William Reeves Deposition, dated 3/5/2018, consisting of pages 42-85.
Exhibit R: Matt McCormack's Deposition, dated 3/5/2018, consisting of pages 86-102.
Exhibit S: Motion for Attorney's Fees and Cost, dated 4/17/2018, consisting of pages 103-122.

II. STIPULATIONS

Counsel for the respective parties stipulated at the time of the hearing to the following issues:

1. The purpose of the hearing is to determine the issues as set forth in the Forms 50 and 51 and any other issues which may timely come before the Commission;
2. Claimant's compensation rate is \$806.92;
3. Notices were timely and properly served upon all parties of interest;
4. Venue is proper as agreed by all parties;
5. That the South Carolina Workers' Compensation Commission has jurisdiction over the parties and issues involved.

Without objection, the Commission's file was made a part of the record in this matter with the exception of any self-serving declaration or unstipulated medical reports.

III. STATEMENT OF THE CASE

This is a denied claim that arises from a motor vehicle accident that occurred on January 5, 2017, when Claimant was driving from work at a job site in Clemson, South Carolina to his home in Gainesville, Georgia. While in Clemson the Claimant would spend time working on two different job sites, the dormitory project at Clemson University and the Earle Street Apartment project. Holder Construction Group, LLC was the general contractor over the dormitory project and obtained a CCIP insurance policy through American Zurich to cover any injuries that happened on the dormitory project. When Claimant was working on the Earle Street Apartment job he was covered under Reeves Young's general workers' compensation insurance policy with Amerisure Insurance Company. Defendants denied the claim on the basis that Claimant was not in the course of his employment at the time of the accident because he was driving from work and did not meet one of the exceptions to the "going and coming" rule. Claimant filed a Form 50, Request for Hearing, to determine the issue of compensability. Defendants filed a Form 51, denying that Claimant sustained an injury arising out of and in the course of his employment.

A hearing was held on March 21, 2019 before the Undersigned to determine the issue of compensability. At the hearing, Claimant took the position that the case was compensable on two grounds: (1) the "special errand" exception to the "going and coming" rule was applicable because Claimant was not working on employer premises, but he was sent to a specific job site as the behest of the employer, and he could not have done the work but for the travel to and from the job site; and (2) the "time or travel compensated for" exception to the "going and coming" rule was applicable because Claimant contends the employer offset the cost of travel and he could not have afforded the cost of travel but for the addition of \$2.00 to his hourly rate and per diem of \$35.00 a day.

It was Defendants Reeves Young and Amerisure Insurance Company's position that

Claimant did not meet any exception to the going and coming rule. He was involved in an unfortunate motor vehicle accident when he was leaving the Clemson job site, but that he was not on a special errand, nor was he compensated for his travel time. Defendants asserted that Claimant received a \$175.00 per diem, as every worker did on the Clemson job site, regardless of whether they stayed at the employer-provided housing, car pooled, or drove home. Defendants argued that the \$175.00 did not constitute mileage, payment for travel time, or reimbursement for gas money, but rather was simply a per diem to every employee at the Clemson job site, including Claimant.

At the hearing, Holder Construction Company and American Zurich Insurance Company made a motion under Section 42-17-80 that Claimant does not have reasonable grounds to pursue a claim against Holder Construction or Zurich Insurance Company and asked for costs associated with defending this claim.

IV. EVIDENCE OF THE CASE

Hearing Testimony of Jorge Lopez-Celestin ("Claimant")

Claimant is 52 years old. He was involved in a motor vehicle accident on January 5, 2017. Claimant has been a heavy machine operator since 1996. Claimant testified that at the time of the accident he was employed by Reeves Young, a construction company. Claimant testified that he was working on projects in Clemson doing grading work and moving dirt. (Hr. Tr. pp. 25-27.)

On January 5, 2017, Claimant testified that he was paid \$18.50 an hour and received a paycheck every week. In addition, Claimant testified that he received regular weekly deposits of \$175.00. Claimant's normal or usual rate of pay was \$16.50 an hour when he worked in Georgia. However, when he worked in Clemson, Claimant testified that he was paid \$18.50 per hour. Claimant testified that his supervisor, Juan Ochoa, told him that he would be making \$2.00 more an hour working at the Clemson site. Claimant testified that he received the \$175.00 every week

that he worked in Clemson. Claimant worked in Marietta, Georgia for a period of time in March 2016 and did not receive the \$175.00 a week during this time. He testified that he resumed receiving the \$175.00 when he went back to work in Clemson. Claimant testified that his hourly rate also went down when he was working in Marietta. (Hr. Tr. pp. 27-32.)

Claimant testified that the job in Clemson was 85 miles from his home in Gainesville. Claimant testified that Reeves Young sent him to work at Clemson. Claimant testified that he would not have been able to afford to travel to Clemson without additional money being paid by the company. Claimant felt it benefited the company for him to be available in Clemson. (Hr. Tr. pp. 34-36.)

Claimant testified that his immediate supervisor is Juan Ochoa, and he usually worked on Juan's team. When he was moved to Atlanta to work Claimant went with Juan's entire team. Claimant testified that Shane Burrell later had asked him to go back to Clemson with another team. Claimant testified that Shane was the supervisor at the Clemson project. Claimant testified that Juan Ochoa wanted him to come back to Atlanta, but Shane told him he could stay at Clemson if he wanted, and Claimant chose to do that. Claimant testified that it was convenient for him to work at Clemson because he was making more money. He testified that he worked at two different locations when he worked in Clemson. (Hr. Tr. pp. 36-39.)

Claimant testified that he sustained serious injuries as a result of his motor vehicle accident, including a left ankle fracture, total knee replacement, fractured ribs, dislocated left shoulder, neck fractures, and two years later, he developed hernias. Claimant testified that he had insurance with Blue Cross Blue Shield, but those benefits ended when he was terminated from the company on December 11, 2017. Claimant testified that he has not been able to return to work since the accident. Claimant testified that he is not able to physically perform the work he

did for Reeves Young due to the injuries sustained in the accident. (Hr. Tr. pp. 39-42.)

Claimant testified that he is still treating with Dr. Scott Barbour. Claimant testified that he has been recommended for treatment for swelling in his arm, his fractures, pain management and additional specialists. Claimant testified that he has not received any financial or monetary compensation from Reeves Young or workers' compensation since his accident. (Hr. Tr. pp. 42-43.)

Upon cross-examination by Defense Counsel for Reeves Young and Amerisure Insurance Company, Claimant testified that his accident occurred on January 5, 2017. After his accident, Claimant admitted that Reeves Young kept him on their group health policy through December of 2017, and he did not pay any premiums during that time frame. Claimant testified that he received another letter from Reeves Young in November of 2017 and that Eric Young came to visit him at his house. (Hr. Tr. pp. 43-49.)

Claimant testified that he was paid \$175.00 additional money per week when he worked in Clemson. Claimant stated that he made the \$175.00 regardless of how many days he worked. Claimant agreed that he worked less hours some weeks if there was rain or bad weather, but he still received the \$175.00 a week regardless. Claimant agreed that the \$175.00 did not fluctuate. (Hr. Tr. pp. 49-50.)

Claimant testified that every Reeves Young worker on the Clemson site received the \$175.00 per diem. He further testified that the workers at the Clemson site drove from different places, but the \$175.00 remained constant. Claimant testified that Reeves Young did not require him to keep receipts for what he was spending the \$175.00 on. Claimant claimed that, "in my case they gave me the money for gas and they never asked me for any receipts." (Hr. Tr. p. 51 at lines 7-8.) Claimant then admitted that Reeves Young never asked him for receipts, a mileage

log, and Claimant never had to tell them how far or where he was driving. Claimant testified that an apartment was mentioned to him if he wanted to stay in Clemson, but he was never officially offered the same. Claimant testified that he chose to drive back and forth to Gainesville, Georgia to take care of his sick wife. Claimant testified that he drove his own car and spent about three and a half hours in the car round trip each day. (Hr. Tr. pp. 50-52.)

During his driving time in the car, Claimant testified that he was not paid his hourly wage. He further stated that Reeves Young did not pay his car insurance, any of his car maintenance, or give him a gas card to buy gas. Claimant testified that he was not doing any errands for Reeves Young, nor was he charged with any tasks by Reeves Young on his way to and from the Clemson job site and his house in Gainesville. (Hr. Tr. p. 52.)

Claimant testified that he routinely worked other jobs for Reeves Young in Atlanta that required him to drive an hour and a half one way in the afternoon, and he was not paid mileage for the same. Claimant agreed that Reeves Young did not exercise any control over what he did while driving in his vehicle to and from Clemson. He did not even have a work phone. Claimant did not have any evidence of the cost it took to fill up his gas tank. He also had no evidence of the maintenance cost of operating his vehicle. (Hr. Tr. pp. 52-54.)

Upon cross-examination by Defense Counsel for Holder Construction Company and American Zurich Insurance Company, Claimant testified that he left from the Earle Street Apartment Complex on January 5, 2017 when he was involved in his motor vehicle accident. Claimant explained that he worked at both the dormitory project and the apartments on the day of his accident, but he only worked on the dormitory project in the morning cleaning out mud for an hour. After that, he went over to the Earle Street Apartment Complex and worked there until the end of the day. (Hr. Tr. pp. 54-57.)

Testimony of Juan Ochoa ("Juan")

Juan testified that he has been employed by Reeves Young as a Foreman for the last year or so. He worked on the dormitory job in Clemson. Juan explained that there were two jobs in Clemson—the dormitory job and the apartment job. Juan testified that he was Foreman on the dormitory job only. Juan testified that he lived in Gainesville, Georgia when he worked on the Clemson job and drove to and from Clemson from Gainesville everyday in his company truck. Juan testified that his truck is owned by Reeves Young, and he does not pay for the truck payments, for insurance, or gas. He uses a company card to pay for gas when driving the company truck. Juan testified that when he worked in Clemson, he also received a per diem of \$175.00 a week. He received the \$175.00 a week regardless of the amount of time he worked during the week. Juan testified that he did not have to keep track of any mileage or receipts when he was traveling between Gainesville and Clemson. (Hr. Tr. pp. 65-68.)

Juan testified that he was never told by Reeves Young how to spend the \$175.00. After he stopped working in Clemson and went back to working in Atlanta, Juan testified that he did not get the \$175.00 anymore. Juan testified that he transported other employees, Julio Abrego, Isidro Silva, and Mario Romero, who lived near the Gainesville area in his company truck most days to work at Clemson. Juan testified that Julio, Isidro, and Mario also received the \$175.00 per diem even though they did not drive their own vehicle and rode with Juan to work. (Hr. Tr. pp. 68-69.)

Juan testified that he was Claimant's supervisor on the dorm job and that Claimant was living in Gainesville while working on the job. Juan testified that Claimant drove back and forth from Gainesville to Clemson for work. Juan further testified that Claimant had the option of staying in housing in Clemson, and he offered that option to Claimant. Juan made it clear to

everyone, including Claimant, that there was housing available in Clemson free of charge. Juan explained that Reeves Young paid for the housing, and it was available from the beginning of the job. (Hr. Tr. pp. 69-70.)

Juan explained that the Clemson job started June 8, 2015. After Juan offered the housing at Clemson to Claimant, he testified that Claimant continued to drive back and forth from Clemson to Gainesville. Juan thought Claimant did that because his wife was sick. Juan testified that Claimant received the \$175.00 per diem and would have still received the \$175.00 per diem if he had decided to stay in the housing. Juan testified that it was the company's plan to continue paying the per diem even if the employees chose to stay in the housing. Juan testified that Claimant did not have to keep track of any mileage or receipts, and he did not tell Claimant how to spend his per diem. (Hr. Tr. pp. 70-72.)

Juan testified that Claimant did not have any errands to run for Reeves Young when he was driving back and forth to Clemson. Juan further testified that Reeves Young did not have any control over Claimant when he was going to or coming from the job site at Clemson. Juan denied ever telling Claimant that the \$175.00 per diem was for gas money. (Hr. Tr. pp. 72-73.)

Upon cross-examination by Claimant's attorney, Juan testified that he told Claimant the money was for per diem, which meant it was to help with meals. Juan explained that everyone received the per diem, regardless if they chose to stay in the provided housing or to drive back home. Juan testified that Claimant drove home at the end of each day to take care of his sick wife. Juan agreed that he also drove home each day for his family. Juan agreed that the company did not require anyone to stay in the company housing. (Hr. Tr. pp. 73-77.)

Juan testified that his crew consisted of Julio Abrego, Isidro Silva, Mario Romero, Jorge Lopez, Luz Lopez, and one other guy whose name he could not remember. Juan testified that

not all of his crew members rode with him. There were other members of the crew that drove their own vehicles to Clemson and also received the \$175.00 per week per diem. Juan testified that all members of his crew were paid the \$175.00. (Hr. Tr. pp. 77-78.)

Juan testified that his crew was transferred to an Atlanta area job in March of 2016. Juan testified that Claimant initially went with him to Atlanta and was a good worker. After 2-3 weeks in Atlanta, Claimant returned to Clemson as the request of Superintendent Shane Burrell. Juan testified that he contacted Shane Burrell and asked for Claimant to be sent back to Atlanta because he liked having him on his crew and needed him back. Shane told Juan that Claimant did not want to come back to Atlanta because he was making more money in Clemson. (Hr. Tr. pp. 78-82.)

Juan testified that he did not use the extra money to pay for any travel expenses because he had a company gas card. He stated that no one else below him in his crew had a gas card. Juan testified that he never told his crew how to use their money. Juan acknowledged that they made extra money working in Clemson that they did not make when working in Atlanta. Juan testified that his salary is separate from the per diem. Juan testified that if there was inclement weather in Clemson, employees were instructed to call in to him or Shane and then they would make a decision from there. Juan testified that it was the company's choice whether they would bring people in on days with inclement weather and/or whether they would send them home early. Regardless, Reeves Young would still pay the employees the \$35.00/day whether they worked 10 minutes or 2 hours. (Hr. Tr. pp. 82-87.)

Testimony of William Reeves ("William")

William testified that he has worked for Reeves Young for 11 years. He is the Vice President and Leader of the Civil Engineering Unit. He was over the two Clemson projects.

William testified that Claimant was a good employee, and they enjoyed having him around. William testified that Claimant's employment was separated in December of 2017, after he could not come back to work after a certain period of time. From his accident in January of 2017 until December of 2017, William stated that Reeves Young kept Claimant on their group health policy and paid his premiums. (Hr. Tr. 89-90.)

William testified that Claimant was not paid mileage while driving to and from Clemson. William testified that Claimant was given a per diem while he was working in Clemson of \$175.00 a week. William explained that the \$175.00 was given to Reeves Young employees working on the Clemson project that traveled from out of state. He stated that the employees received the per diem for being out of town, for meal money, and because of industry standard, which dictated that generally people working out of state are given per diems. William testified that some workers stayed overnight in the Clemson area and Reeves Young provided company housing. William explained that this was an option for all employees to stay overnight, and that they would still receive the per diem if they did stay, which some employees chose to do. (Hr. Tr. pp. 90-92.)

William testified that the \$175.00 was not contemplated as gas money. William testified that other employees traveled from different parts of Atlanta to the Clemson site and still received the \$175.00 per diem. The \$175.00 was flat across the board and did not fluctuate with distance travelled or time worked. William testified that Claimant was offered the housing in Clemson, and had he chosen to stay in the housing, he would have continued to receive the \$175.00. William explained that if workers carpooled, and only one worker was actually driving, they would all still receive the \$175.00. (Hr. Tr. pp. 92-93.)

William testified that the \$175.00 bore no relation to travel time, travel distance, or actual

transportation expenses incurred by Reeves Young employees. Employees did not have to keep a track of mileage receipts or gas logs. William testified that Reeves Young did not derive any benefit from employees driving to and from their home in Gainesville to the job site. William did not place any restrictions on Claimant after he left the job site, and Claimant did not carry out any errands on the way home from Clemson or the way in. (Hr. Tr. pp. 93-95.)

William testified that Juan Ochoa had a company issued fuel card and company truck that he drove to and from his home in Gainesville to the Clemson site; however, Juan also received the \$175.00 per diem. William testified that there are instances in which they will pay an employee's mileage, but there is a process for that involving expense reports and pay per the IRS mileage guidelines. William testified that the mileage process with an expense report was not used in Claimant's case. (Hr. Tr. p. 96.)

Upon cross-examination by Claimant's attorney, William testified that mileage was not offered to the crew going to Clemson, and the company had decided to pay the per diem in consideration for the workers being out of state. William explained that they did not account for how far the workers had to travel and mileage was never part of the equation into giving a per diem. William stated that they assumed the workers would spend the night in Clemson and would have to buy meals, so the per diem was to offset the cost of the extra meals that they had to buy. (Hr. Tr. pp. 96-100.)

William testified that the workers were not required to stay in Clemson. If Claimant had chosen to not go to Clemson, he would not have been terminated, and he could have worked in Atlanta. Shane Burrell was the superintendent of the Clemson job site and was in charge of the daily activities of the site. He directed Juan who would then direct the crew members. When Claimant went to Atlanta with Juan Ochoa's crew, he was not paid the per diem because they

were in state. William testified that the employees could spend the per diem on whatever they wanted to. (Hr. Tr. pp. 100-104.)

Upon cross-examination by Defense Counsel for Holder Construction Company and American Zurich Insurance Company, William testified it was his understanding Claimant worked 10 hours at the Earle Street Apartment Complex on the day of his accident. The general contractor at the Earle Street Apartment Complex was Fortune Johnson. William testified that Holder did not have any business dealings at the Earle Street Apartment Complex and that Reeves Young had insurance through Amerisure for the apartment complex. (Hr. Tr. pp. 104-105.)

Testimony of Matthew McCormack ("Matt")

Upon direct-examination by Claimant's attorney, Matt testified that he is a Vice President for Reeves Young and was the executive over both Clemson projects, and the project manager reported to him the day-to-day activities of the job. Matt was responsible for making sure they had appropriate manpower and ensuring that the projects stayed on time. Matt testified that he was involved with the decision as to whether employees would get paid a per diem when employees were working in Clemson. Matt testified that the \$175.00 a week was because Reeves Young was going to provide housing for the employees to stay in Clemson, and the \$175.00 would cover the cost of meals for being out of town. (Hr. Tr. pp. 106-109.)

Matt explained that this was Reeves Young's first project out of state. He stated that Reeves Young wanted to make it more attractive to the workers and offset the burden of being an out of town employee, so they provided housing and gave them money for food. The employees were not required to tell them what they were spending the money on and not required to turn in receipts. Matt testified that more than one employee was driving back and forth from Gainesville to Clemson every day. Matt testified that they did not require them to stay in

Clemson, nor did they prohibit them from traveling back home just as long as they showed up on time and did their work. (Hr. Tr. pp. 109-110.)

Medical Evidence

On the day of his accident, January 5, 2017, Claimant was transported to AnMed Health Medical Center via EMS. Upon arrival, he was admitted to the orthopaedics unit for multiple orthopaedic injuries: left open knee joint; closed left ankle fracture; closed left shoulder fracture dislocation; and a right forearm wound. Claimant underwent multiple surgeries, including debridement and irrigation to bone of the left knee, placement of uniplanar external fixator left lower extremity, closure of the right forearm laceration (6 cm), and open treatment with internal fixation of left trimalleolar ankle fracture with fixation of the posterior lip. Claimant was discharged from the hospital on January 21, 2017. His discharge diagnoses were: left 5th, 6th and 7th rib fractures; right-sided pulmonary contusion; status post debridement, irrigation left open knee joint; status post an external fixator placement with subsequent conversion to open reduction/internal fixation left ankle; and close left greater tuberosity fracture/dislocation. Home Health physical therapy was ordered. (Claimant's APA #5.)

Claimant underwent home health care with Amedisys Home Health Care from January 24, 2017 to March 21, 2017. (Claimant's APA #4.)

Claimant submitted records from Dr. Scott Barbour at Barbour Orthopaedics dated April 5, 2017 to October 3, 2018. On April 5, 2017, Claimant complained of neck, left shoulder, left knee, left ankle, and left forearm pain resulting from a motor vehicle accident on January 5, 2017. Claimant declined a left shoulder corticosteroid injection. He was given prescriptions for Percocet and Mobic. Dr. Barbour recommended physical therapy for the cervical spine and left ankle and ordered MRIs of the right elbow, cervical spine, left shoulder and left knee. After

reviewing the MRIs, Dr. Barbour recommended left shoulder arthroscopy with rotator cuff repair, Bankart repair, and extensive debridement of the glenohumeral joint vs. superior labral repair with intra-articular injection of AmnioFix. For the knee, he recommended a left knee arthroplasty secondary to severe cortical irregularity, minimal meniscal remnant and tearing, and extensive bone edema in the presence of severe degeneration. For the cervical spine, Dr. Barbour recommended ESIs to treat the disc protrusions at the C4-5 and C5-6 level. He recommended a series of 3 platelet rich plasma injections to the common extensor tendon of the R elbow to treat partial tear and reduce inflammation. Dr. Barbour wrote Claimant out of work. (Claimant's APA #1.)

On May 2, 2017, Dr. Barbour performed arthroscopy of the left shoulder with arthroscopic rotator cuff repair, arthroscopic Bankart repair, arthroscopic SLAP repair, extensive debridement of the glenohumeral joint, arthroscopic subacromial decompression and bursectomy, and AmnioFix growth factor injection. On July 20, 2017, Dr. Barbour performed a left knee total arthroplasty. (Claimant's APA #1.)

On September 27, 2017, Claimant presented to Dr. Vidyadhar Chitale at Premier Neurosurgical Institute for evaluation of his neck pain, numbness/tingling down the bilateral upper extremities, and transient facial swelling. Dr. Chitale ordered an EMG/NCS, which showed median nerve entrapment at the bilateral wrists, but no evidence of denervation, radiculopathy or myopathy. Dr. Chitale diagnosed Claimant with a brachial plexus injury. (Claimant's APA #3.)

From April of 2017 until October of 2018, Claimant continued to regularly follow up with Dr. Barbour for his neck, left shoulder, left knee, and left ankle problems. The last record from Dr. Barbour provided in Claimant's APAs was on October 3, 2018. At that time, Dr.

Barbour noted Claimant's ongoing complaints of left knee, left shoulder, neck, right elbow, and left ankle pain. He also had complaints of swelling on the left side of his body. Dr. Barbour recommended Claimant continue to follow a home exercise program for all affected body parts and recommended an injection for the neck. Dr. Barbour noted that he was unable to determine a date of MMI or of a PPD rating at that time. (Claimant's APA #1.)

A record such as was necessary for a decision was made of the proceeding and after careful consideration and study of all the evidence, the following findings of fact are accordingly made.

V. FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. On January 5, 2017, Claimant was involved in motor vehicle accident after he left his job site in Clemson, South Carolina and was driving to his home in Gainesville, Georgia. Defendants denied compensability of the claim under the "going and coming" rule. This finding of fact is based on the evidence as a whole.
2. Claimant underwent various evaluations and treatments for his alleged work-related injuries. Claimant treated at AnMed Health beginning on January 5, 2017, and underwent multiple surgeries. His care was later transferred to orthopaedist Dr. Scott Barbour, who treated him for neck, left shoulder, left knee, left ankle, and right elbow problems. Dr. Barbour performed left shoulder arthroscopic surgery on May 2, 2017. On July 20, 2017, Dr. Barbour performed a left knee total arthroplasty. Claimant also treated with Dr. Vidyadhar Chitale at Premier Neurosurgical Institute for his neck pain and tingling/numbness in his upper extremities. Dr. Chitale diagnosed Claimant with a brachial plexus injury. According to his hearing testimony, Claimant continues to treat with Dr. Barbour. This finding of fact is based on the evidence as a whole, including Claimant's medical records and hearing

testimony.

3. Claimant was doing construction work at the Earle Street Apartment Complex in Clemson on the day of his motor vehicle accident on January 5, 2017, and left for his home in Gainesville from the apartment job. Reeves Young had insurance through Amerisure for the Earle Street Apartment Complex. Claimant lived in Gainesville, Georgia at the time he was working in Clemson and chose to drive back and forth from Clemson to his home in Gainesville to take care of his sick wife. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony and William Reeves' hearing testimony.
4. Reeves Young is based out of Sugar Hill, Georgia. Matt McCormack testified that the Clemson project was one of the first out of state construction jobs for Reeves Young. Reeves Young provided housing in Clemson for the out of state workers so they would not have to travel back and forth to Georgia. Reeves Young made the decision to pay these out of state workers \$2.00 more an hour and a \$175.00 weekly per diem to make the Clemson job more attractive and to cover the cost of their meals for being out of town. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony, testimony of Juan Ochoa, testimony of William Reeves, and testimony of Matt McCormack.
5. Every Reeves Young employee from out of state working on the Clemson job site received the \$175.00 per diem regardless of where they drove from to get to the job site. Reeves Young did not require Claimant or any employees to keep receipts for what they spent the \$175.00 per diem on, nor did they require them to keep mileage logs. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony, testimony of William Reeves, and testimony of Matt McCormack.

6. Claimant was paid \$2.00 more an hour than his normal hourly wage and also received the \$175.00 weekly per diem while he was working in Clemson. Claimant received \$175.00 regardless of how many days he worked a week. Claimant did not receive the \$175.00 per diem when he worked in Georgia. Claimant testified that the \$175.00 did not fluctuate with his time worked or the distance he traveled. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony.
7. After working at the Clemson job site, Claimant was moved to a job in Atlanta with his supervisor, Juan Ochoa's, crew for a couple of weeks. Claimant was called back to the Clemson site by Shane Burrell, the Clemson site superintendent. Juan wanted Claimant to come back to Atlanta, but Shane told him Claimant could stay in Clemson if he wanted. Claimant testified that he chose to stay and work in Clemson because he was making more money. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony and testimony of Juan Ochoa.
8. Claimant was not paid his hourly wage while driving to and from the Clemson job site. Reeves Young did not pay his car insurance, any of his car maintenance, or give him a gas card. Claimant was not doing any errands for Reeves Young nor was he charged with any tasks by Reeves Young on his way to and from the Clemson job site from his home in Gainesville. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony.
9. Claimant presented no evidence of the cost it took to fill up his gas tank. He also had no evidence of the maintenance cost of operating his vehicle. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony.
10. Juan Ochoa, Foreman for Reeves Young on the Clemson site and Claimant's supervisor,

lived in Gainesville, Georgia when he worked on the Clemson job. He drove to and from Clemson everyday in his company truck and used a company gas card. Juan received the per diem of \$175.00 a week when he worked at the Clemson job site and received the \$175.00 regardless of the amount of time he worked during the week. This finding of fact is based on the evidence as a whole, including Juan's hearing testimony.

11. Juan transported other employees, Julio Abrego, Isidro Silva, and Mario Romero, who lived near the Gainesville area in his company truck most days to work at Clemson. Julio, Isidro, and Mario also received the \$175.00 per diem even though they carpooled with Juan. This finding of fact is based on the evidence as a whole, including Juan Ochoa's hearing testimony.
12. Juan offered Claimant and other employees the option of staying in housing in Clemson free of charge. Claimant chose to drive back to Gainesville to take care of his sick wife. Juan testified that Claimant would have still received the \$175.00 per diem if he had decided to stay in the housing. Every employee would have received the per diem, regardless if they chose to stay in the provided housing or to drive back home. This finding of fact is based on the evidence as a whole, including Juan Ochoa's hearing testimony.
13. William Reeves, the Vice President of Reeves Young, testified that \$175.00 weekly per diem was given to Reeves Young employees working on the Clemson project that traveled from out of state. He testified that the employees received the per diem for being out of town, for meal money, and because of industry standard, which dictated that generally people working out of state are given per diems. William testified that some workers stayed overnight in company provided housing in Clemson. William explained that this was an option for all employees to stay overnight, and that all employees would still receive the

per diem regardless if they chose to stay or go home. This finding of fact is based on the evidence as a whole, including William Reeves' hearing testimony.

14. The \$175.00 per diem bore no relation to travel time, travel distance, or actual transportation expenses incurred by Reeves Young employees. Employees received the same \$175.00 amount irrespective of travel time, distance travelled, or transportation expense actually incurred by the employee. The \$175.00 amount did not fluctuate with and increases or decreases in the actual distance or time travelled and the claimant was not required to file any receipts, mileage logs, or vouchers with Reeves Young regarding mileage, expenses, or travel time. This finding of fact is based on the evidence as a whole.
15. William further testified that Reeves Young did not derive any benefit from Claimant driving to and from Clemson from Gainesville. In fact, Reeves Young tried to avoid workers from having to drive to and from Gainesville to Clemson by providing housing free of charge. The \$175.00 weekly per diem was provided to offset the cost of extra meals the workers would have to buy when they stayed overnight if Clemson. This finding of fact is based on the evidence as a whole, including William Reeves' hearing testimony.
16. William did not place any restrictions on Claimant after he left the job site, and Claimant did not carry out any errands on the way home from Clemson or the way in. This finding of fact is based on the evidence as a whole, including William Reeves' hearing testimony.
17. Claimant's employment was separated in December of 2017, after he could not come back to work for a certain period of time. From his accident in January of 2017 until December of 2017, William Reeves testified that Reeves Young kept Claimant on their group health policy and paid his premiums. This finding of fact is based on the evidence as a whole, including William Reeves' hearing testimony.

18. Based on the sworn testimony of Claimant, William Reeves, Matt McCormack, Juan Ochoa, and payroll records, I hereby find Claimant was an employee of Reeves Young LLC on the date of his motor vehicle accident. In addition, I hereby find that Reeves Young LLC had coverage provided by Amerisure Insurance Company on the date of Claimant's accident, as stipulated to by the parties at the hearing before the undersigned Commissioner. It is also determined that Claimant spent the large majority of January 5, 2017, working on the apartment job and left for his home in Gainesville from this site. Therefore, Holder Construction Group LLC and American Zurich Insurance Company are hereby dismissed as parties to this claim. This finding of fact is based on the evidence as a whole.
19. However, given that Claimant had been at the Holder Construction Group LLC site of their dormitory project earlier on the date of his accident, I hereby find it was not unreasonable for Claimant to have initially added Holder Construction Group LLC as a potential party to this claim, therefore Defendants Holder Construction Group LLC and American Zurich Insurance Company's motion for costs and fees is hereby denied. This finding of fact is based on the evidence as a whole.
20. Based on a preponderance of the evidence, including the sworn testimony of Claimant and representatives for the employer (Juan Ochoa, William Reeves, and Matt McCormack), it is apparent that Claimant on his own chose not to stay in the housing provided by the employer, but rather elected to travel back and forth to work from his home in Gainesville, Georgia. In addition, I find that no part of Claimant's travel to and from his home included performing any duties related to his employment. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony, testimony of William Reeves, testimony of Juan Ochoa, and the testimony of Matt McCormack.

21. Furthermore, I am persuaded that the \$175.00 per diem that was provided to Claimant and to other employees was intended to offset the cost of meals for the week for the employees working in Clemson and was not for travel expenses or "gas money," as housing was provided for them and daily travel was not required. This is further supported by the fact that employees working on job sites other than Clemson were not provided the same per diem. Additionally, Juan Ochoa, also received the \$175.00 per diem even though he drove a company truck and had a company gas card. Members of Juan's crew, who carpooled with Juan in his company truck from around Gainesville to Clemson also received the \$175.00 per diem. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony, testimony of William Reeves, testimony of Juan Ochoa, and the testimony of Matt McCormick.
22. Therefore, I hereby find Claimant has not met his burden with regard to the requisite standard for the going and coming exception. This finding of fact is based on the evidence as a whole.
23. Claimant's request for benefits under the Act is hereby denied.

VI. CONCLUSIONS OF LAW

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

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.
2. Under § 42-1-160, Claimant did not sustain a compensable injury by accident arising out of and in the course of his employment on January 5, 2017.
3. Under § 42-15-60, Claimant is not entitled to any benefits.

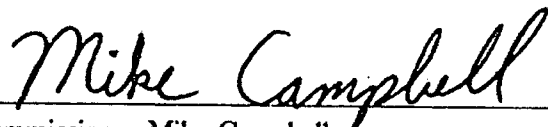
VII. ORDER/AWARD

IT IS HEREBY ORDERED that Claimant did not sustain a compensable injury by accident arising out of and in the course of his employment on January 5, 2017. Claimant is not entitled to any benefits under the Act.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



Commissioner Mike Campbell

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.

September 6, 2019

By: Barbara Cheeseboro, Administrative Assistant to
Commissioner Campbell

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



WCC File #: 1706639
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Jorge Lopez-Celestin SSN: [REDACTED] Employer's Name: Reeves Young, LLC
Address: 2203 Cameo Ct. Address: 4000 Smithtown Road, Suite 200
City: Gainesville State: GA Zip: 30501 City: Suwanee State: GA Zip: 30024
Home Phone: (678) 789-3866 Work Phone: _____ Insurance Carrier: American Zurich Ins. Co. & Amerisure Ins. Co.
Preparer's Name: C. Daniel Vega Law Firm: Chappell, Smith & Arden Preparer's Phone #: 803-929-3600

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

Date of Injury or Illness: 1/5/2017

- ☒ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction
- The claimant sustained an injury to L lower extremity, L shoulder, back, neck, hip, L knee, chest, ribs, whole body (Part(s) of Body Injured) on 1/5/2017 (Month/Day/Year) in Anderson county, state of SC. Body part(s) affected are: L lower extremity, L shoulder, back, neck, hip, L knee, chest, ribs, whole body
 - Briefly describe how the accident occurred: MVA while at work and sustained injuries to L lower extremity, L shoulder, back, neck, hip, L knee, chest, ribs, whole body.
 - Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
 - The relationship of employer and employee existed at the time of injury.
 - At the time of the injury the claimant was performing services arising out of and in the course of employment.
 - Notice of the accidental injury was given to the Employer on 1/5/2017 (Month/Day/Year) in the following manner: Verbally to supervisor.
 - ☒ Due to injury, the claimant is in need of (check one):
☐ (a) medical examination and treatment for: _____
☒ (b) additional medical examination and treatment for: L lower extremity, L shoulder, back, neck, hip, L knee, chest, ribs, whole body
 - ☒ Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: DOI to present
 - ☐ 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
 - ☒ A determination of permanent disability is premature at this time.
 - ☐ Due to the injury, the Claimant has a serious bodily disfigurement consisting of: _____
 - At the time of the injury, the Claimant was paid weekly wages of \$TBD, and demands accounting of days worked and wages earned as provided by law.
 - Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
Reeves Young, LLC.
 - Further grounds or unusual aspects of claim: Claimant is Spanish speaking and will require an interpreter. Claimant has retained an expert witness, Philip G. Simoneaux, II, CPA, CFP.
 - List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
See Attachment.
 - To the best of your knowledge, did you have any prior permanent disability?
If yes, describe: _____
 - 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: 1 hour
☒ 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 _____ see Certificate of Service
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 03/14/2018

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

Amended 50

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

AMENDED FORM 50 ATTACHMENT

Jorge Lopez-Celestin v. Reeves Young, LLC
WCC No.: 1706639

- 11a. List names and addresses of all physicians and other medical specialists who have seen or treated the claimant as a result of the accident:

Pendleton Area Rescue Squad/EMS
P.O. Box 185
111 S. Depot Street
Pendleton, SC 29670

AnMed Health
800 North Fant Street
Anderson, SC 29621

Greenville Health System
701 Grove Road
Greenville, SC 29605

Amedisys Home Health Care
2565 Thompson Bridge Rd., #204
Gainesville, GA 30501

Barbour Orthopaedics and Sports Medicine
5505 Roswell Road, Suite 100
Atlanta, GA 30342

BenchMark Physical Therapy
1100 Sherwood Park Drive NE, Suite 140
Gainesville, GA 30501

Premier Neurosurgical Institute, LLC
211 Chicopee Drive
Marietta, GA 30060



Claimant's Name: Jorge Lopez-Celestin SSN: 618-10-2526 Employer's Name: Reeves Young, LLC
Address: 2283 Cameo Court Address: 45 Peachtree Industrial Blvd. Suite 200
City: Gainesville State: GA Zip: 30501 City: Sugar Hill State: GA Zip: 30024
Home Phone: (678) 789-3866 Work Phone: _____ Insurance Carrier: Amerisure Insurance Company
Date of Injury: 1/5/2017
Preparer's Name: Jason A. Griggs Law Firm: Willson Jones Carter & Baxley, P.A. Preparer's Phone #: (864) 527-3288

Date of Injury or Illness: 1/5/2017

Estimated time for hearing:

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 **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 deny the claimant sustained an injury by accident arising out of and in the course of employment, pending investigation.
2. It is **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 **Denied** the relationship of employer and employee existed at the time in question. The reasons for denial are:

4. It is **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 **Denied** notice of injury was given the employer. The reasons for denial are:

6. It is **Denied** the employee **Needs / Is Entitled to Additional** medical care as a result of injury or illness. The reasons for denial are:

7. It is **Denied** the employee is entitled to temporary total disability for the period(s) of :

8. It is **Denied** the employee is permanently disabled. The reasons for denial are:

9. It is **Denied** the employee has serious disfigurement.

10. It is contended that an average weekly wage of **[TO BE PROVIDED]** applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
Defendants reserve the right to amend and to assert defenses as they become aware of them.

☐ **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 C. Daniel Vega, Esquire/Andrew D. Smith/Judicial Analysts Address: dvega@csa-law.com; KSpicer@csa-law.com; ASmith@GMLJ.com; TWalker@GMLJ.com; judicialanalysts@wcc.sc.gov on the 6th day of September 2018, by: ☐ first class postage ☐ certified mail ☐ personal service ☒ electronic service
I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature: [Signature] Attorney for the Employer/Insurer: jagriggs@wjlaw.net Date: 09/06/2018
Title: _____ Email: _____

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1706639

Jorge Lopez-Celestin)
)
Claimant,)
)
v.)
)
Reeves Young)
)
Employer,)
)
and)
)
Amerisure Insurance)
)
and)
)
American Zurich Insurance)
)
Carrier/Defendants.)
-----)

FULL COMMISSION HEARING

Monday, February 10, 2020
1:34 p.m. - 1:55 p.m.

COPY

The Full Commission Hearing was heard before Commissioner T. Scott Beck, Commissioner Avery B. Wilkerson and Commissioner Gene McCaskill, Chair, at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 10th day of February, 2020 before M. Sean Cary, Court Reporter and Notary Public in and for the State of South Carolina.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

APPEARANCES

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 Columbia, South Carolina 29203
 Attorney for the Defendants American Zurich

INDEX

<u>CALL TO ORDER:</u>	<u>PAGE</u>
COMMISSIONER McCASKILL	4
 <u>CLAIMANT'S POSITION:</u>	
MR. VEGA	4
 <u>DEFENDANT AMERISURE'S POSITION:</u>	
MR. GRIGGS	9
 <u>DEFENDANT AMERICAN ZURICH'S POSITION:</u>	
MR. FLYNN	13
 <u>CLAIMANT'S REPLY:</u>	
MR. VEGA	17
Certificate	21

EXHIBITS

(There were no exhibits marked during the hearing.)



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STIPULATIONS

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



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CALL TO ORDER

COMMISSIONER MCCASKILL: All right. Mr. Cary, please call the case.

COURT REPORTER: Today is Monday, February 10th, 2020. This is South Carolina Workers' Compensation Case Number 1706639. This is the case of Jorge Lopez-Celestin, the Claimant, versus Reeves Young, the Employer, and Amerisure Insurance and American Zurich Insurance. The Appellant is the Claimant represented by C. Daniel Vega. The Respondents are represented by Jason A. Griggs and W. James Flynn, respectively. Each side will be allowed ten minutes for oral argument, and the Appellant three minutes in reply. You are requested to argue the grounds of exception and stay within the record.

COMMISSIONER MCCASKILL: All right. Mr. Vega?

CLAIMANT'S POSITION - MR. VEGA:

MR. VEGA: Thank you. May it please the Commission. I'm representing the Claimant today. There's little dispute as to the facts of this -- the facts of the claim and the type of injury suffered. Claimant was working for Reeves Young which is a grading company out of Gainesville, Georgia as a heavy machine



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1 operator. The nature of his employment
2 required him to travel out of town but
3 sometimes out of state. When the Claimant
4 worked in-state he was paid \$16.50 per hour
5 with no per diem. When the Claimant was sent
6 to work out of state he was paid \$18.50 per
7 hour and paid a \$35 per day per diem. We know
8 factually that Claimant commuted from
9 Gainesville, Georgia to Clemson, South Carolina
10 to work on two projects as a grader. While
11 working at the project in Clemson, Claimant was
12 working at two projects in Clemson but later
13 was transferred to Atlanta to work at a project
14 in Atlanta as well but then was subsequently
15 transferred back to Clemson in order to
16 complete the Clemson project. While Claimant
17 was working in Clemson he received the
18 additional \$2 per hour and the 35 day per diem.
19 When he was transferred to Atlanta the two
20 hours stopped -- \$2 an hour stopped and the per
21 diem stopped. After returning to Clemson and
22 commuting daily from Clemson -- from
23 Gainesville to Clemson and back to Gainesville
24 he suffered an accident -- an automobile
25 accident in which he had severe injuries about



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1 seven miles from the job site. What we know
2 from the deposition and hearing testimony is
3 that the president -- I'm sorry, the vice
4 president of the company, William Reeves,
5 testified that the method of payment was based
6 on the fact that the project was out of town,
7 the additional \$2 and the 35 a day per diem.
8 He also testified that the per diem was their
9 money, meaning the employees' money, and they
10 could spend it however they saw fit. He also
11 testified that they didn't explain to them the
12 purpose of the per diem other than that it was
13 for out of state travel. It's the Claimant's
14 contention that the method of payment as
15 outlined in the facts meets the exception to
16 the going and coming rule when the time
17 consumed is paid for and included in the wages.
18 In support of our argument in our brief we cite
19 the McMillen v. Huntington and Gary Electric
20 Company case. In that case, the Claimant's
21 wages were also increased when he worked out of
22 town. At that time the Claimant was making \$4
23 an hour and his wages were increased by 50
24 cents each time he traveled more than 15 miles.
25 The employer testified Claimant could commute



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1 or board at the job site any way he choose. In
2 McMillen there was no need to -- the Court
3 found that there was not a need to have an
4 express agreement to furnish the transportation
5 or pay the sum in lieu thereof, and that it is
6 sufficient if the agreement is implied as it
7 was. The Court in McMillen found that it is
8 sufficient if the scheme of payment and the
9 amount of the payment bear a definite relation
10 to the travel. In McMillen the Claimant was
11 paid extra wages for traveling out of state and
12 the claim was found compensable. Likewise we
13 contend that Mr. Lopez's claim should be found
14 compensable as he was required to travel out of
15 state, his pay was increased by \$2 per hour and
16 he was provided a per diem. Our second
17 argument is related to the Commission releasing
18 the CCIP policy. Mr. William Reeves, the vice
19 president of the company, testified that based
20 on payroll records Claimant was at both
21 projects on the date of the injury. What
22 happened is if the Claimant worked at the
23 Dotted Hills project he was covered by
24 Amerisure; if he worked at the Earl Street
25 Apartment project he was covered by Zurich



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1 American. Zurich asked to be released from the
2 claim. The Commission granted that release.
3 However, the vice president of the company
4 testified that he worked at both locations on
5 the date of the injury. It is true that the
6 Commission can find that one provider or both
7 providers are responsible for the claim, but I
8 think it was erroneous for him to release
9 Zurich based on the facts that he released
10 Zurich. Lastly, in order to preserve our
11 argument, the Defendants improperly objected to
12 the use of deposition testimony during the
13 hearing. It is clear in Rule 32 of South
14 Carolina Civil Rule -- Rules of Civil Procedure
15 that the deposition of a party or anyone who at
16 the time of the taking of the deposition was an
17 officer, director or managing agent or person
18 designated under the Rules on behalf of a
19 public or private corporation to testify, that
20 deposition may be used by an adverse party for
21 any reason. I was attempting to introduce
22 evidence from the deposition while I was
23 questioning Mr. William Reeves. There was an
24 objection raised. It was sustained. It should
25 not have been sustained based on Rule 32(A)(2),



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1 and that is the Claimant's argument. Thank
2 you.

3 COMMISSIONER MCCASKILL: All right. Thank you, sir.
4 Mr. Griggs?

5 DEFENDANT AMERISURE'S POSITION STATEMENT - MR.
6 GRIGGS:

7 MR. GRIGGS: Thank you, sir. May it please the
8 Commission. Thank you, Commissioners. I'm
9 here today, I represent Reeves Young and
10 Amerisure Insurance Company, and I believe the
11 Commissioner made the correct decision. At the
12 hearing if you read Mr. Vega's position he's
13 arguing at the hearing he cited two cases,
14 neither one of which he cites in his brief, and
15 he was essentially arguing that the per diem
16 was gas money. So he built his whole case on
17 that. In his brief he's arguing one case,
18 McMillen, which he'd never cited at the hearing
19 level. And McMillen stands for one proposition
20 and that is -- first of all each case is to be
21 looked at on its individual facts. He states
22 in his brief, Mr. Vega does, that McMillen
23 stands for the proposition that if you're paid
24 extra wage when you're out of state that it's
25 compensable under the going and coming rule



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1 because you paid for the time that your
2 traveling. McMillen doesn't lay down a blanket
3 rule. It says it in McMillen -- it says it
4 clearly. If you look at the actual McMillen
5 case it says that each case is to be judged --
6 and I'll just read it if I may -- each instance
7 is a question of fact to be determined in the
8 light of the circumstances of each particular
9 case. McMillen does not lay down a blanket
10 rule. McMillen found that the extra income,
11 the extra 50 cent per hour, was to pay for the
12 travel time. That's what McMillen found. But
13 the reason McMillen was able to find ---

14 **COMMISSIONER BECK:** Which would make it akin to them
15 being on the clock?

16 **MR. GRIGGS:** Yes, sir. The reason McMillen was able
17 to make that conclusion was because the
18 Claimant testified that he was paid the extra
19 50 cent to pay for the travel time that it took
20 him to drive to and from the job each day. And
21 in fact the -- one of the owners of the company
22 that was being -- the Employer in McMillen
23 testified similarly. There was no testimony in
24 that. Mr. Vega can't rely on McMillen in this
25 appeal because he didn't mention McMillen -- I



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1 mean, he can as a procedural matter, but the
2 reason that it fails is he didn't mention
3 McMillen in his opening statement and he never
4 -- he didn't build the record for you -- for
5 the Commission to rely on McMillen. He
6 prosecuted this as a -- as paying for gas money
7 case and now he's here on appeal arguing
8 something totally different. That they paid
9 for the actual time. Now it's a distinction
10 that matters, and it's a distinction that's
11 very important because he built his record on
12 one thing. Now he's appealing on another
13 basis. McMillen cannot be relied on in this
14 case to -- to find a different decision than
15 Commissioner Campbell found because the
16 evidence isn't there. A couple of other small
17 things. It's not a \$35 per day per diem; it's
18 \$175 a week. It's a \$175 no matter if you
19 worked four days, five days, six days. The
20 Claimant testified to that. There were days
21 they worked less. They always got the same
22 amount. And the reason that it's not gas money
23 or anything else is that everybody got the
24 same. It doesn't matter how far you drove. It
25 doesn't matter if you car pool. Doesn't matter



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1 if you have a company truck. In fact the
2 supervisor had a company truck with a gas card
3 and he still got the \$175. It's not -- if it
4 was intended to be gas money they wouldn't do
5 those things. You wouldn't pay somebody gas
6 money -- a per diem for gas money if you also
7 give him a gas card and a company truck. If
8 you drove from right over the line in Georgia
9 or if you drove from South Atlanta, the
10 distance didn't matter; you got the same
11 amount. So this is not a per diem case. The
12 going and coming rule says if you're injured to
13 and from work it's not compensable unless you
14 can fit one of the four or five exceptions.
15 They're arguing the exception here that time
16 and travel is compensated for. That's not the
17 case. They also argue special errand. Mr.
18 Vega didn't even brief -- and I indicated in my
19 brief that that position was abandoned because
20 there's just no evidence to support that. So
21 I believe if you look at my brief it's laid out
22 pretty clearly you cannot rely on McMillen to
23 overturn Commissioner Campbell's decision
24 because the evidence wasn't built to allow it.
25 We believe Commissioner Campbell's decision



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1 should be affirmed, that this is not a
2 compensable case, it's their burden to prove,
3 and they didn't meet their burden in this case.

4 Thank you, Commissioners.

5 COMMISSIONER MCCASKILL: Thank you. All right. Mr.
6 Flynn?

7 DEFENDANT AMERICAN ZURICH'S POSITION - MR. FLYNN:

8 MR. FLYNN: Thank you. May it please the
9 Commission. A couple facts. I mean, the facts
10 are kind of out there, but the ones that I want
11 to bring to light are more focused on the issue
12 as directed to my client. And I think there's
13 a distinction to be made clearly between my
14 clients and the other Defendant. It is clear
15 the Claimant was employed by Reeves Young, the
16 co-Defendant. That was stated here in the
17 opening by everybody. Also clear the Claimant
18 was working at two job sites in Clemson, South
19 Carolina. One, my client which is Holder
20 Construction is the general contractor of.
21 That's the Dorm project at Clemson. One is the
22 Earl Street Apartments, a completely different
23 project, completely different general
24 contractor. My client had nothing to do with
25 that. And so the only reason that I think that



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1 I'm standing up here is because Holder
2 Construction had a CCIP policy, a contractor
3 controlled insurance policy, for the Dorm
4 project and that was through American Zurich.
5 Again, for the Earl Street project, Reeves
6 Young had their own workers comp policy from
7 Amerisure. And so way before this motor
8 vehicle accident happens, first thing in the
9 morning -- for the record -- the Claimant was
10 working for about an hour at the Clemson Dorm
11 project -- my client's project. Left there,
12 went to the apartment project and the time
13 records say worked there for the vast majority
14 of the day. I think I saw reference in one
15 place to it being about ten hours. Leaves from
16 that project, the motor vehicle accident
17 happens. And so, you know, again, the focus of
18 what I'm up here to discuss is the fact that
19 Commissioner Campbell, upon my clients', motion
20 dismissed my clients, we would submit properly,
21 from the case because Holder and American
22 Zurich have no involvement in the situation.
23 This isn't a 42-1-410 situation. You know,
24 again, very clear evidence that Reeves Young
25 was the employer and that Amerisure was the



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1 carrier. There's not any controversy about
2 that employment. It's a stipulated fact that
3 Reeves Young has workers' comp insurance
4 coverage with Amerisure. There is no argument
5 from Reeves Young and Amerisure at this stage
6 in the appeal that Holder or American Zurich
7 bear any responsibility or liability, which I
8 think it is an important point to look at. So,
9 nonetheless, we're being kept in the case via
10 the appeal by Claimant. It is unclear what the
11 legal basis for that is. You know, again, I've
12 discussed what the evidence was. The argument
13 in the Claimant's brief is that the Claimant is
14 an employee of Holder because Holder had the
15 right to control and direct the work being
16 done. I would submit to you that the evidence
17 of the record isn't anywhere close to where it
18 needs to be under the applicable case law --
19 the Ray Covington Realtors and other cases
20 which look at the four factors for analyzing
21 that type of relationship of direct evidence of
22 a right to control furnishing of equipment,
23 method of payment, right to fire. What you've
24 got here in the record is is the Claimant is
25 paid by Reeves. The Claimant stays on Reeves'



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1 books for a number of months. They kept him on
2 their health insurance after the fact before
3 they fired him. There is zero evidence that
4 Holder supplied the equipment to grade the
5 project, that the general contractor Holder
6 hires Reeves Young as a subcontractor to do.
7 And so we would submit that that is simply not
8 enough to try to keep Holder in the case.
9 Reeves Young had a foreman on the job. Again,
10 the job that wasn't even the one that the
11 Claimant left from. And so the argument almost
12 seems to be based on the evidence in the record
13 here that any general contractor should be
14 responsible and found to be the employer of a
15 subcontractor. There's -- I think the main
16 point they try to make is that the general
17 contractor held safety meetings and that the
18 subcontractors employees including Reeves'
19 employees, and so the Claimant had to come to
20 safety meetings. I would submit to you that
21 doesn't translate to the right to control, to
22 show how to do their work to furnish equipment.
23 It just -- it doesn't translate to any of that.
24 There's also zero testimony from the Reeves
25 Young folks about them controlling -- about



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1 Holder controlling the work that they were
2 hired to do as a sub. As far as the portion on
3 the coming and going rule we would submit that
4 Commissioner Campbell got the case right and we
5 would adopt the arguments that are being made
6 by the co-Defendant. Thank you very much.

7 **COMMISSIONER McCASKILL:** Thank you, sir. All right,
8 Mr. Vega, three minutes.

9 **CLAIMANT'S REPLY - MR. VEGA:**

10 **MR. VEGA:** Thank you, Commissioner. In our brief it
11 states that the McMillen court considered facts
12 and circumstances that are nearly identical to
13 the specific facts and circumstances as in the
14 present case, and as such it sets a precedent
15 for how you interpret the manner in which the
16 Claimant is paid or incentivized to work out of
17 state. It's interesting, if you look at
18 McMillen very closely, on the day that Mr.
19 McMillen was in his accident he was the
20 passenger. He wasn't driving his own vehicle.
21 It states so right here. On the date -- on
22 this date he was a passenger riding with a co-
23 employee who was driving his own personal
24 automobile. The fact is they incentivized him
25 to go out of state by paying him extra wages



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1 for the work out of state, and that is exactly
2 what Reeves Young in the present case to bring
3 this case into the course and scope of
4 employment. The vice president of the company
5 testified the per diem was their money; they
6 could spend it however they saw fit. And when
7 he said that I asked him, so when you announced
8 that the employees -- that you were going to
9 have a project in Clemson, how did you let the
10 employees know that they would receiving the
11 per diem? He said we, said that based on the
12 project being out of town, each of the
13 employees would receive \$175 per week. So they
14 created an incentive to bring the Claimant to
15 a temporary project out of state and he
16 traveled to and from. They admitted that they
17 didn't care whether he traveled to and from as
18 long as he was there on time and left on time
19 they were fine with the commute. Also there's
20 an interruption. He goes to Atlanta, he gets
21 transferred. He's a very good grader. The
22 vice president of the company, everybody who
23 spoke of him, said that he was an excellent
24 grader. He was sent to Atlanta to work at the
25 Mercedes Benz project when they were building



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1 that stadium to do the grading at that stadium.
2 When he was there, it was an in-state project,
3 they didn't pay him the extra \$2 an hour and
4 they didn't pay him the \$35 per diem. The --
5 one of the supervisors at Clemson missed him,
6 basically wanted him to come back to help them
7 finish the Clemson project, and they
8 reincentivized him by once again increasing his
9 pay, once again paying him the per diem, and
10 when he went up there to do that that's when he
11 had the accident. With regards to Zurich, the
12 CCIP policy ---

13 (Timer sounds.)

14 MR. VEGA: May I make this last ---

15 COMMISSIONER MCCASKILL: Finish your thought.

16 MR. VEGA: Thank you. I asked the president -- the
17 vice president of the company whether he worked
18 at both projects that day, and he said we have
19 a sign in sheet from Dotted Hills project,
20 which is Amerisure, and based on our payroll
21 records he was at the Earl Street project as
22 well, which is Zurich. So to my knowledge he
23 was at both job sites that day. There may be
24 an argument as to which project he left when he
25 got in the accident. Our only contention was



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1 that it was proper to name Zurich as a CCIP
2 policy and for them to participate in this
3 because they have coverage of him. There's no
4 dispute as to employment. Everybody admitted
5 he was an employee working at both projects.

6 **COMMISSIONER MCCASKILL:** All right. Thank you.

7 Thank you all.

8 **MR. WILKERSON:** Thank you all for being here.

9 **MR. GRIGGS:** Have a great day.

10 **COMMISSIONER WILKERSON:** You as well.

11 (There being nothing further, the full commission
12 hearing concluded at 1:55 p.m.)



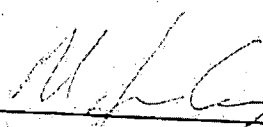
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CERTIFICATE

This is to certify that the within hearing consisting of twenty (20) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on April 20, 2020.



M. Sean Cary
Court Reporter

Notary Public for South Carolina
My Commission Expires: January 29, 2023



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STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1706639

Jorge Lopez-Celestin,)
)
Claimant,)
)
v.)
)
Reeves Young, LLC,)
)
Employer,)
)
and)
)
Amerisure Insurance Company,)
)
and)
)
American Zurich Insurance)
Company,)
)
Carrier.)
-----)

COPY

COMMISSIONER'S HEARING

Thursday, March 21, 2019
11:52 a.m. - 2:19 p.m.

The Commissioner's Hearing was heard before Commissioner R. Michael Campbell, II, at the Ninety Six Police Department Courtroom, 100 North Church Street, Ninety Six, South Carolina, on the 21st day of March, 2019, before Amber Scarborough, Court Reporter and Notary Public in and for the State of South Carolina.



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APPEARANCES

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Attorney for the Carrier, American Zurich

Also present:

Laura Cahue
William Reeves
Matt McCormack
Juan Ochoa

INDEX

<u>CALL TO ORDER:</u>	<u>PAGE</u>
COMMISSIONER CAMPBELL	4
 <u>MOTION:</u>	
MR. SMITH	7
 <u>RESPONSE TO MOTION:</u>	
MR. VEGA	8
 <u>RESPONSE:</u>	
MR. SMITH	9
 <u>POSITION STATEMENTS:</u>	
MR. VEGA	12
MR. GRIGGS	15
 <u>MR. LOPEZ-CELSTIN:</u>	
MR. VEGA . . . DIRECT EXAMINATION	25
MR. GRIGGS . . . CROSS-EXAMINATION	43
MR. VEGA . . . REDIRECT EXAMINATION	59



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MR. OCHOA:

MR. GRIGGS . . .	DIRECT EXAMINATION	65
MR. VEGA . . .	CROSS-EXAMINATION	73

MR. REEVES:

MR. GRIGGS . . .	DIRECT EXAMINATION	89
MR. VEGA . . .	CROSS-EXAMINATION	96
MR. SMITH . . .	CROSS-EXAMINATION	104

MR. MCCORMACK:

MR. VEGA . . .	DIRECT EXAMINATION	106
Certificate		114

EXHIBITS

(Claimant's Exhibit M and Defendant's Exhibit 1 were retained by the Commissioner and introduced as follows:)

Claimant's Exhibit Number M	12
(Philip G. Simoneaux, II, CPA Transcript)	

Defendant's Exhibit Number 1	12
(Dr. Scott Barbour Transcript)	

STIPULATIONS

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



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1 CALL TO ORDER:

2 COMMISSIONER CAMPBELL: Today's hearing date is March
3 21st, 2019. This is Workers' Compensation Case
4 File Number 1706639. The Claimant is Jorge
5 Lopez-Celestin, represented by C. Daniel Vega,
6 the Employer is Reeves Young, LLC, Carrier is
7 Amerisure Insurance Company represented by
8 Jason A. Griggs and American Zurich Insurance
9 Company represented by Andrew D. Smith. The
10 date of accident was January 5th, 2017. There
11 was a corresponding compensation rate which was
12 the maximum rate of \$806.92. APAs have been
13 submitted, are there any objections to
14 jurisdiction, venue or any other items?

15 MR. VEGA: None from the Claimant, sir.

16 MR. GRIGGS: I don't have anything to jurisdiction
17 or venue, I do have an objection to an exhibit
18 that Mr. Vega's entered.

19 COMMISSIONER CAMPBELL: Okay. And if you want to
20 put that on -- on the record at this time.

21 MR. GRIGGS: He has Exhibits I and J. They are
22 printouts from a website called gasbuddy.com
23 and I think they're hearsay. It's -- it's
24 purporting to show, I guess, expenses incurred
25 by Mr. Lopezes vehicle at this time.



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1 Gasbuddy.com, that's not an expert, that's not
2 an exception to any -- I don't know who
3 gasbuddy.com is here, they're not here to
4 verify. I don't know who's behind this
5 website. I mean, it's a hundred percent
6 inappropriate to be admitted into evidence
7 today.

8 COMMISSIONER CAMPBELL: Okay.

9 MR. SMITH: And I was going to have the same
10 objection to it as well.

11 COMMISSIONER CAMPBELL: Okay. And Mr. Vega, I'll --
12 I'll allow you to -- to respond to the
13 objection.

14 MR. VEGA: Correct, Your Honor. The -- we would
15 cite the judicial notice rule. You can take
16 judicial notice of anything that is generally
17 found in a dictionary, a newspaper, a website.
18 It just means that you can refer to it, you can
19 rely on it.

20 COMMISSIONER CAMPBELL: I don't have any problem
21 letting it -- letting it in. I just, I'll just
22 give it the weight I feel like it deserves.

23 MR. GRIGGS: Okay. Again, I think it's important in
24 this case, judicial -- that's not what judicial
25 notice means ---



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1 COMMISSIONER CAMPBELL: I ---

2 MR. GRIGGS: --- judicial notice means today is ---

3 MR. SMITH: What's the weather temperature -

4 MR. GRIGGS: --- judicial notice means today is
5 Thursday ---

6 COMMISSIONER CAMPBELL: We can go back a long -

7 MR. GRIGGS: --- something that you ---

8 COMMISSIONER CAMPBELL: Okay.

9 MR. GRIGGS: --- judicial notice is something that
10 you can -- common knowledge that you can pull
11 out of your own head. This is -- this is rep-
12 -- this is hearsay and it needs to be taken --
13 stricken from the record. He's representing --
14 he's using this to represent cost of trips,
15 things of that nature which are important in
16 the case law and it needs to be stricken from
17 the record. It's an objection that -- that
18 needs to be sustained in my opinion.

19 COMMISSIONER CAMPBELL: Okay. And -- and if you
20 want, put your position on the record. As far
21 as I ---

22 MR. SMITH: That's my exact objection as well.

23 COMMISSIONER CAMPBELL: And like I say, I'll -- I'll
24 let it in, but I'll -- I'll give it -- I'll --
25 I'll give it the weight that I feel like I've



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1 -- like it deserves, okay?

2 MR. GRIGGS: And I -- I understand, just for the
3 record I want to make it clear this document
4 going forward that I have a standing objection

5
6 COMMISSIONER CAMPBELL: Sure. Absolutely.

7 MR. GRIGGS: --- to that and I believe it's
8 inappropriate and I want it preserved for
9 appellate review because I think the Court of
10 Appeals will find it inappropriate as well.

11 COMMISSIONER CAMPBELL: Certainly. That's fine.
12 And I'm sorry did you have any -- any further
13 objections?

14 MR. SMITH: No.

15 COMMISSIONER CAMPBELL: Okay. All right. Without
16 further objections Commission File becomes a
17 part of the record with the exception of self-
18 serving declarations and unstipulated medical
19 reports. Prior to going on the record we had
20 a -- had a lengthy pre-hearing conference. I
21 know at that time Mr. Smith, that you had a
22 motion that you would like to -- to put on the
23 record so if you would do so at that, at this
24 time I would appreciate it.

25 MOTION BY MR. SMITH:



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1 MR. SMITH: Yes, Your Honor. Under 42-17-80 when
2 the Claimant does not have reasonable grounds
3 to go against Holder Construction or Zurich
4 Insurance Company. In Clemson they were
5 performing two projects, one was at the -- at
6 the Earle Street Apartment Complex where
7 Fortune-Johnson was a general contractor, the
8 other was at the dormitory project. All the
9 evidence in the case shows that the, even the
10 Claimant will testify that he left the Earle
11 Street Apartment Complexes and employees will
12 testify to the same so we would ask for cost
13 for the hearing.

14 COMMISSIONER CAMPBELL: Okay. All right. Thank you.
15 And if y'all want to address the motion y'all,
16 I'll let you -- Mr. Vega first.

17 MR. SMITH: Yes. Do you care to add to the motion?

18 MR. GRIGGS: No, sir.

19 RESPONSE TO MOTION:

20 MR. VEGA: Okay. Your Honor, we would, in reply to
21 the motion we contend that Commissioner Beck
22 signed an order adding American Zurich
23 Insurance Company as an indispensable party on
24 July 7, 2017. Facts obtained in discovery
25 demonstrate the Claimant worked under Zurich



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1 American Insurance Company coverage on or about
2 the date close to -- on the day, it's factually
3 in dispute, but on or about January 5, 2017.
4 It is our contention that in the matter of
5 coverage is, yes, it is a factual
6 determination, but it's also a legal
7 determination, it's jurisdictional, it's
8 something that coverage must be determined by
9 the Commission involving the facts. They lend
10 themselves to a particular position until those
11 facts have been adjudicated by the Commission.
12 Zurich American remains an indispensable party
13 and is both the Claimant's right and duty to
14 bring them here today until that issue is
15 resolved.

16 COMMISSIONER CAMPBELL: Okay.

17 MR. SMITH: And Your Honor, can I respond to that?

18 COMMISSIONER CAMPBELL: Yeah and I just want to see
19 if Jason had anything to add.

20 MR. GRIGGS: No, sir.

21 COMMISSIONER CAMPBELL: Yes, sir, Mr. Smith?

22 RESPONSE BY MR. SMITH:

23 MR. SMITH: As far as the coverage issue, the
24 coverage issue is not dispute, I mean, Reeves
25 Young has it though Amerisure and we have the



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1 policy through Zurich on the dormitory project.
2 So you have, on the apartment Complex you have
3 Amerisure has coverage, on the dormitory
4 project you have Zurich that has coverage. So
5 there is -- it's a factual matter and there's
6 no legal or factual basis that the Claimant can
7 move forward on today that can find my client's
8 liable. There isn't any case law that supports
9 the position and factually there -- he didn't
10 work on our job site, he didn't leave our job
11 site so I don't know why we're here.

12 COMMISSIONER CAMPBELL: Okay. And -- and as -- and
13 as we discussed as a part of our pre-hearing
14 conference I will address the motion as a part
15 of my review.

16 MR. SMITH: Thank you, Your Honor.

17 COMMISSIONER CAMPBELL: Okay. Thank you. Anything
18 else at this time?

19 MR. VEGA: No, sir.

20 MR. GRIGGS: The only thing I have is I have the
21 Defendant's Exhibit Number 1 I'd like to hand
22 up.

23 COMMISSIONER CAMPBELL: Sure.

24 MR. GRIGGS: It's the deposition of Phillip
25 Simoneaux.



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1 COMMISSIONER CAMPBELL: Okay.

2 MR. GRIGGS: And that's the expert obtained by
3 Danny.

4 COMMISSIONER CAMPBELL: Okay. And do y'all --
5 anybody else ---

6 MR. VEGA: In that -- in that same vein I have Dr.
7 Barbour's deposition as well.

8 COMMISSIONER CAMPBELL: That's fine. That's fine.

9 MR. GRIGGS: What's that for you? What number is
10 that? You have ---

11 MR. VEGA: Whatever, you're Number 1.

12 COMMISSIONER CAMPBELL: Okay. Both of y'all are
13 Number 1?

14 MR. VEGA: Correct.

15 MR. GRIGGS: 1's in your APA.

16 MR. VEGA: Deposition?

17 MR. GRIGGS: No, the exhibits ---

18 MR. VEGA: All his exhibits? Those are -- those are
19 lettered.

20 COMMISSIONER CAMPBELL: Okay. So this is -- this is
21 Defendant's Number 1 and this is Claimant's
22 Number 1.

23 MR. VEGA: As a preliminary matter I had enumerated
24 my exhibit's by letter. I don't know if the
25 Court Reporter prefers to use that designation



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1 or not as I refer to them or she just wants
2 that, whatever, I mean ---

3 COMMISSIONER CAMPBELL: In this -- in the
4 alphabetical order, yeah, so we'll -- we'll
5 mark that then as your ---

6 MR. VEGA: M.

7 COMMISSIONER CAMPBELL: M? Okay.

8 MR. VEGA: Yes, sir.

9 COMMISSIONER CAMPBELL: And then this one, Jason,
10 will be -- is your Number 1?

11 MR. GRIGGS: That's 1. They didn't want you getting
12 into it.

13 (Defendant's Exhibit Number 1 was marked for
14 identification purposes.)

15 (Claimant's Exhibit Number M was marked for
16 identification purposes.)

17 COMMISSIONER CAMPBELL: Yeah. Okay. And Mr. Vega,
18 we're here today on your Form 50 and that you
19 had filed with the Commission so if you would
20 please put your position on the record and let
21 us know what you're seeking here today, sir.

22 POSITION STATEMENT BY MR. VEGA:

23 MR. VEGA: Thank you, Your Honor. It is our
24 contention today that Mr. Jorge Lopez-Celestin
25 was working for Reeves Young, LLC in Clemson,



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1 South Carolina at the request of the employer
2 on or about January 5, 2017 when he suffered a
3 motor vehicle accident. He suffered severe
4 injuries to his neck, shoulder, ribs, upper,
5 left upper extremity, left lower extremity,
6 left ankle. As a result of these injuries he's
7 received additional -- he's received
8 substantial amount of medical care and
9 treatment primarily by Dr. Barbour and he
10 remains under the doctor's care. He is not at
11 maximum medical improvement so we would request
12 that he -- the defendant's provide additional
13 medical care and treatment consistent with Dr.
14 Barbour's request. With regards to the issues
15 being disputed today there is a legal dispute
16 with regards to whether the Claimant was in the
17 course and scope of his employment on or about
18 January 5, 2017 when he left the project he was
19 working on for the employer, Reeves Young, and
20 suffered his motor vehicle accident some seven
21 miles from the location of his employment. It
22 is our contention that this case is tantamount
23 to the special errand exception to the going
24 and coming rule in that the Claimant was not
25 working on employer premises, but was sent to



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1 a specific job site at the behest of the
 2 employer. If he could not have performed the
 3 work but for traveling 84 miles to and from for
 4 a total, 84 miles total of about 170 or so
 5 total, but he could not have done the work, but
 6 for the travel. In addition, we would cite a
 7 second exception to the going and coming rule
 8 in that time or travel was compensated and --
 9 and or offset. The employer offset the cost of
 10 travel and that the employee could not have
 11 afforded the cost of travel but for the
 12 addition of \$2.00 to his salary and a per diem
 13 of \$35.00 a day. As such we believe the
 14 Claimant was acting within the course and scope
 15 of his employment we have cited specifically
 16 *Sola v. Sunny Slope*. That case stands for the
 17 proposition that the rule excluding off
 18 premises injuries during the journey to and
 19 from work is not applied if the making of the
 20 journey, whether or not separately compensated
 21 for, is in itself a substantial part of the
 22 service which the work was employed. We've
 23 also cited *Gray v. Club*, the amount of travel
 24 was a consideration in determining how much the
 25 Claimant would be paid. We do not believe that



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1 there is a frequency exception to the rule and
2 we do not believe that the Claimant's failure
3 to designate the money as travel expense is
4 binding on the Commission. the Commission can
5 arrive at it's own conclusion in determining
6 what purposes, what was the incentive and what
7 purposes was the extra pay for and if the
8 Commission believes that it offset his travel
9 expense or that the travel was a substantial
10 part of the service for which he was employed
11 the Commission can find the Claimant was in the
12 scope of his employment. As such we would ask
13 the Commission to award benefits pursuant to
14 the Act and award Claimant temporary total
15 benefits from the date of the injury to the
16 present and continuing and award medical care
17 and treatment.

18 COMMISSIONER CAMPBELL: Okay. All right. Thank
19 you, sir. Mr. Griggs?

20 POSITION STATEMENT BY MR. GRIGGS:

21 MR. GRIGGS: Yes, sir. We believe that this is --
22 they're -- first of all, there's not a lot of
23 factual dispute as to how this incident
24 happened and what happened to Mr. Lopez.
25 Unfortunate incident, obviously all of us here



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1 wish it never would have happened. What we do
 2 dispute and what we believe is that this is a
 3 going and coming case, we agree with Danny on
 4 that, but we do not think it fits any of the
 5 exceptions. The general going and coming rule
 6 says if you're driving to or from work and get
 7 in an accident, not compensable. In order to
 8 make an accident that happens when you're
 9 driving to and from work compensable you have
 10 to fit it into one of the exceptions. There's
 11 five exceptions, Danny has contended that this
 12 fits two. The special errand rule, this is not
 13 consistent with the case law of special errand
 14 rule. Special errand is hey Jason, on the way
 15 home today drop off the mail or on the way home
 16 today pick up a supply, that's not the case
 17 here, this is a gentleman that was working out
 18 of town. We believe they've got to fit it in
 19 the first exception, which is if the employer's
 20 providing the means of transportation like
 21 giving the company vehicle or paying for the
 22 travel time, paying you while you're driving,
 23 paying your hourly rate while you're driving or
 24 paying milage, we don't believe that that fits
 25 any of these exceptions here. Mr. Celestine --



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1 Mr. Lopez, I'm sorry, received \$175 per diem
2 when he worked at the Clemson job sites. He
3 would go from his home in Gainesville, Georgia
4 to Clemson every day and then drive back home
5 in the evening. This is not milage, it's not
6 contemplated as milage because everybody on
7 that job site got the same amount, didn't
8 matter how far they drove, didn't matter how
9 many days they drove, did not matter if they
10 even drove at all. There are some employees
11 that rode in a car pool and never drove, they
12 still got the money. There's some employees
13 that had a company truck and a company gas
14 card, still got the money. The employer
15 offered housing in the Clemson area that the
16 employees could avail themselves of and stay
17 free of charge, if they would have stayed there
18 they still got the money. It's not a milage,
19 it's not time. The cases I've cited in my
20 brief I've handed up, there's a case *Byrd v.*
21 *Stackhouse* where a person got a \$90 per diem.
22 He didn't move as Mr. Vega said earlier. He
23 received \$90 per month and this was in the late
24 80s, early 90s, as a travel expense. In that
25 case they found that it was gas money and they



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1 said if you find this gas money you've got to
2 go through a whole 'nother analysis. This is
3 not gas money, he was not compensated, he's
4 spending three and a half hours in the car each
5 day. He'll testify -- testify in his
6 deposition it's about an hour and 45 minutes
7 from Gainesville to Clemson. He's spending
8 three and a half hours in his car every day,
9 traveling 85 miles one way, 170 miles every
10 day. They're not compensating him for that,
11 the money they're paying him does not
12 compensate him for that. As far as it being --
13 they inducing him to come over, the Byrd v
14 Stackhouse case talks about inducement and it
15 says in that case it was undisputed that the
16 gas money, they admitted it was gas money. We
17 do not admit that, we're a per diem case. They
18 say though if you admit it's gas money, they
19 admit that they did induce him to take the job,
20 then they say simply hire - hiring an employee
21 who lives far away from your premises and the
22 expectation of extensive travel to and from is
23 not a basis for Workers Compensation. The
24 employer received no benefit from his travels,
25 that's what they talk about. In this case



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1 Reeves Young received no benefit from Mr.
2 Lopezes -- Lopezes travels. In fact the only
3 person that received the benefit was Mr. Lopez.
4 It's unfortunate, but in June of 2015 when this
5 incident began his wife was sick. He chose to
6 drive back and forth to care for her, that's
7 understandable, everybody at Reeves Young
8 understood that, that was the reason the
9 housing was offered. He chose not to take the
10 housing. He could have still taken the housing
11 and got the per diem which would have helped
12 him with the meals. He chose to drive back and
13 forth every single day and then he got in the
14 accident. Again, it's not a going and coming
15 exception, it's an unfortunate -- we've got an
16 employer here that did the right thing. This
17 accident happened in January of 2017, they kept
18 him on the insurance paying his premiums until
19 December of 2017. During that time span we had
20 the knee replacement, we had a shoulder
21 surgery, we had a lot of the surgery, a lot of
22 the treatment that was rendered. Again, we've
23 got an employer that tried to do the right
24 thing, they offered the per diem to the
25 employees and it was not milage, they know how

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1 to pay milage. This is a large corporation,
2 construction corporation, they know how to pay
3 milage. They'll -- you'll hear testimony
4 today, they have an expense report, they pay
5 people milage per mile pursuant to the IRS rate
6 which is a correct way to do it. They know how
7 to pay milage, if they wanted to pay milage
8 they would have done it. They didn't pay
9 milage, they didn't compensate for time, the
10 evidence will show that. We believe that this
11 case is just an unfortunate accident, but it
12 warrants a denial, complete denial.

13 COMMISSIONER CAMPBELL: Mr. Smith?

14 MR. SMITH: Other than my motion, Your Honor, I
15 don't have anything further.

16 COMMISSIONER CAMPBELL: Okay. All right. Thank
17 you, sir.

18 MR. SMITH: Thank you.

19 COMMISSIONER CAMPBELL: Mr. Vega, anything more at
20 this time?

21 MR. VEGA: Just briefly, Your Honor. We believe
22 that the evidence will demonstrate that the
23 only reason they paid them this amount of money
24 was to induce him to travel out of state and
25 the decision was only made on the fact that



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1 they have to travel out of state and the
2 subject should be compensable.

3 COMMISSIONER CAMPBELL: All right. Mr. Griggs,
4 anymore at this time?

5 MR. GRIGGS: No, sir. I would just cite to the
6 brief I handed up. The cases that Danny cites
7 to, the reliance is misplaced.

8 COMMISSIONER CAMPBELL: All right. Well, and if --
9 and if you guys want to make yourselves
10 comfortable. I mean, y'all are -- y'all are
11 welcome to stand if you want to, but again
12 while -- while Danny's questioning the witness
13 then y'all -- whatever y'all want to do, you're
14 welcome to stand or sit, whatever you want to.
15 And I have -- have -- and this is for the
16 interpreter now.

17 MS. CAHUE: Yes, sir.

18 COMMISSIONER CAMPBELL: We have -- the Court
19 Reporter has some questions that she needs to
20 ask you to qualify you and then she will swear
21 you in, okay?

22 MS. CAHUE: Yes.

23 COURT REPORTER: Are you a friend, associate or
24 relative of a party or counsel involved in the
25 proceedings?



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1 MS. CAHUE: No.

2 COURT REPORTER: Have you served in an investigative
3 capacity for any party involved in the case?

4 MS. CAHUE: No.

5 COURT REPORTER: Do you or your spouse or child have
6 a financial interest in the subject matter in
7 controversy or in a party to the proceeding or
8 any other interest that would be affected by
9 the outcome of the case?

10 MS. CAHUE: No.

11 COURT REPORTER: Have you been involved in the
12 choice of counsel or law firm for the case?

13 MS. CAHUE: No.

14 COURT REPORTER: Are you an attorney or an employee
15 of an attorney in the case?

16 MS. CAHUE: No.

17 COURT REPORTER: Have you previously been retained
18 for private employment by one of the parties to
19 interpret the case?

20 MS. CAHUE: No.

21 COURT REPORTER: Is there any other reason your
22 independence of judgement would be compromised
23 in the course of providing services in the
24 case?

25 MS. CAHUE: None whatsoever.



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1 COURT REPORTER: Okay. You've already got your hand
2 up. So do you solemnly swear or affirm to
3 interpret these proceedings truly, fairly and
4 impartially to the best of your ability?

5 MS. CAHUE: I do.

6 COMMISSIONER CAMPBELL: You -- did you, you didn't
7 ask the ---

8 COURT REPORTER: Oh, yes. And to the attorneys do
9 you consent that the interpreter should not be
10 disqualified and should be allowed to render
11 services in the case?

12 MR. GRIGGS: I don't have any problem with that.

13 MR. SMITH: Consent.

14 MR. VEGA: Consent.

15 COURT REPORTER: Thanks.

16 COMMISSIONER CAMPBELL: All right. And ma'am, have
17 a couple of quick instructions for you.

18 MS. CAHUE: Yes, sir.

19 COMMISSIONER CAMPBELL: First and foremost, and
20 you're doing a great job, but please continue
21 to speak up and speak clearly for us so that we
22 can all hear you interpret the responses to the
23 questions. If you're asked, and if he is asked
24 a yes or no question please ask him to give us
25 a verbal yes or no answer, he can shake his



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1 head yes or no like when you -- like we all do,
2 but to please accompany that with a verbal yes
3 or no answer and to try and stay away from
4 things like uh-huh and huh-uh just because
5 that's easily misinterpreted on the record.

6 MS. CAHUE: Will do.

7 COMMISSIONER CAMPBELL: Okay. Sir, if you could --
8 ask him?

9 (Translator complies.)

10 A: Okay.

11 COMMISSIONER CAMPBELL: Okay. Thank you. Ask him -
12 - and -- and sir, do you speak -- do you speak
13 any English?

14 A: I speak English, but I have some pronunciation
15 problems that why I requested an interpreter.

16 COMMISSIONER CAMPBELL: Okay. Well, just please --
17 please if there -- if you are asked a question,
18 please allow the interpreter to ask the
19 question then you can reply, make your response
20 to her and then she can interpret it back. I
21 don't want to have several conversations going
22 on so -- so please make sure you let the
23 interpreter interpret for you, okay?

24 A: That's fine.

25 COMMISSIONER CAMPBELL: Okay. Thank you. Please



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1 raise your right hand.

2 MR. LOPEZ-CELESTIN: (Witness complies).

3 COMMISSIONER CAMPBELL: Do you swear and affirm the
4 testimony you are about to give is the truth,
5 the whole truth and nothing but the truth?

6 A: I swear.

7 COMMISSIONER CAMPBELL: Okay. You can put your hand
8 down and please state and spell your name for
9 the record. I know we all know who you are,
10 but we want to get it for the record.

11 A: My name is Jorge, J-O-R-G-E, Lopez, L-O-P-E-Z,
12 Celestin, C-E-L-E-S-T-I-N.

13 COMMISSIONER CAMPBELL: Okay. Thank you, sir. Mr.
14 Vega, your witness.

15 MR. VEGA: Thank you, Your Honor.

16 LAURA CAHUE, having been duly sworn, transliterates
17 the testimony of Jorge Lopez-Celestin as
18 follows:

19 JORGE LOPEZ-CELESTIN, having been duly sworn,
20 testifies as follows:

21 MR. LOPEZ-CELESTIN - DIRECT EXAMINATION BY MR. VEGA:

22 Q: Mr. Lopez, how old are you today?

23 A: 52.

24 Q: Were you involved in a motor vehicle accident
25 on January 5, 2017?



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- 1 A: Yes.
- 2 Q: Prior to the accident what type of work were
- 3 you performing?
- 4 A: Construction worker, I have been operator of
- 5 heavy machinery.
- 6 Q: Can you tell us some of the type of the
- 7 equipment that you operated?
- 8 A: A machinery like back hoes and trucks and all
- 9 the heavy machinery. I know how to operate all
- 10 types of machinery.
- 11 Q: And what were you doing with the machinery,
- 12 what kind of work do you do?
- 13 A: So we were doing some grading work and that
- 14 kind of work at the project at the University
- 15 and we also moved dirt and that kind of work.
- 16 Q: How many years have you been a heavy machine
- 17 operator?
- 18 A: Since 1996.
- 19 Q: And prior to the accident who were you working
- 20 for, who employed you?
- 21 A: The company Reeves Young.
- 22 Q: And were you employed by Reeves Young on
- 23 January 5, 2017?
- 24 A: Yes.
- 25 Q: And what kind of company is Reeves Young?



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- 1 A: It's a company that does various construction
2 projects and works like grading, laying of
3 sewage lines, water lines, etcetera, that's the
4 kind of work that I was doing for them.
- 5 Q: And while performing your work were you using
6 your skills as a heavy machine operator?
- 7 A: Yes.
- 8 Q: Did you receive any training from Reeves Young
9 with regards to heavy machine operation?
- 10 A: Well, we just had one person there, his name is
11 Phillip Thomas and he's the one that gives out
12 classes on safety, how to operate the machinery
13 and safety. You have to demonstrate that you
14 know how to operate it safely and if you cannot
15 do it they will not let you operate the heavy
16 machinery.
- 17 Q: Is it a Phillip Thompson or Thomas?
- 18 A: Thomas.
- 19 Q: All right. And did you receive some certi- --
20 certification or a card that indicated you had
21 completed that training?
- 22 A: Yes. They -- they gave them to us and we gave
23 them copies at the last audits. Reeves Young
24 gives them to you because if you don't have
25 them with you or their car licenses you can't

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1 operate the heavy machinery in case the
2 inspectors come by from OSHA for example.

3 Q: And what method or manner did Reeves Young pay
4 you?

5 A: By hour.

6 Q: How frequently did they pay you?

7 A: Every week.

8 Q: What was your hourly rate at the time of the
9 accident on or about that time, January of
10 2017?

11 A: If I'm not mistaken 16.50.

12 Q: Was that your usual rate of pay around that
13 time?

14 A: Yes.

15 Q: Did you receive an increase or decrease in pay
16 based on the location or the performance of
17 your work?

18 A: Supposedly you're supposed to get paid \$2 extra
19 for any work that is done primarily out -- out
20 of state and that would increase your salary.

21 Q: Okay. But I'm asking you specifically not
22 supposedly with regards to other employees, but
23 you specifically, did your pay vary based on
24 the location of where you performed your work?

25 A: I had my regular deposits of \$175 and the \$2



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1 extra were direct deposited from the company.

2 Q: Correct. And we do have that paperwork today,
3 but based on your location, whether you worked
4 in one city versus a different city, in one
5 state versus a different state, did your rate
6 of pay change, yes or no?

7 MR. GRIGGS: I'm going to make an objection,
8 leading. I'm going to make an objection to the
9 record. I think it's a leading question. You
10 can't ask a direct witness, you can't say yes
11 or no. He's telling him how to answer.

12 COMMISSIONER CAMPBELL: Okay. Sustain can you --
13 can rephrase the question, please?

14 MR. VEGA: Yes, sir, Your Honor.

15 COMMISSIONER CAMPBELL: Thank you.

16 Q: You testified a moment ago you made 16.50 an
17 hour, is that correct?

18 A: Yes.

19 Q: Was that your normal or usual rate of pay?

20 A: Yes.

21 Q: Did you receive that rate of pay when you
22 worked in Georgia?

23 A: You mean the 16.50 or the two extra dollars?

24 MR. VEGA: Let me go through the question and --
25 Your Honor, it'll become fair in a minute.



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1 COMMISSIONER CAMPBELL: Okay.

2 Q: If -- if you'll just answer the question,
3 please. When you worked in Georgia how much
4 were you paid?

5 A: 16.50.

6 Q: Did you work for a period of time in Clemson,
7 South Carolina?

8 A: Yes.

9 Q: How much did they pay you in Clemson?

10 A: \$2 above the 16.50.

11 Q: And what is your understanding for the reason
12 for the increase in pay?

13 A: Because I think it was convenient for the
14 company, I think because they needed to finish
15 that job and we, that we employees knew how to
16 do that work.

17 Q: How did you learn that you would be paid \$2
18 more to work in Clemson?

19 A: Everyone knows it in the company because when
20 you're talking to the supervisors they will
21 tell you that you're going to get paid two more
22 dollars for working at those sites, everybody
23 knows that.

24 Q: Who specifically told you that you would get \$2
25 more?



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- 1 A: Juan Ochoa, my supervisor.
- 2 Q: Did you receive any additional compensation
- 3 when you traveled to Clemson to work?
- 4 A: The same, Juan Ochoa told me that he was going
- 5 to talk to William, who is the company's
- 6 president, about money for gas which ended up
- 7 being the \$175.
- 8 Q: And you received \$175 how frequently?
- 9 A: Every week with the exception of when they
- 10 moved me to work in Marietta, that's when I did
- 11 not get the \$175.
- 12 Q: When you say every week, are you referring to
- 13 every week that you worked in Clemson?
- 14 A: Yes.
- 15 Q: Do you recall about when you ended up going to
- 16 Marietta to work during that time period?
- 17 A: In March. And in March and I don't recall if
- 18 it was - if it was two weeks or a few days over
- 19 and then after that they return us back to
- 20 Clemson. And when I was working at Marietta
- 21 they stopped paying me the \$175 for gas that
- 22 they were paying me when I was working in
- 23 Clemson. And when I went back to work in
- 24 Clemson they again started paying me the \$175.
- 25 Q: Was there a change in your hourly rate as well?



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1 A: Yes.

2 Q: So when you went to Marietta, Georgia did your
3 pay increase or decrease?

4 A: It went down.

5 MR. VEGA: Your Honor, I was going to refer to
6 Exhibit L and Exhibit K if I may.

7 COMMISSIONER CAMPBELL: Okay. Thank you.

8 MR. VEGA: If I may also approach the witness?

9 COMMISSIONER CAMPBELL: Sure.

10 MR. VEGA: This would be on the fourth page of
11 Exhibit K, Your Honor.

12 COMMISSIONER CAMPBELL: Thank you.

13 MR. VEGA: I may have them enumerated, I'm sorry.
14 Here they are, Your Honor. I'm sorry.

15 COMMISSIONER CAMPBELL: Thanks, appreciate it.

16 Q: Mr. Lopez, I'm going to show you two documents,
17 one is your pay and one is the 175 or \$35 per
18 day.

19 A: All right.

20 Q: And on this page this is in reference to your
21 salary and wages (indicating). In the middle
22 of page 4 did you get a check for each week
23 worked in March of 2016?

24 A: Possibly, those are the locations?

25 Q: Correct. Did you -- were you paid on March 4th



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1 and ---

2 A: Yes.

3 COMMISSIONER CAMPBELL: Excuse me. Mr. Vega, are
4 you -- you're referring to Exhibit L, is that
5 correct?

6 MR. VEGA: I'm sorry, K, Your Honor.

7 COMMISSIONER CAMPBELL: You -- you're K.

8 MR. VEGA: I'm on K.

9 COMMISSIONER CAMPBELL: I'm sorry I didn't see K
10 before.

11 MR. VEGA: Okay.

12 COMMISSIONER CAMPBELL: Thank you, go ahead.

13 Q: And then you received pay on March 11?

14 A: Yes.

15 Q: And then later March 18?

16 A: Yes.

17 Q: And lastly March 25?

18 A: Yes.

19 MR. VEGA: Now, Your Honor, referring to L on the
20 second page about a third of the page down.

21 Q: What two weeks on this document does it show
22 that you received pay of \$175? What date is
23 that (indicating)?

24 A: Oh, I can't see.

25 Q: It's -- it's a little bit small, March 16?



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1 A: March 16th.

2 Q: And it looks like you had two weeks ---

3 MR. VEGA: I'm sorry and I'll just refer to the
4 document that shows February 29 through March
5 6 and March 21 through 27.

6 COMMISSIONER CAMPBELL: Thank you.

7 MR. VEGA: Okay. Thank you, sir.

8 A: Thank you.

9 Q: Mr. Lopez, when you received the initial money
10 to travel to -- to Clemson, what would you use
11 that money for?

12 A: For gasoline.

13 Q: And you were traveling -- about how many miles
14 each way do you travel from Clemson?

15 A: I don't know round trip, but it's about 85
16 miles from my house to the University.

17 MR. VEGA: And, Your Honor, we would refer to
18 Exhibit C with regards to a mapquest starting
19 at his address to Clemson University.

20 COMMISSIONER CAMPBELL: Thank you.

21 Q: Mr. Lopez, if you had to pay out of your own
22 pocket to travel that long a distance how would
23 that have affected you?

24 A: It would have been economically an impact
25 because I would have received less money.



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1 Q: Would you have been able to afford to travel to
2 Clemson and pay for it yourself without the
3 additional monies being paid by the company?

4 A: No.

5 Q: And when you were offered that additional money
6 did you find it to your benefit to accept the
7 additional money?

8 A: Yes.

9 Q: Do you believe that it also benefitted the
10 company for you to be available in Clemson?

11 A: Yes.

12 Q: Had you refused to do the work in Clemson what
13 do you believe the status of your work would
14 have been at that time?

15 MR. GRIGGS: I'm going to object to his question, I
16 think it's speculative.

17 COMMISSIONER CAMPBELL: Yeah, can you please rephrase
18 the question?

19 MR. VEGA: Well, Your Honor, as -- as a party to the
20 claim and as the person who received the
21 benefit I think he is entitled some room to
22 determine what -- what would have happened to
23 him had he chosen not to work.

24 MR. GRIGGS: I'm just going to maintain the
25 objection. I think it's just ---



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1 MR. VEGA: I'll -- I'll ---

2 COMMISSIONER CAMPBELL: Yeah, if you can -- if you
3 can try to rephrase that.

4 MR. VEGA: Okay.

5 Q: When you went to Clemson who employed you?

6 A: I was working for Reeves and Young and at that
7 time when they sent me to Clemson I was working
8 at the Mercedes Benz Stadium and then they
9 moved me to Clemson.

10 Q: Correct. So it was Reeves Young's decision to
11 send you to Clemson, is what you're saying?

12 A: Yes. Because at that time they moved the
13 entire team, the group that kind of travels
14 with the rest.

15 Q: All right. Let me ask you some questions about
16 that. Your supervisor was Juan Ochoa?

17 A: Well, let me tell you how the company works.
18 So Juan Ochoa is my immediate supervisor, but
19 above him he has another superior and when that
20 person gives you orders, give them to Juan
21 Ochoa and then Juan Ochoa gives them to me.

22 Q: Correct. But when you worked you were assigned
23 to Juan Ochoa's team?

24 A: Yes.

25 Q: And when they moved you to Atlanta they moved



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1 the entire team with Juan Ochoa as supervisor,
2 correct?

3 A: Yes.

4 Q: When they asked you to go back to Clemson did
5 they take the entire team?

6 A: Yes.

7 Q: Please pay attention to the question. When
8 they moved you back to Clemson did they move
9 the entire team or did they move you off of
10 Ochoa's team?

11 A: Okay. The work's like this, we were at the
12 University for about two days then they moved
13 Juan Ochoa to Atlanta and then Shane Burrell
14 asked me if I could stay with the other team
15 and so that's when I went back.

16 Q: Correct. So Juan Ochoa's team stayed in
17 Atlanta and you went back to Clemson?

18 A: Yes.

19 Q: And do you know who asked for you to come to
20 Clemson?

21 **THE TRANSLATOR:** I don't -- I can't understand.

22 Q: Okay. I believe he's saying Shane Burrell, B-
23 U-R-R-E-L-L.

24 **MR. GRIGGS:** That would be correct.

25 Q: That's what he's saying.



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1 THE TRANSLATOR: Shane Burrell? Thank you.

2 Q: So a moment ago you testified that Shane
3 Burrell requested you to come to Clemson?

4 A: Yes.

5 Q: And what was his position with the company?

6 A: He was the supervisor at the University project
7 and he was the one that had all of the drawings
8 for the entire project.

9 Q: And did he supervise your work once he got to
10 Clemson?

11 A: Yes.

12 Q: Do you know if you were asked by Juan Ochoa or
13 anyone else to go back to Atlanta potentially?

14 A: Juan Ochoa wanted me to go back to Atlanta, but
15 then Shane told me that if I wanted to stay at
16 the University that I could and I decided to
17 stay at the University.

18 Q: And what was the incentive that you had to work
19 at a much further location?

20 A: It was convenient for me at that moment because
21 I was making more money and that was good for
22 me.

23 Q: And when you returned to Clemson you were there
24 in your capacity as a heavy machine operator,
25 is that correct?



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1 A: Yes.

2 Q: And how many locations did you work at while
3 you were in Clemson?

4 A: In two.

5 Q: Do you know what the difference in the
6 locations were?

7 A: I don't see any difference between the two
8 locations because I'm just simply an operator
9 so they sent me go here, do this, do that. I
10 don't have any notion of the project or the
11 drawings, I just simply do what they put me to
12 do.

13 Q: All right. When you're in Clemson you're just
14 following orders as far as where you work?

15 A: Yes.

16 Q: As a result of the motor vehicle accident --
17 tell us about the accident itself, how -- how
18 bad was it?

19 A: I don't recall anything, I simply don't know.

20 MR. VEGA: Your Honor, Exhibit B has photos of the
21 vehicle and the damage.

22 COMMISSIONER CAMPBELL: Okay. Thank you.

23 Q: Did you receive serious injuries as a result of
24 the motor vehicle accident?

25 A: Yes.



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1 Q: Did you have to have emergency treatment as a
2 result of the accident?

3 A: Yes.

4 Q: Tell us briefly what body parts or how were you
5 affected physically as a result of the
6 accident?

7 A: Left ankle was fractured, my knee was injured
8 and I had a total knee replacement, all my ribs
9 were fractured, my left shoulder was dislocated
10 and I had to receive microscopic -- macroscopic
11 (sic) surgery, I had some fractures in the neck
12 and as a result I ended up developing, two
13 years later, some hernias because of the lack
14 of medical attention.

15 Q: So at this time you're continuing to experience
16 symptoms you believe are related to the
17 accident?

18 A: I don't think so, I think -- I don't think I'm
19 -- I'm certain one hundred percent because I'm
20 worse from when I went in with the accident.

21 Q: So you believe you're -- you're getting worse,
22 is what you're saying?

23 A: Yes.

24 Q: And did you -- who -- who paid, do you know who
25 paid or if the bills have been paid for the



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1 hospital?

2 A: I have Blue Cross Blue Shield insurance and it
3 was cancelled because I was fired from the
4 company in December 11 of 2018. Supposedly it
5 was because I did not respond to some letter
6 they sent requesting an update to see how I was
7 doing when they could have easily obtained that
8 information from the records office or through
9 their attorneys.

10 MR. VEGA: Your Honor, I'd just point to Exhibit F,
11 past medical bills, and Exhibit G. If I may
12 approach the witness?

13 COMMISSIONER CAMPBELL: Sure.

14 Q: You received a letter discharging you from the
15 company, correct?

16 A: Yes.

17 Q: And is that the letter?

18 A: Yes, I have the original.

19 Q: And the date on that, please?

20 A: 11th of December, 2017.

21 Q: Thank you. Have you physically -- are you able
22 to return to work since -- have you been able
23 to return to work since the accident?

24 A: No.

25 Q: Would you -- in your current condition or the



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- 1 condition you've been in since the accident
2 would you physically be able to perform the
3 work you did for Reeves Young?
- 4 A: No.
- 5 Q: And are you still treating with Dr. Scott
6 Barbour?
- 7 A: Yes. I'm -- I'm with Dr. Barbour, he's a
8 chiropractor, but he sent me with various
9 specialists who treat various things and I am
10 just waiting so that I can start my treatment.
- 11 MR. VEGA: And, Your Honor, just -- just to take
12 note, Dr. Barbour's a medical doctor.
- 13 Q: And so -- but are there recommendations, to
14 this day are there still recommendations for
15 additional care for you?
- 16 A: Yes. I have recommendation for treatment for
17 some allergies and to see what's happened
18 within my arm that it's swelling up, also for
19 the fractures and to go to a clinic for some
20 pain management and other specialties --
21 specialist.
- 22 MR. VEGA: And, Your Honor, all that is discussed in
23 Dr. Barbour's deposition.
- 24 COMMISSIONER CAMPBELL: Okay. Thank you.
- 25 Q: Do you have the financial means to pay for this



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1 medical care and treatment and these
2 specialists, are you able to pay for that
3 yourself?

4 MR. GRIGGS: I'm going to object, I think that's
5 irrelevant.

6 COMMISSIONER CAMPBELL: I'll -- I'll allow him to --
7 to answer that.

8 A: No.

9 Q: And since the accident have you received
10 financial or monetary compensation from Reeves
11 Young, Workers' Comp or anyone else?

12 A: No.

13 (Translator repeats question attorney asks)

14 A: No.

15 Q: And has this accident been a financial burden
16 upon you?

17 A: Yes.

18 Q: I have no further questions.

19 COMMISSIONER CAMPBELL: Okay. Thank you. Mr.
20 Griggs?

21 MR. LOPEZ-CELESTIN - CROSS-EXAMINATION BY MR. GRIGGS:

22 Q: Mr. Lopez, you said that since this accident
23 you've had no help or assistance from Reeves
24 Young, is that correct?

25 A: Yes.



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1 Q: This accident was in January of 2017, correct?

2 A: Yes, January 5th, 2017.

3 Q: Today is March 2019, correct?

4 A: Yes.

5 Q: So it's taken you over two years to prosecute
6 your claim, you waited two years to get to this
7 point, is that correct?

8 MR. VEGA: Your Honor, I would object to the
9 characterization. There are things out of his
10 control, he does not control the calendar with
11 regards to the litigation.

12 COMMISSIONER CAMPBELL: I understand, but I'll allow
13 him to answer that question, okay? Go ahead.

14 A: Can you repeat the question?

15 Q: Why did it take you over two years to prosecute
16 this claim?

17 MR. VEGA: Your Honor, if may? I think now we've
18 crossed over into speculation. There are
19 things that he's not -- he doesn't know, he
20 doesn't control the time frame ---

21 MR. GRIGGS: I'm not asking him to -- to shed any
22 light on the attorney-client privilege, but I
23 do find it curious that somebody that's
24 testifying about a financial hardship has
25 waited over two years to prosecute this claim.



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1 COMMISSIONER CAMPBELL: I'll -- I'll allow him to
2 testify to anything that was within his
3 control, but anything beyond as the process
4 goes ... You can continue.

5 Q: I'd just like the question. I've asked him
6 twice now.

7 A: Well, if it had been up to me, I wasn't
8 expecting two years, if it had been up to me
9 all of this would have been resolved in
10 February or March of 2017. It wasn't until I
11 had to submit law through a claim and I didn't
12 receive any help or assistance or anything.
13 I'm grateful that they sent me some flowers
14 with a card to the hospital that said get well
15 soon, but I did not receive anything else.

16 Q: They kept -- your accident was in January, they
17 kept you on your -- on their group health
18 policy through December 2017, didn't they?

19 A: Yes.

20 Q: Did you pay any premiums during that point in
21 time, during that time?

22 A: No. But supposedly when you have Blue Cross
23 and Blue Shield and you have an accident Blue
24 Cross and Blue Shield is the one that's paying,
25 it wasn't Reeves and Young.



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1 Q: Okay. But you had insurance through December
2 of 2017 and you didn't pay any premiums, is
3 that correct, yes or no?
4 (Deponent begins to answer)
5 Q: I need yes or no question, correct?
6 MR. VEGA: He doesn't have to badger the witness.
7 COMMISSIONER CAMPBELL: Well, he -- he ---
8 MR. VEGA: He's asked the question ---
9 COMMISSIONER CAMPBELL: --- he can say ---
10 MR. VEGA: --- -- I'm sorry, go ahead.
11 COMMISSIONER CAMPBELL: He can answer the question
12 and then give an explanation after that.
13 MR. VEGA: But, Your Honor ---
14 (Translator attempts to ask question to deponent)
15 MR. VEGA: --- the question hasn't even been
16 translated and Mr. Griggs is already ---
17 MR. GRIGGS: He's already answered ---
18 COMMISSIONER CAMPBELL: Okay. Let ---
19 MR. GRIGGS: --- the Commissioner --
20 COMMISSIONER CAMPBELL: --- let ---
21 MR. GRIGGS: --- once, he doesn't need a translator
22 ---
23 COMMISSIONER CAMPBELL: --- let's lets --
24 MR. VEGA: No, Your Honor.
25 MR. GRIGGS: You're out of line.



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1 MR. VEGA: No. He's been grant -- he's been awarded
2 the tran- -- an interpreter ---

3 COMMISSIONER CAMPBELL: Okay.

4 MR. VEGA: And we've all agreed to use -

5 COMMISSIONER CAMPBELL: I'm going to -- I'm going to
6 allow the interpreter, will you -- when he
7 responded to the question will you interpret
8 his response to me now?

9 THE TRANSLATOR: Yes, I'll repeat the question.

10 COMMISSIONER CAMPBELL: Okay. If that's easier for
11 you, yes.

12 (Translator complies)

13 A: Yes. Can I give an explanation?

14 COMMISSIONER CAMPBELL: Yes, but answer it first
15 yes or no then he can give the explanation.

16 THE TRANSLATOR: His answer was yes and now he asks
17 ---

18 COMMISSIONER CAMPBELL: Okay.

19 THE TRANSLATOR: --- and I give an explanation.

20 COMMISSIONER CAMPBELL: Yes.

21 A: The insurance was sending me letters with
22 explanations of all the cost and they were
23 asking me for an update on what's going on with
24 all the claims and all of this and I'm assuming
25 they want their money back.



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1 COMMISSIONER CAMPBELL: Okay. Did -- did you hear
2 that?

3 MR. GRIGGS: Yeah, that's fine. The only other
4 thing I have is Commissioner, Danny submitted
5 his letter regarding the termination and he
6 asked Mr. Lopez about that.

7 Q: You talked about the December 11th letter,
8 correct?

9 (Translator questions deponent)

10 Q: You testified about the termination letter.

11 A: Yes.

12 Q: They also sent you a letter in November of 2017
13 asking you for additional information, did you
14 respond to them at all?

15 A: No, I have another explanation.

16 Q: Go ahead.

17 THE TRANSLATOR: Okay. Eric Jonah. I'm not
18 understanding the name but.

19 A: The owner of the company came to see me at my
20 house and he told me I could not ---

21 MR. GRIGGS: I need to object here Commissioner.

22 MR. VEGA: He's the owner of the company, Your
23 Honor.

24 COMMISSIONER CAMPBELL: I'll -- I'll allow him to --
25 go ahead, continue.



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1 A: --- and he told me that I could not have any
2 contact with the company whatsoever, no
3 letters, no telephone or anything. So when I
4 am told by the owner of the company not to have
5 any contact when I have letters I'm not going
6 to answer. He told me that if I received
7 anything or if there was anything I need to say
8 it needed to be done through the attorneys.

9 MR. GRIGGS: I don't have anything to follow-up to
10 that, Commissioner.

11 Q: Okay. Mr. Lopez, when you worked in Clemson,
12 we've established that you were paid \$175 per
13 week additional money, correct?

14 A: Yes.

15 Q: And you got that \$175 no matter how many days
16 you worked, correct?

17 A: Uh-huh. Yes. Oh, excuse me, but yes, I also
18 sometimes worked on Saturdays and either way I
19 would probably get paid 175.

20 Q: Correct. Sometimes if it was raining or very
21 bad weather there were some weeks you worked
22 less, correct?

23 A: Yes.

24 Q: And you still got 175, correct?

25 A: Yes. Because it's company policy that even if



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1 it's raining you have to go to the work site
2 and if you don't work you just get paid two
3 hours and then they send you back.

4 Q: You worked a -- you got the 175 regardless, it
5 didn't fluctuate, yes or no?

6 A: Yes.

7 Q: In fact every Reeves Young worker on the site
8 received the per diem, correct?

9 A: As far as I understand, yes.

10 Q: Okay. And the people that worked on that site
11 they didn't all come from Gainesville, some of
12 them came from other parts of Atlanta, some of
13 them came from closer to Georgia, everybody
14 drove from different places, correct?

15 A: Yes.

16 Q: But every -- but the 175 remained constant,
17 correct?

18 A: Yes.

19 MR. VEGA: Your Honor, if I may ask for
20 clarification? Is he asking about his 175 or
21 other employee's 175?

22 MR. GRIGGS: I'm asking about his 175.

23 (Translator repeats question)

24 A: Yes.

25 Q: Now, did you have to keep any receipts about



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1 what you were spending the money on?

2 A: I have my application from the vehicle, I have
3 all my receipts there, I don't have to keep
4 them.

5 Q: Did Reeves Young require you to keep receipts
6 as to what you were spending the \$175 on?

7 A: No. In my case they gave me the money for gas
8 and they never asked me for any receipts.

9 Q: Now, did you have to keep a milage log, did you
10 have to tell them how far you were driving or
11 where you were driving?

12 A: No.

13 Q: You were offered an apartment in the Clemson
14 area, correct, or house -- housing, company
15 housing?

16 A: It was mentioned to me that if I wanted to
17 stay, but officially it was never offered to me
18 to have an apartment that the company had where
19 the other workers were staying.

20 Q: That -- that's your testimony? Okay. You
21 chose to drive back and forth because your wife
22 was ill, correct? You needed to take care of
23 her, that's understandable.

24 A: Yes.

25 Q: Did you drive your own car?



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1 A: Yes.

2 Q: And you spent about three and a half hours each
3 day in that car, is that correct? About an
4 hour and 45 each way?

5 A: Yes.

6 Q: During that time you were in the car did they
7 pay you your hourly wage?

8 A: The driving time, no.

9 Q: They did -- Reeves Young did not pay any of
10 your car insurance, did they?

11 A: No, I paid it.

12 Q: They didn't pay any of your car maintenance,
13 did they?

14 A: No.

15 Q: They didn't give you a gas card to buy your
16 gas, did they?

17 A: No. Only the \$175 that they direct deposited
18 into my bank account.

19 Q: Now, the -- when you were driving from
20 Gainesville to Clemson and from Clemson back to
21 Gainesville were you doing any other errands
22 for Reeves Young, were you picking up supplies
23 or running messages back and forth, were you
24 charged with any tasks on the way to and from?

25 A: No.



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1 Q: You said it was about 85 miles from Gainesville
2 to Clemson and you spent about an hour and a
3 half to an hour and 45 minutes in the car, is
4 that right?

5 A: Yes.

6 Q: Other Reeves Young jobs that you worked on from
7 Gainesville, Georgia into downtown Atlanta or
8 into Decatur, those jobs would also require you
9 to travel, is that correct?

10 A: Yes.

11 Q: And you testified that those jobs with traffic
12 in the Atlanta area could take you as much as
13 an hour and a half one way, is that right?

14 A: In the morning it would be maybe 45 minutes,
15 but in the afternoon depending on the traffic
16 an hour and a half.

17 Q: Okay. So you worked other jobs that could
18 routinely take an hour and a half at least one
19 way, not in the morning, but in the afternoon,
20 Reeves -- Reeves Young didn't pay you milage
21 for that, did they?

22 A: No.

23 Q: Reeves Young did not exercise any control over
24 you when you were in your vehicle driving to
25 and from Clemson, did they?



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1 A: No.

2 Q: You didn't have a work phone even, did you?

3 A: No.

4 Q: If you wanted to stop and shop or stop and eat
5 you could have done that on the way to and from
6 Clemson, correct?

7 A: Well, possibly, but in my case I just went from
8 my home to work from Monday through Friday.

9 Q: Do you have any evidence today as to how much
10 it cost you to put gas in your car back then?

11 A: Possibly I have on the telephone, but I'm not
12 sure.

13 Q: Do you have any evidence today to present to
14 the Commissioner as to the cost it cost you to
15 fill up your gas tank, to put gas in your car?

16 A: No.

17 Q: Do you have any evidence as to the maintenance
18 cost of operating your vehicle?

19 A: No.

20 Q: You said it was being a financial hardship for
21 you to work in Clemson and you would not have
22 been able to work in Clemson but for the per
23 diem, but you worked these other jobs in
24 Atlanta without any per diem, is that correct?

25 A: No. Because it was also the \$2 difference and



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1 plus the gasoline.

2 Q: Now, when you went to Atlanta for those two
3 weeks and then went back to Clemson, that was
4 your decision to go back, wasn't it?

5 A: No. They sent us all, the crew, to Marietta to
6 work and I don't recall exactly what it was, I
7 think it was Third Street in Marietta.

8 MR. VEGA: I think he's saying Church Street.

9 THE TRANSLATOR: Church Street? Thank you.

10 MR. GRIGGS: I don't believe I have any other
11 questions, Commissioner.

12 COMMISSIONER CAMPBELL: Okay. Mr. Smith?

13 Q: Mr. Lopez?

14 A: Yeah.

15 Q: Sorry for your injuries. I just have one
16 question to ask you. On the date of your motor
17 vehicle accident on January 5th, 2017 you left
18 at the Earle Street Apartment Complex, is that
19 correct?

20 A: Yes.

21 Q: And that's where you were working that day,
22 correct?

23 A: I worked at both, at the University and the
24 apartments.

25 Q: Oh, at the University, you only worked there in



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1 the morning for exercises, correct?

2 A: In the morning at the University I went to do
3 the exercises that they have you do every
4 morning and then I was cleaning out the mud so
5 that it would be clear for all the other
6 companies that had to go in to do work that
7 day.

8 Q: And you were cleaning out the mud, that took
9 about an hour?

10 A: More or less, uh-huh.

11 Q: Then you went over to the Earle Street
12 Apartment Complex and worked there 'til the end
13 of the day?

14 A: At Earle Street, yes, from there they moved me
15 to the other site.

16 Q: Okay. And the remainder of the day you worked
17 at the Earle Street Apartment Complex, on the
18 day of the accident, correct?

19 A: Yes.

20 Q: Are you aware that Reeves Young employment
21 records have you working ten hours that day on
22 the Earle Street Apartment Complex?

23 A: Well, then they are lying. I don't know how
24 they keep their records, but I was at the
25 University in the morning and then later I went



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1 to the apartments, if we could look to see
2 maybe there's a way of getting to review the
3 signatures at the University you will see the
4 signatures that will show that I was there for
5 the exercises in the morning and then to clean
6 up and then from there I moved to the
7 apartments.

8 Q: Okay. But again, you were only there for an
9 hour cleaning the road, correct?

10 A: Yes.

11 Q: Then you moved over to the Earle Street
12 Apartment Complexes, correct?

13 A: Yes.

14 Q: And how many hours do you thing you worked at
15 the Earle Street Apartment Complex before you
16 left?

17 A: To be sincere I don't recall.

18 Q: But the remainder of the day you were there,
19 correct?

20 A: From the apartments there I went home.

21 Q: Okay. But for the remainder of the -- you
22 worked an hour at the -- the dormitory project,
23 correct?

24 A: Yes. And then from, at the University and then
25 from there as a matter of fact they called and



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1 cancelled us ---

2 (Mr. Lopez corrects translator)

3 A: - Clemson House, because they were going to
4 take them down and then build them.

5 Q: They called the apartment Complexes the Clemson
6 House?

7 A: I don't know what they call them, but all the
8 students and everyone around there and the
9 people that were there would refer to them as
10 Clemson House.

11 Q: Okay. So you typically would arrive at work at
12 7:00 o'clock in the morning, is that correct?

13 A: Yes. Every day to do exercises that you have
14 to do that by -- it was a requirement to do
15 them every day.

16 Q: And what time did you leave on the date of your
17 accident, your employment?

18 A: I don't recall.

19 Q: How far away from the -- the work site was your
20 accident?

21 A: Between seven, six, eight miles. I don't
22 remember, I don't recall exactly.

23 Q: You don't recall when your accident occurred,
24 what time?

25 A: No.



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1 Q: Okay.

2 MR. SMITH: And I'll just refer y'all on to the
3 police report.

4 COMMISSIONER CAMPBELL: Okay. Thank you. Mr. Vega?

5 MR. VEGA: Thank you, Your Honor.

6 MR. LOPEZ-CELESTIN - REDIRECT EXAMINATION BY MR.

7 VEGA:

8 Q: Mr. Lopez, a moment ago you were asked some
9 questions about the \$35 or the 175 a week and
10 you described the procedure for inclement
11 weather. What was the procedure if you woke up
12 and there was inclement weather with regards to
13 the job site?

14 A: We were told by Shane Burrell that we have to
15 show up in case was raining, if it wasn't
16 raining too much that we showed up and if it
17 was raining to the point where we couldn't work
18 they would pay us two hours and then they would
19 send us home.

20 Q: And when you showed up and they paid you the
21 two hours did they also pay you the \$35?

22 A: Yes, because supposedly that's what they were
23 going to pay us for gas.

24 Q: Did they pay you that money even if you didn't
25 get in a bulldozer or didn't get in a backhoe



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1 or anything like that?

2 A: Sometimes we will do it for maybe like ten
3 minutes or something, like they would have us
4 uncover a sewage drainage or something like
5 that and then they would send us home.

6 Q: But they would pay you the \$35 whether you
7 worked ten minutes or an hour or two hours?

8 A: Yes, because you had already showed up to work.

9 Q: Did anyone at the company tell you that it was
10 mandatory or required of you to stay in
11 Clemson?

12 A: No.

13 Q: When you told the company that you were going
14 to drive home did anyone at the company tell
15 you that you were prohibited from driving home
16 each day?

17 A: No.

18 Q: And you went to Clemson -- when you went to a
19 city, be it Atlanta, Decatur, Marietta or
20 Clemson were you going at the direction of the
21 company?

22 A: Can you repeat the question?

23 Q: The city you worked in, was that your choice or
24 was it the company's choice?

25 A: The company's choice.



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1 MR. VEGA: And, Your Honor, I'm going to go back to
2 Exhibit L to where it says the per diem ---

3 COMMISSIONER CAMPBELL: Thank you.

4 MR. VEGA: --- document.

5 Q: When you were on vacation were you paid \$35 a
6 day?

7 A: No. When you went on vacation they
8 automatically stopped the payment, when you
9 went back to -- to work they would start paying
10 them again.

11 Q: And when you were on vacation - or did you
12 receive vacation time when you were on
13 vacation?

14 THE TRANSLATOR: Can you repeat the question?

15 Q: Yes. When you took vacation did you receive
16 company paid vacation time?

17 A: Oh. So after three -- after three years you
18 receive two weeks paid vacation. If you want
19 to take more time than that, three weeks or
20 more then the extra time you can take it with
21 no pay.

22 Q: Did you -- when you were paid your vacation
23 time were you paid at your regular rate or the
24 increased \$2 rate?

25 A: The regular 40 hours that you get paid, but I



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1 don't know how they work in the office if you
2 get bonuses or how they pay.

3 Q: Okay. If you went on a holiday, Thanksgiving,
4 Christmas, things like that, did you receive
5 \$35 a day even if you were paid holiday time?

6 A: Truthfully, I didn't pay attention to that.

7 Q: Okay.

8 MR. VEGA: Your Honor, I would just refer to the
9 document. It does appear, if you look at the
10 dates, Christmastime, Thanksgiving there's, the
11 numbers do vary.

12 COMMISSIONER CAMPBELL: Okay. Thank you.

13 MR. VEGA: Also with vacation pay and things of that
14 nature.

15 COMMISSIONER CAMPBELL: Okay. Thank you.

16 MR. VEGA: Those are all the questions I have.

17 COMMISSIONER CAMPBELL: Okay. Mr. Griggs?

18 MR. GRIGGS: I don't think I have anything else.

19 COMMISSIONER CAMPBELL: Okay. Mr. Smith, anything?

20 MR. SMITH: Nothing further, Your Honor.

21 COMMISSIONER CAMPBELL: Okay. Thank you. Ma'am,
22 you can tell him that y'all can step down.
23 Thank you for your testimony and if you want to
24 have a seat over here by Mr. Vega y'all can --
25 y'all can step over there.



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1 (Translator complies)

2 MR. GRIGGS: Can we take a five minute break?

3 COMMISSIONER CAMPBELL: Yes and we'll just -- we'll
4 take a brief five minute recess.

5 (Off the Record)

6 COMMISSIONER CAMPBELL: We're back on the record and
7 Mr. Vega, I know that you have a witness that
8 you care to call at this time so if you would
9 call your witness.

10 MR. VEGA: Your Honor, pursuant to the agreement of
11 myself and Mr. Griggs he's going to call him
12 first and then I will reserve my right to
13 cross-examine him.

14 COMMISSIONER CAMPBELL: Okay. So you have no
15 further witnesses to call at this time?

16 MR. VEGA: Yes, Your Honor. Contingent on him
17 calling the witness, if he does not call a
18 particular witness I reserve the right to call
19 him.

20 COMMISSIONER CAMPBELL: Okay. All right. Mr.
21 Griggs?

22 MR. GRIGGS: I'd like to call Juan Ochoa.

23 COMMISSIONER CAMPBELL: Okay. And Mr. Ochoa, I have
24 a couple of quick instructions for you. If you
25 would please speak up, speak clearly for us so



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1 that we can all hear your responses to the
2 questions. If you're asked a yes or no
3 question please give us a verbal yes or no
4 answer and try and stay away from things like
5 uh-huh and huh-uh just because that can be
6 easily misinterpreted on the record so if you
7 could help me out with that I'd appreciate it,
8 okay?

9 MR. OCHOA: Okay.

10 COMMISSIONER CAMPBELL: All right. Please raise
11 your right hand.

12 MR. OCHOA: Do you solemnly swear and affirm the
13 testimony is about, that you're about to give
14 is the truth, the whole truth and nothing but
15 the truth?

16 MR. OCHOA: I swear.

17 COMMISSIONER CAMPBELL: Okay. You can put your hand
18 down and please state and spell your name for
19 the record, sir.

20 A: Juan Ochoa.

21 COMMISSIONER CAMPBELL: Okay. If you could spell
22 that for us so we can get that for the record.

23 A: Oh. J-U-A-N, is my first name and Ochoa, O-C-
24 H-O-A.

25 COMMISSIONER CAMPBELL: Okay. Thank you, sir. Mr.



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1 Griggs?

2 JUAN OCHOA, having been duly sworn, testifies as
3 follows:

4 MR. OCHOA - DIRECT EXAMINATION BY MR. GRIGGS:

5 Q: Juan, just remember to speak, even if you feel
6 like you're yelling, just speak as loud as you
7 can, this lady over here has to hear everything
8 you say, okay?

9 A: Yes.

10 COMMISSIONER CAMPBELL: We have to -- have to get it
11 for the record, thank you, sir.

12 Q: Juan, who is your employer?

13 A: Reeves Young.

14 Q: Okay. And what is your job title with Reeves
15 Young?

16 A: Foreman.

17 Q: Okay. How long have you worked at Reeves
18 Young?

19 A: A year or more.

20 Q: Okay. And did you work on the dormitory job in
21 Clemson, South Carolina?

22 A: Yes.

23 Q: Okay. There was two jobs there, there was a
24 dorm job and an apartment job, you weren't the
25 foreman on the apartment job, correct?



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- 1 A: Correct.
- 2 Q: You were just on the dorm job?
- 3 A: Correct.
- 4 Q: But Reeves Young had you there as the foreman,
- 5 correct?
- 6 A: Yes.
- 7 Q: When you worked on that job site in Clemson
- 8 where did you live?
- 9 A: In Gainesville, Georgia.
- 10 Q: Did you drive to and from Clemson daily from
- 11 Gainesville or did you stay overnight in the
- 12 Clemson area?
- 13 A: I drove back and forth everyday.
- 14 Q: How did you get from Gainesville to Clemson and
- 15 then back to Gainesville?
- 16 A: A company truck.
- 17 Q: Okay. You have a company truck?
- 18 A: Yes.
- 19 Q: And it's actually owned by Reeves Young?
- 20 A: Yes.
- 21 Q: You don't pay for the truck?
- 22 A: No.
- 23 Q: You don't pay insurance?
- 24 A: No.
- 25 Q: You don't make any payments?



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- 1 A: No.
- 2 Q: Do you pay for gas?
- 3 A: No..
- 4 Q: How do you pay for your gas when you're
- 5 operating your company truck?
- 6 A: I got a field card for the truck.
- 7 Q: Okay. So Reeves Young provides you a company
- 8 truck and a company gas card?
- 9 A: Yes.
- 10 Q: When you worked in Clemson did you also receive
- 11 a per diem?
- 12 A: Yes.
- 13 Q: How much was your per diem?
- 14 A: \$175 per week.
- 15 Q: Okay. Well, did you get that \$175 per week no
- 16 matter if you worked five days or six days or
- 17 maybe even less, did the 175 stay constant for
- 18 you?
- 19 A: Yes.
- 20 Q: Did you have to keep track of any milage at all
- 21 when you were traveling between Gainesville and
- 22 Clemson?
- 23 A: No.
- 24 Q: Do you have to keep track of any receipts?
- 25 A: No.



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- 1 Q: Were you told by Reeves Young how to spend your
2 \$175?
- 3 A: No.
- 4 Q: After you stopped working in Clemson and moved
5 backed and worked in the Metro Atlanta area did
6 you still get the \$175?
- 7 A: No.
- 8 Q: Now, you had other -- let me ask you this,
9 strike that. When you worked in Clemson did
10 you transport others in your company truck?
- 11 A: Yes.
- 12 Q: And who else would ride with you?
- 13 A: Some guys that was in the crew.
- 14 Q: That worked for Reeves Young?
- 15 A: Yes.
- 16 Q: They lived in the Gainesville area?
- 17 A: They were in the same area that's why they rode
18 with me.
- 19 Q: What -- what were their names?
- 20 A: It was Julio Abrego, Isidro Silva and Mario
21 Romero.
- 22 Q: Okay. Julio Abrego, Isidro ---
- 23 A: Isidro ---
- 24 Q: --- Silva ---
- 25 A: Silva.



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- 1 Q: --- and Mario ---
- 2 A: Mario Romero.
- 3 Q: --- Romero. Okay. You drove them everyday?
- 4 A: Yes.
- 5 Q: Or most days?
- 6 A: Most of the days.
- 7 Q: Okay. There may have been a random day that
- 8 they rode with somebody else?
- 9 A: Yeah.
- 10 Q: Okay. Did they also receive the per diem?
- 11 A: Yes.
- 12 Q: So they didn't drive their own vehicle or drive
- 13 a company truck, they rode with you, but they
- 14 also got the per diem?
- 15 A: Yes.
- 16 Q: And you knew that, as their foreman you knew
- 17 that?
- 18 A: Yes.
- 19 Q: Now, Mr. Lopez is here, you were his supervisor
- 20 on that dorm job?
- 21 A: Yes.
- 22 Q: When you were his supervisor where was he
- 23 living?
- 24 A: In Gainesville.
- 25 Q: Do you know if he stayed in the Clemson area or

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- 1 if he drove back like you did, back and forth?
- 2 A: Drive back and forth.
- 3 Q: Now, did he have the option of staying in
- 4 housing in Clemson?
- 5 A: Yes.
- 6 Q: Did you offer him that option?
- 7 A: Yes.
- 8 Q: You talked with him about it?
- 9 A: To everyone that was from the, out of town.
- 10 Q: Right. You made it clear -- did you make it
- 11 clear to them that there was housing in Clemson
- 12 that they could stay in if they wanted to?
- 13 A: Yes.
- 14 Q: Free of charge?
- 15 A: Free charge.
- 16 Q: And Reeves Young paid for it?
- 17 A: Yes.
- 18 Q: And that was from the beginning of the job?
- 19 A: Yes.
- 20 Q: And do you know when that job started?
- 21 A: We started ---
- 22 Q: When did you start your portion with your crew?
- 23 A: Yeah, we started in June, I think it was June
- 24 8.
- 25 Q: Of what year?



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1 A: The '16.

2 MR. VEGA: Which job site are we referring to?

3 MR. GRIGGS: I'm talking about the Clemson building
4 job.

5 Q: If -- if some records reflect June 8, 2015,
6 does that sound ---

7 A: '15, that's correct.

8 Q: Does that sound right?

9 A: Yes.

10 Q: And his accident again was in January of '17?

11 A: Repeat that again.

12 Q: Mr. Lopez's accident was January of 2017, is
13 that your recollection?

14 A: Can't remember.

15 Q: Okay. Now, when you offered Mr. Lopez the
16 housing in Clemson or offered it to the group
17 did he avail himself to the housing or did he
18 continue to drive back?

19 A: He continued to drive back and forth.

20 Q: Okay. Why was -- why was he driving back and
21 forth?

22 A: The reason why, I think -- I think it was
23 because his wife was sick ---

24 Q: Okay.

25 A: --- and he had to be at home everyday.



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- 1 Q: Okay. Was he given a per diem?
- 2 A: Yes.
- 3 Q: How much was his per diem?
- 4 A: \$175 per week.
- 5 Q: If he had chosen to stay in the Clemson area in
- 6 the housing would he have still received the
- 7 per diem?
- 8 A: Yes.
- 9 MR. VEGA: Objection, speculation.
- 10 Q: Okay. Was it the company plan, did the company
- 11 have a plan to continue to pay the per diem
- 12 even if they stayed in the housing?
- 13 MR. VEGA: Same objection.
- 14 COMMISSIONER CAMPBELL: Well, I'll allow -- I'll
- 15 allow it because he would be familiar with what
- 16 the company plan was.
- 17 A: Yes.
- 18 Q: Now, do you -- are you aware did the -- did the
- 19 Claimant have any, Mr. Lopez, have any
- 20 responsibility to keep track of any milage or
- 21 gas receipts?
- 22 A: No.
- 23 Q: Did you tell him how to spend his per diem?
- 24 A: No.
- 25 Q: Do you know how far it takes, how long it takes



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1 to get from Gainesville to Clemson?

2 A: About an hour, 30 minutes maybe.

3 Q: An hour and 30 minutes?

4 A: One way, yes.

5 Q: Okay. And you -- you drove that same route,
6 correct?

7 A: Yeah.

8 Q: So Mr. Lopez would have spent three plus hours
9 in the car daily?

10 A: Yes.

11 Q: Okay. When he was driving back and forth to
12 Clemson did he have any errands to run for
13 Reeves Young, did he have to go pick up
14 supplies or do anything else?

15 A: No.

16 Q: Did Reeves Young have any control over Mr.
17 Lopez once he left the job site when he was
18 going to Clemson or coming from Clemson?

19 A: No.

20 Q: Did you ever tell Mr. Lopez that the \$175 per
21 diem was for gas money?

22 A: No.

23 Q: I don't have any other questions, Commissioner.

24 COMMISSIONER CAMPBELL: Okay. Mr. Vega?

25 MR. OCHOA - CROSS-EXAMINATION BY MR. VEGA:



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1 Q: Mr. Ochoa, what did you tell Mr. Lopez the
 2 money was for?
 3 A: Per diem.
 4 Q: Yes.
 5 A: Just for per diem.
 6 Q: What does that mean?
 7 A: That means it helps for your meals if you stay
 8 in the housing.
 9 Q: So you only receive the per diem if you stayed
 10 in the housing?
 11 A: You -- you stay, if you stay in the housing you
 12 receive or you choose to drive back and forth
 13 you still receive that per diem.
 14 Q: Okay. Was Mr. Lopez required to stay in
 15 housing?
 16 A: No, it was by choice.
 17 Q: He chose to go home each day?
 18 A: Yes.
 19 Q: And you testified that he chose to go home
 20 because of his wife?
 21 A: Was sick at -- at the time ---
 22 Q: Correct.
 23 A: --- and then ...
 24 Q: Do you recall my deposition of you in March,
 25 March 5, 2018, do you recall giving a statement



1 at your employers location?

2 A: Yes.

3 Q: Why did you drive home each day?

4 A: For my family.

5 Q: That's exactly what you told me, you told me
6 that you went home because of your wife and
7 kids, correct?

8 A: Yes.

9 Q: And you said that that was ---

10 MR. GRIGGS: Your Honor, the way he -- I'm not sure
11 why he's reading off the -- of the deposition.

12 MR. VEGA: I'm --

13 MR. GRIGGS: Witness is right in front of him.

14 COMMISSIONER CAMPBELL: If -- are you -- and -- and
15 ---

16 MR. GRIGGS: Is this to impeach ----

17 COMMISSIONER CAMPBELL: Are you introducing ---

18 MR. GRIGGS: Yes, there is. This is -- I got more
19 questions, but he hasn't given a wrong answer
20 yet or what you mean by wrong answer. A proper
21 way is to ask the question, if you get
22 something inconsistent then you bring it up.

23 MR. VEGA: No, but it also -- I mean that was his
24 answer and it shows that he's given the same
25 answer, there's nothing wrong with that.



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1 MR. GRIGGS: You can't use the deposition transcript
2 unless he wants to try to impeach him somehow.
3 If he's -- the witness is here, he can answer
4 the questions ---

5 MR. VEGA: Your Honor?

6 MR. GRIGGS: --- if he doesn't answer it and he
7 wants to go to the deposition then ---

8 MR. VEGA: Your Honor, pursuant to the
9 Administrative Law Court rules depositions are
10 admissible and they're to be used in the course
11 of the hearing.

12 COMMISSIONER CAMPBELL: Well, I'll tell you what ---

13 MR. VEGA: Some of the ---

14 COMMISSIONER CAMPBELL: --- take it back and then --
15 and then if -- if you need to for impeachment
16 purposes I'll -- I'll allow it come in, okay?

17 MR. VEGA: Thank you.

18 Q: Okay. So the reason that Mr. Lopez gave for
19 driving on each day sounds very similar. Would
20 you agree that it's the same reason that you
21 gave for going home each day?

22 A: For why we choose to drive back and forth?

23 Q: Correct.

24 A: Yes.

25 Q: He went for his family, you went for your



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1 family, correct?

2 A: Correct.

3 Q: Is there anything wrong with driving home to go
4 see your family?

5 A: Not at all.

6 Q: Did the company ever prohibit you from driving
7 home?

8 A: No.

9 Q: Did the company require you to stay in an
10 apartment?

11 A: No.

12 Q: Did you require or did the company require Mr.
13 Lopez to stay in an apartment?

14 A: Nobody required him, just is a choice.

15 Q: All right. But you and -- you were in charge
16 of the crew, on that crew I believe there was
17 another member that you failed to mention, Mr.
18 Luz Lopes.

19 A: Yes. But when he asked he was like who was
20 driving back and forth with me, Luz wasn't
21 riding with me.

22 Q: Who was on your crew was the question.

23 MR. SMITH: Your Honor, I believe Mr. Griggs
24 question was who was riding with him in his
25 truck and he named three individuals.



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1 COMMISSIONER CAMPBELL: And were those the three
2 individuals that were riding with you in the
3 truck?

4 A: Luz wasn't riding with me.

5 COMMISSIONER CAMPBELL: Okay. All right. Mr. Vega?

6 Q: All right. Who was on your crew?

7 A: It was Julio Abrego, Isidro Silva, Mario
8 Romero, Jorge Lopez or Jorge Lopez (using
9 correct Spanish pronunciation), Luz Lopez and I
10 think it was another guy, I can't remember his
11 name.

12 Q: Correct. So not all the members of the crew
13 rode with you in the truck?

14 A: No.

15 Q: There were other members of the crew that drove
16 their on vehicles to Clemson, correct?

17 A: Correct.

18 Q: They were also paid \$35 a day for going to
19 Clemson?

20 A: 175 per week.

21 Q: Correct. Were all the members of your crew
22 paid that money?

23 A: Yes.

24 Q: And that was when they went to Clemson?

25 A: Yes.



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1 Q: When you -- was your crew transferred to
2 Atlanta at one point in March of 2016?

3 A: Yes.

4 Q: And did you take everybody on your crew back
5 with you to Atlanta?

6 A: Everybody except for that one guy I was telling
7 your about because I think he was local.

8 Q: Right. There was a --- one of your crew
9 members just quit the job?

10 A: He quit, yeah.

11 Q: Yeah. But the crew that remained that was
12 yours that you were in charge of in Clemson you
13 took that crew with your to Atlanta?

14 A: Correct.

15 Q: And you supervised the grading?

16 A: Yes.

17 Q: And the heavy machine equipment?

18 A: Yes.

19 Q: And Mr. Lopez went with you to Atlanta?

20 A: Yes.

21 Q: And you told me he was a good worker?

22 A: Yes.

23 Q: And knew how to do his job?

24 A: Yes.

25 Q: And he had the skills to drive and grade



- 1 ground, correct?
- 2 A: Correct.
- 3 Q: Now, after about two weeks was he returned to
- 4 Clemson?
- 5 A: About two, three weeks ---
- 6 Q: Correct.
- 7 A: --- he went back to Clemson.
- 8 Q: And who -- who asked him to go to Clemson?
- 9 A: At that time it was Superintendent Shane
- 10 Burrell.
- 11 Q: Shane Burrell?
- 12 A: Yes.
- 13 Q: And when -- when Mr. Lopez was asked to go back
- 14 to Clemson did you stay in Atlanta with your
- 15 crew?
- 16 A: Yes.
- 17 Q: At one point did you contact Shane Burrell and
- 18 ask him to send Mr. Lopez back to Atlanta?
- 19 A: Yes, after those two or three weeks.
- 20 Q: Why did you ask him to come back?
- 21 A: Because I needed him.
- 22 Q: You needed his skills?
- 23 A: I need -- yeah, I need him back ---
- 24 Q: All right.
- 25 A: --- at that time.



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- 1 Q: Were there things on the crew that he could do
2 that other people could not do?
- 3 A: No.
- 4 Q: Everybody could drive the same equipment?
- 5 A: To drive equipment, operate the equipment.
- 6 Q: So you needed him or you just -- you liked
7 having him on the crew or you wanted him back?
- 8 A: Both.
- 9 Q: So you needed him and you liked having him on
10 your team?
- 11 A: Yes.
- 12 Q: All right. Now, when you asked Shane Burrell
13 to send him back did he come back?
- 14 A: No.
- 15 Q: What was the reason for him staying in Clemson?
- 16 A: First I tried to contact Mr. Lopez to get back
17 on -- on -- on our crew and I could never get
18 him to answer the phone so I called Shane
19 Burrell and he told me that he choose to stay
20 there, he didn't want to come back to Atlanta
21 with us.
- 22 Q: Okay. Shane Burrell told you that Jorge Lopez
23 did not want to come back to Atlanta?
- 24 A: Yes.
- 25 Q: And what reason did Shane Burrell give you?



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- 1 A: Because he was making a little more money.
- 2 Q: So Mr. Lopez wanted to stay in Clemson to make
- 3 the extra money that's what they told you?
- 4 A: That's what they told me.
- 5 Q: And do you believe that as true?
- 6 A: Yes.
- 7 Q: When you worked in Clemson did you enjoy making
- 8 the extra money?
- 9 A: Yes.
- 10 Q: Did it help offset your cost to travel and be
- 11 in Clemson?
- 12 A: Not really.
- 13 Q: So you could have done without the money, you
- 14 could've driven to Clemson and just done
- 15 without the money?
- 16 A: Yes.
- 17 Q: But you would prefer to have the money?
- 18 A: Of course.
- 19 Q: And you used the money to pay for travel
- 20 expenses?
- 21 A: No.
- 22 Q: You did not pay for any travel expenses?
- 23 A: No.
- 24 Q: Did anyone else in your crew to pay for travel
- 25 expenses?



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- 1 A: No.
- 2 Q: How do you know that?
- 3 A: Because I've never asked them.
- 4 Q: Okay. You didn't use it for travel expenses
- 5 because you had a gas card, correct?
- 6 A: Correct.
- 7 Q: And so if you needed to gas up your truck you
- 8 just gassed it up on the company card?
- 9 A: Correct.
- 10 Q: Did anyone below you in your crew also have a
- 11 company gas card?
- 12 A: No.
- 13 Q: So if they were going to drive to Clemson they
- 14 would have to use the money that they were paid
- 15 by the company, correct?
- 16 A: No.
- 17 Q: How would they get to Clemson if they're not
- 18 using the money the company pays them?
- 19 A: Well, they get paid by the company weekly, you
- 20 know, hourly.
- 21 Q: Right.
- 22 A: So if they need to make it to the job they need
- 23 to use their -- their own money to make it to
- 24 the job.
- 25 Q: Did you tell them not to use the money to



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1 travel to Clemson?

2 A: Which money?

3 Q: The extra money, the \$2 an hour, the \$35 per
4 day.

5 A: I didn't tell them.

6 Q: In fact you didn't tell them how to use the
7 money?

8 A: I never tell them how to use the money.

9 Q: But you knew it was extra money for working in
10 Clemson?

11 A: Yes.

12 Q: And that's what you told me in the deposition,
13 it was that job site in Clemson that got the
14 extra money?

15 A: Yes.

16 Q: And you went further and you told me that in
17 Georgia, in Atlanta you did not get extra
18 money?

19 A: You don't get the per diem in Georgia.

20 Q: And you also told me your salary was separate
21 than the per diem?

22 A: Yes.

23 Q: Tell me, if there's inclement weather in
24 Clemson, rain, snow, bad weather what was the
25 policy for the employees that were scheduled to



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- 1 be in Clemson?
- 2 A: Phone call.
- 3 Q: They would call in?
- 4 A: Yes.
- 5 Q: Who would they call?
- 6 A: Me or Shane at that time.
- 7 Q: Did they have -- were they required to come to
- 8 the job site?
- 9 A: No.
- 10 Q: They were not required to be present for two
- 11 hours to see if the weather would clear up?
- 12 A: Not if the -- if you say inclement weather, you
- 13 know, if it's snowing or anything like that you
- 14 don't want to bring people from an hour and a
- 15 half away, you know, just for show up for two
- 16 hours, so.
- 17 Q: I understand that would be a good idea, but is
- 18 that what the company was doing?
- 19 A: No. We'll make a phone call to see how the
- 20 weather looks and then we make a decision from
- 21 there.
- 22 Q: Okay. What if it was just raining a little bit
- 23 and then the employees got to Clemson?
- 24 A: Then ---
- 25 Q: Are you saying that if there was rain nobody



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1 would have to go to Clemson?

2 MR. SMITH: I think you let him finish his answer.

3 Q: Just answer my question.

4 COMMISSIONER CAMPBELL: Yeah, let -- go ahead and --
5 and answer the question.

6 A: We use -- we watch the weather, but if it's
7 raining in the morning, drizzling and you see
8 it's going to clear off around an hour or two
9 and you're going to be able to work we'd all go
10 to the job site.

11 Q: Who's we?

12 A: The ---

13 Q: Who's the weather person?

14 A: The weather person?

15 Q: Yeah, you said we watch the weather, who
16 watches the weather?

17 A: I'm talking, we, as everybody watches the
18 weather. You don't go out -- out of the house,
19 out of your house without watching the weather.

20 Q: Well, you don't know what I do.

21 A: Well, I'm just saying ---

22 Q: Okay. When you -- were there times where the
23 employees drove to Clemson and due to inclement
24 weather they were let go to go back home?

25 A: Yeah, if you can't work you -- you will go back



1 home.

2 Q: Okay. So there were times where the weather

3 would get worse ---

4 A: Correct.

5 Q: --- and you would have to send people home?

6 A: Yes or not bring them in at all.

7 Q: Okay. But that was the company's choice,

8 correct?

9 A: Yeah.

10 Q: And if the company chose to bring them in and

11 watch the weather and see if they could work or

12 not they would still pay them the \$35?

13 A: Yes.

14 Q: Regardless of whether they did ten minutes of

15 work, one hour, two hours?

16 A: Yes.

17 Q: Those are all the questions I have for you.

18 COMMISSIONER CAMPBELL: Okay. Mr. Smith?

19 MR. SMITH: I have none, Your Honor.

20 COMMISSIONER CAMPBELL: Okay. Mr. Griggs?

21 MR. GRIGGS: None on re-direct.

22 COMMISSIONER CAMPBELL: Okay. Thank you, sir.

23 Appreciate it and appreciate your testimony and

24 you can step down. Thank you, sir.

25 MR. OCHOA: Yes, sir.



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1 COMMISSIONER CAMPBELL: Mr. Griggs, you have another
2 witness to call at this time?

3 MR. GRIGGS: Yes, William Reeves.

4 COMMISSIONER CAMPBELL: Okay. Watch your step. And
5 since you've already heard me go over the
6 instruction two times before I'm not going to
7 belabor it -

8 MR. REEVES: Yes, sir.

9 COMMISSIONER CAMPBELL: --- so just speak up for us,
10 okay?

11 MR. REEVES: Yes, sir.

12 COMMISSIONER CAMPBELL: Please raise you right hand.

13 MR. REEVES: (Witness complies).

14 COMMISSIONER CAMPBELL: Do you swear and affirm the
15 testimony you're about to give is the truth,
16 the whole truth and nothing but the truth?

17 MR. REEVES: Yes, sir.

18 COMMISSIONER CAMPBELL: Okay. You can put your hand
19 down and please state and spell your name for
20 the record.

21 MR. REEVES: William Reeves, W-I-L-L-I-A-M R-E-E-V-E-
22 S.

23 COMMISSIONER CAMPBELL: Thank you, sir. Mr. Griggs,
24 your witness.

25 WILLIAM REEVES, having been duly sworn, testifies as



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1 follows:

2 MR. REEVES - DIRECT EXAMINATION BY MR. GRIGGS:

3 Q: Mr. Reeves, do you work with Reeves Young?

4 A: I do.

5 Q: And how long have you been there?

6 A: Eleven years.

7 Q: And what is your position with the company?

8 A: Vice President, Leader for our Civil
9 Engineering Unit.

10 Q: Okay. Were you over the two Clemson projects
11 we've discussed today?

12 A: Yes.

13 Q: Do you know Mr. Jorge Lopez who's here today?

14 A: I do.

15 Q: Okay. Was he a Reeves Young employee?

16 A: He was.

17 Q: Was he a good employee?

18 A: He was.

19 Q: Did y'all enjoy having him around?

20 A: Yes.

21 Q: When was his employment separated, do you know?

22 A: I believe it was in December of 2017.

23 Q: His accident happened in January of 2017, from
24 January to December did you, did Reeves Young
25 keep him on the group health policy?



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- 1 A: We did.
- 2 Q: And did Reeves Young pay his premiums?
- 3 A: We did.
- 4 Q: Before you terminated Mr. Reeve -- Mr. Lopez in
5 December -- well, before you separated
6 employment with him did y'all try to reach out
7 to him before that?
- 8 A: I know Eric Young had gone out to his house to
9 talk with him, yes.
- 10 Q: Was there also another letter sent in November?
- 11 A: Yes.
- 12 Q: Okay. And you say termination, he wasn't
13 terminated for cause, I mean he didn't do
14 anything wrong, he could not come back to work
15 after a certain amount of time, is that fair?
- 16 A: That's fair.
- 17 Q: Okay. So the employment was separated?
- 18 A: Correct.
- 19 Q: Okay. You're also aware that Mr. Lopez was in
20 the accident we've talked about today, correct?
- 21 A: Yes.
- 22 Q: Was he paid milage while driving to and from
23 Clemson from Gainesville?
- 24 A: No.
- 25 Q: Was he given a per diem while working in



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1 Clemson?

2 A: Yes.

3 Q: And how much was that per diem?

4 A: \$175 per week.

5 Q: Okay. And the \$175 per week was that given to
6 all the Reeves Young employees working on that
7 project?

8 A: Yes.

9 Q: Okay. Let me clarify, there was a couple of
10 local employees that were in that Clemson
11 immediate area, they -- they did not receive
12 the per diem?

13 A: The ones that traveled out of state received
14 the per diem.

15 Q: And why did they receive that per diem?

16 A: For being out of town, a lot of the meal money,
17 obviously they weren't at home, having to spend
18 more money on extra meals as well as industry
19 standard. Typically in our industry if folks
20 work out of state they're given per diems.

21 Q: Okay. Now, some guys stayed overnight in the
22 Clemson area?

23 A: Yes.

24 Q: Reeves Young did provide the company housing?

25 A: We did.



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- 1 Q: That was an option for all of them to stay?
- 2 A: It was.
- 3 Q: If they would have stayed in the housing did
- 4 they, would they still receive the per diem?
- 5 A: They would have.
- 6 Q: And in fact other people have stayed in the
- 7 area and did receive the per diem?
- 8 A: That is correct.
- 9 Q: Was the \$175 contemplated as gas money?
- 10 A: No.
- 11 Q: Now again, we've talked about he lived in
- 12 Gainesville, correct?
- 13 A: Yes.
- 14 Q: Were all the Reeves Young employees on that
- 15 site from Gainesville or were there others from
- 16 other parts of Atlanta?
- 17 A: There were others from other parts of Atlanta.
- 18 Q: Did all the Reeves Young employees drive the
- 19 exact same distance in the exact same amount of
- 20 time to get to the job site?
- 21 A: No.
- 22 Q: But everyone got the 175?
- 23 A: Yes, sir.
- 24 Q: So did the per diem fluctuate at all depending
- 25 on distance or time or was it across the board?



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- 1 A: It was across the board.
- 2 Q: And if they worked an extra Saturday did they
3 get an extra day or was it remaining 175?
- 4 A: It was the 175 per week.
- 5 Q: Was Mr. Lopez offered housing in the Clemson
6 area?
- 7 A: He was.
- 8 Q: And that housing was paid for by Reeves Young?
- 9 A: It was.
- 10 Q: If he would have chosen that, to stay in the
11 housing would he have still received the money?
- 12 A: He would have.
- 13 Q: The 175?
- 14 A: Yes.
- 15 Q: Suppose employees carpooled and -- and some
16 people weren't actually driving, but one person
17 was would all of them receive the money, the
18 175?
- 19 A: They would.
- 20 Q: Did the \$175 -- well, let me ask you this. Did
21 Reeves Young consider or look at how far
22 employees were traveling to arrive at that
23 figure?
- 24 A: We did if -- if they were out of ---
- 25 Q: Did you ---



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- 1 A: --- state they got it.
- 2 Q: Right. But did you look at milage, distance in
- 3 coming up with \$175?
- 4 A: No, we did not.
- 5 Q: Did the \$175 bear any relation to travel time,
- 6 travel distance or actual transportation
- 7 expense incurred by the employee?
- 8 A: No.
- 9 Q: Did the employees have to keep track of milage
- 10 receipts or gas logs?
- 11 A: No.
- 12 Q: Did Reeves Young derive any benefit from the
- 13 claim -- from the employees and the Claimant
- 14 driving from their home in Gainesville to the
- 15 job site?
- 16 A: No.
- 17 Q: That was the decision they made?
- 18 A: Correct.
- 19 Q: Did you place any restrictions on Mr. Lopez
- 20 once he left the job site?
- 21 A: No.
- 22 Q: Did you have Mr. Lopez carry out any errands or
- 23 -- or run any errands on the way home from
- 24 Clemson or on the way in?
- 25 A: No.



- 1 Q: He wasn't stopping by the store to pick up
2 things or taking messages back and forth?
- 3 A: No.
- 4 Q: He lives in Gainesville, y'all's corporate
5 office is in a town, Sugar Hill, Georgia?
- 6 A: Yes.
- 7 Q: How far is that from Gainesville approximately,
8 do you know?
- 9 A: 30 minute drive.
- 10 Q: Okay. And Mr. Lopez worked all over the Metro
11 Atlanta area?
- 12 A: Yes.
- 13 Q: So it's customary for him to travel distances
14 routinely, is that correct?
- 15 A: Yes.
- 16 Q: Now, Juan Ochoa, you heard him testify that he
17 had a company issued fuel card and company
18 truck, is that accurate?
- 19 A: That's accurate.
- 20 Q: And he used that card and that truck to drive
21 to and from the Clemson sites?
- 22 A: He did.
- 23 Q: From his home in Gainesville?
- 24 A: Yes.
- 25 Q: Did he also receive the per diem?



1 A: He did.

2 Q: Does Reeves Young pay -- are there other
3 instances where Reeves Young will pay
4 employee's milage?

5 A: There are instances when we do that, yes.

6 Q: And y'all have a process for that?

7 A: We do, we have an expense report and pay for
8 the IRS.

9 Q: Okay. For the milage guidelines?

10 A: Yeah. Yeah.

11 Q: And do you know what those guidelines are, do
12 you know how much?

13 A: I believe 53 cents per mile or something.

14 Q: But y'all do have a process, y'all know how to
15 pay milage?

16 A: Yes. Through the standard expense report,
17 excel template that the employees use.

18 Q: And was that done in this case?

19 A: It was not.

20 Q: I don't think I have any other questions.

21 COMMISSIONER CAMPBELL: Okay. Mr. Vega?

22 MR. VEGA: Thank you, Your Honor.

23 MR. REEVES - CROSS-EXAMINATION BY MR. VEGA:

24 Q: So your testimony just now is that mileage,
25 although you have a policy, was not offered to



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1 the crew that was going to Clemson?

2 A: Mileage was not.

3 Q: Mileage?

4 A: No, we did not pay them mileage.

5 Q: And that was a company decision?

6 A: That's correct.

7 Q: And the decision to pay the per diem and that
8 was a company decision as well?

9 A: Correct.

10 Q: And -- and in fact you had a hand in that
11 decision?

12 A: I did.

13 Q: As the VP?

14 A: Yes.

15 Q: And also as being involved in the Civil
16 Engineering Unit?

17 A: Yeah, yes, sir.

18 Q: Okay. And so it was at your direction
19 ultimately that the \$35 was paid?

20 A: Yes.

21 Q: And when I asked you what was the reason for
22 that you stated for -- it's your contention,
23 your testimony even today that the
24 consideration was being out of state?

25 A: Yes.



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1 Q: Okay. What -- you're also testifying that
2 although you were considering them being out of
3 state you did not take into account how far out
4 of state they were going?

5 A: That's correct.

6 Q: So you made the decision solely on them being
7 out of state, you're contending today that you
8 never considered mileage?

9 A: That's correct, mileage never entered our
10 equation into giving a per diem.

11 Q: Did the distance travel ---

12 A: No.

13 Q: --- come into mind, the fact that people were
14 traveling 85 miles one way to go to work?

15 A: No. Our assumption was that they would spend
16 the night in Clemson and therefore would be
17 buying meals necessary, so that's what we
18 initially thought the per diem would be would
19 be mostly for meals.

20 Q: Okay. So by your testimony you -- the per diem
21 was -- was supposed to be used to offset the
22 cost of being in Clemson?

23 A: It would offset the extra meals that they were
24 buying.

25 Q: Would the per diem, based on your testimony



1 just now, was the per diem intended to offset
2 the cost of being in Clemson in some way?

3 A: Yes.

4 Q: Okay. The housing that was offered to them,
5 was that an attempt to also offset the fact
6 that they were traveling to Clemson to work?

7 A: No. That was to not have employees driving so
8 far.

9 Q: Correct. Doesn't that offset the amount of
10 time they spend in the car and how far they
11 have to travel?

12 A: It would. Yes, an employee would spend less
13 time in the car if they spent the night in a
14 hotel.

15 Q: Correct. And the consideration is traveling?

16 A: Okay.

17 Q: Doesn't all -- doesn't everything you're saying
18 point to the traveling itself?

19 A: It can -- yes, it does, it's pointing to
20 whether they're driving -- we're trying to save
21 them from driving 40 miles to not driving 80
22 miles, yes.

23 Q: Okay. The fact that Juan Ochoa had a gas card
24 and a company vehicle and all those things,
25 that just means he was getting more of an



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1 offset than the other employees?

2 A: I'm not -- I'm not following your question.

3 Q: He wasn't -- the employees were not given gas
4 cards, correct?

5 A: None of our -- only our foreman's have gas
6 cards, that's correct.

7 Q: And the foreman's have the trucks?

8 A: Yep.

9 Q: Sometimes they take the employees in the
10 trucks, right?

11 A: Yes.

12 Q: That's a benefit to the company?

13 A: Yes.

14 Q: For your foreman to be able to have a vehicle
15 and be able to fill it up and all, that's a
16 benefit to the company, correct?

17 A: The job requirement, we've got to have the
18 tools, he's got to have those tools in his
19 truck so yes, it's a benefit, but it's a job
20 requirement.

21 Q: It derives from the work, I get it. But he's
22 getting more of a benefit than Mr. Lopez, but
23 they're both getting a benefit, aren't they?

24 A: I guess they are. I ---

25 Q: They're both benefitting from a policy in which



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1 they get \$35, 175 a week and was there an
2 additional two hour pay as well?

3 A: There was. So they are both getting the
4 benefit that we assume is going to be offset by
5 additional meals or more expensive meals, yes.

6 Q: Correct. Which revolves around the fact that
7 they were in Clemson, correct?

8 A: Correct.

9 Q: Which revolves around the fact that they had to
10 travel to Clemson?

11 A: They didn't have to travel, they could've spent
12 the night?

13 Q: Did you require them to stay in Clemson?

14 A: No.

15 Q: Do you object to them going home to see their
16 families?

17 A: No.

18 Q: Okay. Is it a benefit to the company to have
19 good employees that are happy and have good
20 families?

21 A: That is a benefit.

22 Q: Okay. So you didn't prohibit them from seeing
23 their family, you didn't tell them that they
24 had to stay in Clemson?

25 A: No, that was their choice.



- 1 Q: All right. If Mr. Lopez had chosen not to go
2 to Clemson could he have been terminated?
- 3 A: He would not have been, no.
- 4 Q: Could he have been?
- 5 A: No.
- 6 Q: If he refused to go to the job site?
- 7 A: If he refused to go to Clemson he would have
8 worked in Atlanta.
- 9 Q: Okay. Let me ask you this though, my question
10 is not Clemson, who controls the job sites?
- 11 A: The Superintendent, Shane Burrell was in charge
12 of the daily activities of the job site and he
13 would direct Juan who would direct the crew
14 members.
- 15 Q: Correct. So Mr. Lopez is going to the job site
16 at the direction of the company?
- 17 A: Any job site he goes to is up to the direction
18 of the company.
- 19 Q: Okay.
- 20 A: He chose to go to this one and we granted that
21 wish.
- 22 Q: Well, it was offered to him by Mr. Shane
23 Burrell, do you dispute that?
- 24 A: No. Juan Ochoa also wanted him -- Mr. Lopez is
25 a good employee, he was wanted by probably all



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1 of our foreman's to come work with them.

2 Q: Okay. Do you agree that when he went to
3 Atlanta with Ochoa's crew that they were no
4 longer paid the per diem?

5 A: That's correct.

6 Q: And that was because they were in state?

7 A: That's correct.

8 Q: And it was a shorter distance?

9 A: Most I've -- I -- I don't know the milage off
10 the top of my head from his house to his job
11 sites, but I believe the durations were very
12 similar.

13 Q: You testified earlier that you did not require
14 them to tell you what they were spending the
15 money on, correct?

16 A: That's correct.

17 Q: So you -- you did not hold them accountable for
18 the money, correct?

19 A: That's correct.

20 Q: So why are you holding them accountable for the
21 mileage?

22 A: I'm not following, holding them accountable for
23 -- we're not -- they weren't turning in expense
24 reports, we were not doing milage reports.

25 Q: You testified that the per diem was their money



1 and they could spend it however they saw fit.

2 A: That's correct.

3 Q: All right. So why are you -- are you implying
4 that they could use it on anything they saw fit
5 except mileage?

6 A: They could use that money for whatever they saw
7 fit.

8 Q: Including offset in the costs of traveling?

9 A: If that's what they wanted to spend money on
10 then that's what they could spend it on.

11 MR. VEGA: No further questions Your Honor.

12 COMMISSIONER CAMPBELL: Okay. Mr. Smith?

13 MR. SMITH: I just have a few.

14 MR. REEVES - CROSS-EXAMINATION BY MR. SMITH:

15 Q: You agree on the day of the accident that the
16 Claimant was -- was not working on Holder
17 project, correct?

18 A: Yes. It is my interpretation that he left from
19 the Earle Street Apartments.

20 Q: Okay. And you would agree on the day of the
21 accident that Mr. Lopez worked approximately
22 ten hours according to your paperwork --

23 A: Yes.

24 Q: --- at Earle Street Apartment Complex?

25 A: Yes.



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1 Q: And the general contractor on the Earle Street
2 Apartment Complex was Fortune and Johnson,
3 correct?

4 A: Correct.

5 Q: It wasn't Holder?

6 A: No.

7 Q: And to your knowledge Holder didn't have any
8 business dealings at the Earle Street Apartment
9 Complex whatsoever, did they?

10 A: They did not have any whatsoever.

11 Q: And Reeves Young has it's own insurance through
12 Amerisure for the apartment complex?

13 A: We do.

14 Q: Thank you, that's all the questions I have.

15 COMMISSIONER CAMPBELL: Okay. Mr. Griggs?

16 MR. GRIGGS: I don't have any further questions.

17 COMMISSIONER CAMPBELL: Okay. Thank you, sir.

18 MR. REEVES: Thank you.

19 COMMISSIONER CAMPBELL: Appreciate you being here,
20 you may step down. Anything further?

21 MR. GRIGGS: Yes, Matt McCormack.

22 COMMISSIONER CAMPBELL: Okay. Just make yourself
23 comfortable.

24 MR. MCCORMACK: Yep..

25 COMMISSIONER CAMPBELL: Please raise your right hand.



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1 MR. MCCORMACK: Do you swear and affirm that the
2 testimony you are about to give is the truth,
3 the whole truth and nothing but the truth?

4 MR. MCCORMACK: I do.

5 COMMISSIONER CAMPBELL: Okay. You can put your hand
6 down and please state and spell your name for
7 the record, sir.

8 MR. MCCORMACK: Matthew McCormack, M-A-T-T-H-E-W, M-
9 C-C-O-R-M-A-C-K.

10 COMMISSIONER CAMPBELL: Okay. Thank you, sir. Mr.
11 Griggs, your witness.

12 MR. GRIGGS: I do not have any questions of Mr.
13 McCormack. I'll let Danny ask him questions,
14 but I do reserve the right to follow-up.

15 COMMISSIONER CAMPBELL: Okay. All right.

16 MATTHEW MCCORMACK, having been duly sworn, testifies
17 as follows:

18 MR. MCCORMACK - DIRECT EXAMINATION BY MR. VEGA:

19 Q: Mr. McCormack, what's your position with Reeves
20 Young?

21 A: Vice President.

22 Q: What was your position on or about the date of
23 the accident?

24 A: I don't recall when I received the promotion to
25 Vice President but it was certainly then or



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1 resources group.

2 Q: And were you involved in the Clemson project?

3 A: I was.

4 Q: Both projects?

5 A: Correct.

6 Q: And what was your role directly with regards to
7 the crews that were working in Clemson?

8 A: I was the executive over the projects, over
9 both projects. So I had a project manager that
10 reported to me and the project manager was
11 involved in day-to-day activities of the job.

12 Q: I believe you testified that you -- you had to
13 make sure that there were, was appropriate
14 manpower and that the project stayed on time,
15 that's what you testified at your deposition,
16 correct?

17 A: That's correct.

18 Q: So that's fairly hands on within that project?

19 A: Sure. I mean I was over multiple projects at
20 that time, but yes.

21 Q: Okay. And were you involved in the decision on
22 whether to pay a per diem and additional two
23 hours when the employees would be working in
24 Clemson?

25 A: Yes.



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1 Q: You gave your input into that decision?

2 A: Yes.

3 Q: And your input was that the \$35 was for what,
4 what was the purpose of the \$35?

5 A: The \$175 per week was because we had said we
6 were going to get apartments up there and we're
7 going to allow guys to stay up there and that
8 the \$175 per week would allow them to get the
9 meals for being out of town. That was the
10 thought behind it.

11 Q: Was the purpose of the apartment and the meals
12 to offset the time and/or cost that they would
13 be traveling to and from Clemson?

14 A: I don't know if I would say it was to offset
15 it, I'd say it was, it's not normal for us to
16 have an out of state job, it was the first, I
17 think or it's the first time we'd ever done it
18 and on the basis of it being the first time
19 we'd ever asked people to be out of state, we
20 wanted to make it attractive to them and so we
21 tried to minimize the inconvenience so we gave
22 them housing and we gave them money for food.

23 Q: That sounds like a long yes to my question. It
24 was -- it was intended to offset the employees
25 time traveling, eating, doing things in Clemson



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1 while they worked there.

2 A: We really didn't expect them to travel back and
3 forth every day so what you're saying is
4 incorrect.

5 Q: Okay. I'm not talking about the travel itself,
6 I'm talking about the intent of the company.
7 I believe you told me that it was an industry
8 standard to make the payments, at one time.

9 A: In construction frequently people are required
10 to work out of town and if you could work out
11 of your house everyone would work out of their
12 house, right? If you had to work out of town
13 to make it more attractive people were paid
14 more money.

15 Q: Well, it seems to me when you say make it more
16 attractive what you're saying is that you're
17 offsetting some of the burden of being an out
18 of town employee?

19 A: Sure.

20 Q: Is that -- is that fair?

21 A: Yes.

22 Q: All right. And were -- were the employees
23 required to tell you what they were spending
24 the money on?

25 A: No.



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1 Q: And were they required to turn in receipts?

2 A: No.

3 Q: And did you tell them what to spend the money
4 on?

5 A: No.

6 Q: Now, at one point, not just Mr. Lopez, but it
7 sounds like a good many in the crew were
8 driving home, back and forth from Gainesville
9 to Clemson, is that a fair statement?

10 A: More than one, yes.

11 Q: Okay. And did you require them, did you tell
12 them you can't do that, you've got to stay in
13 Clemson?

14 A: No.

15 Q: You did not require them to stay in Clemson and
16 you did not prohibit them from traveling?

17 A: No.

18 Q: And as long as they were there on time and did
19 their work did you care where they were after
20 work?

21 A: No.

22 Q: Okay. Were they paid -- when you -- when there
23 were employees of Mr. Ochoa's crew sent to
24 Atlanta -- do you agree that they were sent to
25 Atlanta at one time?



- 1 A: Yes.
- 2 Q: Okay. Are you aware of that?
- 3 A: Yes.
- 4 Q: Okay. When they were sent to Atlanta did they
- 5 receive the per diem, did they receive the
- 6 extra \$2?
- 7 A: No.
- 8 Q: And that was because they were in state?
- 9 A: Correct.
- 10 Q: And as a matter of fact the only reason you
- 11 agreed to pay the per diem and the extra \$2 was
- 12 because you were sending people out of state?
- 13 A: Correct.
- 14 Q: And is it your testimony as well -- well, let
- 15 me ask you this, with regards to the mileage
- 16 did you pay anybody on those crews mileage?
- 17 A: No.
- 18 Q: Okay. Did anybody ever turn in a mileage sheet
- 19 that worked on those crews?
- 20 A: No.
- 21 Q: Did you bring up the subject or discuss mileage
- 22 with Ochoa's crew or anyone else working at
- 23 Clemson?
- 24 A: No.
- 25 Q: The offer that was made was the \$35 plus the \$2



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1 increase in pay?

2 A: Correct.

3 Q: Okay. If Mr. Lopez used the money to travel to

4 and from Clemson was that a good use of his

5 money?

6 A: I don't know what a good use of his money was,

7 but he could use it for whatever -- whatever he

8 wanted to.

9 Q: Including gasoline?

10 A: If he chose to.

11 Q: Is that a yes?

12 A: Yes.

13 Q: Thank you, no further questions, Your Honor.

14 COMMISSIONER CAMPBELL: Okay. Mr. Griggs's anything?

15 MR. GRIGGS: I don't have any other questions.

16 COMMISSIONER CAMPBELL: Mr. Smith?

17 MR. SMITH: Nothing, Your Honor.

18 COMMISSIONER CAMPBELL: Okay. Thank you for your

19 testimony, appreciate it. You can step down.

20 Did I have anyone -- anyone else to call?

21 MR. SMITH: No, sir, I do not.

22 MR. VEGA: I do not.

23 MR. GRIGGS: Nothing, Your Honor.

24 COMMISSIONER CAMPBELL: Okay. All right. Thank you

25 all. I want to thank everybody for their time



1 today, being here for your testimony and
2 appreciate it and that concludes today's
3 proceedings.

4 (There being nothing further, the commissioner's
5 hearing concluded at 2:19 p.m.)
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CERTIFICATE

This is to certify that the within hearing consisting of one hundred thirteen (113) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on April 11, 2019.

Amber Scarborough
Amber Scarborough

Notary Public for South Carolina
My Commission Expires: May 30, 2023



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Trip Summary

2203 Cameo Ct, Gainesville, GA 30501, USA to Clemson, SC, USA
to 2203 Cameo Ct, Gainesville, GA 30501, USA



Total Trip Cost
\$12.05

Price of Gas
\$2.462

* Area Average

Distance
170.7 mi

Fuel Used
4.89 gal

Carbon Footprint
117.42 lbs

No file required on this trip.



2203 Cameo Ct, Gainesville, GA 30501, USA

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84.8 mi (about 1 hour 38 mins)



Clemson, SC, USA

[Show Directions](#)

85.9 mi (about 1 hour 37 mins)



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mpg	gal		

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Trip Summary

2203 Cameo Ct, Gainesville, GA 30501, USA to 35 Northside Dr NW, Atlanta, GA 30313, USA
 to 2203 Cameo Ct, Gainesville, GA 30501, USA



Total Trip Cost
\$7.43



Price of Gas
\$2.462

* Area Average

Distance	Fuel Used	Carbon Footprint
104.9 mi	3.02 gal	72.42 lbs

No fills required on this trip.



2203 Cameo Ct, Gainesville, GA 30501, USA

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52.5 mi (about 59 mins)



35 Northside Dr NW, Atlanta, GA 30313, USA

[Show Directions](#)

52.4 mi (about 58 mins)



2203 Cameo Ct, Gainesville, GA 30501, USA

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(Check Dates 04/30/2015 - 12/31/2015)

HOURS, EARNINGS, AND REIMBURSEMENTS & OTHER PAYMENTS							WITHHOLDINGS				DEDUCTIONS			NET
CHECK DATE	DESCR	REGULAR HOURS	OVERTIME HOURS	REGULAR AMOUNT	OVERTIME AMOUNT	TOTAL EARNINGS	REIMB & OTHER PAYMENTS	SOC SEC + MED	FEDERAL TAX	STATE TAX	LOCAL TAX	OTHER	HEALTH INSURANCE	PAY
03/31	Reg			7624.00		10004.00		747.52	643.17	356.49			232.70	7994.12
	Overtime			256.00	2124.00									Activation
	Holiday													
	Warranty W													
QTR 1				7880.00	2124.00	10004.00		S 605.83 M 141.69	643.17 GA	386.49			232.70	7894.12
04/24	Reg			2560.00		3136.00		234.44	197.36	122.32			71.60	2510.28
	Overtime				576.00									Activation
05/01	Reg	40.00		640.00		916.00		68.68	69.09	36.89			17.90	723.44
	Overtime		11.50		276.00									Manual
05/01	Reg	-10.00		-640.00		-916.00		-68.68	-69.09	-36.89			-17.90	VOID
	Overtime		-11.50		-276.00									723.44
05/01	Reg	40.00		640.00		916.00		68.68	69.09	36.89			17.90	723.44
	Overtime		11.50		276.00									
05/07	Reg	38.00		608.00		608.00		45.14	27.09	18.41			17.90	499.46
	Overtime													
05/15	Reg	40.00		640.00		856.00		64.11	60.09	33.29			17.90	680.61
	Overtime		9.00		216.00									
05/22	Reg	40.00		640.00		880.00		65.95	63.69	34.73			17.90	697.73
	Overtime		10.00		240.00									
05/29	Reg	40.00		640.00		880.00		65.95	63.69	34.73			17.90	697.73
	Overtime		10.00		240.00									
06/05	Reg	38.50		616.00		744.00		55.55	43.29	26.57			17.90	600.69
	Holiday	8.00		128.00										
06/12	Reg	40.00		640.00		892.00		66.87	65.49	35.45			17.90	706.29
	Overtime		10.50		252.00									
06/19	Reg	40.00		720.00		976.50		73.33	78.16	52.89			17.90	754.22
	Overtime		9.50		256.50									
06/25	Reg	40.00		720.00		1192.50		89.86	110.56	68.01			17.90	906.17
	Overtime		17.50		472.50									
QTR 2		364.50		8552.00	2529.00	11081.00		S 672.59 M 157.29	778.51 GA	342.39			232.70	8776.62
										SC				
07/02	Reg	40.00		720.00		720.00		53.71	39.69	34.94			17.90	573.75
	Holiday	8.00		148.00		740.00		55.25	42.69	36.34			17.90	587.82
07/10	Vacation	32.00		592.00										
07/17	Reg	40.00		740.00		740.00		55.24	42.69	36.34			17.90	597.84
	Overtime													
07/24	Reg	40.00		740.00		740.00		55.24	42.69	26.33			17.90	597.84
	Overtime													
07/24	Reg	-40.00		-740.00		-740.00		-55.24	-42.69	-26.33			-17.90	VOID
	Overtime													
07/24	Reg	40.00		740.00		740.00		55.24	42.69	26.33			17.90	597.84
	Overtime													Manual
Lopez, Jorge C		ID	1081	Term Date:		Withholding Method:		Federal: Married, 2		Deductions:				
2203 Cameo Court		Home Dept:	6-05 Field - Heavy Civil	Pay Frequency:		Earnings:		GA: (R) Married filing joint one s		Health Insuran		\$17.90, Every Pay Period		
Gainesville, GA 30501		Sex:	Male	Standard Hrs:				SC: (N) Married, 2						
(678) 789-3866		Birthdate:	07/11/2013	Rate 1 / Salary:										
		Hire Date:		Last Raise Date:										
		Inactive Date:												
		Rehire Date:												

R-186

(Check Dates 04/30/2015 - 12/31/2015)

R-187

(Check Dates 04/30/2015 - 12/31/2015)

R-188

EMPLOYEE EARNINGS RECORD

(Check Dates 01/08/2016 - 12/30/2016)

HOURS, EARNINGS, AND REIMBURSEMENTS & OTHER PAYMENTS							WITHHOLDINGS					DEDUCTIONS		NET		
CHECK DATE	DESCR	REGULAR HOURS	OVERTIME HOURS	REGULAR AMOUNT	OVERTIME AMOUNT	TOTAL EARNINGS	REIMB & OTHER PAYMENTS	SOC SEC + MED	FEDERAL TAX	STATE TAX	LOCAL TAX	OTHER	HEALTH INSURANCE	PAY		
01/08	Reg	34.00		629.00		777.00		58.07	48.00	37.68			17.90	615.35		
	Holiday	8.00		148.00												
01/15	Reg	40.00		740.00		767.75		57.36	46.61	37.03			17.90	603.85		
	Overtime		1.00		27.75											
01/22	Reg	40.00		740.00		878.75		65.86	63.26	44.80			17.90	686.93		
	Overtime		5.00		138.75											
01/29	Reg	39.00		721.50		721.50		53.82	39.67	33.79			17.90	576.32		
02/05	Reg	40.00		740.00		934.25		70.10	71.59	48.68			17.90	725.98		
	Overtime		7.00		194.25											
02/12	Reg	40.00		740.00		1045.25		78.60	88.24	56.45			17.90	804.06		
	Overtime		11.00		305.25											
02/19	Reg	40.00		740.00		962.00		72.22	75.75	50.63			17.90	745.50		
	Overtime		8.00		222.00											
02/26	Reg	40.00		740.00		975.88		73.29	77.83	51.60			17.90	755.26		
	Overtime		8.50		235.88											
03/04	Reg	40.00		740.00		837.13		62.67	57.02	41.88			17.90	657.66		
	Overtime		3.50		97.13											
03/11	Reg	13.00		240.50		989.75		74.35	79.91	52.57			17.90	765.02		
	Reg	27.00		499.50												
	Overtime		9.00		249.75											
03/18	Reg	40.00		740.00		948.13		71.16	73.67	49.65			17.90	735.75		
	Overtime		7.50		208.13											
03/25	Reg	30.00		555.00		962.00		72.22	75.75	50.63			17.90	745.50		
	Reg	10.00		185.00												
	Overtime		8.00		222.00											
QTR 1		481.00		8898.50	1900.89	10799.39		S 656.24 M 153.48	797.30	SC			214.80	8422.18		
04/01	Reg	40.00		740.00		962.00		72.23	75.75	50.63			17.90	745.49		
	Overtime		8.00		222.00											
04/08	Reg	40.00		740.00		1128.50		84.96	100.72	62.28			17.90	962.54		
	Overtime		14.00		388.50											
04/15	Reg	40.00		740.00		1017.50		76.46	84.07	54.51			17.90	784.56		
	Overtime		10.00		277.50											
04/22	Reg	40.00		740.00		1128.50		84.97	100.72	62.28			17.90	862.63		
	Overtime		14.00		388.50											
04/29	Reg	40.00		740.00		989.75		74.34	79.91	52.57			17.90	765.03		
	Overtime		9.00		249.75											
05/06	Reg	40.00		740.00		1142.38		86.02	102.81	63.25			17.90	872.40		
	Overtime		14.50		402.38											
05/13	Reg	40.00		740.00		851.00		63.73	59.10	42.86			17.90	667.41		
	Overtime		4.00		111.00											
05/20	Reg	40.00		740.00		823.25		61.61	54.94	40.91			17.90	647.89		
	Overtime		3.00		83.25											
05/27	Reg	38.50		712.25		712.25		53.12	38.29	33.14			17.90	569.80		
06/03	Reg	40.00		740.00		851.00		63.74	59.10	42.86			17.90	667.40		
	Overtime		4.00		111.00											
Lopez, Jorge C		ID	1081		Term Date:		Withholding Method:		Federal: Married, 2		Deductions:		Health Insuran		\$17.90, Every Pay Period	
2203 Cameo Court		Home Dept:	6-05 Field - Heavy Civil		Pay Frequency:		Weekly		GA: (R) Married filing joint one s							
Gainesville, GA 30501		Sex:	Male		Standard Hrs:		30		SC: (N) Married, 2							
(678) 789-3866		Birthdate:	08/27/1967		Rate 1 / Salary:		19.00/Hour									
		Hire Date:	07/11/2013													
		Inactive Date:														
		Rehire Date:			Last Raise Date:		07/12/2016									

R-189

EMPLOYEE EARNINGS RECORD

(Check Dates 01/08/2016 - 12/30/2016)

HOURS, EARNINGS, AND REIMBURSEMENTS & OTHER PAYMENTS							WITHHOLDINGS					DEDUCTIONS		NET
CHECK DATE	DESCR	REGULAR HOURS	OVERTIME HOURS	REGULAR AMOUNT	OVERTIME AMOUNT	TOTAL EARNINGS	REIMB & OTHER PAYMENTS	SOC SEC + MED	FEDERAL TAX	STATE TAX	LOCAL TAX	OTHER	HEALTH INSURANCE	PAY
05/10	Reg	40.00		740.00		1012.88		76.12	83.38	54.19			17.90	781.28
	Overtime		4.50		124.88									
	Holiday	8.00		148.00										
06/17	Reg	40.00		740.00		851.00		63.73	59.10	42.86			17.90	667.41
	Overtime		4.00		111.00									
06/24	Reg	40.00		740.00		1211.75		91.33	113.21	68.11			17.90	921.20
	Overtime		17.00		471.75									
OTR 2		526.50		9740.25	2941.51	12681.76		S 771.85 M 180.51	1011.10	SC			232.70	9815.15
07/01	Reg	40.00		740.00		1142.38		86.01	102.81	63.25			17.90	872.41
	Overtime		14.50		402.38									
07/08	Reg	40.00		740.00		1045.25		78.60	88.24	56.45			17.90	804.06
	Overtime		11.00		305.25									
07/15	Reg	40.00		760.00		940.50		70.58	72.52	49.12			17.90	730.38
	Overtime		1.00		28.50									
	Holiday	8.00		152.00										
07/22	Reg	40.00		760.00		1016.50		76.39	83.92	54.44			17.90	783.85
	Overtime		9.00		256.50									
07/29	Reg	38.00		722.00		722.00		53.87	39.75	33.83			17.90	576.65
08/05	Vacation	40.00		760.00		760.00		56.77	45.45	36.49			17.90	603.39
08/19	Vacation	40.00		760.00		760.00		56.77	45.45	36.49			17.90	603.39
08/26	Reg	40.00		760.00		1187.50		89.47	109.57	66.41			17.90	904.15
	Overtime		15.00		427.50									
09/02	Reg	40.00		760.00		1016.50		76.40	83.92	54.44			17.90	783.84
	Overtime		9.00		256.50									
09/09	Reg	40.00		760.00		988.00		74.20	79.65	52.45			17.90	763.80
	Overtime		8.00		228.00									
09/16	Reg	40.00		760.00		1054.50		79.30	89.62	57.10			17.90	810.58
	Overtime		5.00		142.50									
	Holiday	8.00		152.00										
09/23	Reg	40.00		760.00		1144.75		86.21	103.16	63.42			17.90	874.06
	Overtime		13.50		384.75									
09/30	Reg	40.00		760.00		1073.50		80.75	92.47	58.43			17.90	823.65
	Overtime		11.00		313.50									
QTR 3		534.00		10106.00	2745.38	12851.38		S 782.35 M 182.97	1036.53	SC			232.70	9934.51
10/07	Reg	40.00		760.00		1045.00		78.57	88.20	56.44			17.90	803.89
	Overtime		10.00		285.00									
10/14	Reg	40.00		760.00		1045.00		78.57	88.20	56.44			17.90	803.89
	Overtime		10.00		285.00									
10/21	Reg	40.00		760.00		1002.25		75.31	81.79	53.44			17.90	773.81
	Overtime		8.50		242.25									
10/28	Reg	40.00		760.00		1258.75		94.93	120.26	71.40			17.90	954.26
	Overtime		17.50		498.75									
Lopez, Jorge C														
2203 Cameo Court														
Gainesville, GA 30501														
(678) 769-3866														

R-190

EMPLOYEE EARNINGS RECORD

(Check Dates 01/08/2016 - 12/30/2016)

HOURS, EARNINGS, AND REIMBURSEMENTS & OTHER PAYMENTS							WITHHOLDINGS					DEDUCTIONS		NET
CHECK DATE	DESCR	REGULAR HOURS	OVERTIME HOURS	REGULAR AMOUNT	OVERTIME AMOUNT	TOTAL EARNINGS	REIMB & OTHER PAYMENTS	SOC SEC + MED	FEDERAL TAX	STATE TAX	LOCAL TAX	OTHER	HEALTH INSURANCE	PAY
11/04	Reg	40.00		760.00		1216.00		91.65	113.85	68.41			17.90	
	Overtime		16.00		456.00									924.19
11/10	Reg	40.00		760.00		1059.25		79.66	90.34	57.43			17.90	
	Overtime		10.50		299.25									813.92
11/18	Reg	40.00		760.00		1016.50		76.40	83.92	54.44			17.90	
	Overtime		9.00		256.50									783.84
11/25	Reg	40.00		760.00		988.00		74.21	79.65	52.45			17.90	
	Overtime		8.00		228.00									763.79
12/02	Reg	28.00		532.00		684.00		50.96	34.59	31.17			17.90	
	Holiday	8.00		152.00										549.38
12/08	Bonus			3500.00		3500.00		257.75	175.00	229.54				2827.71
12/08	Bonus			500.00		500.00		38.25	25.00	15.00				421.75
12/09	Reg	40.00		760.00		817.00		61.12	54.00	40.48			17.90	
	Overtime		2.00		57.00									643.50
12/16	Reg	40.00		760.00		859.75		64.41	60.41	43.47			17.90	
	Overtime		3.50		99.75									673.56
12/23	Reg	40.00		760.00		1045.00		78.57	88.20	56.44			17.90	
	Overtime		10.00		285.00									803.89
12/30	Reg	40.00		760.00		1002.25		75.31	81.79	53.44			17.90	
	Overtime		8.50		242.25									773.81
QTR 4		516.00		13804.00	3234.75	17038.75		S 1041.98 M 243.69	1265.20/SC	939.99			232.70	13315.19
YTD		2057.50		42548.75	10822.53	53371.28		S 3252.42 M 760.65	4110.13/SC				912.90	41487.03
2016										2048.15				

HOLIDAY	SEVERANCE	SICK	SICK QUAL	VACATION	CASH TIPS	CHARGE TIPS	INDIRECT TIPS

YTD HOURS PAID	40.00
YTD EARNINGS PAID	752.00

80.00
1520.00

Lopez, Jorge C

2203 Cameo Court
Gainesville, GA 30501
(678) 789-3866

R-191

AP Vendor Payment History

All Vendors

All Paid Months

Print Deduct Recap ? N

Paid Mth	CMAcct	Pay Method CMRef	Paid Date	Amount	Discount	Deducts	Net
Trans Mth	APRef	Trans InvDate	Invoice Description	Gross Invoice	Discount	Deducts	Net
Vendor: 101377 Jorge Lopez							
06/15	105	EFT: 081916	08/19/15	350.00	0.00	0.00	350.00
06/15	8/8/15-6/14/15	87 06/08/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
06/15	8/15/15-6/21/15	107 06/14/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
06/15	105	EFT: 082615b	06/26/15	175.00	0.00	0.00	175.00
06/15	6/15/15-6/21/2015	254 06/19/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
07/15	105	EFT: 0717b	07/17/15	350.00	0.00	0.00	350.00
07/15	6/29/15-7/5/15	34 07/07/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
07/15	7/6/15-7/12/15	56 07/14/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
07/15	105	EFT: 072416	07/24/15	175.00	0.00	0.00	175.00
07/15	7/13/15-7/19/15	87 07/17/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
07/15	105	EFT: 073116	07/31/15	175.00	0.00	0.00	175.00
07/15	7/27/15-8/2/15	232 07/24/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
07/15	105	EFT: 08070216	07/02/15	175.00	0.00	0.00	175.00
08/15	6/22/15-6/28/15	469 06/26/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
08/15	105	EFT: 080716	08/07/15	175.00	0.00	0.00	175.00
08/15	8/3/15-8/9/15	5 08/03/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
08/15	105	EFT: 081416	08/14/15	175.00	0.00	0.00	175.00
08/15	8/10/15-8/16/15	40 08/10/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
08/15	105	EFT: 082116	08/21/15	175.00	0.00	0.00	175.00
08/15	8/17/15-8/23/15	91 08/17/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
08/15	105	EFT: 082816	08/28/15	175.00	0.00	0.00	175.00
08/15	8/24/15-8/30/15	164 08/25/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
09/15	105	EFT: 090416	09/04/15	175.00	0.00	0.00	175.00
09/15	8/31/15-9/6/15	2 09/01/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
09/15	105	EFT: 091116	09/11/15	175.00	0.00	0.00	175.00
09/15	9/7/15-9/13/15	16 09/08/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
09/15	105	EFT: 091816	09/18/15	175.00	0.00	0.00	175.00
09/15	9/14/15-9/20/15	55 09/14/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
09/15	105	EFT: 092516	09/25/15	175.00	0.00	0.00	175.00
09/15	9/21/15-9/27/15	132 09/18/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
09/15	105	EFT: 100216	10/02/15	175.00	0.00	0.00	175.00
09/15	9/28/15-10/4/15	417 09/29/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
10/15	105	EFT: 100916	10/09/15	175.00	0.00	0.00	175.00
10/15	10/5/15-10/11/15	6 10/02/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
10/15	105	EFT: 101616	10/16/15	175.00	0.00	0.00	175.00
10/15	10/12/15-10/18/15	35 10/09/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
10/15	105	EFT: 102316	10/23/15	175.00	0.00	0.00	175.00
10/15	10/19/15-10/25/15	166 10/20/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
10/15	105	EFT: 103016oft	10/30/15	175.00	0.00	0.00	175.00
10/15	10/26/15-11/1/15	283 10/27/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
11/15	105	EFT: 110616	11/06/15	175.00	0.00	0.00	175.00
11/15	11/2/15-11/8/15	6 11/04/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
11/15	105	EFT: 111316	11/13/15	175.00	0.00	0.00	175.00
11/15	11/9/15-11/15/15	16 11/09/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
11/15	105	EFT: 112016	11/20/15	175.00	0.00	0.00	175.00
11/15	11/16/15-11/22/15	73 11/17/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
11/15	105	EFT: 112716	11/27/15	105.00	0.00	0.00	105.00
11/15	11/23/15-11/29/15	273 11/19/15	15701/CLEMSON/PER DIEM	105.00	0.00	0.00	105.00
12/15	105	EFT: 120416	12/04/15	175.00	0.00	0.00	175.00
12/15	11/30/15-12/6/15	8 12/01/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
12/15	105	EFT: 121816	12/18/15	175.00	0.00	0.00	175.00
12/15	12/14/15-12/20/15	85 12/16/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
12/15	105	EFT: 122316	12/23/15	105.00	0.00	0.00	105.00
12/15	12/21/15-12/27/15	116 12/21/15	15701/CLEMSON/PER DIEM	105.00	0.00	0.00	105.00
12/15	105	EFT: 08121116	12/11/15	175.00	0.00	0.00	175.00
12/15	12/7/15-12/13/15	18 12/08/15	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
12/15	105	EFT: 08123116	12/31/15	140.00	0.00	0.00	140.00

* Indicates a voided payment

AP Vendor Payment History

All Vendors

All Paid Months

Print Deduct Recap ? N

Paid Mth	CMAcct	Pay Method	CMRef	Paid Date	Amount	Discount	Deducts	Net
Trans Mth	APRef	Trans	InvDate	Invoice Description	Gross Invoice	Discount	Deducts	Net
Vendor: 101377 Jorge Lopez					- Continued			
12/15	12/27/15-1/1/16	232	12/29/15	15701/CLEMSON/PER DIEM	140.00	0.00	0.00	140.00
01/16	105	EFT: 0129a		01/28/16	175.00	0.00	0.00	175.00
01/16	1/25/16-1/31/16	184	01/27/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
01/16	105	EFT: 011518a		01/16/16	175.00	0.00	0.00	175.00
01/16	1/11/16-1/17/16	16	01/13/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
01/16	105	EFT: 012216a		01/22/16	175.00	0.00	0.00	175.00
01/16	1/18/16-1/24/16	125	01/20/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
01/16	105	EFT: 01010816		01/08/16	175.00	0.00	0.00	175.00
01/16	1/4/16-1/10/16	6	01/05/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
02/16	105	EFT: 020516a		02/05/16	175.00	0.00	0.00	175.00
02/16	2/1/17-2/7/17	6	02/02/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
02/16	105	EFT: 021216a		02/12/16	175.00	0.00	0.00	175.00
02/16	2/8/16-2/14/16	17	02/09/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
02/16	105	EFT: 021816a		02/19/16	175.00	0.00	0.00	175.00
02/16	2/15/16-2/21/16	34	02/16/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
02/16	105	EFT: 022616a		02/26/16	175.00	0.00	0.00	175.00
02/16	2/22/16-2/28/16	135	02/23/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
03/16	105	EFT: 030416a		03/04/16	175.00	0.00	0.00	175.00
03/16	2/29/16-3/6/16	4	03/02/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
03/16	105	EFT: 032516a		03/25/16	175.00	0.00	0.00	175.00
03/16	3/21/16-3/27/16	128	03/22/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
03/16	105	EFT: 040116a		04/01/16	175.00	0.00	0.00	175.00
03/16	3/28/16-4/3/16	309	03/30/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
04/16	105	EFT: 041516a		04/15/16	175.00	0.00	0.00	175.00
04/16	4/11/16-4/17/16	12	04/11/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
04/16	105	EFT: 042216a		04/22/16	175.00	0.00	0.00	175.00
04/16	4/18/16-4/24/16	94	04/19/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
04/16	105	EFT: 042916a		04/29/16	175.00	0.00	0.00	175.00
04/16	4/25/16-5/1/16	306	04/26/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
04/16	105	EFT: 040816EFT		04/08/16	175.00	0.00	0.00	175.00
04/16	4/4/16-4/10/16	3	04/06/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
05/16	105	EFT: 050816a		05/08/16	175.00	0.00	0.00	175.00
05/16	5/2/16-5/8/16	4	05/03/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
05/16	105	EFT: 051316a		05/13/16	175.00	0.00	0.00	175.00
05/16	5/9/16-5/15/16	14	05/11/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
05/16	105	EFT: 052016a		05/20/16	175.00	0.00	0.00	175.00
05/16	5/16/16-5/22/16	36	05/18/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
05/16	105	EFT: 05052716		05/27/16	175.00	0.00	0.00	175.00
05/16	5/23/16-5/29/16	123	05/25/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
06/16	105	EFT: 060316a		06/03/16	140.00	0.00	0.00	140.00
05/16	5/30/16-6/5/16	388	06/01/16	15701/CLEMSON/PER DIEM	140.00	0.00	0.00	140.00
06/16	105	EFT: 061016EFT		06/10/16	175.00	0.00	0.00	175.00
06/16	6/6/16-6/12/16	4	06/01/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
06/16	105	EFT: 061716RYR		06/17/16	175.00	0.00	0.00	175.00
06/16	6/13/16-6/19/16	46	06/15/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
06/16	105	EFT: 06062416		06/24/16	175.00	0.00	0.00	175.00
06/16	6/20/16-6/26/16	82	06/21/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
06/16	105	EFT: 06070116		07/01/16	175.00	0.00	0.00	175.00
06/16	6/27/16-7/1/16	212	06/29/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
07/16	105	EFT: 071516EFT		07/15/16	175.00	0.00	0.00	175.00
07/16	7/11/16-7/17/16	43	07/13/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
07/16	105	EFT: EFT072216		07/22/16	175.00	0.00	0.00	175.00
07/16	7/18/16-7/24/16	73	07/20/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
07/16	105	EFT: 07072916		07/29/16	175.00	0.00	0.00	175.00
07/16	7/25/16-7/31/16	183	07/27/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
07/16	105	EFT: 07070816b		07/08/16	175.00	0.00	0.00	175.00
07/16	7/4/16-7/10/16	6	07/06/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00

* Indicates a voided payment

AP Vendor Payment History

All Vendors

All Paid Months

Print Deduct Recap ? N

Paid Mth	CMAcct	Pay Method CMRef	Paid Date	Amount	Discount	Deducts	Net
Trans Mth	APRef	Trans InvDate	Invoice Description	Gross Invoice	Discount	Deducts	Net
Vendor: 101377 Jorge Lopez							- Continued
08/16	105	EFT: efi080516	08/05/16	175.00	0.00	0.00	175.00
08/16	8/1/16-8/7/16	3 08/01/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
08/16	105	EFT: efi081216	08/12/16	175.00	0.00	0.00	175.00
08/16	8/8/16-8/14/16	8 08/10/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
08/16	105	EFT: efi081916	08/19/16	175.00	0.00	0.00	175.00
08/16	8/15/16-8/21/16	37 08/16/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
08/16	105	EFT: efi082616	08/26/16	175.00	0.00	0.00	175.00
08/16	8/22/16-8/28/16	78 08/22/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
08/16	105	EFT: efi080216	08/02/16	175.00	0.00	0.00	175.00
08/16	8/29/16-9/4/16	213 08/31/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
09/16	105	EFT: efi090916	09/09/16	140.00	0.00	0.00	140.00
09/16	9/6/16-9/11/16	4 09/06/16	15701/CLEMSON/PER DIEM	140.00	0.00	0.00	140.00
09/16	105	EFT: efi091616	09/16/16	175.00	0.00	0.00	175.00
09/16	9/12/16-9/18/16	21 09/13/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
09/16	105	EFT: efi092316	09/23/16	175.00	0.00	0.00	175.00
09/16	9/19/16-9/25/16	123 09/20/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
09/16	105	EFT: efi093016	09/30/16	175.00	0.00	0.00	175.00
09/16	9/26/16-10/2/16	259 09/28/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
10/16	105	EFT: efi100716	10/07/16	175.00	0.00	0.00	175.00
10/16	10/3/16-10/9/16	3 10/04/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
10/16	105	EFT: efi101416	10/14/16	175.00	0.00	0.00	175.00
10/16	10/10/16-10/16/	64 10/10/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
10/16	105	EFT: efi102116	10/21/16	175.00	0.00	0.00	175.00
10/16	10/17/16-10/23	111 10/18/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
10/16	105	EFT: efi102816	10/28/16	175.00	0.00	0.00	175.00
10/16	10/24/16-10/30/	348 10/25/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
11/16	101	EFT: efi120216	12/02/16	175.00	0.00	0.00	175.00
11/16	11/28/16-12/2/1	255 11/29/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
11/16	105	EFT: efi111816	11/18/16	175.00	0.00	0.00	175.00
11/16	11/14/16-11/30/	62 11/16/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
11/16	105	EFT: efi110416w	11/04/16	175.00	0.00	0.00	175.00
11/16	10/31/16-11/6/1	23 11/02/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
11/16	105	EFT: EFT111016B	11/10/16	175.00	0.00	0.00	175.00
11/16	11/7/16-11/13/1	44 11/09/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
11/16	105	EFT: efi112516	11/25/16	175.00	0.00	0.00	175.00
11/16	11/21/16-11/27/	129 11/21/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
12/16	105	EFT: efi120916	12/09/16	175.00	0.00	0.00	175.00
12/16	12/5/16-12/11/1	55 12/07/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
12/16	105	EFT: efi121616	12/16/16	175.00	0.00	0.00	175.00
12/16	12/12/16-12/18/	77 12/13/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
12/16	105	EFT: efi122316	12/23/16	175.00	0.00	0.00	175.00
12/16	12/19/16-12/15/	146 12/20/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
12/16	105	EFT: efi123016	12/30/16	175.00	0.00	0.00	175.00
12/16	12/26/16-1/1/17	359 12/28/16	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
01/17	101	EFT: efi011317	01/13/17	175.00	0.00	0.00	175.00
01/17	1/9/17-1/15/17	61 01/10/17	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
01/17	105	EFT: efi010617	01/06/17	175.00	0.00	0.00	175.00
01/17	1/2/17-1/8/17	3 01/04/17	15701/CLEMSON/PER DIEM	175.00	0.00	0.00	175.00
Total for Jorge Lopez							14,105.00

* Indicates a voided payment



Claimant's Name: Jorge Lopez-Celestin Employer's Name: Reeves Young, LLC
Address: 2283 Cameo Court Address: 45 Peachtree Industrial Blvd. Suite 200
City: Gainesville State: GA Zip: 30501 City: Sugar Hill State: GA Zip: 300
Home Phone: (678) 789-3866 Work Phone: _____ Carrier: Amerisure Insurance Company
Preparer's Name: Jason A. Griggs Preparer's Phone #: (864) 527-3288

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$806.92 (max) 2. AWW: \$1,221.49 Date of Injury: 1/5/2017
3. Type of injury and body part(s): Left leg, shoulder, neck, back, chest, and ribs.
4. Facts in controversy: (1) Compensability?
(2) Defendant's position is that Claimant was involved in a motor vehicle accident while traveling from work site in Clemson, South Carolina to his home in Gainesville, Georgia. This is a going and coming case and no exception to the general rule applies. Thus, this is not a compensable case.
5. Legal issues involved: See No. 4. Also, §42-5-80.
6. Unusual aspects: _____
7. Witnesses (designate if expert):* Juan Ochoa, William Reeves, Matt McCormack
8. Exhibits: Claimant's deposition transcript, Claimant's payroll records, American Zurich Ins. Co. CCIP policy, Holder Construction Compar Subcontractors, IRS 2017 Standard Mileage Rates for Business, Medical, and Moving; Deposition of Phillip Simoneaux.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): No submissions at this time, but Defendants reserve the right to amend and submit further documentary evidence upon receipt of the same.
10. Name, address, and specialty, if any, of the treating physician: Dr. Scott Barbour, Barbour Orthopedics, 5505 Roswell Road, Suite 275 Atlanta, GA; orthopaedics.
11. Impairment rating(s); body part(s); physician and date of opinion: N/A
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 certify I have served this document pursuant to Reg. 67-211 by delivering a copy to C. Daniel Vega, Esquire; Andrew D. Smith, Esq.
Address: dvega@csa-law.com; KSpicer@csa-law.com/ASmith@GMLJ.com; TWalker@GMLJ.com on the 11th day of March 2019 by: ☐ first class postage ☐ certified mail ☐ personal service ☒ electronic service

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

Signature: Jason A. Griggs, Wilson Jones Carter & Baxley, P.A. Email: jagriggs@wjlaw.net
Date of hearing: 03/21/2019 - Commissioner Campbell Time needed for hearing: 1 1/2 hrs.

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 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.

Jorge Lopez-Celestin v. Reeves Young, LLC

WCC # 1706639

Supplement to Pre-hearing Brief

Jason A. Griggs, Attorney for Defendants, Amerisure and Reeves Young, LLC

Facts in Controversy: It is settled in South Carolina that ordinarily injuries sustained while traveling to and from work are not compensable under workers' compensation law. This rule is commonly known as the going and coming rule. However, South Carolina recognizes five exceptions to this rule: 1) if the employer provides the means of transportation or pays travel time, 2) if the employee performs duties during his commute, 3) if the way used is inherently dangerous, 4) if the place where the injury occurs is in such close proximity to the workplace that it is brought within the scope of the employment, and 5) if the injury occurs while the employee is on a special errand for the employer.

It is undisputed that the claimant was involved in a motor vehicle accident while traveling from a job site in Clemson, South Carolina to his home in Gainesville, Georgia. Claimant argues that his accident is compensable under the first exception asserting that claimant was paid to travel to and from his home in Georgia to the job site in South Carolina. The claimant is mistaken and the facts of this case do not support compensability under the first exception noted above.

In this case, the claimant was paid an additional \$175.00 per week while working on two job sites in Clemson, South Carolina. Claimant lives in Gainesville, Georgia and would commute daily, to and from Clemson. The evidence will show that Reeves Young offered the claimant housing to use during the week in the Clemson area. If the claimant chose to avail himself of this housing he would have still received the additional \$175.00 per week. The evidence will show that Reeves Young employees who traveled from Georgia to the job sites in Clemson received the additional \$175.00 per week regardless of whether they drove a personal vehicle, car-pooled with another employee, drive a company truck and were provided a company fuel card, or stayed in the company provided housing negating the need to travel daily. Employees received the same \$175.00 amount irrespective of travel time, distance travelled, or transportation expense actually incurred by the employee. The \$175.00 amount did not fluctuate with and increases or decreases in the actual distance or time travelled and the claimant was not required to file any receipts, mileage logs, or vouchers with Reeves Young regarding mileage, expenses, or travel time.

Claimant cites two cases in support of his contention that the accident should be compensable under the first exception to the going and coming rule. The first case, Sola v. Sunny Slope Farms, 244 S.C. 6, 135 S.E.2d 321 (1964), lays out the general going and coming rule, along with the exceptions thereto. However, the facts in Sola deal with a claimant who was killed while traveling between two different places where he was required to perform services. The facts are entirely different in this case. If the claimant in our case would have been injured driving between the two job sites in Clemson then the facts would align with Sola and support compensability. This is not the case and the claimant's reliance on Sola is misplaced.

Claimant also cites to Gray v. Club Group, Ltd., 339 S.C. 173, 528 S.E. 2d 435 (Ct. App. 2000), which also lays out the going and coming rule, along with the exceptions. However, the facts in Gray deal with a claimant who was paid \$35.00 to transport payroll information between two golf clubs owned by the employer. The opinion makes it clear that the employer in Gray arrived at the \$35.00 amount by calculating the distance the claimant was required to travel to perform this errand. The facts in our case are completely different and do not align with Gray. Accordingly, the claimant's reliance on Gray is misplaced.

Defendants believe that Byrd v. Stackhouse Sheet Metal Works, 317 S.C. 35, 451 S.E.2d 405 (Ct. App. 1994) presents facts much more in line with the instant case and supports their position that the claimant's accident is not compensable. In Byrd, the claimant was involved in a fatal motor vehicle accident while driving his own vehicle home from work. When claimant was hired it was agreed that he would be paid an additional \$90.00 per month as an inducement to take the job because he did not wish to move and the job was 55 miles from home. In Byrd, it was undisputed that the \$90.00 per month was "gas money." In our case, the \$175.00 does not represent gas money, but even if you assume for argument's sake that the \$175.00 is gas money, Byrd still supports the Defendant's position that the accident is not compensable.

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BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

JORGE LOPEZ-CELESTIN,

Claimant,

vs.

WCC FILE NO. 1706639

REEVES YOUNG, LLC,

Employer,

AMERISURE INSURANCE COMPANY,

Carrier/Defendants.

~~~~~

DEPOSITION OF  
WILLIAM REEVES

March 5, 2018  
11:17 a.m.

45 Peachtree Industrial Boulevard  
Sugar Hill, Georgia

Heather Brown, RPR  
CCR-4759-4284-5258-1376

APPEARANCES OF COUNSEL

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On behalf of the Claimant:

C. DANIEL VEGA, Esquire  
CHAPPELL, SMITH & ARDEN, P.A.  
P.O. BOX 12330  
Columbia, South Carolina 29211  
(803) 509-5830  
dvega@csa-law.com

On behalf of the Employer:

JASON GRIGGS, Esquire  
WILLSON, JONES, CARTER & BAXLEY, LLC  
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Greenville, South Carolina 29607  
(864) 527-3288  
jagriggs@wjlaw.net

On behalf of the Carrier/Defendants:

ANDREW D. SMITH, Esquire  
GOODMAN MCGUFFEY, LLPS  
147 Wappoo Creek Drive  
Suite 204  
Charleston, South Carolina 29412  
(843) 518-5040  
asmith@gm-llp.com

INDEX OF EXHIBITS

| Exhibit   | Description   | Page |
|-----------|---------------|------|
| Exhibit 1 | Document..... | 35   |
| Exhibit 2 | Document..... | 35   |
| Exhibit 3 | Document..... | 36   |
| Exhibit 4 | Document..... | 37   |

(Original exhibits are attached to the original transcript.)

INDEX OF EXAMINATION

| Description                   | Page |
|-------------------------------|------|
| Examination By Mr. Vega.....  | 4    |
| Examination By Mr. Smith..... | 34   |

1                                   Deposition of William Reeves  
2                                                           March 5, 2018

3                                   WILLIAM REEVES,  
4   having first been duly sworn, was examined and  
5   testified as follows:

6                                                           EXAMINATION

7   BY MR. VEGA:

8               Q.   Mr. Reeves, my name is Danny Vega, and I'm  
9   an attorney.   I represent Jorge Lopez-Celestin in his  
10  workers' compensation claim.   I'm here to do what's  
11  called a deposition.   A deposition is a means by  
12  which we can ask questions of potential witnesses of  
13  parties.   You have an attorney here present with you.

14                               I'm going to read you some rules.   If  
15  you don't understand the rule or if you don't  
16  understand something I say, just ask me to repeat it,  
17  okay?

18               A.   Okay.

19               Q.   I read these rules to all people I depose.  
20  No. 1, you are under oath.   Being under oath means  
21  you are testifying as if in a court of law, subject  
22  to the rules of perjury.   No. 2, everything you say  
23  will be recorded by the court reporter.   No. 3, I  
24  will be asking verbal questions and ask that you give  
25  verbal responses.   If you nod your head, shake your

1 head, say uh-huh or huh-uh, I will ask whether you  
2 meant to say yes or no, for purposes of clarifying  
3 only, okay?

4 A. (Nods head up and down.)

5 Q. No. 4, if you didn't understand a question,  
6 please ask me to rephrase it or repeat it.  
7 Otherwise, we assume that you understood a question,  
8 and the answer that you give is the one you intended  
9 to give. No. 5, you cannot ask your attorney to  
10 assist you with answers to the questions. No. 6, if  
11 you -- you may take a break. If you take a break and  
12 we go off the record, any discussion that you have  
13 with your attorney is subject to me asking you  
14 question about that discussion, okay? No. 7, you  
15 must answer the questions posed to you today. Should  
16 you refuse to answer the questions, I can seek an  
17 order from the Court compelling a response. Do you  
18 have any questions about the instructions?

19 A. No, sir.

20 Q. All right. Mr. Reeves, what is your full  
21 name, please?

22 A. William Dean Reeves, III.

23 Q. And your date of birth, please.

24 A. January 7, 1983.

25 Q. How old does that make you today?

1 A. Thirty-five today.

2 Q. All right. And your social security number,  
3 please?

4 A. XXX-XX-XXXX.

5 Q. And the court reporter will redact that from  
6 the transcript so it's not on the transcript, okay?

7 A. Okay.

8 Q. Do you have a valid Georgia state license?

9 A. Yes, sir.

10 Q. And has it been suspended or revoked?

11 A. No, sir.

12 Q. Do you know the number?

13 A. No, sir.

14 Q. Could you give it to me, please. Do you  
15 have your license with you?

16 A. It's in my truck.

17 Q. All right. If I ask your attorney for that  
18 later, could you get it for me?

19 A. I can.

20 Q. Are you married, single, or divorced?

21 A. Married.

22 Q. Do you have any children?

23 A. Three.

24 Q. Are they at home, dependent upon you for  
25 support?



1 A. They are all at home.

2 Q. And your address, please?

3 A. 2500 Weber Heights Way, Buford, Georgia  
4 30519.

5 Q. How far did you go in school?

6 A. I graduated from Clemson University in 2005.

7 Q. What kind of degree did you obtain?

8 A. A finance degree with an emphasis in real  
9 estate.

10 Q. Have you been arrested, convicted, or pled  
11 guilty to a crime in the past?

12 A. No, sir.

13 Q. Thank you.

14 A. Outside of a speeding ticket, no.

15 Q. Okay, good. What is your current  
16 employment?

17 A. Current employment is here with Reeves  
18 Young. My title is vice president and the business  
19 unit leader for our heavy civil group.

20 Q. How long have you been employed by Reeves  
21 Young?

22 A. Ten years.

23 Q. And do you have an ownership interest in the  
24 company?

25 A. Yes, sir.

1 Q. Do you have partners?

2 A. No, sir. Just ownership interest that the  
3 company provides.

4 Q. You're the sole proprietor of the company?

5 A. No, sir.

6 Q. Okay. Who is the proprietor of the company?

7 A. It is an employee owned company.

8 Q. Okay. And you said you're the VP of what  
9 department now?

10 A. I'm a vice president of the company. I --  
11 the title we use -- we have three business units.

12 Q. Okay.

13 A. I'm a business unit leader for our heavy  
14 civil group.

15 Q. What does that mean in layman's terms?

16 A. I'm the president of our heavy civil group.

17 Q. What is heavy civil group? What does that  
18 mean?

19 A. That group is traditionally everything from  
20 site development. So we've got a heavy civil group,  
21 a water resource group, and then our commercial  
22 group. So typically, what I do is everything  
23 horizontal; sanitary, water, sewer, grading, those  
24 operations. My guys and I oversee those operations.

25 Q. Okay. And would it be fair to say that's

1 the group that goes in initially when -- when you  
2 start to develop a --

3 A. Yes, sir.

4 Q. -- a site?

5 A. Yes, sir, that is.

6 Q. Prior to being with Reeves Young, who were  
7 you with?

8 A. I was with a company called RealNet USA.

9 Q. Real Net?

10 A. R-E-A-L-N-E-T, U.S.A.

11 Q. What type of company is that?

12 A. It was a commercial real estate company.

13 Q. How long did you work for them?

14 A. I'd say, right around three years.

15 Q. Prior to RealNet, who were you with?

16 A. The first job out of school.

17 Q. Okay. All right. Do you have any sort of  
18 ownership interest in any companies other than Reeves  
19 Young?

20 A. I do. I own a company called White Sands  
21 Realty.

22 Q. What type of realty is that?

23 A. It is an LLC. I own some office condos.

24 Q. Do you manage the property or just have the  
25 ownership?

1 A. Just ownership of those units.

2 Q. Okay. Any other businesses?

3 A. No, sir.

4 Q. Have you owned -- in the past, have you  
5 owned other businesses?

6 A. Nope. Just that LLC.

7 Q. How would you describe Reeves Young's  
8 company?

9 A. It is a growing company that cares about  
10 their employees and puts employees first. We've got  
11 a phenomenal work culture and are able to attract and  
12 retain great talent.

13 Q. How would you describe what Reeves Young,  
14 what it does?

15 A. Reeves Young is based on the three divisions  
16 we've got. We are a provider, a turnkey service,  
17 from site development to building of the buildings.  
18 We are a commercial general contractor in the metro  
19 Atlanta market, and certainly other areas as well.  
20 Predominantly metro Atlanta.

21 Q. How many employees does the company have?

22 A. I think we're just north of 220. I don't  
23 have that exact number.

24 Q. What's a typical day like for you as a VP of  
25 the heavy civil group?

1           A. Most days are not typical. So I typically  
2 get in to work around 7:00 and work on business  
3 development, manage projects, any issues that come up  
4 on projects, whether that's issues out in the field  
5 or equipment needs.

6                       Again, my -- my main goal is to make  
7 sure the crews and employees we have are staying  
8 productive and have work.

9           **Q. What is Reeves Young's relationship to**  
10 **Holder Construction?**

11           A. Reeves Young is a subcontractor to Holder  
12 Construction.

13           **Q. How long have both companies worked**  
14 **together?**

15           A. I believe -- to my knowledge, the last three  
16 and a half to four years. I don't know if any work  
17 was done with Holder prior to me coming in.

18           **Q. Who is the president of Reeves Young?**

19           A. Eric Young.

20           **Q. And do you have a relationship to Mr. Eric**  
21 **Young?**

22           A. No.

23           **Q. Is he family to you?**

24           A. No, sir.

25           **Q. Okay. So who is the Reeves and who is the**

1 Young?

2 A. Eric is the Young. My grandfather was the  
3 Reeves. He started the company in 1952. My dad is  
4 the COO -- or he's chairman, is technically his  
5 title. Dean Reeves would be the -- in my opinion, is  
6 the Reeves --

7 Q. Okay.

8 A. -- in Reeves Young.

9 Q. All right.

10 MR. GRIGGS: You sure it's not yourself?

11 THE WITNESS: Yeah. I'm under oath,  
12 right?

13 Q. (By Mr. Vega) Yes. So -- all right. I  
14 understand that Reeves Young had a project at Clemson  
15 University; is that correct?

16 A. That is correct.

17 Q. And that was -- it was told to me that  
18 that's called Douthit Hills or Dotted Hills.

19 A. Douthit Hills, D-O-U-T-H-I-T, I believe.  
20 Douthit Hills is the name of the project.

21 Q. Is that an ongoing project?

22 A. Yes, sir. That has not been completed.

23 Q. Okay. And when did that project come about?

24 A. I do not know the start date. Roughly, two  
25 and half years ago, three years ago.

1           Q.   Okay.  Can you describe that project, what's  
2   being built and things like that?

3           A.   Yeah.  So Clemson University hired Holder  
4   Construction to be the general contractor.  Holder  
5   Construction subcontracted with us.  The project,  
6   overall, I believe is eight new dormitory buildings.  
7   I believe one building is called their hub, and that  
8   will be a new student campus facility for the  
9   university to house students.

10          Q.   How many dorms per hub?  Do you know?

11          A.   I believe the hub building is actually a  
12   workout, cafeteria, kind of technology --

13          Q.   Okay.

14          A.   -- building that's in the center, and I  
15   believe it's seven surrounding dormitories.

16          Q.   Do you know about how many units?

17          A.   I don't on the units.  I believe each  
18   dormitory is roughly five or six stories, something  
19   like that.

20          Q.   It's a big project?

21          A.   Yes, sir.  In my opinion.

22          Q.   All right.  Does Reeves Young subcontract  
23   any of their work to contractors below them?

24          A.   Yes.

25          Q.   At that -- at that per --

1 A. We do.

2 Q. Okay. Does Reeves Young maintain employees  
3 that work directly for the company that work on that  
4 project as well?

5 A. Could you rephrase that?

6 MR. SMITH: I didn't understand the  
7 question, I'm sorry.

8 A. Yeah, I didn't --

9 Q. (By Mr. Vega) Reeves Young, when you say  
10 you're a subcontractor to Holder, you're  
11 subcontracted to build those dorms and hub, correct?

12 A. No, sir.

13 Q. What is your -- what is the purpose of  
14 Reeves Young?

15 A. Our scope was to come in and do the grading,  
16 utilities, asphalt pavement.

17 Q. Okay. That was -- that work was performed  
18 by employees of Reeves Young?

19 A. Grading and utilities, yes, sir. We  
20 subcontracted out the asphalt pavement to a  
21 subcontractor.

22 Q. Okay. And when you say utilities, it's  
23 sewer lines --

24 A. Storm, water, sewer. Yes, sir.

25 Q. If you just allow me to finish the question



1 so that the court reporter can have a clean  
2 transcript.

3 A. Okay.

4 Q. All right. Now, I was told earlier that the  
5 chain of command is project manager, senior  
6 superintendent, superintendent, foreman or field  
7 supervisor, crew leader, and then laborers. Does  
8 that sound right?

9 A. Can you repeat it? I think I had in my head  
10 the opposite. So you're talking -- you're starting  
11 at the highest and working --

12 Q. Sure. Tell me, from a laborer up the chain  
13 or down the chain, either way, tell me what's the  
14 chain of command for the work that was done in  
15 grading and utilities.

16 A. The laborers would report to the operators,  
17 the operators would report to the foreman, the  
18 foreman would report to the superintendent, the  
19 superintendent would report to a senior  
20 superintendent, who would report to a project  
21 manager.

22 Q. And when you say operators, those are the  
23 equipment operators?

24 A. Yes, sir.

25 Q. Would it be fair to say those are laborers

1 or did you have laborers below operators?

2 A. Some individual -- some folks are just  
3 laborers and cannot operate equipment. Some of our  
4 equipment operators do also perform labor tasks, but  
5 there is a class of individuals that is below  
6 operators.

7 Q. All right. Do you know an operator named  
8 Jorge Lopez-Celestin?

9 A. Yes, sir.

10 Q. And what can you tell me about Mr. Lopez?

11 A. Mr. Lopez is a very good operator. As much  
12 detail as I know, is that what you're looking for?

13 Q. Yeah. Just tell me what you know about him,  
14 whether it's a lot or a little bit.

15 A. Okay. Very nice guy. He lived in the  
16 Gainesville area. Typically, he ran a dozer or did  
17 what we call, finish grade on the bulldozer, for us  
18 on our job sites. Nice guy. Typically when I'd see  
19 him, in good spirits. I know he had some family  
20 issues with his wife, that she passed away not too  
21 long ago. I know he was in a very difficult car  
22 accident about two years ago.

23 Q. All right. Let's go -- prior to the  
24 accident, I understand that he worked on a crew with  
25 Mr. Juan Ochoa; is that your understanding?

1 A. It is.

2 Q. And he was an operator. He did excavation,  
3 mostly?

4 A. Excavation, bulldozer. Yes, sir.

5 Q. You had an opportunity at times to see his  
6 work? See him working in the field?

7 A. I did.

8 Q. Okay. And you understood that he was a good  
9 operator?

10 A. I did.

11 Q. Okay. And I understand that there was  
12 several people in Mr. Ochoa's crew, about five or six  
13 people working at the Clemson Road development at  
14 Douthit Hill Roads; is that correct?

15 A. That's correct.

16 Q. All right. Do you know, what was the salary  
17 for an operator, at that time, like Mr. Lopez?

18 A. A salary is very dependent on skill level.

19 Q. Okay. Do you know how the laborers and  
20 operators are paid? Are they paid by the hour or  
21 salaried?

22 A. Both are paid by the hour.

23 Q. Okay. Mr. Ochoa testified that, as a  
24 foreman, that he was paid a salary; is that your  
25 understanding?

1 A. That is correct.

2 Q. Okay. I understand that Mr. Ochoa also  
3 testified that he had a company truck and a company  
4 credit card to pay gas for that truck; is that your  
5 understanding as well?

6 A. He had a company truck and he has a company  
7 fuel card, not a company credit card, for fuel  
8 related expenses.

9 Q. Okay. Was there a per diem paid to  
10 employees who were working at Clemson Road?

11 A. Yes, sir.

12 Q. And what was -- how did that come about?  
13 Where did the per diem -- why did the company choose  
14 to pay a per diem to those employees?

15 A. That project was out of state.

16 Q. What was the rate of the per diem?

17 A. \$175 per week.

18 Q. And my math tells me that's about \$35 a day?

19 A. Based on a five-day -- yes, sir.

20 Q. On a five-day. Was the per diem paid at a  
21 flat rate or was it paid at \$35 a day?

22 A. I don't know that. I believe it was 175 per  
23 week.

24 Q. And whose decision was it to pay that per  
25 diem?

1 A. Mine and Matt McCormack's.

2 Q. And Mr. McCormack is -- what is he?

3 A. He is the business unit leader for our water  
4 resource group. I would also include Dave Buser, who  
5 is our director of operations, was involved in the  
6 decision.

7 Q. So you guys got together, you decided to pay  
8 a per diem for an out-of-state project. The rate was  
9 \$35 a day. Was there any -- what went into that  
10 calculation? How did y' all select that number?

11 MR. GRIGGS: Object to form. Answer the  
12 question.

13 A. Industry standard.

14 Q. (By Mr. Vega) And when you say, industry  
15 standard, can you be more specific? Is there some  
16 sort of manual or --

17 A. Typically, on out-of-town meals, folks are  
18 buying meals. So we figured they needed to go by  
19 additional cost of purchasing meals.

20 Q. When you say, industry standard, is that of  
21 word of mouth in the industry or --

22 A. It is.

23 Q. Or is it something that's --

24 A. We had been told --

25 Q. If I may. Is it -- is it something that's

1 researched, and you know, certain contract companies  
2 come up with?

3 A. For this project, and in my opinion, it was  
4 word of mouth. We had spoken to other firms and  
5 asked what they had given to their employees for  
6 projects out of state.

7 Q. Was there a requirement by the general  
8 contractor that a per diem be paid to your employees?

9 A. Not to my knowledge.

10 Q. So that was purely an internal decision?

11 A. Yes.

12 Q. Okay. Were there instructions given to  
13 employees who were receiving those per diems on how  
14 to spend the money?

15 A. No, sir.

16 Q. Was there a requirement that they provide  
17 receipts or accounting of that information? How they  
18 spent the money?

19 A. No, sir.

20 Q. Is that paid to them as a part of their  
21 salary or was that paid to them separate than their  
22 salary?

23 A. I'd have to ask accounting on that. I know  
24 it went into their direct deposit.

25 Q. Do you know if it was a separate deposit?

1 A. I do not.

2 Q. Okay. Do you know if taxes were withheld  
3 from that money that was paid for per diem?

4 A. I do not.

5 Q. Do you know if Reeves Young receives a tax  
6 benefit from paying them per diem?

7 A. I do not.

8 Q. The accounting department, who is the head  
9 of the accounting department?

10 A. Stan Silver is our CFO.

11 MR. GRIGGS: Dan Silver?

12 THE WITNESS: Stan, S-T-A-N. Stan.

13 MR. GRIGGS: Stan Silver.

14 Q. (By Mr. Vega) CFO, you said?

15 A. Yes, sir.

16 Q. Is that for all Reeves Young's projects or  
17 just the department that you're the VP of?

18 A. For all Reeves Young.

19 Q. Okay. Do you know if the employees that  
20 were working at Clemson Road that came from  
21 Gainesville, do you know if at some point they were  
22 offered an apartment to stay in or housing?

23 A. They were. Any employee on that project was  
24 offered it.

25 Q. Do you know how many stayed over there?

1           A. To my knowledge, at least three. Others may  
2 have stayed at various times, but to my knowledge,  
3 three did.

4           Q. Do you know which three?

5           A. Adam Waites, Galdeano Lopez, and I cannot  
6 think of the third name.

7           Q. Who is Mr. Whites?

8           A. Mr. Adam Waites was the project manager.

9                   MR. GRIGGS: He's saying Waites.

10                   THE WITNESS: Waites, W-A-I-T-E-S.

11           Q. (By Mr. Vega) Oh, I'm sorry. I'm sorry.

12           A. You're good. W-A-I-T-E-S.

13           Q. The other person that you don't remember  
14 their name, was that somebody who was an  
15 operator/laborer or --

16           A. Yes, sir.

17           Q. Yes?

18           A. Yes.

19           Q. Okay. But other than those three people  
20 that worked on that project, drove from Gainesville  
21 to Clemson; is that correct?

22           A. Some people on the job drove from  
23 Gainesville to Clemson. Others came from different  
24 parts of -- not everyone lived in Gainesville.

25           Q. Okay. Other than those three, the other



1 people working on the project were driving to the  
2 project from their home, presumably?

3 A. I don't know.

4 Q. Do you know if Mr. Lopez-Celestin, whether  
5 he was driving on a daily basis to the project?

6 A. I don't. I can't confirm that. Obviously,  
7 he was driving to the project. He was not staying  
8 onsite, so he was getting there somehow.

9 Q. Do you know if he stayed in the apartments  
10 or the housing that was offered him?

11 A. Not to my knowledge, he did not.

12 Q. All right. So just to make sure,  
13 Mr. Celestin was an employee of Reeves Young,  
14 correct?

15 A. Correct.

16 Q. 2015 and '16 and '17, to the best of your  
17 knowledge?

18 A. Yes.

19 Q. And he was not an employee, a dual employee,  
20 also employed by another company during that time?

21 A. Not to my knowledge.

22 Q. Okay. And when he was working at Clemson  
23 Road, he was working on a crew that belonged to  
24 Reeves Young?

25 A. That's correct.

1 Q. Do you know if he was lent to a crew that  
2 may have belonged to another company, at any time,  
3 while he was at Clemson?

4 A. Not to my knowledge.

5 Q. Okay. There seem to be -- well, before I go  
6 to that next point, is Mr. Lopez-Celestin still  
7 employed by Reeves Young?

8 A. Not to my knowledge.

9 Q. Was he terminated?

10 A. I can't confirm that. I'm not sure.

11 Q. You don't know if he works for Reeves Young?

12 A. I don't believe he does. You're asking if  
13 he was terminated -- I don't know if he voluntarily  
14 separated or we terminated him. I'm not sure how he  
15 is no longer employed.

16 Q. Okay. Is he currently receiving a salary or  
17 any benefits from Reeves Young?

18 A. Not to my knowledge.

19 Q. Was that a decision he made or the company  
20 made?

21 MR. SMITH: Object to the form.

22 A. If you can clarify what you're asking.

23 Q. (By Mr. Vega) Was there a decision made by  
24 employees of Reeves Young to end the employment of  
25 Mr. Jorge Lopez-Celestin?

1 A. Yes.

2 Q. Were you a part of that decision making?

3 A. No, sir.

4 Q. Do you know who made that decision?

5 A. I don't.

6 Q. All right. There -- there was another  
7 project in the Clemson area, that I understand -- I  
8 don't know the name of it, and I'm asking because I  
9 don't know. There was an apartment complex that was  
10 a project of Holder's. Did Reeves Young perform work  
11 at that apartment complex?

12 A. I think you've got something -- if I can  
13 clarify, there was another project. It was not a  
14 Holder project. It was a -- Fortune-Johnson was the  
15 general contractor. The name of that project, we  
16 referred to it as Earle, E-A-R-L-E, Street  
17 Apartments.

18 MR. GRIGGS: Fortune-Johnson?

19 THE WITNESS: Fortune-Johnson.

20 MR. GRIGGS: Fortune, just like it  
21 sounds?

22 THE WITNESS: Yep.

23 Q. (By Mr. Vega) Earle Street Apartment?

24 A. Yes, sir.

25 Q. Did employees of Reeves Young, meaning

1 Mr. Jorge Lopez-Celestin, did he do excavation or any  
2 type of work at that apartment complex?

3 A. Yes.

4 Q. So Reeves Young was a subcontractor to  
5 Fortune-Johnson?

6 A. Yes, sir.

7 Q. Okay. Do you know how much -- did Reeves  
8 Young do all of the grading and all of the sub work  
9 and all that for that apartment complex?

10 A. Yes, sir. We were grading and utilities.

11 Q. Is that project still going on?

12 A. No, sir. It's been completed.

13 Q. Okay. So when Reeves Young was doing  
14 grading and utilities, they were using the entire  
15 crew that was also used at Clemson Road at the Earle  
16 Street Apartments?

17 A. I don't know if the entire crew was used.  
18 Individuals from the Douthit Hills project were used  
19 at Earle Street.

20 Q. How long did that project take?

21 A. I don't know. Rough guess is 18 months.

22 Q. Okay. Do you know how many units were  
23 built?

24 A. No, sir.

25 Q. So when your crew was working at the Clemson

1 project, they were operating as subcontractors to

2 Holder, correct?

3 A. Correct.

4 Q. But when they were working at

5 Fortune-Johnson -- I'm sorry, at Earle Street

6 Apartments, they were subcontracting to

7 Fortune-Johnson?

8 A. Yes, sir.

9 Q. All right. That would include all levels of  
10 supervision necessary for that project; project  
11 manager, senior supervisor -- I'm sorry, senior  
12 superintendent, superintendent, all of that?

13 A. If you could clarify.

14 Q. So when -- this is what I'm trying to get  
15 at. When Mr. Jorge Lopez-Celestin was performing  
16 work at the Earle Street Apartments, he wasn't going  
17 over there by himself, was he?

18 A. Not to my knowledge.

19 Q. It was -- it was a crew project?

20 A. Yes.

21 Q. It required all the different operators and  
22 all the different members of the crew to perform that  
23 work?

24 A. At the original stage it did. Toward the  
25 end, or punch list items, sometimes only involves an

1 individual.

2 Q. All right. So how would the crew know where  
3 they were going to be on any particular day? Whether  
4 they were going to be at Clemson or at Earle Street?

5 A. Their superintendent, senior superintendent,  
6 or project manager would direct them.

7 Q. Would they know that before they got to the  
8 job site in the morning?

9 A. I'm not sure when the project manager told  
10 them that.

11 Q. Okay. And those two projects though, they  
12 seem to be -- they were running concurrently, or were  
13 they stacked?

14 A. The Holder project started and ended -- so  
15 started before Earle Street, then they ran  
16 concurrently for roughly 18 months, and the Holder  
17 project continues.

18 Q. I understand Mr. Jorge Lopez-Celestin also  
19 worked at the MLS Soccer Complex in Atlanta; is that  
20 your understanding as well?

21 A. It is.

22 Q. Do you know how long he was at the soccer  
23 complex?

24 A. I don't. Not specifics, No, sir.

25 Q. Do you know if he went with the same crew?

1           A. He did. That -- Juan's crew came down to  
2 the Atlanta United project, yes.

3           Q. Okay. Do you know whether he received a per  
4 diem while he was working in Atlanta?

5           A. He did not.

6           Q. Okay. Is the decision to pay the per diem,  
7 is that in-state and out-of-state decision?

8           A. Yes, sir.

9           Q. So any work being performed in Georgia is  
10 not a per diem job?

11          A. That's a broad statement, but I don't  
12 believe it would be.

13          Q. Is it limited to like -- when you say you  
14 don't believe it would be, you're saying no, you  
15 would not pay a per diem in Georgia?

16          A. That's correct.

17          Q. Okay. All right. And when you pay the per  
18 diem, you don't -- did you ever -- let me ask you  
19 this: I understand that there were certain like  
20 training meetings, toolbox meetings. Is that what --

21          A. Yes, sir.

22          Q. Are you familiar with that?

23          A. Yes, sir.

24          Q. What are the purpose of the toolbox  
25 meetings?

1           A. Safety is very important to our company, so  
2 each morning, or every Friday, at a minimum, our  
3 foreman or superintendent would lead what's called a  
4 safety toolbox meeting and gather the crew together  
5 and go over a safety meeting for them to talk about  
6 and make sure that they are staying on top of safety  
7 hazards.

8           Q. Okay. Would there have been any classes or  
9 teaching or anything said about the per diem? The  
10 purpose of the per diem and how to spend that money?

11          A. No. We would not have a toolbox meeting on  
12 that.

13          Q. Would you have any other kind of meeting on  
14 that subject?

15          A. No. The per diem was their money.

16          Q. Okay.

17          A. They could spend it however they saw fit.

18          Q. So when -- when you announced that employees  
19 were -- that you were going to have a project in  
20 Clemson, how did you let the employees know they  
21 would be receiving a per diem?

22          A. We said that, based on the project being out  
23 of town, each of the employees would receive \$175 per  
24 week.

25          Q. Was that an announcement? I mean, is that



1 something that goes out on a bulletin or -- how does  
2 -- how does the word get out that that's going to  
3 happen?

4 A. I believe the way is we told Juan Ochoa, and  
5 Juan told his crew members.

6 Q. Okay.

7 A. We also told the project manager and  
8 superintendent. So any individuals that they spoke  
9 to -- so most of the announcement was through verbal  
10 communication.

11 Q. Was there any paperwork prepared by yourself  
12 or members of your team or the financial office, that  
13 was ever prepared with regards to per diem?

14 A. Not to my knowledge.

15 Q. Now, understand that, after  
16 Mr. Lopez-Celestin worked at the Soccer Complex, that  
17 he returned to Clemson; is that your understanding as  
18 well?

19 A. That's correct.

20 Q. And then he had the accident, I believe,  
21 January 2017; is that your understanding as well?

22 A. Yes, sir.

23 Q. And at the time that the accident occurred,  
24 who did you -- what project did you understand him to  
25 be working on?

1           A.   The Douthit Hills project.

2           Q.   Would he have been working -- would he have  
3   had a chance to be working at the Earle Street?

4           A.   He could have. It was my understanding he  
5   was at Douthit Hills. But he could have been at that  
6   project, yes, sir.

7           Q.   At the time of the accident, would he have  
8   been doing punch list items at Earle Street? In  
9   other words, was the main phase of the --

10          A.   I don't believe so. I believe we were still  
11   doing contract work at that point.

12          Q.   Okay. So that -- that accident occurred at  
13   a time where the projects were running concurrently?

14          A.   That's correct.

15          Q.   Do you have a way of confirming or verifying  
16   where exactly -- where he worked that day?

17          A.   We have got a -- I have seen a signed  
18   sign-in sheet from the Douthit Hills project, and  
19   based on our payroll records, he was at the Earle  
20   Street as well. So to my knowledge, he was at both  
21   job sites that day.

22          Q.   So on the payroll, you have -- it tells you  
23   what project he was working on?

24          A.   I believe it is the daily report, or the  
25   payroll sheet should mention Earle Street, the

1 coding.

2 Q. Okay. You're not referring to his personal  
3 payroll records, are you?

4 A. No. On our daily reporting sheet, it's got  
5 what project each individual is on.

6 Q. And is it your testimony that he was on both  
7 daily reporting sheets, one for Clemson --

8 A. We had daily reports for each job site. To  
9 my knowledge, yes. So our crew -- it's my  
10 understanding that our crews that were up in Douthit  
11 Hills -- or individuals could have been on both job  
12 sites.

13 Q. So it's possible he could have performed  
14 work on both job sites that day?

15 A. That's correct. My assumption is -- if  
16 we've got a daily report for a job site, my  
17 assumption is, we are doing work on that job site.  
18 So I didn't physically see him working on either job  
19 site, but you can infer, based on the daily  
20 reporting, that Reeves Young worked on both sites --  
21 both job sites.

22 Q. Just -- just to reiterate, the decision to  
23 pay the per diem, that was a Reeves Young decision?

24 A. Yes.

25 Q. That was not a requirement of any contract

1 or negotiations with the general contractor?

2 A. That is correct.

3 Q. Of either project?

4 A. That's correct.

5 Q. Those are all the questions I have. Thank  
6 you, sir.

7 EXAMINATION

8 BY MR. SMITH:

9 Q. Hello, Mr. Reeves. My name is Andrew Smith.  
10 We met briefly off the record. Mr. Vega told you  
11 you're free take a break any time you want. Do you  
12 need take a break now or do you want to plow through?

13 A. I'm good.

14 Q. Okay, Great. Now, you had two concurrent  
15 projects going on on the day of Mr. Lopez's accident,  
16 which is January 5, 2017; is that correct?

17 A. That's correct.

18 Q. One is the Douthit Hills project and the  
19 other is the Earle Street project; is that correct?

20 A. That's correct.

21 MR. SMITH: Madam Court Reporter, are  
22 you having difficulty hearing me? I see you're  
23 looking over.

24 COURT REPORTER: Yeah. That's okay.

25 Thank you.

1 MR. SMITH: We can switch spots, if you  
2 want to.

3 COURT REPORTER: Thank you.

4 MR. SMITH: I don't mind.

5 COURT REPORTER: Thank you.

6 MR. SMITH: Sure.

7 Q. (By Mr. Smith) Okay. So we had two  
8 concurrent projects, the Douthit Hills and the Earle  
9 Street; is that correct?

10 A. That's correct.

11 Q. All right. Now, the Clemson, Douthit Hills  
12 project, that was your Employer Code 15701, correct?

13 A. I believe so. I do not manage that project.

14 MR. SMITH: May we mark this as Holder's  
15 Defense Exhibit No. 1, please?

16 (Whereupon Exhibit D-1 was marked for  
17 identification.)

18 MR. VEGA: What's that number again?

19 MR. SMITH: I'll repeat it.

20 Q. (By Mr. Smith) So was the Employee Code for  
21 the Clemson, Douthit Hills, 15701?

22 A. Yes. That's it.

23 MR. SMITH: May we mark this as Defense  
24 Exhibit No. 2, please.

25 (Whereupon Exhibit D-2 was marked for

1 identification.)

2 Q. (By Mr. Smith) Thank you. And the employer  
3 code for any of the individuals who worked for Reeves  
4 Young on the Earle Street projects would have been  
5 16702; is that correct?

6 A. That's correct.

7 Q. Okay.

8 MR. SMITH: And may we mark this as  
9 Defense Exhibit No. 3, please.

10 (Whereupon Exhibit D-3 was marked for  
11 identification.)

12 Q. (By Mr. Smith) I'm going to provide you  
13 with a timecard entry list for the date of accident,  
14 January 5, 2017. And reviewing Defense Exhibit  
15 No. 3, would you agree that there are five employees  
16 that worked at the Earle Street apartment complex,  
17 based on the employer code?

18 A. Yes.

19 Q. Okay. One of those employees on the date of  
20 accident, January 5, 2017, was Mr. Lopez, correct?

21 A. That's correct.

22 Q. And he worked ten hours at the Earle Street  
23 apartment complex that day?

24 A. Based on that, yes, sir.

25 Q. Based on this, is your company document --

1           A. I did not see him work, but, yes. I didn't  
2 physically see him working at the job site, but I  
3 would -- based on that information, he worked ten  
4 hours at the Earle Street project.

5           Q. Okay. And who provides this information to  
6 the company? So he's --

7           A. The time entry would have been by either, in  
8 my opinion, Shane Burrell or Adam Waites.

9           Q. Okay. So somebody who was on the job and  
10 knew what was going on?

11          A. Yes, sir.

12          Q. Okay. So you wouldn't have any reason to  
13 doubt or dispute the fact that he worked ten hours at  
14 the Earle Street project for Reeves Young on the date  
15 of the accident?

16          A. Yes, sir. I don't have any reason to  
17 dispute that.

18          Q. Okay. And on the day of the accident --

19                   MR. SMITH: Mark this at Defendant's  
20 Exhibit 4, please.

21                   (Whereupon Exhibit D-4 was marked for  
22 identification.)

23          Q. (By Mr. Smith) Thank you. Were there five  
24 employees working on the Earle Street apartment  
25 complex on the date of accident?

1 A. Yes, sir.

2 Q. According to Defense Exhibit No. 4; is that  
3 correct?

4 A. Uh-huh (affirmative).

5 Q. And you just have to say, yes or no --

6 A. Yes, sir.

7 Q. -- a hard parked, yes or no. And was there  
8 50 hours worked?

9 A. Yes, sir.

10 Q. On the day of the accident?

11 A. Yes, sir.

12 Q. Okay. And the 50 hours, going back to  
13 Defense Exhibit No. 3, I believe eight hours were  
14 worked by Shane; is that correct?

15 A. That's correct.

16 Q. And then we had another 10 worked by, it  
17 looks like, Paul; is that correct?

18 A. It looked like he worked 12.

19 Q. You're correct. Then we get to 20. Yeah,  
20 you're correct, 12. Then Mr. Lopez worked 10?

21 A. Yes.

22 Q. So that gets us to 30, right?

23 A. That's correct.

24 Q. And then Robert worked another 10; is that  
25 correct?



1 A. That's correct.

2 Q. And then Matthew worked another 10; is that  
3 correct?

4 A. That's correct.

5 Q. So that would be 50 hours worked at that  
6 Earle Street apartment complex on the date of  
7 accident?

8 A. Yes, sir.

9 Q. Okay. So there's obviously a direct  
10 correlation between the daily report requirement and  
11 the timecard entry?

12 A. Yes, sir.

13 Q. And then, on the daily report, who prepares  
14 that?

15 A. That was -- that particular one was done by  
16 Cody Pitts. He was the foreman on the project.

17 Q. Okay. All right. And then Shawn most  
18 likely turned in the time --

19 A. I'm sorry, Shane.

20 Q. Shane, I'm sorry.

21 A. Yes. Shane, either Shane or Cody could have  
22 turned in his time.

23 Q. Okay.

24 A. Either our foreman or superintendents,  
25 depending on the project, have the ability to turn in

1 hours.

2 Q. Okay. And you agree that Holder  
3 Construction didn't have any business dealings, to  
4 your knowledge, at the Earle Street apartment  
5 complex?

6 A. That's correct.

7 Q. They're not the general contractors you just  
8 testified to, correct?

9 A. They are not.

10 Q. Okay. And Reeves Young had its own workers'  
11 comp insurance for the Earle Street project --  
12 apartment complex; is that correct?

13 A. Yes, sir.

14 Q. And that was through Amerisure?

15 A. Yes, sir.

16 Q. Okay. And when your employees were working  
17 on the Douthit Hills project, the dormitory project,  
18 under the general contractor of Holder, did they have  
19 a CSEP policy?

20 A. Yes, sir.

21 Q. Okay. Were your employees covered under  
22 that?

23 A. Yes, sir.

24 Q. Okay. You would agree, if your employees  
25 were injured on the Earle Street apartment complex

1 project, they would not be covered by the CSEP policy  
2 with Holder, correct?

3 A. That's correct.

4 Q. Do Shane, Paul, Robert, or Matthew still  
5 work for the company?

6 A. I don't believe any of them do.

7 Q. Okay. Do you have any firsthand knowledge,  
8 or any evidence whatsoever, to dispute the fact that  
9 Mr. Lopez worked at the Earle Street apartment  
10 complex for 10 hours, at least, on the date of  
11 accident?

12 A. I don't.

13 Q. Okay. And you indicated earlier that there  
14 was some thought that he might have been working on  
15 Holder's project?

16 A. I've seen a sign-in sheet from the -- that  
17 date as well, from the Holder project where he had  
18 signed in, essentially, as I believe it, as an end of  
19 the week injury or toolbox talk. He had signed  
20 something from that project.

21 Q. Okay. But don't all Reeves Young employees  
22 who arrive at the job site at 7:00, they go through  
23 the Holder exercises and they have a toolbox talk and  
24 then they sign off on Holder's sign-in sheet?

25 A. They do.

1           Q.   So an employee who could have nothing to do  
2 with working on the Holder project could have signed  
3 that?

4           A.   That's correct.

5           Q.   Do you know of anyone who has any knowledge  
6 that the claimant was working any other where, other  
7 than the Earle Street apartment complex, when he left  
8 on the day of the accident on January 5, 2017?

9           A.   I don't know.

10          Q.   That's all the questions I have.

11                   MR. GRIGGS: I do not have any  
12 questions.

13                   MR. VEGA: I have no follow-up. Thank  
14 you.

15                           (Deposition concluded at 12:06 p.m.)

16  
17 Pursuant to Rule 30(e) of the Federal Rules  
18 Of Civil Procedure and/or O.C.G.A. 9-11-30(e),  
19 Signature of the witness has been waived.

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C E R T I F I C A T E

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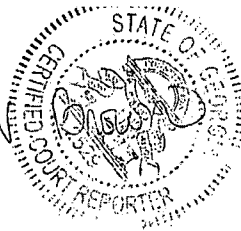
STATE OF GEORGIA:

COUNTY OF GWINNETT:

I hereby certify that the foregoing transcript was reported, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages represent a true, complete and correct transcript of the evidence given upon said deposition, and I further certify that I am not of kin or counsel to the parties in the case; am not in the employ of counsel for any of said parties; nor am I in any way interested in the result of said case.

This 22nd day of April 2018.

*Heather N.*



Heather Brown, RPR  
CCR 4756-4284-5258-1376

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BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION  
COMMISSION

JORGE LOPEZ-CELESTIN,

Claimant,

vs.

WCC FILE NO. 1706639

REEVES YOUNG, LLC,

Employer,

AMERISURE INSURANCE COMPANY,

Carrier/Defendants.

~~~~~

DEPOSITION OF
MATTHEW MCCORMACK

March 5, 2018
12:15 p.m.

45 Peachtree Industrial Boulevard
Sugar Hill, Georgia

Heather Brown, RPR
CCR-4759-4284-5258-1376

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INDEX OF EXHIBITS

Exhibit	Description	Page

(There were no exhibits marked during this
deposition.)

INDEX OF EXAMINATION

Description	Page

Examination By Mr. Vega.....	4

1 Deposition of Matthew T. McCormack
2 March 5, 2018

3 MATTHEW T. MCCORMACK,
4 having first been duly sworn, was examined and
5 testified as follows:

6 EXAMINATION

7 BY MR. VEGA:

8 Q. Mr. McCormack, my name is Danny Vega. I'm
9 an attorney with Chappel, Smith & Arden. I'm here
10 representing Jorge Lopez-Celestin in his workers'
11 compensation claim. The deposition -- have you been
12 deposed in the past?

13 A. It's been a long time, but I have, yes.

14 Q. Okay. The purpose of the deposition is to
15 allow the attorneys to get information regarding a
16 claim, and so we're here to depose you. I'm going to
17 read you some rules. I read these to everybody. If
18 you don't understand something I say, please ask me
19 to stop and repeat it, okay?

20 A. Okay.

21 Q. Rule No. 1, is that you are under oath and
22 being under oath means you are testifying as in a
23 court of law, subject to the rules of perjury.
24 No. 2, everything you say will be recorded by the
25 court reporter. No. 3, I'll be asking verbal

1 questions and ask that you give verbal responses. If
2 you nod your head, shake your head, say uh-huh or
3 huh-uh, I will ask you to clarify so that we have a
4 clear transcript and know what your answer was.

5 If you do not understand a question, I
6 ask you to please ask me to rephrase or repeat it.
7 If you answer the question, we're going to assume
8 that you understood the question and the answer is
9 the one you meant to give. So if you don't
10 understand the question, it's better for you to ask
11 us to rephrase it. You cannot ask your attorney to
12 assist you with the answers to the question. You may
13 ask to take a break during the deposition. If you
14 take a break and have a conversation with someone
15 during the break, I can ask you questions about that
16 conversation.

17 You must answer the questions posed to
18 you today. Should you refuse to answer the
19 questions, I have the right to seek a Court order
20 compelling you to respond to the questions. Do you
21 have any questions about these instructions?

22 A. No.

23 Q. All right. What is your full name, sir?

24 A. Matthew Thomas McCormack.

25 Q. What is your date of birth?

1 A. December 26, 1969.

2 Q. How old does that make you today?

3 A. Forty-eight.

4 Q. Your social security number, please.

5 A. XXX-XX-XXXX.

6 Q. And the court reporter will redact that from
7 the record so it's not in the record, okay? Do you
8 have a Georgia driver's license?

9 A. I do.

10 Q. Is it valid?

11 A. Yes.

12 Q. Has it been suspended or revoked in the
13 past?

14 A. It was suspended a long time ago.

15 Q. What was the reason for the suspension?

16 A. I didn't pay a ticket.

17 Q. More than ten years ago?

18 A. Yes, I'm sorry.

19 Q. Okay. Married, single, or divorced?

20 A. Married.

21 Q. Do you have any children?

22 A. Two.

23 Q. Are they dependent upon you for support?

24 A. Yes.

25 Q. What's your address, please?

1 A. 4886 Sara, S-A-R-A, Creek Way, and that's in
2 Sugar Hill, Georgia, ZIP is 30518.

3 Q. How far did you go in school?

4 A. Excuse me?

5 Q. How far did you go in school?

6 A. I have my bachelor's degree from Georgia
7 Tech.

8 Q. And what is that in?

9 A. Civil engineering.

10 Q. Have you been arrested, convicted, or pled
11 guilty to a crime?

12 A. Yes.

13 Q. More than ten years ago?

14 A. Yes.

15 Q. Did it involve fraud or perjury?

16 A. No.

17 Q. All right. Who are you currently employed
18 by?

19 A. Reeves Young.

20 Q. And how long have you been with Reeves
21 Young?

22 A. Coming up on my third year anniversary.

23 Q. Who did you work for before Reeves Young?

24 A. Archer Western.

25 Q. What is Archer Western?

1 A. A contractor.

2 Q. Were you a civil engineer with them?

3 A. I was a project manager with them.

4 Q. How long did you work for Archer Western?

5 A. Fourteen years.

6 Q. Could you give me a description of Reeves
7 Young? What type of company is it? What type of
8 work does it do?

9 A. We are a general contractor with a pretty
10 diverse -- pretty diverse areas of construction. We
11 have three business units. I am the business unit
12 leader for water, waste water. We have a business
13 unit -- a heavy civil business unit and we have a
14 commercial business unit. This Clemson project,
15 truthfully, would be part of the heavy civil business
16 unit. The job started when I first came -- when I
17 first got here, kind of gave me something to do, was
18 to manage this job. And so that's why -- that's my
19 involvement in that job.

20 Q. All right. So you were the project manager
21 at Clemson?

22 A. I started off as the project manager, and I
23 always had executive responsibility for it. We had
24 another guy, Adam Waites, that was the PM, at one
25 point.

1 Q. So you were a project manager for a portion
2 of the Clemson job?

3 A. My title was senior project manager, and
4 that was the case for the extent of the project.

5 Q. Okay. And I understand that project is
6 ongoing?

7 A. Correct.

8 Q. I understand that, as a project manager --
9 well, you tell me. What were your duties as a
10 project manager or senior project manager at Clemson
11 University?

12 A. To make sure that the job had appropriate
13 manpower, to make sure the job stayed on schedule,
14 make sure the job had the right, you know, had all
15 the materials, track the cost, forecast the cost. We
16 did all those things. Everything else was probably
17 secondary to those things.

18 Q. I understand that, during that project,
19 there was a crew at Clemson that was manned by -- or
20 the foreman was Mr. Juan Ochoa. Do you know
21 Mr. Ochoa?

22 A. I do.

23 Q. Did he work under your supervision?

24 A. Yes. Several tiers down, but, yes.

25 Q. Correct. And I don't mean that you were --

1 A. Sure. That's right.

2 Q. -- watching him do his job, but --

3 A. That's right.

4 Q. -- he was part of your project?

5 A. Correct.

6 Q. Okay. And I understand that Mr. Jorge
7 Lopez-Celestin was an operator on that crew; is that
8 your understanding as well?

9 A. Yes.

10 Q. And I understand that he was performing work
11 at Clemson, with regards to the grading and
12 utilities; is that correct?

13 A. Yes.

14 Q. All right. And are you aware that Mr. Jorge
15 Lopez was in a motor vehicle accident on his way
16 home?

17 A. Yes, I am.

18 Q. In January of 2017?

19 A. Yes.

20 Q. And what is your understanding? What do you
21 know about that day? What can you tell me?

22 A. My understanding is that he worked in
23 Clemson that day, and that there was then a car
24 accident on the way home from work that was obviously
25 very serious, and that he has not worked since.

1 Q. Do you know what his current status is as an
2 employee of Reeves Young?

3 A. I believe that he is -- I'm not sure.

4 Q. Has he been separated from the company?

5 A. I believe that he is. I believe that he has
6 been, but I'm not 100 percent certain on that.

7 Q. Is that -- were you a part of that decision
8 making process?

9 A. No.

10 Q. Okay. There was another project that was
11 occurring concurrently with Clemson. Are you
12 familiar with the apartment project --

13 A. Yes.

14 Q. -- over at Earle Street?

15 A. Yes.

16 Q. And did you supervise or did you have any
17 duties with regards to the Earle Street apartment
18 complex?

19 A. I had the same role.

20 Q. I understand that several, if not all of the
21 crew that worked at -- and when I say crew, I'm
22 referring to Mr. Ochoa's crew, okay? I understand
23 that several of the crew, or most of them, if not all
24 of them, lived in Georgia while they were working at
25 the Clemson project; is that your understanding as

1 well?

2 A. Certainly some of them, yes.

3 Q. Were they paid a per diem?

4 A. Yes.

5 Q. And were you a part of the decision making
6 with regards to the per diem?

7 A. I was part of the decision making, yes.

8 Q. And how did y' all arrive at a decision to
9 pay them a per diem?

10 A. That was the first job that we had done that
11 was out of state, and so we thought it was
12 appropriate that they receive a per diem for that.

13 Q. What was the rate of the per diem?

14 A. It was \$175 a week.

15 Q. How was that number arrived at?

16 A. \$35 per weekday.

17 Q. Is there a significance or -- what was the
18 decision making with regards to the \$35 itself?

19 A. I'd say it was fairly arbitrary.

20 Q. What was the purpose of the per diem?

21 A. It was just, quite frankly, they could do
22 whatever they wanted with that per diem. We didn't
23 ask them to do anything with it. We didn't ask them
24 what they did with it. It was just something we gave
25 to the guys that were willing to work out of state.

1 Q. And was the -- was there housing offered to
2 the employees that were working out of state?

3 A. There was.

4 Q. Were they required to stay in the housing?

5 A. Nope.

6 Q. Were they allowed to travel home on a daily
7 basis if they chose to?

8 A. If they chose to.

9 Q. As long as they showed up on time and left
10 on time?

11 A. That's correct.

12 Q. Okay. Now, you said that there were no
13 requirements with the per diem. They were not told
14 how to use the money?

15 A. Correct.

16 Q. And they were not required to provide
17 receipts to the company?

18 A. Correct.

19 Q. And were they paid the per diem as part of
20 their salary or was it separate?

21 A. What do you -- clarify.

22 Q. Was it in their paycheck or was it a
23 separate check?

24 A. No, it was in their check.

25 Q. It was -- your understanding is that they

1 were paid in --

2 A. They received one check a week that had
3 their salary, and it also had the per diem in it.

4 Q. Okay. Do you know if there were any tax
5 withholdings to the per diem?

6 A. I'm not -- I'm not sure.

7 Q. Okay. When the employee -- there's been
8 testimony that Mr. Ochoa's crew left the Clemson
9 project and they went to work at the Atlanta Soccer
10 Complex. Were they paid a per diem when they were in
11 Atlanta?

12 A. I don't believe so.

13 Q. Are the employees generally paid a per diem
14 when they're working in state?

15 A. No.

16 Q. So that decision was solely made based on
17 the fact that they were traveling out of state?

18 A. Correct.

19 Q. All right. Do you have an -- what is your
20 understanding, as to the purpose of the per diem?
21 Specifically, what was the company expecting the
22 employees to do with that money?

23 A. I have no idea what they're going to do with
24 that money.

25 Q. So if they spent it on food, the company had

1 no opinion as to whether they spent it on food?

2 A. They could spend it wherever they wanted to
3 spend it. They could spend it at the strip joint.
4 They can spend it wherever they wanted to spend it.

5 Q. All right. And do you -- you don't have any
6 role in the finances, as far as taxes and issues of
7 that nature, with the company here?

8 A. I don't work in the accounting department,
9 no.

10 MR. VEGA: I have no further questions.

11 MR. GRIGGS: I will -- I will stipulate
12 Mr. McCormack's testimony will be identical to
13 Mr. Reeves on the points of Andrew's questions, but
14 you're free to question him, if you would like to.

15 MR. SMITH: Danny, will you stipulate to
16 that as well?

17 MR. VEGA: Yes.

18 MR. SMITH: Then I have no questions.

19 MR. GRIGGS: All right. I don't have
20 any questions either.

21 (Deposition concluded at 12:29 p.m.)

22

23 Pursuant to Rule 30(e) of the Federal Rules
24 Of Civil Procedure and/or O.C.G.A. 9-11-30(e),
25 Signature of the witness has been waived.

C E R T I F I C A T E

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3 STATE OF GEORGIA:

4 COUNTY OF GWINNETT:

5

6 I hereby certify that the foregoing transcript
7 was reported, as stated in the caption, and the
8 questions and answers thereto were reduced to
9 typewriting under my direction; that the foregoing
10 pages represent a true, complete and correct
11 transcript of the evidence given upon said
12 deposition, and I further certify that I am not of
13 kin or counsel to the parties in the case; am not in
14 the employ of counsel for any of said parties; nor am
15 I in any way interested in the result of said case.

16

17 This 22nd day of April 2018.

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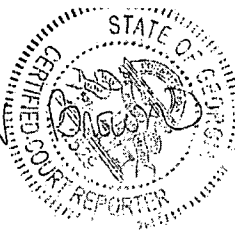
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Heather N.



Heather Brown, RPR
CCR 4756-4284-5258-1376

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BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

JORGE LOPEZ-CELESTIN,

Claimant,

vs.

WCC FILE NO. 1706639

REEVES YOUNG, LLC,

Employer,

AMERISURE INSURANCE COMPANY,

Carrier/Defendants.

~~~~~

DEPOSITION OF  
JUAN OCHOA

March 5, 2018  
10:26 a.m.

45 Peachtree Industrial Boulevard  
Sugar Hill, Georgia

Heather Brown, RPR  
CCR-4759-4284-5258-1376

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|----|---------------------------------------------------|-------------|--------|
| 1  | INDEX OF EXHIBITS                                 |             | Page 3 |
| 2  | Exhibit                                           | Description | Page   |
| 3  |                                                   |             |        |
| 4  | (No exhibits were marked during this deposition.) |             |        |
| 5  |                                                   |             |        |
| 6  |                                                   |             |        |
| 7  | INDEX OF EXAMINATION                              |             |        |
| 8  | Description                                       |             | Page   |
| 9  |                                                   |             |        |
| 10 | Examination By Mr. Vega.....                      |             | 4      |
| 11 | Examination By Mr. Smith.....                     |             | 41     |
| 12 |                                                   |             |        |
| 13 |                                                   |             |        |
| 14 |                                                   |             |        |
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1                                   Deposition of Juan Ochoa  
2                                   March 5, 2018

3                                   MR. VEGA: If you'll swear in the  
4 witness, please.

5                                   JUAN OCHOA,  
6 having first been duly sworn, was examined and  
7 testified as follows:

8                                   EXAMINATION

9 BY MR. VEGA:

10                   Q. Okay. Mr. Ochoa, my name is Danny Vega.  
11 I'm an attorney from Columbia, South Carolina, and  
12 I'm here representing the claimant,  
13 Mr. Lopez-Celestin in a workers' compensation claim  
14 that we have in the state of South Carolina.

15                   A. Uh-huh (affirmative).

16                   Q. In a workers' compensation claim, we take  
17 what's called discovery depositions. Depositions are  
18 a means by which we can interview witnesses, okay?  
19 There are certain rules that we're required to give  
20 you, and I'm going to give you those rules, so if  
21 you'll just bear with me.

22                                   If you do not understand anything I am  
23 saying, please stop me --

24                   A. Okay.

25                   Q. -- and say, I'm sorry, I did not understand.

1 If I mumble, or if I use a word that you don't know,  
2 I'll be more than happy to rephrase any questions,  
3 okay?

4 A. Okay.

5 Q. Rule No. 1 is that you are under oath.  
6 Being under oath means that you are testifying as if  
7 you were in a court of law, and the rules of perjury  
8 apply. No. 2, everything you say will be recorded by  
9 the court reporter. No. 3, I will be asking verbal  
10 questions and ask that you give verbal responses. If  
11 you nod your head, shake your head, say uh-huh,  
12 huh-uh, or something intelligible -- unintelligible,  
13 rather, I will ask you, did you mean to say yes or  
14 no, or I will ask you to clarify your answer. Do you  
15 understand so far?

16 A. Yes.

17 Q. If you do not understand the question,  
18 please ask me to rephrase it. You cannot ask your  
19 attorney for help to assist you with any of the  
20 answers that you give today.

21 You may ask to take a break during the  
22 deposition. If you ask to take a break, we will go  
23 off the record. If you have any discussions with  
24 your attorney while you're -- during the break while  
25 we're off the record, I have a right to ask you

1 questions about what you discussed.

2 A. Okay.

3 Q. Okay. You must answer the questions posed  
4 to you today. Should you refuse to answer the  
5 questions, I will seek an order from the Court  
6 compelling you to answer the questions. Do we  
7 understand so far?

8 A. Yes.

9 Q. Do you have any questions about my  
10 instructions?

11 A. No.

12 Q. All right. Give me your full name, please.

13 A. Juan Ochoa.

14 Q. Is that your full name?

15 A. Juan Ronaldo Ochoa.

16 Q. Is Ronaldo a middle name?

17 A. Middle name, yes.

18 Q. Do you have another last name, other than  
19 Ochoa?

20 A. No.

21 Q. Is that your father's name or your mother's  
22 name?

23 A. Mother's.

24 Q. Do you carry your father's name?

25 A. No.

1 Q. All right. And what is your date of birth?

2 A. 10/10/1991.

3 Q. How old are you today?

4 A. '81.

5 Q. 1981?

6 A. 1981.

7 Q. All right. Thank you for clarifying. So  
8 October 10, 1981?

9 A. Yes.

10 Q. And that makes you how old today?

11 A. Thirty-five.

12 Q. Okay. What is your social security number?

13 A. It's XXX-XX-XXXX.

14 Q. That is a valid, federally issued social  
15 security number?

16 A. Yes.

17 Q. Do you have a Georgia driver's license?

18 A. Yes.

19 Q. Is it active?

20 A. Yes.

21 Q. Has it been suspended or revoked?

22 A. No.

23 Q. Do you know the number?

24 A. Not off of my head.

25 Q. Do you have it with you, that you could give

1 me the number, please?

2 A. It's 052314606.

3 Q. Thank you.

4 MR. VEGA: And please redact his social  
5 security number.

6 Q. (By Mr. Vega) Are you married, single, or  
7 divorced?

8 A. Married.

9 Q. And do you have children?

10 A. Yes.

11 Q. How many?

12 A. Two.

13 Q. Are they at home?

14 A. Yes.

15 Q. What -- what's your address, please?

16 A. 2486 Canary Court in Gainesville, Georgia.

17 Q. And how long have you been in Georgia?

18 A. Fourteen, fifteen years.

19 Q. Have you lived in any other states?

20 A. No.

21 Q. Have you lived in South Carolina or North  
22 Carolina?

23 A. No. I just worked there.

24 Q. You have work in South Carolina?

25 A. South Carolina.

1 Q. Okay. All right. How far did you go in  
2 school?

3 A. Just started high school.

4 Q. Did you finish?

5 A. No.

6 Q. Was that here in the U.S.?

7 A. No.

8 Q. Have you been arrested, convicted, or pled  
9 guilty to a crime?

10 A. No.

11 Q. How long have you worked -- do you currently  
12 work with Reeves Young?

13 A. Yes.

14 Q. How long have you worked with them?

15 A. Ever since 2011. So a little over seven  
16 years.

17 Q. And what is your position with them?

18 A. Field supervisor.

19 Q. How long have you been a field supervisor?

20 A. A couple years before I started with Reeves.  
21 So with Reeves, I've always been a field supervisor.

22 Q. Okay. All right. And tell me -- describe  
23 to me Reeves Young. What do you understand the  
24 company is? How would you describe it?

25 A. I would describe it like, as a great

1 company. You know, they treat you more like a part  
2 of a family instead of just a number.

3 Q. Okay. Tell me, what is the purpose of  
4 Reeves Young? What -- what kind of business does  
5 Reeves Young conduct?

6 A. They do commercial and heavy civil.

7 Q. Commercial and heavy civil what?

8 A. Construction.

9 Q. Okay. All phases of construction?

10 A. To my knowledge, yes.

11 Q. Does Reeves Young always do commercial  
12 construction? Ever do housing construction?

13 A. Not that I know.

14 Q. Okay. And when you say commercial and heavy  
15 civil, all phases from foundation through the  
16 finishing of a building?

17 A. Yes.

18 Q. Okay. And how many employees would you say  
19 Reeves Young has?

20 A. I have no clue. I'm not -- not sure.

21 Q. Okay. How many -- when you say you're a  
22 field supervisor, tell me your chain of command. How  
23 many people are above you? How many people are below  
24 you?

25 A. I'm in a foreman position, so we'll have

1 superintendents, senior superintendents, and project  
2 managers.

3 Q. So does it start with the project manager,  
4 then the senior superintendent, then the  
5 superintendent?

6 A. Then foreman. And you've got crew leaders  
7 too.

8 Q. Okay.

9 MR. GRIGGS: For clarification, is he  
10 saying crew leader was below foreman? Can you  
11 clarify that?

12 Q. (By Mr. Vega) All right. You have the  
13 project manager, then you have senior superintendent,  
14 then superintendent, correct?

15 A. Uh-huh. (affirmative).

16 Q. Is that a yes?

17 A. That is yes.

18 Q. All right. So then below superintendent?

19 A. You have foreman.

20 Q. Foreman, okay. And then below the foreman?

21 A. Crew leader.

22 Q. Crew leader, okay. Then below the crew  
23 leader?

24 A. Just operators and laborers.

25 Q. Okay. So when you say you're a field



1 supervisor, is that -- where do you fall in that?

2 A. Foreman.

3 Q. Okay. So foreman and field supervisor are  
4 the same thing?

5 A. Pretty much.

6 Q. Yes or no?

7 A. Yes.

8 Q. Okay. And how -- how large are the crews  
9 usually when you're working with them?

10 A. It depends from job site. It could be four  
11 crew -- four guys, four-man crew, to fifteen.

12 Q. Okay.

13 A. It depends on the job site.

14 Q. All right. As a foreman or a field  
15 supervisor, what aspect of the construction do you  
16 supervise?

17 A. Grading.

18 Q. Has it always been grading?

19 A. Yes.

20 Q. Is that a specialty, of kinds, for you?

21 A. Kind of.

22 Q. Is that what you've done?

23 A. Yeah. That's what I've done most of the  
24 time.

25 Q. Okay. Did you do grading prior to coming to

1 Reeves Young?

2 A. Yes.

3 Q. And then you were hired to come here to do  
4 grading?

5 A. To do grading.

6 Q. Okay. What company were you with before?

7 A. It was BNA Grading, which they don't exist  
8 anymore.

9 Q. B and A or B-N-A?

10 A. B-N-A.

11 Q. Okay. How long were you with BNA Grading?

12 A. Three or four years, something like that.

13 Q. Before that, did you do grading as well?

14 A. No.

15 Q. Okay. Did you do some other kind of  
16 construction?

17 A. Just any kind of construction.

18 Q. Did you do like housing or commercial?

19 A. Whatever. At that time, it was just kind of  
20 whatever.

21 Q. Okay. Were you working for different  
22 employers for short periods of time?

23 A. Yes.

24 Q. All right. So BNA Grading for three years,  
25 and then Reeves Young for seven years. So you have

1 about ten years of experience in grading?

2 A. Yes.

3 Q. All right. Do you know how to operate the  
4 heavy equipment?

5 A. Yes. I can operate.

6 Q. And you get in it and you can operate it  
7 yourself?

8 A. Yes.

9 Q. Do all the grading, backhoes, levelers, all  
10 that?

11 A. Bulldozers, whatever.

12 Q. Okay. All right. Do you know a company  
13 named Holder Construction?

14 A. Yes.

15 Q. What is Holder Construction?

16 A. It's a general contractor.

17 Q. And where are they at -- out of?

18 A. I'm not sure. They're all over the U.S.

19 Q. Okay. Do you know any officers or people  
20 that work for Holder Construction?

21 A. Yes.

22 Q. Who do you know from Holder Construction?

23 A. A few superintendents. Or a couple. The --  
24 right now, we're working on a Holder Construction,  
25 Dan Simpson.

1 Q. Dan Simpson?

2 A. Yes.

3 Q. All right. Did you perform work at Clemson  
4 University on a project over there as a -- what did  
5 you call yourself?

6 A. A foreman.

7 Q. -- as a foreman?

8 A. Yes.

9 Q. And there was a Clemson University project,  
10 there was also an apartment complex; is that correct?

11 A. I don't know. I've only worked on the  
12 University thing in Clemson.

13 Q. Okay. What was the name of that project?

14 A. Dot Hills, something. I'm not sure about  
15 the whole name.

16 Q. Dot Hills?

17 A. Yeah, something like that.

18 Q. D-O-T, Hills?

19 MR. GRIGGS: If I may, for the record, I  
20 think that all parties stipulated it's called Douthit  
21 Hills, and it's spelled, D-O-U-T-H-I-T, I believe.  
22 That's the dormitory project, I think. Andrew and  
23 myself will both stipulate that's the name of the  
24 project, Douthit Hills.

25 MR. VEGA: At Clemson University?

1 MR. GRIGGS: Yes. Is that correct,  
2 Andrew?

3 MR. SMITH: Yes.

4 MR. GRIGGS: Okay. That's the dormitory  
5 project at Clemson University.

6 Q. (By Mr. Vega) All right. And so you worked  
7 as a superintendent at Douthit Hills --

8 A. As a foreman.

9 Q. As a foreman at Douthit Hills Dormitory?

10 A. Yes.

11 Q. All right. Are you aware that there was  
12 another project near the Douthit Hills project?

13 A. No.

14 Q. You're not aware they had an apartment  
15 complex nearby?

16 A. No.

17 Q. Okay. You never performed -- let me ask  
18 you: How long did you work at Douthit Hills?

19 A. Nine months, something like that.

20 Q. All right. Okay. So when you were at  
21 Douthit Hills as a foreman, did you have a particular  
22 crew there?

23 A. Yes.

24 Q. And how many members did you have on your  
25 crew?

1 A. Six, seven, something like that.

2 Q. All right. Tell me the names of the crew  
3 members that you recall that worked with you at  
4 Douthit Hills.

5 A. It was Mario Romero.

6 MR. GRIGGS: What's Mario's last name?

7 THE WITNESS: Romero.

8 MR. GRIGGS: Mario Romero?

9 THE WITNESS: Yeah.

10 A. Julio Abrego.

11 MR. GRIGGS: I'm sorry? I didn't catch  
12 that last name.

13 MR. VEGA: Abrego, A-B-R-E-G-O.

14 A. Yeah. That's correct.

15 Q. (By Mr. Vega) Okay. Who else?

16 A. Isidro Silva.

17 Q. C-I-D-R-O?

18 A. No. E -- Isidro, spells with I.

19 Q. Okay.

20 A. Isidro.

21 Q. I-S-I-D-R-O?

22 A. Yes. Silva.

23 Q. S-I-L-V-A?

24 A. Yes.

25 Q. All right. Who's next?

1 A. Luz Lopes.

2 Q. L-U-Z, L-O-P-E-S?

3 A. Yes.

4 Q. Okay.

5 A. And Jorge Lopez.

6 Q. Anyone else that you recall?

7 A. Let me think. There was another guy. I  
8 can't remember his name.

9 Q. There was another person there?

10 A. Yeah. I can't remember his name. Chris  
11 something.

12 Q. Anglo guy?

13 A. Yes.

14 Q. Chris worked for you or your -- was he --

15 A. Well, he was in the -- hired to work on that  
16 job.

17 Q. You supervised Chris?

18 A. Most of the times.

19 Q. Okay. All right. And so, if you remember  
20 his last name, just let us know, okay?

21 A. Okay.

22 Q. All right. When did you start -- you said  
23 you were there for about nine months. Do you recall  
24 what month you started?

25 A. It was -- I think it was end of May or first

1 of June.

2 Q. Of what year?

3 A. 2015. Until, I think it was March or April  
4 of '16.

5 Q. When you left that project, where did you go  
6 work next?

7 A. To Atlanta area, in Marietta.

8 Q. And what did you go do in Atlanta? What  
9 project were you working on in Atlanta?

10 A. It was the MLS Soccer Complex.

11 Q. Did you take the same crew with you?

12 A. Yes, other than that Chris guy. I think he  
13 quit at that job in Clemson.

14 Q. Okay. All right. And you went to Atlanta,  
15 and Jorge Lopez went with you?

16 A. He went with me for a week or two, something  
17 like that.

18 Q. Okay. And what happened after two weeks?

19 A. He choose to go back to work in Clemson.

20 Q. Do you know any particular reason he chose  
21 to go back to Clemson?

22 A. He was getting a little extra money for  
23 working on that job.

24 Q. What do you understand by that? What do you  
25 mean he was getting extra money?



1 A. Just extra money for working on that job.

2 That he was on out-of-town job.

3 Q. Okay. So Clemson was out of town? Atlanta  
4 is not out of town?

5 A. No.

6 Q. Okay.

7 A. He was supposed to go back for two weeks,  
8 which I didn't want him to go back because he was a  
9 great worker, you know, good help, and then they  
10 asked me for him to go back for a couple weeks. And  
11 that turned out to about a month and when I asked for  
12 him, he choose not to come back because of the extra  
13 money he was getting on the job.

14 Q. All right. So let's talk about his -- his  
15 work capacity. You said he was a great worker?

16 A. Yeah.

17 Q. And he knew how to operate all the  
18 equipment?

19 A. All excavators.

20 Q. Excavators?

21 A. That was the most thing that he was  
22 operating.

23 Q. Okay. All right. So he had a good work  
24 ethic and he did his job well?

25 A. Yeah.

1 Q. And he got along with everybody on the crew?

2 A. Yeah.

3 Q. Okay. So did you, after that period of  
4 time, did you ever return to Clemson?

5 A. No.

6 Q. And did he ever, meaning Jorge, did he ever  
7 come back to work for your crew?

8 A. No.

9 Q. Okay.

10 A. No. Because when I was calling him to, you  
11 know, like come back, he would never answer my phone  
12 and I - I talked to the superintendent, at that time,  
13 which was Shane Burrell.

14 Q. Uh-huh (affirmative).

15 A. -- and Shane told me that he choose to stay  
16 there. He won't want to come back to work with us,  
17 here in Atlanta.

18 Q. Okay. And so -- just go back. You felt  
19 like he did good work and you guys got along?

20 A. Yep.

21 Q. So his reason for leaving had nothing to do  
22 with like, personality issues?

23 A. No. It was just the little extra money he  
24 was getting.

25 Q. Okay. Shane Burrell is -- who is Shane

1 Burrell?

2 A. He was superintendent on that job.

3 Q. Was he the superintendent on that job when  
4 you were working at Clemson?

5 A. Yeah.

6 Q. So as far as you know, he was the  
7 superintendent during the whole project?

8 A. The whole project.

9 Q. Okay. Okay. So Jorge never came back to  
10 work on your crew. What was the next thing that you  
11 heard about Jorge after that?

12 A. After that, I didn't hear nothing until the  
13 accident happened.

14 Q. Okay. And what do you understand about the  
15 accident?

16 A. I really don't know. As far as the  
17 accident, I just heard from his brother.

18 Q. Sure.

19 A. Because his brother was working -- was  
20 still was working with me. He told me about it, that  
21 he was going to miss that one day because his brother  
22 had an accident the night before and he had to go to  
23 the hospital.

24 Q. Who's Jorge's brother?

25 A. Luz Lopes.

1 Q. Okay. So Luz stayed on your crew even when  
2 Jorge went back?

3 A. Yeah. Jorge choose to go back.

4 Q. Okay. And that's how you learned about the  
5 accident?

6 A. Yes.

7 Q. Did you ever see Jorge after that?

8 A. After the accident?

9 Q. Yes.

10 A. I went to visit him to the hospital one day.

11 Q. Okay. And you saw him in the hospital?

12 A. Yes.

13 Q. When you were performing your duties at  
14 Clemson Road, were you -- you were working directly  
15 for Reeves Young?

16 A. Yes.

17 Q. And were you ever paid for -- paid by  
18 another company at the same time?

19 A. No.

20 Q. When they had these superintendents on the  
21 job, were they always Reeves Young superintendents?

22 A. Well, our superintendents was, but of  
23 course, Holder had their own superintendents. You  
24 know, the general contractor, they got their own  
25 field supervisors and superintendents.

1 Q. Let me ask you this: When you were at  
2 Clemson Road, was the project manager an employee of  
3 Reeves Young?

4 A. Yes.

5 Q. Was the senior superintendent an employee of  
6 Reeves Young?

7 A. Sometimes. He wasn't there full time.

8 Q. Okay. Did you have somebody from another  
9 company come in and do senior superintendent?

10 A. No.

11 Q. Okay. Or superintendent? In other words,  
12 everybody that you answered to was an employee of  
13 Reeves Young?

14 A. Reeves Young, yes.

15 Q. Okay. So you never worked directly for  
16 Holder Company?

17 A. No.

18 Q. Okay. And you just know them as the general  
19 contractor?

20 A. Holder?

21 Q. Yes.

22 A. Yes.

23 Q. Do you know any details about their  
24 relationship or their contracts or anything like  
25 that?

1 A. No.

2 Q. All right. Okay. Let me ask you this:

3 When you were at Clemson, at that project, were you  
4 staying in Clemson?

5 A. No. I was driving back and forth.

6 Q. You were driving from Gainesville to  
7 Clemson?

8 A. Yes.

9 Q. Was there an apartment provided to you?

10 A. It was offered.

11 Q. Do you know if anybody on your crew stayed  
12 in an apartment?

13 A. No. Everybody choose to drive back and  
14 forth.

15 Q. All right. When you were at Clemson, were  
16 you paid extra money?

17 A. I was, yeah.

18 Q. And what was the extra money you were paid?

19 A. It was \$175 a week.

20 Q. What did that represent?

21 A. Just extra money for working on -- on that  
22 job site.

23 Q. Were you given an explanation as to why?

24 What was --

25 A. It was what they called, per diem.

1 Q. Okay. And do you know -- were you working  
2 five days a week? Six days a week? Seven days a  
3 week?

4 A. Five days a week.

5 Q. Did you always have Saturdays and Sundays  
6 off?

7 A. Most of the times. If you get rained out  
8 during the week, then you had to work Saturdays.

9 Q. You made it up?

10 A. Made it up.

11 Q. Okay. Were you always paid 175?

12 A. Yes.

13 Q. What did you understand that that meant per  
14 day?

15 A. It's -- have to divide it.

16 Q. Okay. All right. You just -- did you ever  
17 do the math or anything or think about how much you  
18 were getting each day?

19 A. No.

20 Q. Okay. And were you told by the company how  
21 to spend that money?

22 A. No.

23 Q. Were you told -- did you have to give the  
24 company any receipts in return for that money?

25 A. No.

1 Q. Did you -- did the company withhold taxes on  
2 that money?

3 A. I don't know.

4 Q. Were you paid a paycheck for your hourly  
5 labor?

6 A. Yes.

7 Q. Were you an hourly employee?

8 A. No. Salary.

9 Q. You were salaried?

10 A. (Nods head up and down.)

11 Q. Okay. And so when you say you were  
12 salaried, each week you got the same amount,  
13 regardless of how many days or hours you put in?

14 A. Yes.

15 Q. Okay. And when you were receiving your  
16 salary check, was that separate than your per diem  
17 check?

18 A. Yes.

19 Q. Okay. And so was your salary check being  
20 paid to you directly deposited?

21 A. Direct deposit, yeah.

22 Q. Okay. So you received a deposit for your  
23 check. Was it on a monthly, weekly, or biweekly --

24 A. For my paycheck?

25 Q. Yes.



1 A. Just weekly.

2 Q. And then the per diem check, was that a  
3 separate deposit into your account?

4 A. Yes.

5 Q. And was that paid on a weekly basis?

6 A. Weekly.

7 Q. Okay. And when you went to Atlanta, were  
8 they still paying you the per diem?

9 A. No.

10 Q. And it's your testimony today that the nine  
11 months that you worked at Clemson, you drove back and  
12 forth to Gainesville?

13 A. Yes.

14 Q. And everybody else on the crew was driving  
15 back and forth?

16 A. Yes.

17 Q. Do you know anybody who was staying in  
18 Clemson?

19 A. I'm not sure. It was some other crews  
20 working on that. Like Shane Burrell had some other  
21 people working on that job site too. And I'm not  
22 sure if they were staying or not.

23 Q. Okay. I'm not asking you to guess. When I  
24 say, did you know, I mean --

25 A. I don't know --

1 Q. Okay.

2 A. -- if they stayed or not.

3 Q. Do you know if any of your superintendents,  
4 senior superintendents, any of those people, do you  
5 know if any of them that you knew, that you worked  
6 with, were they staying at Clemson?

7 A. I don't know.

8 Q. Okay. Have you worked at other projects  
9 outside of Georgia for Reeves Young?

10 A. No. That was the only one.

11 Q. Clemson Road was the only one?

12 A. (Nods head up and down.)

13 Q. Okay. When you are working in Georgia, have  
14 you gone anywhere -- what's the farthest location  
15 you've worked in Georgia?

16 A. South of Atlanta. Marietta.

17 Q. Okay. Was that considered in town?

18 A. Yeah. Anything around Atlanta is considered  
19 in town.

20 Q. Okay.

21 A. Or anything in Georgia.

22 Q. Okay. All right. When you went to Clemson,  
23 were you driving a personal vehicle?

24 A. Company vehicle.

25 Q. The -- were you provided a truck by the

1 company?

2 A. Yes.

3 Q. And you've had one as long as you've been a  
4 foreman?

5 A. Yes.

6 Q. All right. Do you carry equipment in your  
7 truck?

8 A. Just basic tools.

9 Q. Okay. Do you carry any of the crew members  
10 with you?

11 A. Yes.

12 Q. All the time?

13 A. Not all the time. Just depends on the job  
14 site.

15 Q. Are we talking about a two-man truck with a  
16 bed?

17 A. No. It's a crew.

18 Q. It's a crew truck?

19 A. A crew cab truck.

20 Q. Okay. So you can carry five people in it?

21 A. No. Four.

22 Q. Four people, okay. And do you have a gas  
23 card?

24 A. Yes.

25 Q. Do you have -- does the company maintain

1 your truck?

2 A. Yes.

3 Q. Okay. And so if you fill up the gas tank,  
4 do you use the company card?

5 A. Yes.

6 Q. All right. And you can carry basic  
7 equipment in there?

8 A. No. No equipment. Well, a chainsaw or  
9 something like that, yes. No bigger equipment.

10 Q. All right. No shovels or anything like  
11 that?

12 A. No. We keep them on the job site.

13 Q. Keep all the tools at the job site? Do you  
14 have a trailer you keep them in?

15 A. Conex.

16 MR. GRIGGS: What was that answer?

17 THE WITNESS: A Conex. You know, one of  
18 those containers.

19 Q. (By Mr. Vega) Okay. Is that, C-O-N-E-X,  
20 Conex?

21 A. Yes, N-N-E-X.

22 Q. Okay. All right. And even though you were  
23 provided a company vehicle and you had a gas card,  
24 you were still paid the per diem?

25 A. Yes.

1 Q. And you were offered an apartment, but you  
2 turned it down?

3 A. I turned it down because I got my family.  
4 I'd rather be at home every day.

5 Q. Wife and kids?

6 A. Yes.

7 Q. Important to you?

8 A. Oh, yeah. They mean everything.

9 Q. Yeah. So some days, you might take somebody  
10 from the crew with you, but not every day?

11 A. Yes. Not every day. Some days, depending  
12 on the job and depending on where they lived. I'm  
13 not going to go pick up somebody on the other side of  
14 the town who working on this side of town.

15 Q. I gotcha.

16 A. If they're in the way where I'm driving  
17 every day, then I'll give them a ride.

18 Q. Right.

19 A. That's not every day or every time.

20 Q. Okay. But specifically with the Clemson  
21 Road project, did you carry people sometimes?

22 A. Yes, I have.

23 Q. Did you carry them every day at Clemson  
24 Road, or just sometimes?

25 A. Sometimes.

1 Q. Okay. To the best of your knowledge, the  
2 other crew members either drove their vehicles or --

3 A. Their own vehicles.

4 Q. All right. Did anybody on your crew below  
5 your crew -- below you, rather, did any of them have  
6 company vehicles?

7 A. No.

8 Q. Any of them have gas cards or anything like  
9 that?

10 A. No.

11 Q. Okay. So when you got to -- about what time  
12 did you usually get to the job site in the morning?

13 A. Fifteen till 7:00 a.m. every morning.

14 Q. Okay. About 7:15?

15 A. No. Fifteen till 7:00.

16 Q. Okay. 6:45?

17 A. 6:45, 6:50.

18 Q. Did y' all have safety meetings?

19 A. Yes. Every day.

20 Q. Did you run those safety meetings?

21 A. No. They were run by Holder -- Holder.

22 Q. Oh, Holder had the safety meetings?

23 A. Yeah. We had to attend their safety  
24 meetings.

25 Q. Who put together their safety meetings?

1 A. Holder people.

2 Q. Different people?

3 A. They always have a safety person onsite, and  
4 he directs anything that has to do with safety.

5 Q. Did you know who that person was?

6 A. What was his name? I can't remember his  
7 name. No, I can't remember his name.

8 Q. That's fine. It wasn't Shane Burrell?

9 A. No.

10 Q. Okay. He was -- Shane Burrell was your  
11 superintendent?

12 A. Yeah. He's a Reeves employee. Used to be.

13 Q. Okay. Did Reeves have their own safety  
14 meetings?

15 A. Yes.

16 Q. Did you have two in a day or you just --

17 A. Do a toolbox talk weekly. Either -- it  
18 don't matter, just as long as you do it weekly.

19 Q. Okay. Were you ever directly told that you  
20 had to stay in Clemson in order to work there?

21 A. No.

22 Q. And so the company allowed you to drive back  
23 and forth?

24 A. Yes.

25 Q. And how long did it take you to drive from

1   Gainesville to --

2           A.   About -- without traffic, about an hour and  
3   forty minutes.

4           Q.   Did you ever figure out how many miles you  
5   were driving?

6           A.   No.

7           Q.   Did you ever keep track of the gas? Did you  
8   have to give the receipts to the company or anything  
9   like that?

10          A.   No.

11          Q.   Did you ever get the bill for the credit  
12   card or did --

13          A.   No. It was on the company.

14          Q.   Did you use that credit card for anything  
15   other than gas?

16          A.   No. Can't use it for anything other than  
17   gas.

18          Q.   Okay. Couldn't buy lunch on it?

19          A.   No.

20          Q.   Or anything like that?

21          A.   It was just for gas.

22          Q.   Okay. So when you say an hour and forty  
23   minutes, you mean one way?

24          A.   Yes. One way.

25          Q.   So you would drive an hour and forty minutes



1 in the morning to work and then an hour and forty  
2 minutes on the way back?

3 A. Yes.

4 Q. And which road did you take to get to  
5 Clemson?

6 A. It was 129 from Gainesville to 85. I can't  
7 remember the other road that cuts from 85 to Clemson.

8 MR. GRIGGS: 129 from Gainesville?

9 A. Yeah. 129 from Gainesville to 85, which is  
10 Pendergrass, and 85 North till the exit, I think it's  
11 Exit 19.

12 Q. (By Mr. Vega) Exit 19?

13 A. Yes.

14 Q. Is that what you used to take?

15 A. Yep.

16 Q. Did you used to take 187?

17 A. That is 187.

18 Q. Did you get on 187 to go to Clemson?

19 A. To go to Clemson.

20 Q. Is that a yes?

21 A. Yes.

22 Q. Okay. Did you feel that that was kind of a  
23 direct route to Clemson?

24 A. It was kind of the quickest route for me.

25 Q. From 85 to 187 to Clemson?

1 A. To Clemson.

2 Q. That was the quickest route for you?

3 A. Yes.

4 Q. Did anybody on your crew live in South  
5 Carolina?

6 A. No.

7 Q. To the best of your knowledge, they all  
8 lived here in this area of Gainesville?

9 A. Gainesville or in the Atlanta area.

10 Q. Did you choose to go to Atlanta to work at  
11 the MLS Soccer Complex or did they send you down  
12 there?

13 A. It was just my next project.

14 Q. That was your next project?

15 A. Yeah.

16 Q. Had you finished doing your project at  
17 Clemson when you left to go to Atlanta?

18 A. The grading part --

19 Q. Okay.

20 A. -- which is what I do.

21 Q. Do you know why Jorge was called back to  
22 Clemson?

23 A. They were short-handed and he wanted to go  
24 back.

25 Q. Okay. And they still needed excavators?

1 A. Yes.

2 Q. And you told me that that's what he did  
3 best, was excavation?

4 A. Excavating, yeah.

5 Q. But they didn't need grading anymore, to the  
6 best of your knowledge?

7 A. Not mass grading, which is what I do. Mass  
8 grading's time to put everything on level and then  
9 you still got pipe, you know, utilities --  
10 underground utilities that you gotta put in. But  
11 what I do is mass grading.

12 Q. Okay. But once you went to Atlanta, you  
13 never went back to Clemson?

14 A. No.

15 Q. Okay. You just -- who -- did you tell me  
16 who called him back to go to Clemson?

17 A. It was Shane Burrell.

18 Q. Shane Burrell?

19 A. (Nods head up and down.)

20 Q. And then, Shane Burrell's the one that told  
21 you that Jorge wanted to stay in Clemson?

22 A. Yes.

23 Q. And Shane told you he wanted the extra  
24 money?

25 A. No. He wanted to stay there because he was

1 getting a little extra money.

2 Q. And that's something Shane told you or Jorge  
3 told you?

4 A. Shane. Because Jorge would never answer my  
5 phone because he knew I was wanting him to come back.  
6 And he was -- just never answered phone calls. So I  
7 called Shane and asked him, hey, I need Jorge back  
8 here. He said, I'm sorry, he don't want to go back.

9 Q. Okay.

10 A. That was his choice.

11 Q. Okay. Where are you currently working?

12 A. Atlanta area, in Dunwoody.

13 Q. Spell that for me.

14 A. D-O-U-N-W-O-O-D-Y.

15 Q. Okay.

16 MR. GRIGGS: For the record, I'll state  
17 that Dunwoody is spelled, D-U-N-W-O-O-D-Y.

18 Q. (By Mr. Vega) Okay. That's fine. And what  
19 kind of project are you working on now?

20 A. It's -- we're building a second phase of  
21 State Farm.

22 Q. It's a commercial project?

23 A. Yes.

24 Q. And you're doing grading?

25 A. Grading, footing, excavations, and all that.

1 Q. And the last time you saw Jorge was when he  
2 was in the hospital?

3 A. Yes.

4 Q. And have you talked to him by phone any?

5 A. No. After that, I went to his house to just  
6 visit him.

7 Q. You saw him one time at his house?

8 A. Yes.

9 Q. Was that soon after the hospital?

10 A. It was probably -- it was four, maybe five  
11 weeks after. After the hospital.

12 Q. And Luz, does he still work on your crew?

13 A. Yes.

14 Q. Okay. Mario still on your crew?

15 A. Yes.

16 Q. Julio still on your crew?

17 A. No.

18 Q. Where's Julio?

19 A. He's on a different crew.

20 Q. Still working for Reeves?

21 A. Still working for Reeves.

22 Q. Isidro?

23 A. On the same crew as Julio.

24 Q. Okay. Still working for Reeves?

25 A. Yes.

1 Q. And Luz is still working for Reeves?

2 A. Yes.

3 Q. And Chris, you don't remember his name?

4 A. No, I don't.

5 Q. But he --

6 A. I don't -- I don't think he's working for  
7 Reeves anymore.

8 Q. Okay. All right. Thank you, sir. Those  
9 are all the questions I have.

10 MR. SMITH: I just have a couple  
11 question for you.

12 EXAMINATION

13 BY MR. SMITH:

14 Q. During the nine months that you worked at  
15 the Clemson project, you said you were doing Holder  
16 exercises and things of that nature; is that correct?

17 A. What they call stretch and flex and all  
18 that. Is that what you mean?

19 Q. Yeah. Did they do that on a daily basis?

20 A. Yeah. That's a daily basis on the safety  
21 meeting, every day.

22 Q. Okay. You also said Reeves Young had theirs  
23 as well?

24 A. Toolbox talk.

25 Q. What is the difference between toolbox

1 talk --

2 A. Toolbox talk.

3 Q. -- and the safety meetings? Yeah.

4 MR. GRIGGS: Toolbox. Toolbox.

5 A. Toolbox. You just talk about, you know, any  
6 hazards or anything --

7 Q. Any what?

8 A. Hazards or anything you can face on the job  
9 site. Like any danger zones or anything like that.

10 MR. GRIGGS: Hazards.

11 Q. (By Mr. Smith) Would that follow the Holder  
12 meeting?

13 A. The what?

14 Q. Would that be after the Holder exercise?

15 A. Yeah, yeah.

16 Q. When you did the Holder exercise on the  
17 daily basis, would you do a sign-in sheet?

18 A. Yes.

19 Q. And you would sign that Holder sheet,  
20 correct?

21 A. Yes.

22 Q. And you never worked for Holder or received  
23 any money from Holder, correct?

24 A. No.

25 Q. And you never -- okay. Do you know,

1 specifically, exactly what job site Mr. Lopez was  
2 working at when he left and was involved in the motor  
3 vehicle accident on January 5, 2017?

4 A. No.

5 Q. Do you know of anybody who has any specific  
6 knowledge of where Mr. Lopez had left the job site on  
7 January 5, 2015 [sic]?

8 A. No.

9 Q. That's all the questions I have.

10 MR. GRIGGS: I do not have any  
11 questions. Any redirect? Re-questioning?

12 MR. VEGA: Are y' all going to limit me  
13 to what he asked?

14 MR. GRIGGS: Yeah. I think --

15 MR. SMITH: I think that's normal.

16 MR. VEGA: I have no further questions.

17 (Deposition concluded at 11:10 a.m.)

18

19 Pursuant to Rule 30(e) of the Federal Rules  
20 Of Civil Procedure and/or O.C.G.A. 9-11-30(e),  
21 Signature of the witness has been waived.

22

23

24

25



C E R T I F I C A T E

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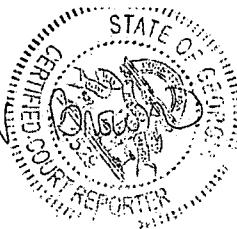
STATE OF GEORGIA:

COUNTY OF GWINNETT:

I hereby certify that the foregoing transcript was reported, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages represent a true, complete and correct transcript of the evidence given upon said deposition, and I further certify that I am not of kin or counsel to the parties in the case; am not in the employ of counsel for any of said parties; nor am I in any way interested in the result of said case.

This 23rd day of April 2018.

*Heather J. Brown*



Heather Brown, RPR  
CCR 4756-4284-5258-1376

1                               BEFORE THE SOUTH CAROLINA  
2                               WORKERS' COMPENSATION COMMISSION

3       Jorge Lopez-Celestin,  
4                               Employee,  
5                               Claimant,

6       vs.

WCC FILE NO. 1706639  
DOI: 1/6/2017

7       Reeves Young, LLC,  
8       Holder Construction,

9                               Employer,

10       and

11       Amerisure Insurance Company,  
12       American Zurich Insurance Co.,

13                               Carrier,  
14                               Defendants.

15

16                               DEPOSITION OF

17                               JORGE LOPEZ-CELESTIN

18

19                               January 16, 2018

20                               11:03 a.m.

21

22                               108 Colony Park Drive, Suite 100

23                               Cumming, Georgia 30040

24

25                               Will Robertson, CCR/CVR-M

                              Certified Court Reporter #2594

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24 Also Present:

25 Rosa Burkard, Spanish-English interpreter

|    |                              |                      |        |
|----|------------------------------|----------------------|--------|
| 1  | INDEX TO EXAMINATIONS        |                      | Page 3 |
| 2  |                              |                      |        |
| 3  | WITNESS:                     | JORGE LOPEZ-CELESTIN |        |
| 4  | EXAMINATION                  |                      | Page   |
| 5  | Cross by Mr. Griggs.....     |                      | 5      |
| 6  | Cross by Mr. Smith.....      |                      | 38     |
| 7  | - - -                        |                      |        |
| 8  | INDEX TO EXHIBITS            |                      |        |
| 9  | Exhibits                     | Description          | Page   |
| 10 | No exhibits were identified. |                      |        |
| 11 |                              |                      |        |
| 12 |                              |                      |        |
| 13 |                              |                      |        |
| 14 |                              |                      |        |
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1 DEPOSITION OF JORGE LOPEZ-CELESTIN

2 JANUARY 16, 2018

3

4 (Rosa Burkard was duly sworn as Spanish/English  
5 interpreter.)

6 JORGE LOPEZ-CELESTIN,  
7 having been first duly sworn was examined and  
8 testified as follows:

9 MR. GRIGGS: Mr. Lopez, my name is  
10 Jason Griggs and I represent Reeves Construction  
11 and Amerisure Insurance Company. I'm going to  
12 take your deposition today regarding your  
13 Workers' Compensation claim.

14 We are going to utilize the services  
15 of the interpreter today, so please let her  
16 finish talking before you start. Likewise, give  
17 your answers in Spanish and she will then  
18 interpret them into English.

19 Whatever happens today, just remember  
20 that you cannot speak while someone else is  
21 speaking, and the only reason for that is so  
22 that we can get a clear transcript for our court  
23 reporter, and then for us to use later. If you  
24 have any questions, you can let me know and  
25 we'll try to address them the best that we can.

1                               Finally, I will ask you to give your  
2           answers in ten-to-fifteen word increments for  
3           the ease of translation. Then you can continue.  
4           You can speak as long as you want, but pause  
5           periodically to let the translator interpret.

6                               CROSS-EXAMINATION

7   BY MR. GRIGGS:

8           Q.   Give us your full name please.

9           A.   Jorge Lopez.

10          Q.   And where are you originally from, sir?

11          A.   Mexico.

12          Q.   How long have you resided in the United  
13   States?

14          A.   Since 1985.

15          Q.   Have you lived in any states besides  
16   Georgia?

17          A.   California.

18          Q.   Any other state?

19          A.   No.

20          Q.   How long have you lived in Georgia?

21          A.   Since 1990s.

22          Q.   What is your current home address?

23          A.   That is 2203 Cameo Court, Gainesville,  
24   Georgia. The zip code is 30501.

25          Q.   How long have you lived at 2203 Cameo

1 Court?

2 A. Since 1996 when I bought the house.

3 Q. Who do you live with?

4 A. Right now I'm living with my son and my  
5 brother.

6 Q. What is your son's name?

7 A. Jorge Lopez, Junior.

8 Q. How old is Mr. Lopez, Junior?

9 A. Twenty-three.

10 Q. Does he have a job?

11 A. Right now he's not working because he was  
12 attending school and he's helping me.

13 Q. What is your brother's name?

14 A. J. Luz Lopez.

15 Q. Does the J stand for anything in  
16 particular?

17 A. No. That is the name that was given to  
18 him when he was a child.

19 Q. How old is your brother?

20 A. Fifty-four or fifty-five. I don't  
21 remember well.

22 Q. How long has he lived at that address?

23 A. He's been living there with me for  
24 approximately one and a half years.

25 Q. Does your brother have a job?

1 A. Yes.

2 Q. Where does he work?

3 A. He works at the same company where I used  
4 to work, Reeves Young.

5 Q. So he works for Reeves Young currently?

6 A. Yes.

7 Q. Where is he working right now?

8 A. I don't know where he's working, but I  
9 know that he's working with a supervisor named Juan  
10 Ochoa.

11 Q. Is he working out of town?

12 A. I don't know if they are in Marietta or  
13 where exactly they're working, but in the area of  
14 Atlanta.

15 Q. Is he home every evening?

16 A. Yes.

17 Q. What is your date of birth?

18 A. That is August 27, 1967.

19 Q. How far did you go in school, sir?

20 A. (Speaking.)

21 INTERPRETER: The interpreter would  
22 like to ask for a clarification if that's okay.

23 MR. GRIGGS: Fine with me.

24 INTERPRETER: (Speaking with witness  
25 in Spanish.)



1 A. Almost the end of high school.

2 Q. Okay. Do you speak English?

3 A. Yes, I do. The only thing is that I have  
4 a problem with my pronunciation. That is why I'm  
5 using an interpreter.

6 Q. If you were on a job site and someone  
7 spoke English, you would be able to understand and  
8 work with them?

9 A. Yes. As a matter of fact I can also read  
10 the blueprints and I can do any type of job.

11 Q. Okay. So you could go get a job if you  
12 were physically able where you would have to speak  
13 English and converse with English-speaking  
14 individuals; is that correct?

15 A. Yes.

16 Q. Are you married?

17 A. I am a widower.

18 Q. How many occasions have you been married?  
19 Just one?

20 A. Only once.

21 Q. When did your wife pass away?

22 A. That was September 9, 2015.

23 Q. What was your wife's name?

24 A. Delgadina Sanchez.

25 Q. Do you have any children besides Jorge

1     **Lopez, Junior?**

2           A.     No, that is the only child I had with my  
3     wife.  However, I also have the children of my wife,  
4     who call me dad.  And their names are Alejandro and  
5     Ketzia.

6           Q.     Can you spell the second name for us?

7           A.     K-e-t-z-i-a.

8           Q.     Okay.  Where do Alejandro and Ketzia live?

9           A.     I don't know the exact address, but they  
10    live close to where I live and they have their own  
11    home.

12          Q.     Okay.  What's their last names?

13          A.     Sanchez.

14          Q.     Prior to this claim that we're here for  
15    today, have you ever had a Workers' Compensation  
16    claim in the past?

17          A.     Yes, I had one approximately between 30  
18    and 52 years ago.

19          Q.     In what state?

20          A.     In California.

21          Q.     What body part did you injure?

22          A.     Here a leg bone broke.

23          Q.     Okay.  What leg bone or hip are you  
24    pointing to?

25          A.     The left one.

1 Q. So your left hip or left upper leg?

2 A. Well, it is the part of the leg where the  
3 hip is.

4 Q. Okay. Did you have any lingering  
5 problems?

6 A. No. As a matter of fact there was a  
7 clause that said that if I had any problem I could  
8 go back to the doctor. But I never went back to the  
9 doctor and I've had a normal life.

10 Q. Did you miss any work as a result of the  
11 accident?

12 A. Yes.

13 Q. How much?

14 A. I don't remember how much, but that was  
15 around eight months.

16 Q. Did you receive a settlement?

17 A. Yes.

18 Q. How much?

19 A. I don't remember exactly how much it was,  
20 but at that time I decided since I could not move I  
21 decided to get more time with that money.

22 Q. Have you ever been arrested in the State  
23 of Georgia or in the State of South Carolina?

24 A. Here in Georgia no, and also in South  
25 Carolina, no.

1 Q. Do you have a permanent resident card? Or  
2 what is your immigration status?

3 A. I am a permanent resident.

4 Q. Now, I know you gave your deposition  
5 prior, when you were proceeding under a Georgia  
6 claim.

7 Other than that, have you been deposed in the  
8 past?

9 A. No.

10 Q. Have you ever been a party to a lawsuit?

11 A. Here in Georgia, no.

12 Q. Anywhere else besides your prior Workers'  
13 Comp claim, have you ever been a party to a lawsuit?

14 A. Well, that was 30-and-something years ago  
15 when the accident happened.

16 Q. Have you ever received any type of  
17 insurance settlements other than your prior Workers'  
18 Comp claim?

19 A. No.

20 Q. Now, you're currently out of work;  
21 correct?

22 A. No, I'm not working.

23 Q. Have you worked at all since your accident  
24 on January 5, 2017?

25 A. No. I cannot work.

1 Q. How are you supporting yourself right now?

2 Do you have any income?

3 A. With the help of my brother. Also I have  
4 a savings account which I'm using, and support from  
5 my family.

6 Q. Are you eligible for Social Security  
7 disability benefit?

8 A. Well, I don't know, because before I hired  
9 the services of a lawyer, I applied. However, it  
10 was denied because they said that a year has to go  
11 by before I can have any benefits.

12 Q. But you're not receiving any type of  
13 disability benefits at this point; is that correct?

14 A. No, not at all.

15 Q. Is Reeves Young the last employer that you  
16 worked for?

17 A. Yes.

18 Q. When did you go to work for them? When  
19 were you hired?

20 A. That was 2013.

21 Q. Do you know the exact date?

22 A. I don't remember the exact date but it was  
23 sometime in between April and May.

24 Q. And you worked with them up until January  
25 5th of -- up until your separation you worked with

1     **them exclusively?**

2           A.     Yes.

3                   MR. VEGA: I think the date -- check  
4     the date, please.

5                   INTERPRETER: (Speaking with the  
6     witness in Spanish.)

7                   INTERPRETER: I'm sorry, you're  
8     right. It's January 5, 2017.

9                   MR. GRIGGS: Well, let's scratch that  
10    and I'll ask the question again.

11   BY MR. GRIGGS:

12       **Q.     Are you still employed by Reeves Young?**

13       A.     No. But they sent me some letters which I  
14    did not answer, asking about my health. Then I was  
15    fired on December 11th when I was separated.

16       **Q.     Did you work for anyone else from 2013**  
17    **until your accident?**

18       A.     No. Only with the company of Reeves  
19    Young.

20       **Q.     Okay. What was your job with Reeves**  
21    **Young?**

22       A.     My work was operator of heavy machinery.

23       **Q.     What type of machine are we talking about?**

24       A.     Well, all types of equipment in the  
25    company like trucks, bulldozer, Bobcat.

1           **Q.     Anything else?**

2           A.     I have a license that allows me to operate  
3     all type of machinery, heavy machinery and non-heavy  
4     machinery.

5           **Q.     On how many different job sites did you**  
6     **work while employed by Reeves Young?**

7           A.     Well, I worked in Decatur. That was at a  
8     police station and a school that were together.

9           **Q.     Okay. Where else?**

10          A.     Then they moved me to the new Falcons  
11     Stadium, the Mercedes-Benz Stadium.

12          **Q.     Okay. Where else?**

13          A.     And then they moved me to the University  
14     of Clemson in South Carolina.

15          **Q.     Okay. How many different job sites in**  
16     **Clemson did you work on?**

17          A.     I worked at the university but they also  
18     sent me to work at some apartments. But I don't  
19     know the address of those apartments because when  
20     the supervisor comes, he says well, you go there or  
21     you go there, and that is what I have.

22          **Q.     While you were in Clemson did you work on**  
23     **two different job sites?**

24          A.     Well, actually I cannot answer that  
25     question because I don't know if it was the same

1 contractor a different contract. I don't know.  
2 They just tell us where to go and we don't have the  
3 information other than that.

4 Q. Gotcha. And you tell me if I'm wrong; you  
5 worked on campus helping out with some dormitories  
6 and a student living quarters. Is that correct?

7 A. Yes. Building the new dormitories that  
8 the University is building, yes.

9 Q. Do you know what those dormitories were  
10 going to be called? Do you know the name of the  
11 living area?

12 A. I only remember where the old dormitories  
13 were, which was called Clemson House.

14 Q. So you worked on dorms. And the  
15 apartments, were they a mile or so down the road?

16 A. I don't know. Because everything is  
17 there; you just enter the university and you go  
18 around, so I don't know. I cannot answer that  
19 question.

20 Q. If you went from the apartments to the  
21 dorms, did you drive in a vehicle or would you walk?

22 A. (Speaking.)

23 INTERPRETER: The interpreter would  
24 like to ask for a clarification..

25 MR. GRIGGS: That's fine.



1 INTERPRETER: (Speaking with the  
2 witness in Spanish.)

3 A. Okay, yes. What happens is that if I am  
4 working on say a machine, and the supervisor comes  
5 driving his truck and he asks me to get into the  
6 truck. And he takes me to another machine and so on  
7 and so forth.

8 So I never know exactly if that is part or not  
9 of the university.

10 Q. When you started working for Reeves Young  
11 how much were you paid?

12 A. \$15.

13 Q. An hour?

14 A. Yes.

15 Q. When you last worked, what did you make?

16 A. I was being paid 16.50, and they said that  
17 they were going to increase the salary in those  
18 days.

19 However, when you work out of state you get two  
20 more dollars, so it was \$18.50.

21 Q. So when you worked out of state you made  
22 \$18.50 per hour?

23 A. Yes. What I understand is that  
24 everybody's being paid the same when you get out of  
25 the state.

1           Q.    So everybody that did the job similar to  
2    you that worked out of state was making 18.50 per  
3    hour?

4           A.    No, because that depends on how much  
5    people are making. There are certain operators who  
6    make more, and if they go out of state then they get  
7    two more dollars.

8           Q.    Okay. Everybody that works out of state  
9    gets two dollars added on to their base hourly pay;  
10   is that your understanding?

11          A.    Yes.

12          Q.    Okay. When you last worked at the Clemson  
13   sites were you paid anything else other than 18.50  
14   per hour?

15          A.    They were depositing \$175 per week to pay  
16   for gas.

17          Q.    When you were at the Clemson site how many  
18   days a week did you work on the Clemson site?

19          A.    Usually five days, but if there was  
20   something else to do, we could go on Saturdays.

21          Q.    So the Clemson site, you worked five days  
22   a week? Sometimes six?

23          A.    Yes.

24          Q.    Did you ever work less than five days a  
25   week?

1           A.     On occasions, because it was raining.     But  
2     we would show up every day to work.

3           Q.     You said that you were also given \$175 a  
4     week, in your words, to pay for gas while working in  
5     South Carolina.

6           Who told you that money was to pay for gas?

7           A.     Well, Juan Ochoa talked with somebody; I  
8     don't know who exactly. It could have been the  
9     owner of the company.

10          And he said that that check was being deposited  
11     for that.

12          Q.     How long did you work on the Clemson  
13     sites?

14          A.     I do not remember, but it was over one  
15     year.

16          Q.     When you were on the Clemson site did you  
17     always drive back to your home in the evening?

18          A.     Yes, every day.

19          Q.     How far was it from your home to the  
20     Clemson site?

21          A.     It is approximately 85 miles, and that is  
22     1.45 minutes approximately.

23          Q.     One hour, 45 minutes?

24          A.     Yes.

25          Q.     When you were at the Clemson site were you

1 given the option to stay in Clemson at the -- in  
2 company-provided housing?

3 A. Well, the last three or four months a  
4 supervisor called Shane Burrell asked me if I wanted  
5 to stay.

6 However, I told him no because we were about to  
7 finish the project.

8 Q. You said that Shane Burrell only asked you  
9 if you wanted to stay overnight in Clemson for the  
10 last two months you were on the job?

11 A. Two, three, or four, I don't remember.  
12 Now I remember a lot of things, but in the past I  
13 didn't remember many things and I had to write down  
14 on a block.

15 Q. On a what?

16 A. Writing down on a block. On a pad, on a  
17 writing pad.

18 Q. Did your brother work at the Clemson site  
19 with you?

20 A. Yes.

21 Q. Did he work there the same times that you  
22 did?

23 A. Yes.

24 Q. How did he get to and from work?

25 A. When the Juan Ochoa team was moved to

1 Atlanta, I was also moved to Atlanta. But it was  
2 only for two weeks and then I was moved back to  
3 South Carolina.

4 Q. Okay. My question is how did your brother  
5 get to and from work in South Carolina?

6 A. With me.

7 Q. So my understanding, and tell me if I'm  
8 wrong, they sent you to work in Clemson; you worked  
9 there for several months?

10 A. Yes.

11 Q. Then they took your team and put you back  
12 in Atlanta for a few weeks, and then returned you to  
13 Clemson?

14 A. Well, the team was sent to Atlanta, but  
15 then the team stayed in Atlanta and I was the only  
16 one who was sent back to South Carolina.

17 Q. Okay. What job did they put you on in  
18 Atlanta for two weeks?

19 A. Church Street in Marietta. That was on --  
20 I don't remember the exact date but that was on  
21 Church Street in Atlanta where they were building  
22 soccer fields.

23 Q. When you went to Clemson, how long were  
24 you there before your wreck? After being in Atlanta  
25 you went back to Clemson; how long were you there

1     **before your accident?**

2           A.     Allow me to remember... I don't remember  
3     well, but it was approximately six months.

4           Q.     And for those six months you were the only  
5     member of the Juan Ochoa team, as you have termed  
6     it, at Clemson?

7           A.     Yes.

8           Q.     Your brother and everyone else stayed in  
9     Atlanta?

10          A.     Yes.

11          Q.     When your brother was working in Clemson  
12     and riding with you, was he paid the extra \$175 per  
13     week?

14          A.     That I know of, he was not being paid  
15     that, no.

16          Q.     How do you know that?

17          A.     Because I asked him one day and I told him  
18     to ask Juan Ochoa why he was not being paid for  
19     that.

20          Q.     Did he ask him?

21          A.     I don't remember that. The conversation  
22     ended there.

23          Q.     Who else was on the Juan Ochoa team during  
24     your first stint of work in Clemson?

25                     INTERPRETER: The interpreter would

1           like you to clarify your question please.

2                       MR. GRIGGS: Okay.

3   BY MR. GRIGGS:

4           Q.   When you worked in Clemson the first time  
5   before going to Atlanta for two weeks, who else was  
6   working on the Juan Ochoa team with you?

7           A.   Julio, Mario, Luz my brother, and I don't  
8   remember the names of the others.

9           Q.   What is Julio's last name?

10          A.   I don't know.

11          Q.   What is Mario's last name?

12          A.   I don't know it.

13          Q.   How many other team members were there  
14   whom you cannot name?

15          A.   Yeah, allow me for a second please...  
16   Yes, there was one more person.

17          Q.   Where did Julio live when he was working  
18   in Clemson?

19          A.   In Gainesville.

20          Q.   Where did Mario live when he was working  
21   in Clemson?

22          A.   In Gainesville.

23          Q.   Where did the other unnamed individual  
24   live when he was working in Clemson, do you know?

25          A.   In Gainesville.

1 Q. Did Julio drive back and forth each day or  
2 did he stay in Clemson?

3 A. They had another situation. They would  
4 all drive the company's truck with Juan Ochoa.

5 Q. Julio, Mario, and the other person would  
6 ride with Juan?

7 A. Yes, with Juan Ochoa.

8 Q. Every day?

9 A. Yes.

10 Q. Would they ride back with him as well, or  
11 would they stay in Clemson?

12 A. They rode back with Juan every day.

13 Q. Did they receive the \$175?

14 A. There, nobody has the information on  
15 anybody else. Those are company policies which  
16 require you not to share that information.

17 All of them, since I've started working with the  
18 company in 2013, all of them traveled with Juan on  
19 the company's truck.

20 Q. When you worked for Reeves, did you have  
21 any other supervisors besides Juan?

22 A. When I went back to South Carolina after  
23 the 15 days, Juan asked me if I wanted to stay with  
24 him in Atlanta. And I said that -- I answered if I  
25 could stay with Shane Burrell.



1           Q.    So Shane was your supervisor the second  
2   time you were at Clemson?

3           A.    Yes.  Well, he was a supervisor, but then  
4   he would assign other people like Koory (ph) you had  
5   to work with.

6           Q.    When you were offered by Shane to stay  
7   overnight in Clemson instead of driving back and  
8   forth, why did you decline the offer?

9           A.    Well, because it was going to be for the  
10   three or four last months of the project, after  
11   which we would be moved to another project.

12          Q.    We'll get back to that.  For now let me  
13   ask you, before Reeves Young where did you work?

14          A.    Summit Pipeline.  It was for a company  
15   called Summit pipeline, and then the name was  
16   changed to Summit Underground.  But it was the same  
17   company; the only change was the name.

18          Q.    How long did you work there?

19          A.    That was since -- from 1990 to 2013.  
20   March 2013.

21          Q.    Why did you leave the job?

22          A.    Well, because work started to fall.

23          Q.    Did you leave or were you terminated?

24          A.    I left because I was there on a salary,  
25   and actually I was making 50 percent or half of what

1 I was making at Reeves.

2 Q. So you got a pay increase to go to Reeves?

3 A. After I left Summit I worked for a  
4 concrete company for approximately three months, and  
5 that was in Marietta's Army.

6 Q. My question is, did you make more with  
7 Reeves than you made at Summit Pipeline, or less?

8 A. Well, more or less the same. But at  
9 Summit I had benefits, insurance, a truck. All the  
10 benefits actually.

11 Q. While working with Reeves were you ever  
12 provided a company vehicle?

13 A. No.

14 Q. When you lived in Gainesville and worked  
15 in Decatur, how far was that travel each day?

16 A. I don't remember the amount of miles.  
17 However, in minutes it was approximately 45 minutes  
18 in the morning when there was no traffic, and in the  
19 afternoon it could be one hour or one and a half  
20 hours.

21 Q. Were you given, in your opinion, any  
22 mileage pay while working in Decatur?

23 A. At the company nobody gets mileage, paid  
24 mileage. Only the supervisor gets a truck, and  
25 everybody else drives his or her own car.

1           Q.    So you did not get paid what you believed  
2   to be mileage pay while working in Decatur, yes or  
3   no?

4           A.    No.  They did not pay, no.

5           Q.    When you worked at the Mercedes-Benz  
6   Stadium in downtown Atlanta, how far was that from  
7   your home in Gainesville?

8           A.    You know, I don't really pay attention to  
9   miles, but in the morning it was approximately 55  
10   minutes with no traffic, and then again in the  
11   afternoon, one to one and a half hours.

12          Q.    Were you paid any mileage during that job?

13          A.    No.

14          Q.    The \$175 that you got extra while working  
15   in Clemson, did you receive that whether you worked  
16   five days or six days or if you worked four days?  
17   Did it vary or was it always the same?

18          A.    It was \$175 per five days.  And when I  
19   worked on Saturdays also, the amount was the same:  
20   175.

21          Q.    Okay.

22          A.    And also the days that we did not work, we  
23   were paid the same amount, 175.  Because we had to  
24   show up for work anyway, even if we then had to go  
25   back.

1 Q. But even the days you worked on Saturday,  
2 you still got 175, no more or no less. Is that  
3 correct?

4 A. Yes.

5 Q. What kind of vehicle did you drive?

6 A. Toyota Corolla, 2003.

7 Q. Did Reeves Young pay for your insurance?

8 A. I paid for it.

9 Q. Did they pay for any maintenance on your  
10 car?

11 A. No. I paid everything.

12 Q. When you were driving from Clemson to  
13 Gainesville were you given any things to do such as  
14 pick up supplies, pick up other employees? Or were  
15 you just driving yourself from Clemson to home and  
16 back?

17 A. No, only from Clemson to my house.

18 Q. So they didn't ask you to do anything else  
19 on the way. Is that correct?

20 A. No.

21 Q. Now that you are out of work, what do you  
22 spend your time doing on a daily basis?

23 A. I spend all the time at home. And the  
24 reason for that is that when I start walking the  
25 whole left side of my body becomes inflamed and it

1 is impossible to walk.

2 Q. Do you take any prescription medications?

3 A. Yes. Pain medication and also medication  
4 to sleep.

5 Q. Do you know the names of the medications?

6 A. No, but they are here. But I do not know  
7 the names, no.

8 Q. Could I see the pill bottle you just  
9 produced?

10 A. Really, I don't remember the names of the  
11 prescription address. But it is 325 milligrams for  
12 pain.

13 MR. GRIGGS: Mr. Lopez has produced a  
14 bottle of oxycodone, but I cannot read anything  
15 else on the label.

16 Is that accurate, Danny?

17 MR. VEGA: Yeah, it appears to say  
18 oxycodone. But yeah, it's hard to decipher who  
19 prescribed it.

20 THE WITNESS: The doctor is Dr. Scott  
21 Barber, and he is my doctor.

22 BY MR. GRIGGS:

23 Q. Do you have a family doctor, sir?

24 A. Well, we used to have one. But the last  
25 time I saw him it was approximately seven years ago

1 when I had the kidney problem. I had stones. But  
2 that was the last time.

3 Q. Who was your family doctor?

4 A. Dr. Rios.

5 Q. Where was he located?

6 A. In Gainesville.

7 Q. Is he still there?

8 A. Yes. His name is Antonio Rios.

9 Q. In the months -- in the year preceding  
10 your accident, had you seen any medical provider for  
11 any reason?

12 A. No.

13 Q. What body parts did you injure in the  
14 accident?

15 A. (Speaking.)

16 INTERPRETER: I'm stuck because I'm  
17 trying to remember a word in English.

18 MR. GRIGGS: We'll go off the record  
19 for a second.

20 (Discussion off the record.)

21 MR. GRIGGS: Okay, we're going to go  
22 back on the record so the interpreter can  
23 translate the answer.

24 A. I injured my ankle and also the bone of my  
25 leg. And as a matter of fact, they put a metal

1 piece with screws and also my knee. They did a full  
2 replacement of my knee.

3 Q. The ankle, the leg, and the knee; is that  
4 your left side?

5 A. Yes.

6 Q. Okay. What other body parts?

7 A. There was also a dislocation of the  
8 shoulder.

9 Q. Which shoulder?

10 A. The left one. Arthroscopic surgery.

11 Q. Okay. What else?

12 A. Also my ribs broke, and also a bone in the  
13 back.

14 Q. What do you mean "in the back"?

15 A. Yes, here on the back, under the shoulder  
16 actually.

17 Q. The back of your neck?

18 A. No, here. The shoulder.

19 Q. Okay, the left shoulder. And what about  
20 your neck?

21 A. I have also two dislocated discs. And  
22 this arm here also suffered a cut because metal got  
23 into it.

24 Q. Which arm?

25 A. The right one.

1 Q. Anything else?

2 A. I believe that is all.

3 Q. Okay. Before this accident had you ever  
4 had any problems or received any medical treatment  
5 for your left ankle?

6 A. No.

7 Q. Before this accident, meaning the motor  
8 vehicle accident on January 5, 2017, had you ever  
9 received any medical treatment or had any problems  
10 with your left leg?

11 A. No.

12 Q. Before the accident have you ever received  
13 any treatment or had any problems with your left  
14 knee?

15 A. No.

16 Q. Before this accident had you ever received  
17 any medical treatment or had any problems with your  
18 left shoulder?

19 A. No.

20 Q. Before this accident had you ever received  
21 any treatment or had any problems with your ribs?

22 A. No.

23 Q. Before this accident had you ever received  
24 any medical treatment or had any problems with your  
25 neck?



1 A. No.

2 Q. And before this accident had you ever  
3 received any medical treatment or had any problems  
4 with your right elbow or your right arm?

5 A. No.

6 Q. Since the accident on January 5, 2017 have  
7 you had any new motor vehicle accidents?

8 A. No.

9 Q. The accident happened on January 5, 2017;  
10 correct?

11 A. Yes.

12 Q. Do you know what day of the week that was?

13 A. I'm not sure, but I think it was Thursday.

14 Q. What time was the accident?

15 A. I don't remember anything because I spent  
16 20 days without remembering anything.

17 Q. When you worked in Clemson what time did  
18 you have to be there in the morning?

19 A. I had to be there at 7:00 to take an  
20 orientation from Holder.

21 Q. And when you went to work in Clemson, did  
22 you go to the same place every day at the start of  
23 the day?

24 A. Yes, because they give us an orientation  
25 every day and they ask us to do some exercises.

1           Q.    What do you mean, exercises?

2           A.    Well, you know, like physical exercises,  
3    like squats or moving your arms up and down or  
4    moving back and forward, or backward.

5           Q.    Holder would ask you to do that every day?

6           A.    Yes.

7           Q.    Where would you have to arrive at 7:00  
8    a.m.? At what job site?

9           A.    Well, that was in the campus area, the  
10   university campus area where Holder would give us  
11   the orientation every day.

12          Q.    Was that on the dormitory project site?

13          A.    Yes.

14          Q.    And what time did you leave each day when  
15   you worked at Clemson?

16          A.    Usually at 5:36 p.m. But in that type of  
17   work you have to wait until the job is done, so it  
18   could be 7:00.

19          Q.    Did you have a lunch break?

20          A.    Well, on occasions. But in that type of  
21   work you had to drive trucks loaded with dirt, and  
22   you had to eat your lunch in the truck or the  
23   machine you were operator on at that particular  
24   time.

25          Q.    On Thursday, January 5th did you work on

1 just the dorm site or did you work on both sites?

2 A. Both projects.

3 Q. So you worked on both sites on January  
4 5th?

5 A. Yes.

6 Q. Which site did you leave from?

7 A. You mean in the afternoon?

8 Q. Yes. When you left to travel back to  
9 Gainesville, what site did you leave from?

10 A. The apartments.

11 Q. Who was the supervisor on the apartment  
12 site?

13 A. Shane Burrell.

14 Q. Was he also your supervisor on the  
15 dormitory site?

16 A. Yes.

17 Q. When you worked in Clemson did you work  
18 equally on the dorms and on the apartments? Or did  
19 you work dominantly on one job versus the other?

20 A. Well, at the university it was always  
21 there. On occasions you would leave before two or  
22 three hours to do other things, and would come back.

23 Q. What do you mean to do other things? What  
24 are you talking about?

25 A. Well for example, you know, I would start

1 working at the university with loading trucks. But  
2 then like a piece of drainage had to be installed  
3 somewhere else, so they would ask you, you know,  
4 what come up, and they would take us somewhere else.  
5 But they didn't tell you where.

6 Q. How far apart were the apartments from the  
7 dormitories?

8 A. I would say something like half a mile,  
9 because actually you could see the machines from the  
10 university, the machines at the apartment.

11 Q. The \$175 that you received while working  
12 at Clemson, the extra pay, was that something that  
13 you negotiated with the company or is that something  
14 they just gave you and there was no question about  
15 it?

16 A. When they told me that they were going to  
17 pay me, Juan Ochoa said that he was going to talk to  
18 somebody in the company, and then they started  
19 giving me 175.

20 Q. But the question is, did you negotiate  
21 that figure or did they just tell you that's what  
22 they were going to pay you?

23 A. No, that is what they gave me. I did not  
24 negotiate anything.

25 Q. Did anyone ever arrive back and forth from

1     Gainesville to the Clemson job site with you,  
2     besides your brother?

3           A.     No.

4           Q.     So there's not even one occasion that  
5     somebody else would ride with you?

6           A.     No -- yes; I want to add something.

7           Q.     Yes?

8           A.     But then another employee came from  
9     Atlanta to work at the university, and he was on the  
10    same situation I was. That is to say, he was being  
11    paid a certain amount, but we did not know how much  
12    that was. Because that was the policy of the  
13    company.

14          Q.     Where did this other employees live?

15          A.     In Gainesville.

16          Q.     What's his name?

17          A.     I don't remember his name.

18          Q.     The entire time that you drove from  
19    Gainesville to Clemson, did you ever ride with  
20    anyone else or did you always drive yourself?

21          A.     I was alone. Always alone.

22          Q.     Or either with your brother?

23          A.     When he was with me on Juan's team, yes.

24          Q.     Did you receive the \$175 each week the  
25    entire time that you worked in Clemson?

1           A.     Yes.  As a matter of fact I have a copy of  
2     all the deposits, separate from my paycheck.

3           Q.     So it was two different deposits?

4           A.     Yes.  And one more thing; when I went on  
5     vacation they stopped paying the gas amount of  
6     money.

7           I don't remember if it was for two or three  
8     weeks, but when I went to Mexico.  And when I came  
9     back they started paying the \$175 again.

10                   MR. GRIGGS:  I don't have any other  
11     questions.

12                   Andrew, do you have any questions?

13                   MR. SMITH:  Yeah, I've got some.

14                   MR. GRIGGS:  All right Andrew, you're  
15     on.  Just remember to speak loud enough for the  
16     interpreter to hear you.

17                   (Discussion off the record.)

18                   MR. SMITH:  Hello, Mr. Lopez.  My  
19     name is Andrew Smith.  How are you doing today?

20                   THE WITNESS:  Very well, thank you.  
21     How about yourself?

22                   MR. SMITH:  Good, thank you.

23                   I know you've already been sitting  
24     there for an hour and a half.  I'm not sure if  
25     anyone instructed you that you're welcome to

1 take a break if you need to. I do have a number  
2 of questions for you; do you feel like you need  
3 to take a break or are you ready to proceed?

4 THE WITNESS: Let's go on, sir.

5 MR. SMITH: Okay.

6 CROSS-EXAMINATION

7 BY MR. SMITH:

8 Q. So you testified that you always showed up  
9 at 7:00 o'clock on the Holder jobsite, is that  
10 correct, in the morning?

11 A. Yes.

12 Q. But then sometimes you would be  
13 transferred over to the apartments. Is that  
14 correct?

15 A. Sometimes on occasion, yes.

16 Q. Okay. And when you were at Holder, you  
17 had to do OSHA requirements, things of that nature?  
18 Exercises, sign-in sheets, things of that nature?

19 A. Yes. As a matter of fact we had to sign a  
20 sheet of paper every day that Holder gave us.

21 Q. How many times do you think you signed a  
22 piece of paper that Holder gave you, but you also  
23 worked on the apartments?

24 A. Every day.

25 Q. Okay. And on the day of your accident,

1     January 5, 2017, what time did you arrive at work?

2           A.     At 7:00.

3           Q.     Okay. And then after 7:00 o'clock what  
4     did you do?

5           A.     Well, you go to attend the class, and then  
6     you go to work or --

7                   MR. SMITH: I'm sorry, there's some  
8     background noise behind you. Is the door open?

9                   MR. GRIGGS: No, it's closed.

10                  MR. VEGA: It should be better now.  
11     Go ahead.

12           A.     (continuing) Right now I went to class  
13     and then I went to work, to wherever I was sent to.

14           Q.     Okay. Where were you sent to?

15           A.     To the apartments.

16           Q.     Okay. So you went and you did those  
17     exercises at Holder, and you signed a sign-in sheet.  
18     Is that correct?

19                   INTERPRETER: The interpreter would  
20     like you to repeat the question, please.

21                   MR. SMITH: Sure.

22     BY MR. SMITH:

23           Q.     When you arrived on January 5, 2017, you  
24     arrived at 7:00 o'clock. Is that correct?

25           A.     Yes.



1           Q.    And then you went through the exercises  
2   and you signed on the Holder sign-in sheet; is that  
3   correct?

4           A.    That week I don't remember exactly,  
5   because we would go back and forth to the  
6   apartments. But I would show up for the Holder's  
7   class at 7:00.

8           Q.    Okay. So that day after you showed up for  
9   the class, what sort of work did you do at the  
10  apartments?

11          A.    We were installing a main hall, and we  
12  were applying cement to finish that project.

13          Q.    Is that what you did the entire day until  
14  you left?

15          A.    No. I did -- we did several things. We  
16  were installing a drain, we were putting gravel on  
17  the floor to make entrances to a parking space. So  
18  we were doing different things. We were applying  
19  cement also.

20          Q.    Okay. Did that encompass your entire day  
21  of work, working at the apartment on January 5,  
22  2017?

23          A.    No. In the morning we were -- I was  
24  operating the bulldozer after the university.

25          Q.    Okay, I'm sorry. So at 7:00 o'clock you

1    **had your courses, you signed the sign-in sheet, and**  
2    **what's the next thing you did?**

3                   INTERPRETER: Okay, I'm sorry. The  
4           interpreter would like -- coughing -- sorry.

5                   MR. GRIGGS: Do you need a break?

6                   INTERPRETER: I think I need a small  
7           break, yes. I'm sorry.

8                   MR. GRIGGS: We're taking a break,  
9           Andrew.

10                  MR. SMITH: Five or ten?

11                  MR. GRIGGS: Five minutes.

12                  MR. SMITH: Okay.

13                  (Break from 12:37 p.m. to 12:40 p.m.)

14                  MR. SMITH: Do you need me to repeat  
15           my last question?

16                  INTERPRETER: Yes, please.

17                  MR. SMITH: Okay.

18    BY MR. SMITH:

19           Q.    So on January 5, 2017, the day of the  
20           accident, after you did the exercises and signed the  
21           sign-in sheet at Holder, what is the first thing you  
22           started doing work-wise?

23           A.    I moved a lot of -- with the bulldozer I  
24           moved away a lot of mud that was on the road to  
25           allow for all of the machines and the company's

1 vehicles to come in.

2 Q. To come in where?

3 A. To get into the project area.

4 Q. And which project was this? Was this the  
5 apartments or the dormitories?

6 A. The dorms. The dormitories at the Clemson  
7 University.

8 Q. Okay. And then how long did it take with  
9 the bulldozer to clear the mud away from the road?

10 A. Well, approximately one hour because I was  
11 using a rather big bulldozer. And after that I went  
12 to the apartments.

13 Q. Did you ever come back to the dormitories  
14 that day?

15 A. In the afternoon when we finished our  
16 work, I went home.

17 Q. Did you ever go back to the dormitory  
18 project after you cleared the mud with the  
19 bulldozer?

20 A. No.

21 Q. Okay. So you never came back to the  
22 dormitories after you went to the apartments on the  
23 date of your motor vehicle accident; is that  
24 correct?

25 A. No, I did not go back.

1           Q.    Then you left straight from the apartments  
2   to your home; is that correct?

3           A.    Yes.

4           Q.    And you said Shane was your supervisor, is  
5   that correct, when you came back the last two to  
6   four months?

7           A.    Yes.

8           Q.    And who did Shane work for?

9           A.    For Reeves and Young.

10          Q.    And was he your supervisor on the day of  
11   your accident?

12          A.    Yes. But he had another one who also was  
13   sort of a supervisor, who he would tell what to do.

14          Q.    So placed underneath him was kind of a  
15   foreman?

16          A.    Yes.

17          Q.    And what was his name?

18          A.    Koory.

19          Q.    And who did he work for?

20          A.    He used to work for Reeves and Young. I  
21   don't know if he still works for them, but he used  
22   to work for them, yes.

23          Q.    You mentioned earlier that you had a  
24   license to operate heavy equipment. Do you have a  
25   CDL?

1 A. No, I do not have a CDL.

2 Q. What sort of license were you referring  
3 to, to operate the heavy equipment?

4 A. That is a license that the company gives  
5 you, to indicate to OSHA that you are qualified to  
6 operate those machines. Otherwise, you cannot  
7 operate them.

8 Q. And on the day of your accident, whose  
9 license were you working under?

10 A. We would carry that license all the time,  
11 because OSHA could come at any time and request it.

12 Q. And which company paid for you to go get  
13 the license?

14 A. It was given to me by Reeves and Young.

15 Q. Was that when you were first hired, or did  
16 you have to get that renewed or --?

17 A. Well, that is something that the  
18 construction companies have to have. It's like  
19 classes to stop the traffic. I mean if you don't  
20 have that license you cannot work in the  
21 construction company, the same as if you don't have  
22 a license to stop the trucks, then you cannot do it.

23 Q. How long did it take after you got the  
24 license for it to expire?

25 A. I don't remember.

1           Q.    Did Reeves send you more than once to go  
2   get a license since your date of hire?

3           A.    Yeah, they give you the license.  Because  
4   they know already that you are qualified --

5           Q.    Okay, I'm just wondering how many times  
6   did he have to go apply for this license.  Let me  
7   rephrase it.

8           A.    You don't really request it.  They just  
9   send it to you.

10                   MR. VEGA:  Well -- excuse me.  
11   Andrew?

12                   MR. SMITH:  Yes?

13                   MR. VEGA:  This is Danny Vega.  He  
14   handed me a card, a laminated card.

15                   MR. GRIGGS:  It looks like it's just  
16   some type of internal Reeves Young issue.  I  
17   don't think it's issued by any governmental  
18   agency or entity.

19                   Would you agree, Danny?

20                   MR. VEGA:  Yeah.  It's just a  
21   laminated -- it looks almost like a business  
22   card.

23                   MR. SMITH:  Oh, okay.  Do you have a  
24   date on that by any chance?

25                   MR. VEGA:  It says (as read:) Expires

1 01/2017.

2 MR. SMITH: And the issue date, by  
3 chance?

4 MR. VEGA: No.

5 MR. SMITH: Okay. Thanks.

6 MR. VEGA: I'll take a picture of it  
7 and send it to you.

8 MR. SMITH: Thank you.

9 BY MR. SMITH:

10 Q. Now, Mr. Lopez, you testified earlier when  
11 you started working for Reeves you earned  
12 approximately \$15 an hour. At the time of the  
13 accident -- at the time of the accident you were  
14 earning how much per hour?

15 A. As per the deposits, it was 16.50.

16 Q. 16.50?

17 A. Yes.

18 Q. Okay. And then when you went to go work  
19 on the Clemson job site you testified earlier that  
20 they increased your pay by \$2 per hour; is that  
21 correct or not?

22 A. That is correct, yes.

23 Q. Wasn't it some problem with getting that  
24 extra money into your bank account, the extra \$2?

25 A. No.

1 Q. There wasn't any problem, and that's when  
2 you asked about the \$175?

3 A. No.

4 Q. Oh, okay. Did other workers also receive  
5 the \$2 per hour?

6 A. Reeves has -- he has their company  
7 policies according to which some are paid more and  
8 some are paid less.

9 Q. So they are paid -- they don't all earn  
10 \$16.50 per hour; correct?

11 A. Well, some of them, if they've been there  
12 for a longer period of time, they may be making 20,  
13 others 18, others 14.

14 Q. Okay. So if others are making 18, 20, 14,  
15 was their pay adjusted to \$2 additional per hour to  
16 work on the Clemson job site?

17 A. That is what we all understood, yes.

18 Q. Okay. I thought there was a company  
19 policy not to talk about how much you earn per hour.  
20 Is that true?

21 A. Yes.

22 Q. So how do you know if the other coworkers  
23 made the additional \$2 per hour?

24 A. Because that is what they would tell you  
25 before going to the project, that they were going to



1 pay you two more dollars.

2 Q. When you say "they," would that be an  
3 announcement Reeves made in front of other  
4 coworkers?

5 A. No, no. The foreman talks with you  
6 one-on-one. With everybody, but one-on-one.  
7 Because they may have a different arrangement with  
8 other workers.

9 Q. So you really don't know how much the  
10 other workers made per hour, whether they made an  
11 additional \$2 per hour for working on the Clemson  
12 job site?

13 A. Yes. I mean you cannot share that  
14 information with anybody. Even when you are done  
15 you cannot tell anybody. Because if you do they can  
16 even terminate you if they find out that you've been  
17 sharing that information with others.

18 Q. You testified earlier that it was 85 miles  
19 from your home to the Clemson job site?

20 A. Yes.

21 Q. Okay. So that would be 170 miles  
22 round-trip?

23 A. Yes.

24 Q. And the last two, three, four months  
25 before your motor vehicle accident, Shane asked you

1 if you wanted to work at the Clemson housing by your  
2 testimony. Is that correct?

3 A. I did not understand that question. Can  
4 you ask it again, please.

5 Q. Certainly. So for the last two to four  
6 months when you were working on the Clemson housing  
7 project, did Shane Burrell then say to you that  
8 there was housing available for you in Clemson, and  
9 you didn't have to commute home?

10 A. Yes, it was a sort of a comment he made,  
11 you know, asking why didn't I stay in Clemson. But  
12 since we were about to finish the project I decided  
13 to go back and forth and go home, yes.

14 Q. Okay. So your going home back and forth  
15 from work was really a benefit to you at that point  
16 in time; is that correct?

17 A. Yes.

18 Q. And it was a gratuitous act by your  
19 employer; is that correct.

20 INTERPRETER: Sir, the interpreter  
21 did not understand the question.

22 BY MR. SMITH:

23 Q. It was a gratuitous act by your employer  
24 to allow you to -- or to pay you the \$175 that you  
25 stated was for gas money?

1           A.    Well, the whole thing, the whole story  
2    about the \$175 started because I could not stay  
3    there because of another issue I had. So they  
4    offered the \$175.

5           Q.    Okay. And I'm sorry to hear that your  
6    wife passed away, but initially when you were on the  
7    Clemson projects, your wife was ill. Is that  
8    correct?

9           A.    Yes. Thank you for your concern. Yes,  
10   she had cancer and that was the reason why I would  
11   go back and forth every day.

12          Q.    Okay. And then I believe you took work  
13   outside of South Carolina for a couple of weeks  
14   while you were working on that Clemson project; is  
15   that correct?

16          A.    I was working in Clemson and I was sent  
17   back to Marietta with Juan Ochoa's team for two  
18   weeks. And then they sent me back to Clemson.

19          Q.    You chose to go back to Clemson. Is that  
20   correct?

21          A.    No. They needed me and I decided to stay  
22   in Clemson because Juan wanted me back in Marietta.

23          Q.    Okay. So when you came back to Clemson  
24   from Marietta your wife had already passed. Is that  
25   correct?

1 A. Yes.

2 Q. So it was really -- I think your  
3 terminology issue -- there was really no issue at  
4 that time when you returned back to the Clemson  
5 project after Marietta?

6 A. They called me because they needed me, and  
7 I decided to stay there.

8 Q. Right, but you also decided to commute to  
9 and from your work; is that correct?

10 A. They -- they asked me if I wanted to stay  
11 in Clemson only the last two or four months, as my  
12 supervisor told me. It was at the very end.

13 Q. Right. So initially the reason we talked  
14 to your supervisor which you allege is for the gas  
15 money [sic phrase] --

16 MR. SMITH: Please translate.

17 INTERPRETER: The interpreter did not  
18 understand your comment.

19 MR. SMITH: Okay.

20 BY MR. SMITH:

21 Q. Initially the reason why you wanted to go  
22 home was because your wife was ill. Is that  
23 correct?

24 A. Yes.

25 Q. Two to four months prior to your motor

1 vehicle accident your wife had already passed; is  
2 that correct?

3 A. Yes. She passed away in September 2015.

4 Q. And again, I'm sorry to hear that.

5 So when you returned to the Clemson project it  
6 was really just your own choice to move and forth  
7 from your home for your convenience?

8 A. Well, actually I was going back and forth,  
9 but nobody really offered me to stay there. Because  
10 if you are offered that, it is the boss who's going  
11 to pay the hotel or your stay at the job place.

12 Q. Okay. But I thought we already talked  
13 about Shane had offered you a place to stay two to  
14 four months on the Clemson project; is that correct?

15 A. Actually, it was not an offer. It was a  
16 comment. Because when they offer you something,  
17 they send you to the office for you to sign some  
18 papers. So in this case it was a comment.

19 Q. Did you want to follow up on the comment  
20 and stay at the Clemson site? Or did you want to go  
21 home?

22 A. I preferred to go home because the project  
23 was about finished.

24 Q. Okay. And you also preferred to go home  
25 so you had your own bed, you had your own kitchen;

1 correct?

2 A. And my son who was alone, yes.

3 Q. But he's already of age; correct? He was  
4 already over 21 at the time?

5 A. Yes.

6 Q. So there was really no need to commute to  
7 and from your house other than for your convenience;  
8 correct?

9 A. If they had offered me to stay and tell me  
10 how much they would pay me, I would have possibly  
11 stayed. But nobody really offered me it.

12 Q. Okay.

13 MR. SMITH: Could you ask him to  
14 please answer the question.

15 INTERPRETER: (Speaking to the  
16 witness in Spanish?)

17 THE WITNESS: Which one?

18 BY MR. SMITH:

19 Q. The question was -- okay, you had spoken  
20 with Shane; correct? And Shane made mention, why  
21 don't you stay at Clemson? Correct?

22 A. Yes.

23 Q. Okay. And then after that conversation  
24 you said you chose not to stay on the project  
25 because it was winding up; is that correct?

1 A. Yes.

2 Q. So when Shane posed that question to you  
3 about staying on the Clemson project, you didn't  
4 follow up on it because you wanted to be able to go  
5 back to your home; correct?

6 A. Yes.

7 Q. Okay. So you typically would clock out --  
8 I'm sorry, was it 5:30?

9 A. Well actually, there you don't really  
10 click [sic] off your card. It is the supervisor who  
11 writes down the time you are leaving, which could be  
12 at 5:00 or it could be at 6:00.

13 And then he sends that information back to the  
14 office.

15 Q. So after you leave -- or after you left  
16 the job site at Clemson, your employer didn't  
17 exercise any kind of control over you until you  
18 arrived back at the job site at 7:00 o'clock in the  
19 morning; is that correct?

20 A. Yes.

21 Q. So in essence, after you left the job site  
22 you were on your own time; correct?

23 A. Well, when you leave at the job site  
24 actually you are not on your own time because you  
25 are leaving your work to go home. It's not your own

1 time.

2 Q. Right, but you're not getting paid for  
3 that time; correct?

4 A. No, only the gas.

5 Q. And you could stop off to go watch a movie  
6 or get some lunch -- get some dinner, anything you  
7 wanted on the way home; correct?

8 A. Possibly. But I never did so. I went  
9 straight to my home.

10 Q. But you could have?

11 A. Possibly.

12 Q. And Reeves and Young never told you the  
13 direction or what road you had to travel to get back  
14 home from the Clemson job site; you chose your own  
15 route, is that correct?

16 A. The first time. Only the first time. I  
17 had to follow the foreman to know where the  
18 university was at.

19 Q. Okay. But then after that, within the  
20 last three or four months prior to your injury, he  
21 could have chose his own route; is that correct?

22 A. I would take the same route every day.

23 Q. Right, but it's your choice; correct?

24 A. There isn't any other choice. That was  
25 the only one or it least the one that was shown to



1 me.

2 Q. Okay. But Reeves Young didn't care really  
3 what you did with your time after you left the job  
4 site; is that correct?

5 MR. VEGA: Objection to form.

6 BY MR. SMITH:

7 Q. As long as you showed up at 7:00 o'clock  
8 in the morning?

9 A. No.

10 MR. SMITH: I didn't hear his  
11 response.

12 THE WITNESS: Can you repeat the  
13 question again?

14 BY MR. SMITH:

15 Q. Reeves Young really didn't care what you  
16 did with your own time after you left the job site;  
17 correct?

18 A. No. The only thing you would do, just  
19 tell the supervisor that you were leaving. Would be  
20 at 5:37 and that's it.

21 Q. Okay. How many miles away from the job  
22 site did your motor vehicle accident occur?

23 A. I don't know; I don't remember. I cannot  
24 really answer that question because for a period of  
25 between 15 and 20 days I don't remember anything.

1 MR. SMITH: If you would just give me  
2 a second Mr. Lopez, I just have to review my  
3 notes. Okay?

4 (Off the record.)

5 MR. SMITH: Just a few more questions  
6 for you, Mr. Lopez.

7 BY MR. SMITH:

8 Q. Reeves Young provided you with a cell  
9 phone; correct?

10 A. No.

11 Q. And during the time of your motor vehicle  
12 accident you weren't on call -- they wouldn't call  
13 you in the middle of the night and have you come  
14 back to Clemson or do any of the tasks; correct?

15 A. No.

16 Q. And they were not paying for your time to  
17 drive; they were just paying for your mileage, from  
18 your testimony; is that correct?

19 A. No, only the gas.

20 Q. And this is my last question for you. On  
21 the day of your motor vehicle accident did you see  
22 anyone at Holder -- strike that question.

23 Do people at Holder have any kind of uniforms or  
24 anything that identifies them as working for Holder?

25 A. They wear blue clothes and they have their

1 name and Holder's name on their top, and then also  
2 on their hardhat.

3 Q. And did anyone from Holder work at the  
4 apartments? Or was it just the dormitories?

5 A. I cannot answer that question because I  
6 don't know. I don't know who was working, where  
7 they were working, because you only receive orders  
8 from the company.

9 Q. Okay. So on the day of your motor vehicle  
10 accident after you cleared the mud away and moved  
11 over to the apartments, did you see anyone that you  
12 thought worked for Holder that day at the  
13 apartments?

14 A. No.

15 MR. SMITH: Thank you for your time.

16 I'm not sure if anyone has any follow-up.

17 MR. GRIGGS: I have no questions.

18 MR. VEGA: I do not.

19 MR. GRIGGS: All right Andrew, we'll  
20 be in touch. You got anything else?

21 MR. SMITH: That is all.

22 Thank you for your time.

23 COURT REPORTER: Does anyone need  
24 this transcript?

25 MR. GRIGGS: I need obviously the

1 original and one copy.

2 COURT REPORTER: Mr. Smith, did you  
3 need a copy?

4 MR. SMITH: E-Tran please.

5 COURT REPORTER: Very good. Thank  
6 you.

7

8 (Proceedings concluded at 1:24 PM)

9 (Pursuant to OCGA 9-11-30(e), signature of the  
10 witness has been waived.)

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1 C E R T I F I C A T E

2 STATE OF GEORGIA )

3 FULTON COUNTY )

4

5 I hereby certify that the foregoing transcript  
6 was reported as stated in the caption, and the  
7 questions and answers thereto were reduced to  
8 typewriting under my direction; that the foregoing  
9 pages represent a true, correct, and complete  
10 transcript of the evidence given upon said  
11 deposition, and I further certify that I am not of  
12 kin or counsel to the parties in the case, am not in  
13 the employ of counsel for any of said parties, nor  
14 am I in any way interested in the result of said  
15 case.

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WILLIAM H. ROBERTSON, CCR 2594

William H. Robertson, CCR/CVR-M  
Certified Court Reporter  
Certificate #2594

The State of South Carolina  
In the Court of Appeals

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Appeal from the South Carolina  
Workers' Compensation Commission

T. Scott Beck, Commissioner  
Avery B. Wilkerson, Jr., Commissioner  
Gene McCaskill, Commissioner

---

Appellate Case No.: 2020-000739

Jorge Lopez-Celestin.....Claimant, Appellant,

v.

Reeves Young, LLC, and  
Holder Construction Group.....Employers,

And

Amerisure Insurance Company, and  
American Zurich Insurance Company.....Carriers, Defendants

of whom Reeves Young, LLC; and  
Amerisure Insurance Company are the .....Respondents.

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**Rule 210(g) SCARC, Certificate of Counsel**

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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