

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

T. SCOTT BECK, COMMISSIONER, CHAIR
DERRICK L. WILLIAMS, COMMISSIONER

W.C.C. FILE NO.: 0810190

Bobby Baker, ...Employee/Claimant/Appellant,

vs.

Hilton Hotels Corporation, Employer, and
Ace American Insurance Company, ...Carrier/Defendants, Respondents.

RECORD ON APPEAL
VOLUME I

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SC Court of Appeals

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BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 0810190

Bobby Baker,

Employee/Claimant,

vs.

Hilton Hotels Corporation,

Employer,

And

ACE American Insurance Company,

Carrier/Defendants.

DECISION & ORDER

HEARING:

Held in Columbia South Carolina on January 4, 2011.

APPEARANCES:

Claimant represented by Luke A. Rankin, Esquire of Rankin & Rankin, P.A.. Defendants represented by Aisha Taylor, Esquire of Collins & Lacy, P.C.

PURPOSE OF HEARING:

To determine issues as set forth in Forms 50 and 51.

COMMISSIONER:

G. Bryan Lyndon

FILED:

March 2, 2011

STATEMENT OF THE CASE

Claimant filed a Form 50, Request for Hearing, on July 7, 2010 alleging injuries to his head, spine, left leg and right leg. Claimant alleges these injuries resulted from a work-related accident in which he was hit in the head by a piece of ceiling tile. Claimant alleged he was permanently and totally disabled as a result of his work-related injury and also alleged he sustained physical brain damage pursuant to S.C. Code Ann. §42-9-10(C).

Defendants filed a Form 51, Employer's Answer to Request for Hearing, admitting that Claimant sustained an injury to his back only. Defendants denied Claimant was permanently and totally disabled and denied Claimant's allegation of physical brain damage.

This claim was set for a hearing on January 4, 2011 at 10:00 am before the undersigned Commissioner in Columbia, South Carolina. All parties were present and represented by counsel.

STIPULATIONS

At the call of the case for hearing, counsel for the respective parties stipulated as follows:

1. The purpose of the hearing was to determine whether Claimant was at maximum medical improvement; whether Claimant was entitled to an award of permanency, and if so, in what amount; whether Claimant suffered physical brain damage and whether Claimant was entitled to ongoing medical treatment pursuant to S.C. Code Ann. §42-15-60.
2. Notice of the hearing was timely and properly served upon the parties of interest;
3. Venue, set in Richland County, South Carolina, is proper as agreed to by all parties and the South Carolina Workers' Compensation Commission has jurisdiction over the matter;
4. Claimant has an average weekly wage of \$964.84, resulting in a compensation rate of \$623.26.
5. Without objection, the Commission's file is made a part of the record, excluding

any unstipulated medical reports and/or self-serving statements.

EVIDENCE OF THE CASE

APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence:

Claimant's APA Submissions

	NAME OF PHYSICIAN/OTHER	DATE OF REPORT	PAGE #
1)	Grand Strand Medical Center	5/6/2008	1
2)	Doctors Care of NMB	6/16/2008	2 - 3
3)	SRSA - Dr. McCaffrey	6/26/2008 - 10/12/2010	4 - 62
4)	Waccamaw Pain Mgmt. Ctr. - Dr. Rosenberg	9/10/2008 - 8/4/2009	63 - 106
5)	Lowe's Physical Therapy	5/18/2009	107 - 116
6)	Select Physical Therapy - FCE	5/10/2010	117 - 128
7)	Community Rehabilitation & PT	9/29/2009 - 10/2/2009	129 - 132
8)	Dr. Kang	11/4/2009 - 11/4/2010	133 - 160
9)	Coastal Orthopaedic Associates	9/8/2009 - 10/5/2009	161 - 169
10)	Robert E. Brabham, Ph.D.	7/20/2010 & 10/12/2010	170 - 188
11)	L. Randolph Waid, Ph.D.	9/29/2010	189 - 197
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Defendants' APA Submissions

	NAME OF PHYSICIAN/OTHER	DATE OF REPORT	PAGE #
1)	Robert E. Deysach, Ph.D.	12/4/2010	1 - 8
2)	W.S. Edwards, Jr., MD	10/21/10	9 - 11
3)	James R. Myers, MA, QRP, CCM, CRC	10/2/2010 & 10/7/2010	12 - 24
4)	John D. Steichen, M.D.	10/30/2009	25 - 26
5)	Jeffrey C. Wilkins, M.D.	9/8/2009 - 10/5/2009	27 - 31
6)	Doctor's Care	5/6/2008 & 6/18/2008	32 - 36
7)	Grand Strand Regional Medical Center	5/6/2008 & 6/14/2008	37 - 55

TESTIMONY

Claimant, Bobby Baker, testified on his own behalf. He is 52 years old and lives in Conway, South Carolina with his wife of 26 years, Peggy. He attends church in his community and helps take care of his four grandchildren.

Prior to his injury, he was employed with Hilton Hotels Corporation for approximately four years in the maintenance department. His job duties included HVAC repair, plumbing, carpentry and general inspections of hotel rooms. While working for Hilton Hotels, he was also employed as an automobile mechanic at Hardwick's Lube-It in Conway, South Carolina. Prior to working for Hilton Hotels, Claimant ran his own automobile mechanic business with his wife. Claimant testified that in running his business, he would run the day-to-day operation of the shop, while his wife handled the book keeping and other administrative duties.

Claimant completed the 9th grade but dropped out in the 10th grade so he could work to buy a car. Claimant testified he made poor grades in school and was even held back in the first grade. He did not like school and admitted to being distracted a lot and having problems with reading, spelling and math. Claimant received no other formal education beyond the 9th grade.

Claimant testified he could not remember exactly what happened to him on the date of injury. All he remembered was waking up on the floor of a hotel room he was inspecting. He was later told that a piece of ceiling tile had fallen on his head. Claimant was driven to the hospital by his supervisor where he was treated for a scalp laceration. He received several staples in his scalp, and was told to follow-up with his family physician to have the staples removed. Claimant admitted that he did not inform the ER physician about any other problems and that he did not receive nor request any diagnostic tests or studies regarding the potential for physical brain damage. Claimant went to Doctors Care the day after his injury for a follow-up appointment and was released to return to work. Claimant admitted he did not mention any problems with memory or physical brain damage at this visit.

Claimant testified he was unable to return to work as recommended by the Doctors Care physician due to a bad respiratory infection. He went to the emergency room about one month after the injury due to severe back pain. He followed up with Doctors Care for his back pain and was eventually referred to Dr. McCaffrey, a neurologist with Strand Regional Specialty Associates. Claimant testified that Dr. McCaffrey took him out of work because of his back pain. He continued to treat with Dr. McCaffrey for over a year. Claimant testified that he began to develop headaches after his injury and he informed Dr. McCaffrey of this. Dr. McCaffrey provided Claimant with medication for his headaches. Claimant admitted he never discussed anything regarding memory difficulties or brain damage throughout the course of his treatment with Dr. McCaffrey.

Claimant testified Dr. McCaffrey placed him at maximum medical improvement in March 2009. Claimant recalled attending an FCE where he had to perform a lot of different exercises. Claimant acknowledged he received a 14% impairment rating to his spine as a result of his FCE performance and he recalled telling the examiner he would like to return to work if he was

physically able to do so. Claimant admitted that he never mentioned anything to the FCE examiner about memory loss or cognitive problems.

After the FCE, Claimant began pain management with Dr. Gregory Kang. Claimant testified he treated with Dr. Kang for over a year and continues to treat with him. Claimant testified Dr. Kang has been able to give him the most pain relief. Again, Claimant admitted he never mentioned anything with regard to memory problems and cognitive difficulties to Dr. Kang. Claimant acknowledged he received over two years of medical treatment without any discussion of or treatment for memory problems, cognitive difficulties or brain damage.

Claimant's wife, Peggy Baker, testified on his behalf. When asked to describe the type of problems her husband was having, she testified Claimant used to work 80 hours per week and that he is no longer able to do that. She also testified he used to take care of the home and do the yard work and he was not physically able to do this anymore. Mrs. Baker testified her husband started forgetting things a lot and was oftentimes confused. She stated he "was not the same" mentally and physically and her husband usually lies around the house and watches television.

Mrs. Baker testified she was allowed to participate in her husband's medical treatment and attended approximately 95% of all of his medical appointments. She testified she was allowed to ask questions and get clarification from all of the treating physicians and that she was never barred from an examination room. No additional witnesses testified on behalf of Claimant or Defendants at the hearing.

MEDICAL EVIDENCE

Claimant initially presented to the emergency room at Grand Strand Regional Medical Center on May 6, 2008. He was not transported by ambulance. He was diagnosed with a scalp laceration and head contusion for which he received wound clips. An x-ray of his cervical spine

read as, "no acute fracture" by the radiologist. Claimant was discharged home with instructions to follow up with his primary care physician for recheck within the next week. (Claimant's APA, p.1). Claimant followed up with Doctors Care later that day. (Defendants' APA, pp. 32 - 33).

On June 14, 2008, Claimant presented to Grand Strand Regional Medical Center complaining of "lower back discomfort". Claimant's diagnosis was listed as "back pain" and he was discharged home with Percocet and Flexeril. Claimant was instructed to "follow up with orthopaedics for MRI of the back to further delineate." (Defendants' APA, p. 49).

Claimant presented to Doctors Care on June 16, 2008 with additional complaints of low back pain and was diagnosed as having a "low back strain." (Defendants' APA, p. 35). Claimant had an MRI of the lumbar spine performed on June 23, 2008 that revealed degenerative disc and facet joint disease with bilateral annular tears within the peripheral annular fibers at L4-5. Degenerative disc disease with an annular tear was also noted at the T11-12 level. (Defendants' APA, p.51).

Claimant was referred to Dr. McCaffrey at Strand Regional Associates on June 26, 2008. Prior to meeting with Dr. McCaffrey, Claimant completed a medical questionnaire wherein he indicated he "never" suffered from recurrent headaches, migraine headaches, fainting, dizziness or memory loss." (Claimant's APA, pp. 11-14). In his first meeting with the Claimant, Dr. McCaffrey noted,

"[h]e suffered a very brief loss of conscious[ness] with a laceration to the occipital area requiring 12 stitches at Grand Strand Regional Medical Center. He went to Doctor's Care the next day and was told to go back to work. Unfortunately, he developed a bad upper respiratory infection. He was seen by his primary care physician and was in bed for two to three days after this accident. On 06/14/2008, he developed severe low back pain. He was seen at Grand Strand Regional Medical Center and given intravenous medication."

(Claimant's APA, p.4). Claimant was diagnosed as having "low back pain with right leg radiation"

and was referred for an EMG of the right lower extremity. Claimant was also diagnosed with a "closed-head injury with a left occipital laceration." Dr. McCaffrey noted that Claimant's laceration was completely healed and Claimant was having "no residual symptoms from this." (Claimant's APA, p. 6). In the "Mental Status" of his neurological evaluation, Dr. McCaffrey noted that Claimant was,

"Oriented to person, place, and time. No difficulty with short or long term memory. Good attention span and concentration. Patient able to repeat phrases and identify objects. Patient has no difficulty in discussing current events."

(Claimant's APA, p. 6). Claimant continued to treat with Dr. McCaffrey from June 26, 2008 through March 11, 2009 when he was placed at maximum medical improvement with a finding of permanent and total disability "in reference to his low back pain, neck pain, and headaches." Claimant's mental status was assessed at each and every visit and was noted to be the same. (Claimant's APA, pp. 4-54). Dr. McCaffrey went on to complete an "Attending Physician's Statement of Disability" wherein he noted Claimant had a Class 5 Physical Impairment (severe limitation) and a Class 1 Mental/Nervous Impairment (no limitations). (Claimant's APA, p. 59).

Claimant treated with Dr. Jason C. Rosenberg at the Waccamaw Pain Management Center from September 10, 2008 through August 4, 2009. At his initial visit with Dr. Rosenberg on September 10, 2008, Claimant complained of "low back and right lower extremity pain." Claimant's mental status was described as "alert, oriented, cooperative, and follows commands well. Speech is clear and language is normal. Abstract function is normal. Attention and memory are normal." (Claimant's APA, p. 64). Claimant received a series of right L3 through S1 medial branch blocks and radiofrequency ablation procedures throughout the course of his treatment. Claimant's mental status was addressed during every visit and procedure and was noted to be "normal." (Claimant's APA, pp. 63 - 106).

Claimant was referred to pain management with Dr. Kang on November 4, 2009. Dr. Kang diagnosed Claimant with lumbar degenerative disc disease with lumbar facet syndrome and recommended a repeat radio frequency ablation and medical management of Claimant's pain medications. (Claimant's APA, p. 133). Claimant continues to receive medical treatment from Dr. Kang. The last medical record from Dr. Kang is dated November 24, 2010. Dr. Kang placed Claimant at maximum medical improvement on June 8, 2010 with an 18% impairment rating to the lumbar spine. Dr. Kang gave Claimant clearance for sedentary type activity. In all medical records from November 4, 2009 through November 24, 2010, it was noted that Claimant "shows no signs of cognitive impairment." (Claimant's APA, pp. 133 - 160).

At the request of his attorney, Claimant saw Robert E. Brabham, Ph.D. on July 20, 2010 for a psychological and vocational evaluation. Dr. Brabham noted Claimant's history of academic difficulties. Specifically, during the evaluation, Claimant described himself as "good with my hands" but "retarded in the books." (Claimant's APA, p.177). Claimant also noted that he had been "unable to handle the paperwork or financial aspects of his auto mechanics business in the past." (Claimant's APA, p.177).

Again, per the referral of his attorney, L. Randolph Waid, Ph.D. evaluated Claimant on September 29, 2010 for a neuropsychological evaluation. Dr. Waid also noted Claimant's history of academic difficulties. During this examination, Claimant reported that "he has always been mechanical and good with his hands but not a 'good book learner.'" (Claimant's APA, p.192). Interestingly, in his summary and case discussion, Dr. Waid, noted, "I believe it evident that the primary obstacle to Mr. Baker's ability to return successfully to role functioning are the residuals from the orthopaedic injury...." (Claimant's APA, p.196).

Finally, Claimant was evaluated by Robert E. Deysach, Ph.D. on December 4, 2010 at the

request of the Employer/Carrier. On the Wechsler Abbreviated Scale of Intelligence (WASI), Claimant was noted to have a Full-2 estimated IQ of 62, which places him in the "Mildly Handicapped" range. (Defendants' APA, p.4). Dr. Deysach agreed with Dr. Waid that the "primary obstacles" of Claimant's inability to return to a competitive job market are the "residuals from the orthopedic injury." (Defendants' APA, p.7). Of importance, Dr. Deysach noted cognitive deficits were documented but "the data indicate that these deficits are basically developmental (i.e., existing before the accident) rather than the result of physical brain damage from the accident." Specifically, Dr. Deysach noted,

"In other words, up to the present, the patient has been able to compensate for his intellectual shortcomings by his physical competencies and a strong work ethic (e.g., working two full time jobs before his accident). The accident and his failure to return to productivity has made more salient to him and his family that he has significant deficits in the area of language and math (i.e., skills critical for activities of daily living)."

(Defendants' APA, p.7). Lastly, Dr. Deysach noted it was reasonable to conclude Claimant did suffer an injury to the head with brief and mild-post concussive symptoms but "the data do not appear to support the presence of an acquired brain injury." (Defendants' APA, p. 8).

FINDINGS OF FACT

Based upon the oral arguments and stipulations of counsel, the parties' respective APA Submissions, hearing testimony, and my personal observation of the Claimant and his witness,

I MAKE THE FOLLOWING FINDINGS OF FACT:

1. Claimant was an employee of Hilton Hotels Corporation on May 5, 2008 and had an average weekly wage of \$964.84, resulting in a compensation rate of \$623.26. ACE American Insurance Company is the workers compensation carrier for the Employer.
2. Claimant sustained a compensable work-related injury to his back on May 5, 2008. Although Claimant received a scalp laceration after being stuck by a ceiling tile, the primary injury

was to Claimant's back.

3. Claimant's back injury was admitted by the Employer/Carrier and the Claimant has received appropriate medical care under the South Carolina Workers' Compensation Act. Defendants are to pay for all causally-related medical treatment to Claimant's back.

4. Claimant also alleges physical brain damage as a result of this work-related accident.

5. Claimant was treated for over two years after the accident and there was no mention of or treatment for brain damage or any other head injury.

6. No medical tests or imaging studies were conducted as a result of complaints of a physical brain injury or physical brain damage.

7. Medical reports throughout the course of Claimant's medical treatment consistently stated Claimant was well oriented to time and place and referred to Claimant's mental status as normal.

8. Dr. McCaffrey, with whom Claimant treated for approximately nine months, placed Claimant at maximum medical improvement in March of 2009 without any mention of a head injury or brain damage.

9. Claimant received follow-up treatment and pain management from Dr. Kang who repeatedly stated Claimant showed no signs of cognitive impairment and gave Claimant clearance for sedentary work.

10. It was not until Claimant saw Dr. Brabham, prior to the original hearing date, that a brain injury or physical brain damage was mentioned.

11. Claimant completed the 9th grade and has an IQ of 62, which puts him in the mildly handicapped range.

12. I am persuaded by and agree with Dr. Deysach's conclusion that the reason

Claimant is unlikely to return to gainful employment is due to his orthopaedic injury and not cognitive limitations, which are developmental in nature.

13. I also agree with Dr. Deysach's conclusion that although Claimant may have sustained an injury to the head with brief and mild-post concussive symptoms, the data does not support a finding of physical brain damage.

14. In addition to the results of the testing performed by Dr. Deysach, Defendants rely on the South Carolina Court of Appeals' decision in Crisp v. SouthCo., Inc., 390 S.C. 340, 701 S.E.2d 762 (Ct. App. 2010) to support their position that there is not substantial evidence in the record to support a finding of a physical brain injury or physical brain damage. I agree that Crisp closely parallels this claim.

15. Based upon the greater weight of the evidence as a whole, including all of the medical evidence, I find that Claimant did not suffer a physical brain injury or any resulting physical brain damage.

16. I do find that pursuant to S.C. Code Ann. §42-9-30(21), Claimant has sustained greater than 50% loss of use to the back and is permanently and totally disabled and entitled to compensation under S.C. Code Ann. §42-9-10(B).

17. By operation of S.C. Code Ann. 42-9-30(21) Claimant is entitled to receive 500 weeks of benefits pursuant to S.C. Code Ann. §42-9-10(B). Defendants are entitled to a credit for all temporary total disability benefits paid to date.

18. Claimant is entitled to lifetime causally-related medical treatment for his back.

CONCLUSIONS OF LAW

IN VIEW OF THE FINDINGS OF FACT, I CONCLUDE AS MATTERS OF LAW:

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

2. Pursuant to S.C. Code Ann. §42-1-160, Claimant suffered a compensable injury by accident to his back arising out of the course and scope of his employment with Hilton Hotels Corporation.

3. A Claimant must establish by the preponderance of the evidence the facts which will entitle him to an award under the Workers' Compensation Act. Walsh v. U.S. Rubber Co., 238 S.C. 411, 120 S.E.2d 685 (1961); Herndon v. Morgan Mills, 246 S.C. 201, 143 S.E.2d 376 (1965). The findings of the Commission may not rest on surmise, conjecture, or speculation, but must be founded upon substantial evidence. Id.

4. There is insufficient evidence in the record to support a finding of physical brain damage pursuant to S.C. Code Ann. §42-9-10(C) because the medical records of several physicians who treated Claimant following the accident made no reference to a brain injury or physical brain damage. See Crisp v. SouthCo., Inc., 390 S.C. 340, 701 S.E.2d 762 (Ct. App. 2010); See also S.C. Code Ann. §42-1-160(E). Claimant failed to meet his burden of proving he sustained a physical brain injury or physical brain damage.

5. Pursuant to S.C. Code Ann. §42-9-30(21), Claimant has sustained greater than 50% loss of use of his back and is permanently and totally disabled as a result thereof and is entitled to compensation pursuant to S.C. Code Ann. §42-9-10(B).

6. Pursuant to S.C. Code Ann. §42-9-30(21), which invokes S.C. Code Ann. §42-9-

10(B), Claimant is entitled to permanent and total disability benefits in the amount of \$623.26 per week from May 5, 2008 and continuing for a period not to exceed five hundred (500) weeks. Defendants are entitled to receive credit for all weeks of temporary total disability paid to date.

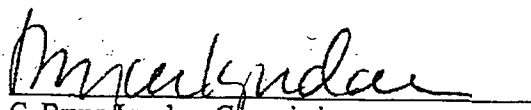
7. Pursuant to S.C. Code Ann. §42-15-60, Claimant is entitled to lifetime causally-related medical treatment for his back as recommended by the authorized treating physicians.

AWARD

Based upon the above Findings of Fact and Conclusions of Law set forth herein, IT IS **HEREBY ORDERED:**

Claimant is entitled to permanent and total disability benefits under S.C. Code Ann. §42-9-30(21), which invokes S.C. Code Ann. §42-9-10(B), in the amount of \$623.26 per week from May 5, 2008 and continuing for a period not to exceed five hundred (500) weeks. Defendants are entitled to receive credit for all weeks of temporary total disability paid to date. In addition, Claimant is entitled to lifetime causally-related medical treatment for his back as recommended by the authorized treating physicians.

AND IT IS SO ORDERED!


G. Bryan Lyndon, Commissioner

Columbia, South Carolina

2/28/2011

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

This 2nd day of March, 2011
By Shonda Morris
Administrative Assistant to the Commissioner

UAR
AT

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 0810190

Bobby Baker,)
)
Employee/Claimant,)
)
vs.)
)
Hilton Hotels Corporation,)
)
Employer,)
)
And)
)
ACE American Insurance Company,)
)
Carrier/Defendants.)
_____)

Appellate Panel Review held in Columbia, South Carolina
on June 21, 2011 per notices timely and properly served
on all parties of interest.

Appellate Panel Decision and Order filed

10-31, 2011

APPEARANCES:

Claimant/Appellant represented by Luke A. Rankin, Esquire of
Rankin & Rankin, P.A..

Defendants/Respondents represented by Aisha Taylor, Esquire of
Collins & Lacy, P.C.

STATEMENT OF THE CASE

A hearing was held on January 4, 2011 before Commissioner G. Bryan Lyndon in Columbia, South Carolina. On March 2, 2011, he issued the following Order:

Based upon the above Findings of Fact and Conclusions of Law set forth herein, **IT IS HEREBY ORDERED:**

Claimant is entitled to permanent and total disability benefits under S.C. Code Ann. §42-9-30(21), which invokes S.C. Code Ann. §42-9-10(B), in the amount of \$623.26 per week from May 5, 2008 and continuing for a period not to exceed five hundred (500) weeks. Defendants are entitled to receive credit for all weeks of temporary total disability paid to date. In addition, Claimant is entitled to lifetime causally-related medical treatment for his back as recommended by the authorized treating physicians.

AND IT IS SO ORDERED!

Within the statutory period, counsel for the Claimant filed an Application for Review in the case setting forth his reasons, copies of which were furnished to all interested parties prior to oral argument presented before the Appellate Panel on June 21, 2011. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Full Commission and has since been under study and consideration.

By appeal, Claimant respectfully submits the following:

1. Whether the Single Commissioner erred in his failure to issue a factual finding that Claimant suffered a compensable permanent physical brain injury?
2. Whether the Single Commissioner erred in his failure to conclude as a matter of law that Claimant was entitled to lifetime benefits as a result of a compensable permanent physical brain injury?

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 of all evidence in the instant case, the Commission, by unanimous vote, has determined all of the Single Commissioner's Findings of Fact and Conclusions of Law were correct as stated. Accordingly, they shall become, and hereby are, the law of the case, and, therefore, the Decision and Order of the Hearing Commissioner is sustained in its entirety. The Appellate Panel enters the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Claimant was an employee of Hilton Hotels Corporation on May 5, 2008 and had an average weekly wage of \$964.84, resulting in a compensation rate of \$623.26. ACE American Insurance Company is the workers compensation carrier for the Employer.

2. Claimant sustained a compensable work-related injury to his back on May 5, 2008. Although Claimant received a scalp laceration after being stuck by a ceiling tile, the primary injury was to Claimant's back.

3. , Claimant's back injury was admitted by the Employer/Carrier and the Claimant has received appropriate medical care under the South Carolina Workers' Compensation Act. Defendants are to pay for all causally-related medical treatment to Claimant's back.

4. Claimant also alleges physical brain damage as a result of this work-related accident.

5. Claimant was treated for over two years after the accident and there was no mention of or treatment for brain damage or any other head injury.

6. No medical tests or imaging studies were conducted as a result of complaints of a physical brain injury or physical brain damage.

7. Medical reports throughout the course of Claimant's medical treatment consistently stated Claimant was well oriented to time and place and referred to Claimant's mental status as normal.

8. Dr. McCaffrey, with whom Claimant treated for approximately nine months, placed Claimant at maximum medical improvement in March of 2009 without any mention of a head injury or brain damage.

9. Claimant received follow-up treatment and pain management from Dr. Kang who repeatedly stated Claimant showed no signs of cognitive impairment and gave Claimant clearance for sedentary work.

10. It was not until Claimant saw Dr. Brabham, prior to the original hearing date, that a brain injury or physical brain damage was mentioned.

11. Claimant completed the 9th grade and has an IQ of 62, which puts him in the mildly handicapped range.

12. We are persuaded by and agree with Dr. Deysach's conclusion that the reason Claimant is unlikely to return to gainful employment is due to his orthopaedic injury and not cognitive limitations, which are developmental in nature.

13. We also agree with Dr. Deysach's conclusion that although Claimant may have sustained an injury to the head with brief and mild-post concussive symptoms, the data does not support a finding of physical brain damage.

14. In addition to the results of the testing performed by Dr. Deysach, Defendants rely on the South Carolina Court of Appeals' decision in Crisp v. SouthCo., Inc., 390 S.C. 340, 701 S.E.2d 762 (Ct. App. 2010) to support their position that there is not substantial evidence in the record to support a finding of a physical brain injury or physical brain damage. We agree that Crisp closely parallels this claim.

15. Based upon the greater weight of the evidence as a whole, including all of the medical evidence, we find that Claimant did not suffer a physical brain injury or any resulting physical brain damage.

16. We do find that pursuant to S.C. Code Ann. §42-9-30(21), Claimant has sustained greater than 50% loss of use to the back and is permanently and totally disabled and entitled to compensation under S.C. Code Ann. §42-9-10(B).

17. By operation of S.C. Code Ann. 42-9-30(21) Claimant is entitled to receive 500 weeks of benefits pursuant to S.C. Code Ann. §42-9-10(B). Defendants are entitled to a credit for all temporary total disability benefits paid to date.

18. Claimant is entitled to lifetime causally-related medical treatment for his back.

CONCLUSIONS OF LAW

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

2. Pursuant to S.C. Code Ann. §42-1-160, Claimant suffered a compensable injury by accident to his back arising out of the course and scope of his employment with Hilton Hotels Corporation.

3. A Claimant must establish by the preponderance of the evidence the facts which will entitle him to an award under the Workers' Compensation Act. Walsh v. U.S. Rubber Co., 238 S.C. 411, 120 S.E.2d 685 (1961); Herndon v. Morgan Mills, 246 S.C. 201, 143 S.E.2d 376 (1965). The findings of the Commission may not rest on surmise, conjecture, or speculation, but must be founded upon substantial evidence. Id.

4. There is insufficient evidence in the record to support a finding of physical brain damage pursuant to S.C. Code Ann. §42-9-10(C) because the medical records of several physicians who treated Claimant following the accident made no reference to a brain injury or physical brain damage. See Crisp v. SouthCo., Inc., 390 S.C. 340, 701 S.E.2d 762 (Cl. App. 2010); See also S.C. Code Ann. §42-1-160(E). Claimant failed to meet his burden of proving he sustained a physical brain injury or physical brain damage.

5. Pursuant to S.C. Code Ann. §42-9-30(21), Claimant has sustained greater than 50% loss of use of his back and is permanently and totally disabled as a result thereof and is entitled to compensation pursuant to S.C. Code Ann. §42-9-10(B).

6. Pursuant to S.C. Code Ann. §42-9-30(21), which invokes S.C. Code Ann. §42-9-10(B), Claimant is entitled to permanent and total disability benefits in the amount of \$623.26 per week from May 5, 2008 and continuing for a period not to exceed five hundred (500) weeks. Defendants are entitled to receive credit for all weeks of temporary total disability paid to date.

7. Pursuant to S.C. Code Ann. §42-15-60, Claimant is entitled to lifetime causally-related medical treatment for his back as recommended by the authorized treating physicians.

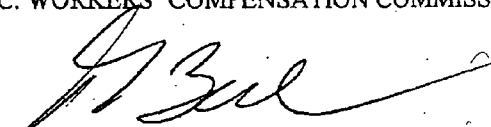
ORDER

IT IS, THEREFORE, ORDERED the Decision and Order of the Single Commissioner is hereby **AFFIRMED** in total and made the Decision and Order of the Appellate Panel of the South Carolina Workers' Compensation Commission.

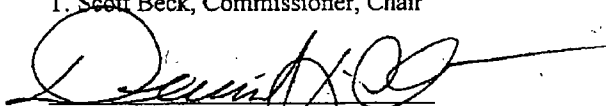
AND IT IS SO ORDERED!

S.C. WORKERS' COMPENSATION COMMISSION

FULL AFFIRMATION:

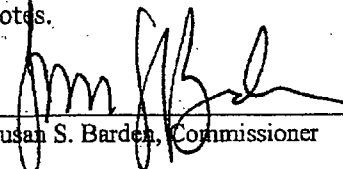

T. Scott Beck, Commissioner, Chair

CONCUR:


Derrick L. Williams, Commissioner

CONCUR WITH COMMENTS:

Commissioner Barden: Dr. McCaffrey's questionnaire answers are not supported by his own treatment notes. The symptoms appeared months (over one year) after the date of the injury. The proof is in the treatment notes.


Susan S. Barden, Commissioner

CERTIFICATE OF SERVICE

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

This 31 day of October, 2011
By Valerie D. Baker

Administrative Assistant to the Commissioner

Luke A. Ranken
Aisha Grant Taylor
Peter H. Swokjanyn

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



WCC File #: 0810190
Carrier File #: YTE01212C
Carrier Code #: 00461
Employer FEIN #:

Claimant's Name: Bobby Baker SSN: [REDACTED] Employer's Name: Hilton
Address: [REDACTED] Address: 9800 Queensway Blvd
City: [REDACTED] State: SC Zip: [REDACTED] City: Myrtle Beach State: SC Zip: [REDACTED]
Home Phone: [REDACTED] Work Phone: [REDACTED] Insurance Carrier: Specialty Risk Services, LLC
Preparer's Name: Luke A. Rankin Law Firm: Rankin and Rankin Preparer's Phone #: (843)248-2405

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

A claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness: 05/05/2008
☒ Injury ☐ Illness ☐ Repetitive Trauma

- 1a. The claimant sustained an injury to head, spine, left and right lower extremities (Part(s) of Body Injured) on 05/05/2008 in Horry county, state of South Carolina.
- 1b. Body part(s) affected are: head, spine, left and right lower extremities
Briefly describe how the accident occurred. ceiling fell on Claimant
2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the Employer on 05/05/2008 (Month/Day/Year) in the following manner:
supervisor was notified
- ☒ 6. Due to injury, the claimant is in need of (check one):
☐ (a) medical examination and treatment for:
☒ (b) additional medical examination and treatment for: future medicals
- ☒ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: since date of injury.
- ☒ 8. 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 ☐ Partial
- ☐ 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:
- 10a. At the time of the injury, the Claimant was paid weekly wages of \$tbd, and demands accounting of days worked and wages earned as provided by law.
- 10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident: None
- 11a. Further grounds or unusual aspects of claim: None
- 11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident: Please see attached addendum
- 11c. To the best of your knowledge, did you have any prior permanent disability? No
If yes, describe:
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- ☐ 13a. I am filing a claim. I am not requesting a hearing at this time.
- ☒ 13b. I am requesting a hearing. A \$25 fee is required.
14. Estimated time needed for hearing: 30 minutes

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

Preparer's Signature

Luke A. Rankin

Title

rhonda@rankinandrakin.com

July 7, 2010
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

WCC Form # 50
Revised 9/07

50

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

Bobby Baker vs. Hilton Hotels Corporation

DOI: 05/05/08

WCC File #0810190

ADDENDUM

1. Grand Strand Regional Medical Center
809 82nd Parkway
Myrtle Beach, SC 29572
2. Doctor's Care NMB
1714 Highway 17 South
North Myrtle Beach, SC 29582
3. Dr. Michael McCaffrey
Strand Regional Specialty Associates
8171 Rourke Street
Myrtle Beach, SC 29572
4. Dr. Jason C. Rosenberg
Next Step Pain Management
C/O Waccamaw Community Hospital
4070 Highway 17 Bypass
Murrells Inlet, SC 29576
5. Lowe's Therapy (FCE)
507 W. Cheves Street
Florence, SC 29501
6. Select Physical Therapy
150 Waccamaw Medical Park Court
Conway, SC 29526
7. Community Rehab and Physical Therapy
117 Waccamaw Medical Park Drive
Conway, SC 29526
8. Pain Spine and Sports Medicine-Dr. Kang
3029 Newcastle Loop
Myrtle Beach, SC 29588

9. Coastal Orthopaedic Associates
2376 Cypress Circle, Suite 300
Conway, SC 29526

1612 Marion Street • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5739
www.wcc.sc.gov



Carrier File #: YTE01212C

Ca. Code #:

Employer FEIN #:

Claimant's Name: Bobby Baker SSN: [REDACTED] Employer's Name: Hilton Hotels Corporation
Address: [REDACTED] Address: 9800 Queensway Blvd
City: [REDACTED] State: [REDACTED] Zip: [REDACTED] City: Myrtle Beach State: SC Zip: 29572
Home Phone: [REDACTED] Work Phone: () - Insurance Carrier: ACE American Insurance
Date of Injury: 05-05-2008
Preparer's Name: Peter H. Dworjanyn, Esquire Law Firm: Collins & Lacy, P.C. Preparer's Phone #: (803) 256-2660

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer/carrier in answer to the claim, respectfully shows:

1. It is **Admitted** the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
2. It is **Admitted** the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
3. It is **Admitted** the relationship of employer and employee existed at the time in question. The reasons for denial are:
4. It is **Admitted** at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
5. It is **Admitted** notice of injury was given the employer. The reasons for denial are:
6. It is **Admitted** the employee **Needs / Is Entitled to Additional** medical care as a result of injury or illness. The reasons for denial are:
Defendants continue to provide the palliative care recommended by the treating physician. Dr. Kang placed Claimant at MMI, and released him to return to work.
7. It is **Admitted** the employee is entitled to temporary total disability for the period(s) of :
Admit only that Claimant continues to receive TTD benefits.
8. It is **Admitted** the employee is permanently disabled. The reasons for denial are:
Admit only that Claimant has received an impairment rating. Claimant contends that he is permanently and totally disabled. However, an FCE shows Claimant is capable of light duty work, and Dr. Kang opined Claimant could perform sedentary duties.
9. It is **Denied** the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ See Form 20 applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
12. Estimated time needed for hearing: 30 minutes

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

Name: Luke A. Rankin, Esquire
Address: P.O. Box 851, Conway, SC 29528-0851

On August 6, 2010, by ☒ first class mail ☐ personal service ☐ certified mail.

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

Preparer's Signature

Attorney at Law
Title

pdworjanyn@collinsandlacy.com
Email

August 6, 2010
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

WCC Form # 51
Revised 9/07

51

Employer's Answer to Request for Hearing

01/08/2008 15:15 8434976829
Compensation Commission
P. O. Box 1715-1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

HILTON HOTEL

PAGE 02/03

WCC File # _____
Carrier File # _____
Carrier Code # _____

Bobby Baker

Claimant's Name

SSN

SC

Address

City

State

Zip

Home Phone #

Work Phone #

Embassy Suites @ Kingston Plantation

Employer's Name

8800 Queensway Blvd Myrtle Beach SC 29572

Address

City

State

Zip

Kerri Jenkins

10000 Beach Club Dr Myrtle Beach SC 29582

Insurance Carrier

843-692-3122

Preparer's Name

Preparer's Address

Phone #

A. Total Wages Paid

Date of Injury 8/6/08

1. Choose One ☒ Report of earnings of injured employee based on four completed quarters
☐ Report of earnings of injured employee who did not complete four quarters based on actual time worked.
☐ Report of earnings of similar employee. Injured employee did not work sufficient time before alleged injury. Hire Date: _____
☐ Report of earnings of injured employee based on alternative method because Form 20 results in a compensation rate that is not fair and just.
2. List total wages paid as reported to Employment Security Commission on the Employer Quarterly Contribution and Wage Reports during the four quarters immediately preceding the quarter in which the injury occurred. Do not include the quarter during which the injury occurred.

Quarter	Ending Date	Total Wages Paid
1st	<u>6-30-07</u>	<u>5676.16</u>
2nd	<u>9-30-07</u>	<u>6861.40</u>
3rd	<u>12-31-07</u>	<u>7041.27</u>
4th	<u>3-31-08</u>	<u>5740.20</u>

Total Paid

2. 25325.02

3. List total value of other allowances of any character made in lieu of wages during four quarters above.
4. Add lines 2 and 3.
5. List total number of weeks paid to employee during the four quarters immediately preceding the quarter in which the injury occurred.

Total Wages Paid

3. 0

4. 25325.02

5. 52

B. Average Weekly Wage

6. To determine average weekly wage, divide total wages (line 4) by total weeks paid (line 5).

AVERAGE WEEKLY WAGE

6. 487.02

C. Compensation Rate

7. The general rule for calculating the compensation rate is to multiply average weekly wage (line 6) by .887. Estimate compensation rate by multiplying average weekly wage (line 6) by .887. Base line 8 below to determine the actual compensation rate.
8. The compensation rate is as follows (choose one):
- ☐ When average weekly wage (line 6) is less than \$75.00, the compensation rate is the average weekly wage. Enter average weekly wage on line 1.
 - ☐ When the estimated compensation rate (line 7) is less than \$75.00 and average weekly wage (line 6) is more than \$75.00, the compensation rate is \$75.00 enter \$75.00 on line 8.
 - ☐ When the estimated compensation rate (line 7) is more than the maximum compensation rate for the year in which the injury occurred, enter the maximum compensation rate for the year in which the injury occurred on line 8.
 - ☐ Employee is within the exceptions listed in S.C. Code Ann. Section 42-7-45. List applicable exception here and enter appropriate compensation rate on line 8: _____
- ☒ The calculated compensation rate (line 7) applies. Enter amount from Line 7 on line 8.

WEEKLY COMPENSATION RATE:

7. 324.70

The carrier should complete and file the Form 20 with the Claims Department according to R.67-1603. Carrier must serve the Form 20 on Claimant according to R.67-212. NOTE: Average weekly wage represents average gross pay before taxes and other deductions. WHEN THE CLAIMANT DOES NOT AGREE WITH THE COMPENSATION RATE ON LINE 8, HE OR SHE SHOULD CONTACT THE EMPLOYER'S REPRESENTATIVE TO TRY TO REACH AN AGREEMENT AS TO THE COMPENSATION RATE. IF NO AGREEMENT CAN BE REACHED, THE CLAIMANT SHOULD CONTACT THE CLAIMS DEPARTMENT AT (803) 737-5723.

WCC Form #20

20

Statement of Earnings of Injured Employee

Bobby Baker

Payperiod Ending	Total Wages	Other Pay	Gross Wages	Paydates		
4/12/2007	930.70		930.70	4/20/07		
4/25/2007	848.96	90.84	939.80	5/4/07		
5/10/2007	961.29		961.29	5/18/07		
5/24/2007	968.94		968.94	6/1/07		
6/7/2007	950.76		950.76	6/15/07		
6/21/2007	743.69	181.28	924.97	6/29/07	5878.18	2nd
7/5/2007	950.93		950.93	7/19/07		
7/19/2007	1071.42		1071.42	7/27/07		
8/2/2007	1229.65		1229.65	8/10/07		
8/16/2007	1035.00	90.84	1125.84	8/24/07		
8/30/2007	1230.66		1230.66	9/7/07		
9/13/2007	1253.10		1253.10	9/21/07	8861.40	3rd
9/27/2007	1119.18		1119.18	10/5/07		
10/11/2007	944.98	90.00	1034.98	10/19/07		
10/25/2007	966.80		966.80	11/2/07		
11/8/2007	857.56	62.69	920.24	11/16/07		
11/22/2007	882.18	187.52	1069.70	11/30/07		
12/6/2007	1008.82		1008.82	12/14/07		
12/20/2007	941.84		941.84	12/28/07	7041.27	4th
1/3/2008	568.19	375.04	943.23	1/11/08		
1/17/2008	973.99		973.99	1/25/08		
1/31/2008	984.15		984.15	2/8/08		
2/14/2008	782.85	187.52	950.37	2/22/08		
2/28/2008	969.60		969.60	3/7/08		
3/13/2008	382.31	582.56	944.87	3/21/08	5748.20	1st
Totals	23497.13	1827.89	25325.02		25325.02	



Carrier Code #: _____

Employer FEIN #: _____

Claimant's Name: Bobby Baker SSN: [REDACTED] Employer's Name: Hardwick's Lube-It Brake and Exhaust

Address: [REDACTED] Address: 2112 Main Street

City: [REDACTED] State: SC Zip: [REDACTED] City: Conway State: SC Zip: 29526

Home Phone: [REDACTED] Work Phone: () Insurance Carrier: ACE American Insurance Company

Preparer's Name: Peter H. Dwarjanyn, Esquire Preparer's Phone #: (803) 256 - 2660

Date of Injury: 5/5/2008
month day year

A. Total Wages Paid

1. Check Applicable Method:

- ☐ Report of earnings of injured employee based on four completed quarters.
☐ Report of earnings of injured employee who did not complete four quarters based on actual time worked.
☐ Report of earnings of similar employee. Injured employee did not work sufficient time before alleged injury. Hire date: _____
☐ Report of earnings of injured employee based on alternative method because Form 20 results in a compensation rate that is not fair and just (attach documentation to show how average weekly wage and compensation rate were calculated).

2. List total wages paid as reported to the Employment Security Commission on the Employer Quarterly Contribution and Age Reports during the four quarters immediately preceding the quarter in which the injury occurred. Do not include the quarter during which the injury occurred.

Quarter	Ending Date	Total Wages Paid
1st	_____	\$ _____
2nd	_____	\$ _____
3rd	_____	\$ _____
4th	_____	\$ _____

Total Paid 2. \$ _____

3. List total value of other allowances of any character made in lieu of wages during four quarters above.

3. \$ _____

4. Add lines 2 and 3.

TOTAL WAGES PAID:

4. \$ _____

5. List total number of weeks paid to employee during the four quarters immediately preceding the quarter in which the injury occurred.

5. _____

B. Average Weekly Wage

6. To calculate average weekly wage, divide total wages (line 4) by total weeks paid (line 5).

AVERAGE WEEKLY WAGE:

6. \$477.82

C. Compensation Rate

7. The general rule for calculating the compensation rate is to multiply average weekly wage (line 6) by .6667. Estimate compensation rate by multiplying average weekly wage (line 6) by .6667. See part 8 below to determine the actual compensation rate.

8. The compensation rate is as follows (choose one):

- ☐ When average weekly wage (line 6) is less than \$75.00, the compensation rate is the average weekly wage. Enter average weekly wage on line 8.
☐ When the estimated compensation rate (line 7) is less than \$75.00 and average weekly wage (line 6) is more than \$75.00, the compensation rate is \$75.00. Enter \$75.00 on line 8.
☐ When the estimated compensation rate (line 7) is more than the maximum compensation rate for the year in which the injury occurred, enter the maximum compensation rate for the year in which the injury occurred on line 8.
☐ Employee is within the exceptions listed in S.C. Code Ann. Section 42-7-65. List applicable exception here and enter appropriate compensation rate on line 8. _____

WEEKLY COMPENSATION RATE: 8. \$298.56

\$298.56
Should be \$385.60 A5T

Employer's representative shall prepare a Form 20 and serve per R.67-211 a copy on the claimant within thirty days of beginning temporary compensation. See R.67-1603 when no temporary compensation is paid. NOTE: Average weekly wage represents average gross pay before taxes and other deductions. WHEN THE CLAIMANT DOES NOT AGREE WITH THE COMPENSATION RATE ON LINE 8, HE OR SHE SHOULD CONTACT THE EMPLOYER'S REPRESENTATIVE TO TRY TO REACH AN AGREEMENT AS TO THE COMPENSATION RATE. IF NO AGREEMENT CAN BE REACHED, THE CLAIMANT SHOULD CONTACT THE CLAIMS DEPARTMENT AT (803)737-5723.

WCC Form # 20
Rev. Date 3/97

20

STATEMENT OF EARNINGS
OF INJURED EMPLOYEE

South Carolina Workers' Compensation Commission
1612 Marion Street
Post Office Box 1715
Columbia, SC 29202-1715
803-737-5723
www.wcc.sc.gov



AMENDED PRE-HEARING BRIEF
WCC File No: 0810190

Claimant's Name: Bobby Baker SSN: [REDACTED] Employer's Name: Hilton
Address: [REDACTED] Address: 9800 Queensway Blvd
City: [REDACTED] State: [REDACTED] Zip: [REDACTED] City: Myrtle Beach State: SC Zip: Ozip
Home Phone: 843-365-2722 Work Phone: [REDACTED] Insurance Carrier: Specialty Risk Services, LLC
Preparer's Name: Luke A. Rankin Law Firm: Rankin & Rankin Preparer's Phone #: 843-248-2405

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: 623.26 2. AWW: \$ 964.84 Date of Injury: 05/05/2008
3. Type of injury and body part(s): Ceiling tile fell on claimant causing injury to his head, neck, back and lower extremities
4. Facts in controversy: Whether Claimant is totally and permanently disabled; Whether Claimant is totally and permanently disabled due to permanent physical brain injury and physical injuries rendering him incapable of earning the same wages in the same or similar employment; lump sum payment per *Utica Mohawk* (SC Sup. Ct *James vs. Anne's Inc.*); lifetime medical;
5. Legal issues involved: See No. 4
6. Unusual aspects: [REDACTED]
7. Witnesses (designate if expert): * Claimant, Peggy Baker and any witnesses called on behalf of defendants
8. Exhibits: See attached APA Submissions
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
See attached APA Submissions
10. Name, address, and specialty, if any, of the treating physician: Please see attached addendum
11. Impairment rating(s); body part(s); physician and date of opinion: L. Randolph Waid, Ph.D, Dr. Michael McCaffrey (permanent physical brain injury), Robert Brabham, Ph.D, 10/12/10; Dr. Gregory Kang (18% lumbar spine), 6/8/10
12. I am amending my Form 50/51 in the following manner: [REDACTED]

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

Signature: Luke A. Rankin

Email: rhonda@rankinandrakin.com

Date of hearing: 12/15/10

Time needed for hearing: 30 minutes

On behalf of ☒ Claimant ☐ Employer

File this form and proof of service on the opposing party according to R.67-811 and R.67-212. Do not send medical reports
* Commissioners reserve the right to admit expert witnesses at hearings.

WCC Form # 58
Rev. 9/07

58

PRE-HEARING BR



Claimant's Name: Bobby Baker Employer's Name: Hilton Hotels Corporation
Address: [REDACTED] Address: 9800 Queensway Blvd
City: [REDACTED] State: [REDACTED] Zip: [REDACTED] City: Myrtle Beach State: SC Zip: 29572
Home Phone: [REDACTED] Work Phone: () Carrier: ACE American Insurance
Preparer's Name: Aisha G. Taylor, Attorney at Law Preparer's Phone #: (803) 256-2660

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: 623.26 2. AWW: \$964.84 Date of Injury: 05/05/2008
3. Type of Injury and body part(s): Defendants admit Claimant sustained an injury to his back only. Claimant alleges a physical brain injury and erectile dysfunction, which Defendants deny.
4. Facts in controversy: Whether Claimant is at maximum medical improvement; whether Claimant is entitled to permanent partial disability benefits; whether Claimant is permanently and totally disabled, whether Claimant sustained a physical brain injury; whether Claimant's erectile dysfunction is causally related to his work-related injury; whether Claimant is entitled to lifetime indemnity and medical benefits; and whether any award by the commission should be paid in a lump-sum.
5. Legal issues involved: See Facts in Controversy; S.C. Code Ann. Sections 42-9-30, 42-9-10 and 42-15-60.
6. Unusual aspects: Claimant underwent a neuropsychological evaluation by Dr. Robert Deysach on December 4, 2010. The parties are still waiting on the official report. Dr. Deysach's office has been instructed to send the report to both the Claimant and Defendants simultaneously. The report will be sent to the Commission by way of a Supplemental APA submission as soon as it is received.
7. Witnesses (designate if expert):* Dennis McGinn, Ray Davis and/or other representatives of the employer.
8. Exhibits: Vocational Evaluation and Labor Market Analysis have been included in Defendants' APA Submissions as exhibits; portions of Claimant's deposition testimony and personnel file may also be introduced.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): See Defendants' APA Submissions.
10. Name, address, and specialty, if any, of the treating physician: C. Gregory Kang, MD; 3029 Myrtle Beach, SC 29588.
11. Impairment rating(s); body part(s); physician and date of opinion: On June 8, 2010, Dr. Kang assigned rating of 18% to the lumbar spine. On July 16, 2010, Dr. McCaffrey indicated Claimant's impairment to be 14% of the lumbar spine.
12. I am amending my Form 50/51 in the following manner: N/A

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

Signature: [Signature]

Email: ataylor@collinsandlacy.com

Date of hearing: December 15, 2010

Time needed for hearing: 2 hours

On behalf of ☐ Claimant ☒ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.
* Commissioners reserve the right to admit expert witnesses at hearings.

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File #: 0810190
Carrier File #: YTE01212C
Carrier Code #:
Employer FEIN:

Bobby Baker Claimant's Name		[REDACTED] SSN		Hilton Hotels Corporation Employer's Name	
[REDACTED] Address		[REDACTED] City		9800 Queensway Blvd Myrtle Beach SC 29572 Address City State Zip	
[REDACTED] Home Phone #		[REDACTED] Work Phone #		Specialty Risk Services, LLC Insurance Carrier	
Luke A. Rankin Preparer's Name				843-248-2405 Phone #	

Request for Commission Review by ☒ claimant ☐ employer (check one)

Date of injury: 05/05/2008

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

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

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Aisha Grant Taylor, Esquire
Name

Collins & Lacy, PC, PO Box 12487, Columbia, SC 29211
Address

on the 16th day of March, 2011 by ☒ first class mail; ☐ personal service; ☐ certified mail.

Luke A. Rankin Attorney for Claimant 03/16/2011
Preparer's Signature Title Date

Check this box if you are not represented by an attorney ☐

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701 B. Otherwise, file the original and 4 copies of this form with the Judicial Department. The appeal must be Postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

WCC FORM # 30 REV. DATE 3/97

30

REQUEST FOR COMMISSION REVIEW

Page

GROUNDS FOR REVIEW

1. Whether the Hearing Commissioner erred in Findings of Fact 2, 5,6,7,8,9,10,12,13,14,15, when the findings of fact are against the greater weight of the overwhelming and substantial evidence as a whole?
2. Whether the Hearing Commissioner erred in Conclusion of law Number 4, when the overwhelming and substantial evidence in the record clearly warrants a finding the Claimant did sustain a physical brain injury?
3. Whether the Hearing Commissioner erred in failing to consider the un-refuted medical opinions and findings of the treating physician and psychologists when said error warranted an incorrect finding of fact and conclusion of law that claimant did not sustain a permanent physical brain injury?
4. Whether the Hearing Commissioner erred in Conclusion of law Number 4, by misapplying statutory and case law and adopting a result that is contrary to the Law and overwhelming and substantial evidence in the record?
5. Whether the Hearing Commissioner erred in failing to find that Claimant did sustain a permanent physical brain injury, when the overwhelming and substantial evidence of the record warrant said finding?
6. Whether the Hearing Commissioner erred as a matter of law in imposing an incorrect standard and burden of proof for the Claimant than is required by existing and controlling statutory and case law, when such error resulted in undue prejudice and incorrect result?

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

T. SCOTT BECK, COMMISSIONER, CHAIR
DERRICK L. WILLIAMS, COMMISSIONER

W.C.C. FILE NO.:0810190

Bobby Baker, ...Employee/Claimant/Appellant,

vs.

Hilton Hotels Corporation Employer,

AND

ACE American Insurance Company Carrier/Defendants.

OF WHOM

Hilton Hotels Corporation and ACE American Insurance Company are Respondents.

NOTICE OF APPEAL

Bobby Baker appeals from the Appellate Panel Decision and Order filed October 31, 2011. Written notice of the Order was received on October 31, 2011. A copy of the Order is attached hereto.

The grounds for this appeal are as follows:

1. Whether the Single Commissioner and Full Commission erred in their failure to issue factual finding that Claimant suffered a compensable permanent physical brain injury?

2. Whether the Single Commissioner and Full Commission erred in their failure to conclude as a matter of law that Claimant was entitled to lifetime benefits as a result of a compensable permanent physical brain injury?

3. And for such other and further grounds as set forth in the Appellant's briefs on appeal.



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Attorneys for Appellant

Other Counsel of Record:

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Attorneys for Respondents

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 0810190



COPY

EMPLOYEE/CLAIMANT: BOBBY BAKER

EMPLOYER: HILTON HOTELS CORPORATION

INSURER: ACE AMERICAN INSURANCE COMPANY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 4TH DAY OF
JANUARY, 2011, COMMENCING AT THE HOUR OF 10:40 A.M., IN
COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE BRYAN
LYNDON, ATTENDED BY COUNSEL AS FOLLOWS:

JAN L. WHITWORTH
VERBATIM REPORTER

JAN L. WHITWORTH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, S.C. 29376

APPEARANCES

LUKE A. RANKIN, ESQUIRE, OF THE FIRM
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I N D E X

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

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

6 BY COMMISSIONER LYNDON:

7 TODAY'S DATE IS JANUARY THE 4TH, 2011. THIS IS
8 SOUTH CAROLINA WORKERS' COMPENSATION CASE FILE
9 NUMBER 0810190. BOBBY BAKER IS THE CLAIMANT
10 REPRESENTED BY ATTORNEY LUKE RANKIN VERSUS THE
11 EMPLOYER HILTON HOTELS CORPORATION. ACE AMERICAN IS
12 THE CARRIER, AND AISHA GRANT TAYLOR IS THE ATTORNEY
13 FOR THE DEFENDANT, AND STAN LACY IS ALSO CO-COUNSEL
14 IN THIS HEARING. THE PURPOSE OF THE HEARING IS TO
15 DETERMINE ISSUES RAISED ON FORMS 50 AND 51. THE
16 CLAIMANT'S AVERAGE WEEKLY WAGE IS \$964.84. HIS COMP
17 RATE IS \$623.26, AND THE DATE OF ACCIDENT IS 5/5/08.

18 ARE THERE ANY OBJECTIONS TO APAs, JURISDICTION,
19 VENUE, OR ANY OTHER ITEMS?

20 BY MS. TAYLOR:

21 ACTUALLY, DEFENDANTS DO OBJECT TO CLAIMANT'S
22 APA NUMBER 11, AND THAT IS THE REPORT OF DR. RANDY
23 WAID, OR DR. BRABHAM, BECAUSE THE CLAIMANT'S WIFE
24 ACTUALLY COMPLETED PORTIONS OF THE TESTING, AND WE
25 BELIEVE THAT THAT PREJUDICES OUR CLIENT.

1 BY COMMISSIONER LYNDON:

2 AND YOUR REPLY TO THAT, MR. RANKIN?

3 BY MR. RANKIN:

4 I'M NOT AWARE OF WHAT -- MS. BAKER HAS NOT BEEN
5 DEPOSED. SHE WAS PRESENT WITH MR. BAKER AT BOTH THE
6 I.M.E. OR THE PSYCH EVAL WITH DR. DEYSACH THAT THEY
7 ARRANGED IN DECEMBER. I DON'T THINK SHE HAS
8 PARTICIPATED IN THIS ANY MORE THAN WOULD TAINT THIS.
9 CERTAINLY, THEY DID NOT DEPOSE DR. EDWARDS OR DR.
10 WAID TO VERIFY WHAT IF ANY PARTICIPATION SHE MAY
11 HAVE HAD, AND ACTUALLY THE PSYCH EVAL ---

12 BY MS. TAYLOR:

13 ACTUALLY HIS REPORT ON PAGE 195 STATES THAT MS.
14 BAKER COMPLETED THAT PARTICULAR PORTION OF THE
15 EVALUATION.

16 BY COMMISSIONER LYNDON:

17 WELL, WAS HIS EVALUATION -- WAS THE PREDICATE
18 FOR THAT THIS FORM THAT SHE FILLED OUT?

19 BY MS. TAYLOR:

20 IT WAS ONE OF THE CONCLUSIONS -- IT WAS ONE OF
21 THE TESTS USED TO FORM HIS CONCLUSIONS.

22 BY COMMISSIONER LYNDON:

23 AND THESE WERE ALL TESTS?

24 BY MS. TAYLOR:

25 YES, SIR.

1 BY MR. RANKIN:

2 YOUR HONOR, I THINK THAT MIGHT BE MORE TO --
3 AGAIN TO THE WEIGHT OF THAT. AGAIN, DR. WAID HAS
4 NOT BEEN DEPOSED, AND CERTAINLY HE DOESN'T CITE IN
5 HIS CONCLUSIONS AT PAGE 196 AND 197 OF MY APAS, TAB
6 11, AGAIN THE PAGES I'VE JUST ENUMERATED, THAT THAT
7 WAS AT ALL WHAT HE RELIED UPON IN HIS OPINION THAT
8 MR. BAKER SUFFERED A PERMANENT PHYSICAL BRAIN
9 INJURY.

10 BY COMMISSIONER LYNDON:

11 WELL, IT'S GOT SUCH QUESTIONS AS "ARE YOU
12 MARRIED?" "DO YOU USE ALCOHOL?" "WHAT ARE YOU
13 ALLERGIC TO? - CODEINE." AND OBVIOUSLY, IT MAY HAVE
14 SOME QUESTIONS THAT GO TO -- THERE'S A LONG LIST ON
15 PAGE 13 OF DISEASES HE MAY OR MAY NOT HAVE HAD IN
16 THE PAST, PRESENT, OR NEVER HAD, OR HE HAD A COLD.

17 BY MS. TAYLOR:

18 AND, COMMISSIONER, WE'RE ACTUALLY REFERRING TO
19 CLAIMANT'S APA PAGE 195, AND THERE ARE ACTUALLY FOUR
20 PARAGRAPHS RIGHT BEFORE THE SUMMARY AND CASE
21 DISCUSSIONS THAT WE ARE -- THAT FORMS THE BASIS UPON
22 FOR WHICH OUR OBJECTION IS MADE.

23 BY COMMISSIONER LYNDON:

24 AND I GUESS WHAT MY QUESTION WOULD BE IS
25 WITHOUT THAT, HER ASSESSMENT IN ESSENCE IS WHAT SHE

1 IS GOING TO TESTIFY TO TODAY, IS THAT RIGHT?

2 BY MR. RANKIN:

3 WELL, EFFECTIVELY CUMULATIVE WHAT SHE IS GOING
4 TO TALK ABOUT.

5 BY MS. TAYLOR:

6 RIGHT, BUT IF IT IS THE TESTING UPON WHICH THE
7 EVALUATION AND ALTERNATE OPINION IS BASED, IT JUST -
8 - IT PREJUDICES OUR CLIENT THAT SOMEONE ELSE, A
9 THIRD PARTY, WAS ABLE TO COMPLETE A PORTION OF THIS
10 TESTING.

11 BY COMMISSIONER LYNDON:

12 AND IF WHAT I READ WAS -- IF THE QUESTIONS THAT
13 WERE ASKED WERE WHAT HE DREW HIS CONCLUSIONS FROM,
14 THE TEST WOULD BE -- I MEAN, THEY ARE ALL VERY
15 GENERAL QUESTIONS. I'M GOING TO NOTE YOUR
16 OBJECTION. WE NEED TO MOVE ON.

17 BY MS. TAYLOR:

18 OKAY.

19 BY COMMISSIONER LYNDON:

20 BUT I'M GOING TO ALLOW IT IN. ANY OTHER
21 OBJECTIONS?

22 BY MS. TAYLOR:

23 NOT TO THE APAS BEING MADE A PART OF THE RECORD
24 OTHER THAN THE ONE WE PREVIOUSLY STATED.

25 BY COMMISSIONER LYNDON:

1 ALL RIGHT.

2 BY MS. TAYLOR:

3 AND THEN AT THIS TIME, WE WILL ASK THAT MS.
4 BAKER BE SEQUESTERED OUTSIDE.

5 BY MR. RANKIN:

6 AT THE POINT OF TESTIMONY. SHE'S THE WIFE OF
7 THE CLAIMANT. SHE IS ABLE TO SIT IN HERE.

8 BY COMMISSIONER LYNDON:

9 LET'S GO OFF THE RECORD JUST A MINUTE.

10 (OFF THE RECORD)

11 BY COMMISSIONER LYNDON:

12 WE'RE BACK ON THE RECORD, AND WE HAD TWO
13 OBJECTIONS. ONE OBJECTION WAS TO A PART OF THE TEST
14 THAT, I BELIEVE, DR. WAID -- WHAT DR. WAID'S
15 CONCLUSIONS WERE DRAWN FROM, AND HE SAYS ON HIS
16 REPORT ON PAGE 195 THAT THE CLAIMANT'S WIFE
17 COMPLETED A PART OF THE TEST, AND THAT LOOKS LIKE
18 THAT WAS MORE HISTORICAL INFORMATION BASED ON JUST A
19 BRIEF GLANCE OF WHAT I'VE SEEN. NEVERTHELESS,
20 DEFENDANTS' COUNSEL STATED THAT THAT BIASES -- THAT
21 MAKES THE TOTAL CONCLUSION SUSPECT SIMPLY BECAUSE
22 SOMEBODY ELSE FILLED IT OUT. COUNSEL FOR THE
23 CLAIMANT STATED THAT IT'S A MINOR PART OF THE TEST,
24 AND THE CONCLUSIONS DO NOT SPECIFICALLY DRAW FROM
25 THAT, IT'S JUST A PART OF IT. I TEND TO AGREE. SO,

1 I'M ALLOWING THAT IN. I DO AGREE, AND I'M ALLOWING
2 THAT IN. THE OTHER OBJECTION WAS THE CLAIMANT'S
3 WIFE WAS IN THE ROOM, AND IT WAS REQUESTED THAT SHE
4 BE SEQUESTERED. I AGREE THAT SHE SHOULD BE AND NOT
5 HEAR THE PREHEARING ARGUMENTS. ANY OTHER
6 OBJECTIONS?

7 BY MS. TAYLOR:

8 NONE AT THIS TIME.

9 BY COMMISSIONER LYNDON:

10 IF THERE ARE NO OTHER OBJECTIONS, THE
11 COMMISSION FILE BECOMES A PART OF THE RECORD WITH
12 THE EXCEPTION OF SELF-SERVING DECLARATIONS AND
13 UNSTIPULATED MEDICAL REPORTS.

14 PRIOR TO GOING ON THE RECORD, WE HAD A FAIRLY
15 LENGTHY PREHEARING CONFERENCE, AND THIS IS THE
16 SECOND ATTEMPT TO HAVE THIS HEARING. I MOVED IT
17 FROM -- I BELIEVE IT WAS HORRY COUNTY WHEN I WAS
18 THERE BACK IN OCTOBER AND RETAINED JURISDICTION.
19 THERE WAS SOME MORE DISCOVERY TO BE DONE, AND RATHER
20 THAN MY TRYING TO PUT THE POSITIONS ON THE RECORD,
21 SINCE THIS IS A FAIRLY COMPLICATED CASE, I WILL LET
22 EACH PUT THEIR RESPECTIVE POSITIONS ON THE RECORD
23 STARTING WITH THE MOVING PARTY FOR THE CLAIMANT, MR.
24 RANKIN.

25 BY MR. RANKIN:

1 THANK YOU, YOUR HONOR, AND JUST A MATTER OF
2 HOUSEKEEPING, THIS IS THE THIRD ATTEMPT.

3 BY COMMISSIONER LYNDON:

4 I'M SORRY.

5 BY MR. RANKIN:

6 WE WERE IN CAMDEN A COUPLE -- HOW EVER MANY
7 WEEKS AGO.

8 BY COMMISSIONER LYNDON:

9 AND I APOLOGIZE ON THE RECORD FOR RUNNING OVER
10 THERE AND NOT BEING ABLE TO DO THIS. YOU ARE
11 ABSOLUTELY RIGHT.

12 BY MR. RANKIN:

13 A CERTAIN ATTORNEY IN THE PEE DEE WHO MAY GET
14 THE CREDIT FOR RUNNING YOUR DOCKET, AND THE SECURITY
15 FOLKS WERE RUNNING US ALL OUT OF THE COURT HOUSE.

16 BY COMMISSIONER LYNDON:

17 THAT'S RIGHT. THEY DID.

18 BY MR. RANKIN:

19 ANYWAY, AS STATED, I REPRESENT BOBBY BAKER WHO
20 WE MAINTAIN WITHOUT COMPLICATION OR MUCH HEAVY
21 LIFTING ON THE COMMISSION'S PART, WE CLEARLY SATISFY
22 THE BURDEN OF PROOF THAT WE HAVE TO THE POINT THAT
23 MR. BAKER SUFFERED A DISABLING PERMANENT PHYSICAL
24 BRAIN INJURY. WITHOUT A DOUBT, THERE'S -- AND I
25 DON'T THINK THERE WILL BE ANY DISPUTE FROM DR.

1 EDWARDS, DR. McCAFFREY, DR. STEICHEN, DR. KANG, DR.
2 DEYSACH, THEIR PSYCH EVAL, WHICH HE PERFORMED HIS
3 REPORT AND EXAMINATION ON DECEMBER 4TH, THAT MR.
4 BAKER IS PERMANENTLY AND TOTALLY DISABLED FROM A
5 PHYSICAL STANDPOINT. THE ONLY PERSON WHO QUIBBLES
6 WITH THAT NOT SURPRISINGLY IS THE VOC EVAL THAT THEY
7 OBTAINED THROUGH JAMES MYERS WHO SAYS THAT THERE ARE
8 NUMEROUS JOBS WHICH MR. BAKER IS CAPABLE OF DOING,
9 AND HE SETS FORTH THOSE IN THE DEFENDANTS' APA PAGES
10 12 THROUGH 24. DR. EDWARDS, THE LAST DOCTOR TO
11 CONDUCT AN INDEPENDENT MEDICAL EXAM FOR THE
12 DEFENDANTS, OF WHICH THERE HAVE BEEN A NUMBER,
13 CLEARLY STATES THAT THERE ARE PHYSICAL RESTRICTIONS
14 THAT PREVENT HIM FROM RETURNING TO WORK. AND TO DR.
15 DEYSACH, THEIR PSYCH EVAL AGAIN FROM DECEMBER, HE
16 LIKEWISE TAKES ISSUE WITH THE VOC EVAL, WHICH THEY
17 HAVE PROFFERED FOR YOU TODAY. THE KEY HERE IS THAT
18 THREE OUT OF FOUR DOCTORS HAVE CLEARLY SHOWN AND THE
19 EVIDENCE WILL BEAR OUT THAT MR. BAKER SUFFERED A
20 PERMANENT PHYSICAL BRAIN INJURY. THE NOTES FROM
21 EARLY ON REFLECT THAT MR. BAKER LOST CONSCIOUSNESS
22 WHEN A HEAVY, AND I THINK THE ESTIMATES ARE 30
23 POUNDS OR SO, CEILING TILE FELL ON HIS HEAD KNOCKING
24 HIM OUT, AND THE RECORDS REFLECT "LOST
25 CONSCIOUSNESS." THERE IS EARLY REFERENCE TO AND

1 DIAGNOSIS OF A CLOSED-HEAD INJURY, WHICH DRS.
2 McCAFFREY AND ALL DOCTORS THEREAFTER REFERENCE IN
3 TERMS OF THE INJURY THAT WAS SUSTAINED. BUT FOR THE
4 BLOW TO THE HEAD, MR. BAKER HAS NOT SUFFERED A
5 PERMANENT PHYSICAL BRAIN INJURY. IF THE TILE HAD
6 FELL ON HIS NECK OR HIS BACK CAUSING ALL THE
7 PHYSICAL PROBLEMS THAT AGAIN I DON'T THINK THERE'S
8 ANY DISPUTE THAT HE SUFFERS, WE ARE NOT HERE TODAY
9 SEEKING AN AWARD FOR A PERMANENT PHYSICAL BRAIN
10 INJURY. THE RECORDS REFLECT THAT MR. BAKER IS
11 CREDIBLE. THERE IS NO SURVEILLANCE ON MR. BAKER
12 THAT SUGGESTS HE CAN DO THINGS THAT THEY -- THAT HE
13 HAS TOLD HIS DOCTORS THAT HE CAN'T AGAIN FROM A
14 COGNITIVE STANDPOINT, AND I DON'T THINK THERE'S
15 GOING TO BE ANY EVIDENCE FROM THE DEFENDANTS ABOUT
16 HIS CREDIBILITY, ABOUT HIS MALINGERING, ABOUT HIS
17 ACTUALLY OVERSTATING OR HIS INABILITY TO REMEMBER,
18 HIS INABILITY TO ACT AND LIVE AND OPERATE FROM A
19 COGNITIVE STANDPOINT AS HE DID BEFORE. THE
20 DEFENDANTS HAVE CITED TODAY A CASE, WHICH THEY ARGUE
21 STANDS FOR THE PROPOSITION THAT THE LAW JUST BY
22 CLAIMING THAT YOU HAVE A PERMANENT PHYSICAL BRAIN
23 INJURY AND SATISFYING THE ACT, THAT YOU'VE GOT TO
24 HAVE MORE EVIDENCE THAN WE HAVE TODAY FOR THE
25 COMMISSION TO CONSIDER, AND I WOULD POINT OUT THAT

1 THAT CASE EFFECTIVELY STANDS FOR THE PROPOSITION
2 WHERE ONE WHO HAS NOT EVEN COMPLAINED OF A HEAD
3 TRAUMA OR PAIN AT THE TIME OR HE WAS AWARE THAT HE
4 EVEN HAD A CUT ON THE HEAD CANNOT CLAIM A PERMANENT
5 PHYSICAL BRAIN INJURY. THAT IS FROM THE TESTIMONY
6 IN THE CASE OF THE *CRISP VERSUS SOUTHCO*, WHICH
7 STANDS IN DIRECT OPPOSITION TO WHAT WE HAVE IN THIS
8 CASE WITH AGAIN FROM THE EMERGENCY ROOM, DOCTORS
9 CARE, THE LOSS OF CONSCIOUSNESS, CLOSED HEAD INJURY,
10 REPLETE THROUGHOUT THE RECORDS AS TO WHAT INJURIES
11 WERE SUSTAINED IN THIS CASE. SO WE THINK FROM AGAIN
12 A NON COMPLICATED, NON HEAVY LIFTING STANDPOINT WITH
13 OPINIONS WHO HAVE BEEN UNCHALLENGED WITH NO
14 DEPOSITIONS TO QUIBBLE WITH THEIR DOCTORS. AGAIN,
15 McCAFFREY I'M REFERRING TO, THAT THIS IS A CASE OF
16 BOTH PERMANENT PHYSICAL BRAIN INJURY AND THE
17 UNDERLYING ORTHOPEDIC PHYSICAL PROBLEMS. DR. WAID
18 IS CREDIBLE. HE IS A PREEMINENT EXPERT IN THE
19 STATE. PERHAPS DR. DEYSACH IS AS WELL, BUT AS
20 DISCUSSED IN THE PREHEARING CONFERENCE, IF THE COURT
21 OR THE COMMISSION WILL EVEN LOOK AT THE DEFENDANTS'
22 SUBMISSION, EFFECTIVELY HE IS ADMITTING, DR.
23 DEYSACH, THAT THERE IS A PHYSICAL BRAIN INJURY OR
24 THAT THERE WAS A CLOSED-HEAD INJURY, AND HE IS
25 SENSITIVE THAT DR. WAID RECOGNIZES COGNITIVE

1 DEFICITS. BUT HE ALLUDES TO THE FACT THAT THESE ARE
2 PRE-INJURY AND EFFECTIVELY REACHES IN THE SKY TO SAY
3 "THESE PROBLEMS EXISTED BEFORE THIS 30-POUND TILE
4 FELL ON THIS FELLOW'S HEAD. HE HAD PROBLEMS BEFORE.
5 HE WAS NOT ABLE TO OPERATE, TO REMEMBER, TO LIVE,"
6 AND THERE IS NO EVIDENCE THAT THIS COURT, THIS
7 COMMISSION, WILL HAVE TO BEAR OUT THAT FACT.
8 THERE'S A DISTINCT BEFORE AND AFTER DIFFERENCE IN
9 MR. BAKER'S LIFE THAT DR. DEYSACH EFFECTIVELY PUT
10 OUT BENEFIT OF AND HE IS JUST REACHING FOR AN
11 OPINION THAT ALSO EFFECTIVELY SAYS IN THE SECOND
12 PARAGRAPH OF HIS FINDING THAT IT IS BETTER NOT TO
13 TELL SOMEONE THAT THEY HAVE A PHYSICAL BRAIN INJURY,
14 LEST IT SUGGESTS TO THEM THAT THEY ARE DAMAGED
15 BEYOND THE ORTHOPEDIC INJURIES AND CHRONIC PAIN,
16 WHICH DIRECTS ATTENTION AWAY FROM THE PHYSICAL AND
17 MOST CRITICAL FOR RECOVERY RATHER THAN CALLING IT
18 WHAT IT IS, WHICH AGAIN TO ME IS AT BEST CURIOUS
19 LOGIC IF NOT TORTURED TO REACH A POINT THE
20 DEFENDANTS WOULD HAVE THIS COMMISSION FIND AGAIN
21 CITING ONE OUT OF FOUR THAT HE DID NOT SUFFER
22 PERMANENT PHYSICAL BRAIN INJURY.

23 BY COMMISSIONER LYNDON:

24 OKAY. THANK YOU.

25 BY THE COURT REPORTER:

1 I'M SORRY. DO YOU MIND IF I HAVE JUST A
2 MINUTE.

3 BY COMMISSIONER LYNDON:

4 LET'S GO OFF THE RECORD.

5 (OFF THE RECORD)

6 BY COMMISSIONER LYNDON:

7 WE ARE BACK ON THE RECORD. AND FOR THE
8 DEFENDANT, MS. TAYLOR.

9 BY MS. TAYLOR:

10 THANK YOU, COMMISSIONER. IT IS THE DEFENDANTS'
11 POSITION THAT THE CLAIMANT HAS ABSOLUTELY NOT
12 SATISFIED HIS BURDEN OF PROVING A PHYSICAL BRAIN
13 INJURY. THIS IS NOT THE TYPE OF BRAIN INJURY CLAIM
14 THE LEGISLATURE INTENDED WHEN THEY ENACTED 42-9-10.
15 THERE IS NO EVIDENCE IN THE RECORD THAT SUGGESTS THE
16 CLAIMANT IS PERMANENTLY AND TOTALLY DISABLED DUE TO
17 HIS PHYSICAL BRAIN INJURY. NOW, CLAIMANT'S COUNSEL
18 JUST STATED BUT FOR THE TILE FALLING ON HIS HEAD, WE
19 WOULD NOT BE HERE ON A PHYSICAL BRAIN INJURY CLAIM,
20 BUT THAT'S THE SAME THING AS SAYING THAT JUST
21 BECAUSE SOMEONE GETS HIT IN THE HEAD, THAT MEANS
22 THEY HAVE A PHYSICAL BRAIN INJURY. THIS IS AN
23 ADMITTED BACK CLAIM. THE CLAIMANT TREATED FOR OVER
24 TWO YEARS WITHOUT ANY MENTION OF A PHYSICAL BRAIN
25 INJURY OR ANY COGNITIVE LIMITATIONS. HE TREATED

1 WITH OVER EIGHT PHYSICIANS DURING THIS TIME, AND NOT
2 ONE OF THEM MENTIONED A PHYSICAL BRAIN INJURY DURING
3 ANY OF HIS MEDICAL TREATMENT. IN ALL OF HIS MEDICAL
4 TREATMENT, NOT ONCE DID ANY PHYSICIAN DEEM IT
5 NECESSARY TO PERFORM ANY DIAGNOSTIC STUDIES OR TESTS
6 REGARDING ANY COMPLAINTS REGARDING COGNITIVE
7 IMPAIRMENT OR A PHYSICAL BRAIN INJURY. IN OUR
8 PREHEARING CONFERENCE, DEFENDANTS HANDED UP *CRISP*
9 *VERSUS SOUTHCO* WHERE THE COURT FOUND THE CLAIMANT
10 DID NOT SUSTAIN A BRAIN INJURY CLAIM. NOW,
11 CLAIMANT'S ATTORNEY DID MENTION THAT CLAIM JUST A
12 FEW MINUTES AGO, BUT I BELIEVE HE READ SOMETHING IN
13 THE CONCLUSIONS WITHOUT GOING BACK TO THE FACTS. IN
14 THIS CASE, CRISP WAS ADMITTED TO THE HOSPITAL, AND
15 HE WAS TREATED FOR ABRASIONS AND BRUISES BEHIND THE
16 BACK OF HIS HEAD AS WELL AS NECK INJURIES AND ALSO
17 INJURIES TO HIS BACK AND RIGHT HAND. IN OUR CASE
18 HERE, WE HAVE THE SAME THING. THE CLAIMANT WAS
19 ADMITTED TO GRAND STRAND MEMORIAL HOSPITAL WITH A
20 SCALP LACERATION. HE DID RECEIVE TREATMENT FOR THAT
21 LACERATION INCLUDING STAPLES. THERE WAS NOTHING IN
22 ANY OF THE EMERGENCY ROOM MEDICAL RECORDS OR HIS
23 IMMEDIATE FOLLOW-UP CARE WITH DOCTORS CARE THAT
24 REFLECTS TREATMENT OR THE NEED OR ANY COMPLAINTS
25 RELATING TO A PHYSICAL BRAIN INJURY. AGAIN, IN THIS

1 CRISP VERSUS SOUTHCO CLAIM, THE BASIS FOR THE COURT
2 OF APPEALS FINDING THAT THERE WAS NO PHYSICAL BRAIN
3 INJURY WAS BASED ON THE HOSPITAL PHYSICIAN'S
4 RECORDS, WHICH DID NOT NOTE ANY SYMPTOMS COMMONLY
5 ATTENDED TO A PHYSICAL BRAIN INJURY, AND AGAIN THE
6 COURT NOTED THE TREATING PHYSICIANS WHO DIAGNOSED
7 CLAIMANT AFTER THE INJURY, DID NOT DIAGNOSE A
8 PHYSICAL BRAIN INJURY AND IN FACT SPECIFICALLY
9 OPINED CLAIMANT WAS NEUROLOGICALLY INTACT. AGAIN,
10 OUR CLAIM HERE IS EXACTLY THE SAME. JUST ONE MONTH
11 AFTER THE ACCIDENT, CLAIMANT BEGAN TREATING WITH DR.
12 McCAFFREY. HE TREATED WITH DR. McCAFFREY FOR
13 APPROXIMATELY ONE YEAR. IN EACH AND EVERY MEDICAL
14 RECORD BY DR. McCAFFREY, HE NOTED CLAIMANT WAS
15 "ORIENTED TO PERSON, PLACE, AND TIME, NO DIFFICULTY
16 WITH SHORT OR LONG-TERM MEMORY. GOOD ATTENTION SPAN
17 AND CONCENTRATION. PATIENT ABLE TO REPEAT PHRASES
18 AND IDENTIFY OBJECTS. PATIENT HAS NO DIFFICULTY IN
19 DISCUSSING CURRENT EVENTS." NOW, DR. McCAFFREY
20 PLACED CLAIMANT AT M.M.I. IN MARCH OF 2009 WITHOUT
21 ANY MENTION OF A PHYSICAL BRAIN INJURY. CLAIMANT
22 WAS CORRECT -- OR CLAIMANT'S ATTORNEY WAS CORRECT IN
23 STATING THAT MR. -- DR. McCAFFREY DID PLACE CLAIMANT
24 AT M.M.I. WITH A FINDING OF PERMANENT AND TOTAL
25 DISABILITY; HOWEVER, DR. KANG, THE SECOND AUTHORIZED

1 TREATING PHYSICIAN, DID NOT. THE CLAIMANT BEGAN
2 TREATING WITH DR. KANG IN MARCH OF 2009 AND
3 CONTINUED THROUGH TO THIS VERY PRESENT DAY. IN EACH
4 OF DR. KANG'S RECORDS, HE NOTES "CLAIMANT SHOWS NO
5 SIGN OF COGNITIVE IMPAIRMENT." IT IS IN EVERY
6 SINGLE RECORD FOR THE LAST YEAR AND A HALF. DR.
7 KANG FINALLY PLACED CLAIMANT AT M.M.I. IN JUNE OF
8 2010; HOWEVER, CONTRARY TO THE CLAIMANT'S ATTORNEY'S
9 STATEMENT, HE DID NOT SAY CLAIMANT WAS PERMANENTLY
10 AND TOTALLY DISABLED. IN FACT, DR. KANG PLACED
11 CLAIMANT IN THE LIGHT SEDENTARY WORK CATEGORY. NOW,
12 IT WASN'T UNTIL AFTER HE WAS PLACED AT M.M.I. BY
13 DRS. McCAFFREY AND DR. KANG THAT HE WENT TO SEE DR.
14 BRABHAM, AND LO AND BEHOLD, WE NOW HAVE A BRAIN
15 INJURY CLAIM JUST THREE MONTHS PRIOR TO OUR ORIGINAL
16 HEARING DATE. HE THEN SEES DR. WAID WHO
17 INTERESTINGLY STATES HE BELIEVES IT IS EVIDENT THAT
18 THE PRIMARY OBSTACLES TO MR. BAKER'S ABILITY TO
19 RETURN SUCCESSFULLY TO THE ROLE FUNCTIONING ARE THE
20 RESIDUALS OF THE ORTHOPEDIC INJURY. AGAIN, WE
21 BELIEVE THIS VERY STATEMENT FLIES IN THE FACE OF THE
22 BRAIN INJURY AS INTENDED IN 42-9-10. OUR EXPERT,
23 DR. DEYSACH, COMPLETED SOME ADDITIONAL TESTING AND
24 SOME REPEAT TESTING AS WELL, AND HE DID AGREE WITH
25 DR. WAID THAT THE PRIMARY OBSTACLES WERE RELATED TO

1 MR. BAKER'S ORTHOPEDIC INJURIES. I BELIEVE WE
2 STATED EARLIER IN OUR PREHEARING DISCUSSION THAT THE
3 TRUTH OF THE MATTER IS IF MR. BAKER HAD FULLY
4 RECOVERED FROM HIS BACK INJURY, HE WOULD BE ABLE TO
5 GO BACK TO WORK. HIS COMPLETE WORK HISTORY AND
6 PRIOR JOBS EVEN FOR OUR INSURED AND HIS OWN COMPANY
7 THAT HE RAN WITH HIS WIFE RELIED ON HIM BEING ABLE
8 TO PERFORM MANUAL LABOR. IT DID NOT REQUIRE
9 EXTENSIVE KNOWLEDGE OR TECHNICAL SKILLS OTHER THAN
10 THAT OF BEING A MECHANIC, AND WE BELIEVE THAT IF HE
11 WAS PHYSICALLY ABLE TO DO SO, HE WOULD BE ABLE TO GO
12 BACK TO EARN HIS SAME WAGES HE EARNED PRIOR TO THIS
13 ACCIDENT.

14 BY COMMISSIONER LYNDON:

15 OKAY. ANYTHING IN REBUTTAL?

16 BY MR. RANKIN:

17 JUST A COUPLE OF THINGS IN REPLY. AGAIN, A
18 REVIEW OF THE CRISP CASE THAT THEY'VE HANDED UP
19 AGAIN IS EASILY DISTINGUISHED BECAUSE IN THAT CASE,
20 YOU HAD NO REFERENCE OF ANY HEAD INJURY, AND THE
21 DIAGNOSIS OF THE CLAIMANT IN THAT CASE WAS BASED ON
22 A SUBSTANCE-INDUCED PERSISTING DEMENTIA. AND AGAIN,
23 I'M LOOKING AT PAGE THREE OF THAT CASE WHERE DR.
24 PRICE -- AGAIN, I WOULD PUT ON PAR WITH DR. WAID,
25 SAID IN THAT CASE THERE WAS NO CREDIBLE EVIDENCE

1 THAT THE CLAIMANT SUSTAINED A BRAIN INJURY. SO,
2 THAT AND OTHER REASONS IN THERE AS WE TALKED ABOUT
3 IN MY INITIAL STATEMENT. WITHOUT ANY TESTIMONY ANY
4 CREDIBLE EVIDENCE AT ALL OF ANYTHING OTHER THAN A
5 MINOR HEAD INJURY WHERE THE CLAIMANT DIDN'T EVEN
6 RECALL IT AND THE NOTES DIDN'T REFLECT IT, WAS NOT
7 SUBSTANTIAL EVIDENCE. AND THEN THE OTHER
8 DISTINGUISHING FACTOR IN THAT CASE AND THIS, THERE
9 IN CRISP, HE DIDN'T HAVE ANYTHING MORE THAN LOW
10 FREQUENCY HEADACHE COMPLAINTS, WHICH APPARENTLY
11 DIDN'T RISE TO THE LEVEL OF CONSISTENT NOTE IN HERE
12 OF OCCIPITAL HEADACHES AND MIGRAINES SUFFERED BY
13 HIM.

14 BY COMMISSIONER LYNDON:

15 JUST TO MAKE SURE I UNDERSTAND, IT SEEMS TO ME
16 THAT EITHER ALL OR MOST OF THE DOCTORS SAY IT REALLY
17 IS A COMBINATION OF THE ORTHOPEDIC INJURIES AND THE
18 BRAIN, AND HE'S NOT TOTALED BECAUSE -- I MEAN, HE'S
19 NOT -- THE BRAIN DAMAGE, ACCORDING TO WAID AT LEAST,
20 IT LOOKS LIKE, THE BRAIN DAMAGE IS SECONDARY TO THE
21 FACT THAT HE HAS SEVERE ORTHOPEDIC INJURIES.

22 BY MR. RANKIN:

23 RIGHT. AND PAIN PROBLEMS AS WELL, BUT AGAIN,
24 YOU KNOW, MY STATEMENT THAT WE'RE NOT HERE SEEKING
25 PHYSICAL BRAIN INJURY IF THE TILE FALLS ON HIS BACK.

1 THERE ARE -- THREE OUT OF FOUR SAY THAT THERE ARE
2 COGNITIVE DEFICITS THAT THEY ATTRIBUTE TO THE
3 FALLING CEILING TILE. ONLY DR. DEYSACH SAYS AND
4 ATTRIBUTES THIS TO A PRE-INJURY SENSE OF DEMENTIA,
5 AND AGAIN -- OR SOME COGNITIVE DEFICIT -- THAT THERE
6 IS NO EVIDENCE AT ALL TO SUPPORT.

7 BY MS. TAYLOR:

8 AND, COMMISSIONER, IT'S OUR POSITION THAT HIS
9 STATEMENT THAT THERE IS NO EVIDENCE ACTUALLY
10 SUPPORTS OUR POSITION. THERE IS NO EVIDENCE OF A
11 PHYSICAL BRAIN INJURY IN 26 MONTHS AFTER HIS
12 ACCIDENT. THESE ARE THE PEOPLE WHO SAW HIM EVERY
13 DAY AS WE STATED ABOVE, AND AGAIN, IF WE GO BACK TO
14 THIS CRISP CASE, I'M LOOKING AT THE FIRST PARAGRAPH
15 IN THE FACT SECTION. HE WAS HIT IN THE HEAD BY A
16 BOBCAT BUCKET. THIS IS A BIG METAL PIECE THAT
17 WEIGHS SIGNIFICANTLY MORE THAN 30 POUNDS. HE
18 SUFFERED INJURIES TO HIS HEAD, NECK, BACK, AND RIGHT
19 UPPER EXTREMITY. HE WAS ADMITTED TO THE HOSPITAL
20 AND TREATED FOR ABRASIONS AND BRUISES BEHIND THE
21 BACK OF HIS HEAD AND NECK. HE HAD SOME BROKEN
22 BONES. FOLLOWING SURGERY, HE SOUGHT MEDICAL
23 TREATMENT FROM SEVERAL PHYSICIANS REGARDING HIS
24 HEADACHES, NECK AND LOWER BACK PAIN. THIS IS
25 EXACTLY WHAT WE HAVE HERE IN THIS CASE. THERE IS NO

1 IMMEDIATE TREATMENT FOR A PHYSICAL BRAIN INJURY, AND
2 EVEN THE HEADACHES, WHICH ARE ACCOUNTED FOR AS A
3 SCHEDULED MEMBER UNDER THE REGS, IN THIS CASE, THEY
4 WERE INFREQUENT AND THEY KEPT POPPING UP THROUGHOUT
5 THE COURSE OF THE MEDICAL TREATMENT, AND THEY DID
6 THE SAME THING IN THIS CASE. THERE IS NOTHING IN
7 OUR CASE HERE TODAY THAT IS VERY DISTINGUISHABLE
8 FROM THE CRISP CASE AT ALL. THERE ARE NO DIAGNOSTIC
9 STUDIES SUPPORTING A PHYSICAL BRAIN INJURY, AND
10 HONESTLY, IT IS THE CLAIMANT'S BURDEN OF PROOF. IT
11 IS NOT OUR BURDEN OF PROOF TO GO DEPOSE EVERY DOCTOR
12 TO FIND OUT THE EXACT BASIS UPON WHICH THESE
13 FINDINGS ARE MADE. THAT'S THE CLAIMANT'S BURDEN OF
14 PROOF.

15 **BY COMMISSIONER LYNDON:**

16 OKAY. AND WAS YOUR FIRST WITNESS THE
17 CLAIMANT'S WIFE?

18 **BY MR. RANKIN:**

19 YES, SIR.

20 **BY COMMISSIONER LYNDON:**

21 OKAY. HEY, MS. BAKER. JUST HAVE A SEAT HERE.
22 THIS SHOULD NOT BE TOO LONG. WOULD YOU STATE YOUR
23 FULL NAME FOR THE RECORD, MA'AM.

24 **BY THE WITNESS:**

25 PEGGY ANN BAKER.

1 BY COMMISSIONER LYNDON:

2 * * * * *

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

6 PEGGY ANN BAKER

7 BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS FOLLOWS:

8 BY COMMISSIONER LYNDON:

9 ALL RIGHT. YOU'VE GOT A GOOD STRONG VOICE.

10 JUST ANSWER ANY QUESTIONS YOUR ATTORNEY HAS FOR YOU.

11 BY THE WITNESS:

12 OKAY.

13 DIRECT EXAMINATION BY MR. RANKIN:

14 Q. GOOD MORNING.

15 A. GOOD MORNING.

16 Q. GLAD TO BE HERE?

17 A. NO.

18 Q. YOU'VE NEVER BEEN IN A COURT BEFORE?

19 A. NO, SIR.

20 Q. WITH YOUR HUSBAND OR YOU SEEKING ANY KIND OF
21 BENEFITS FOR WORKERS' COMP OR ANYTHING, HAVE YOU?

22 A. NO, SIR.

23 Q. OKAY. YOU'VE BEEN MARRIED HOW LONG?

24 A. TWENTY-SIX YEARS.

25 Q. AND YOU'RE MARRIED TO BOBBY?

- 1 A. YES, SIR.
- 2 Q. Y'ALL HAVE A CHILD TOGETHER?
- 3 A. YES, WE HAVE ONE CHILD AND A STEP-SON.
- 4 Q. AND DO Y'ALL HAVE GRANDCHILDREN?
- 5 A. FOUR.
- 6 Q. AND Y'ALL HAVE THE GRANDCHILDREN AT YOUR HOUSE A
- 7 GOOD BIT?
- 8 A. OFF AND ON, YES.
- 9 Q. OKAY. YOUR HUSBAND WAS INJURED WHEN A TILE FELL ON
- 10 HIM AT WORK?
- 11 A. YES, SIR.
- 12 Q. AND YOU HAD BEEN WITH HIM TO THE DOCTORS MOST ALL
- 13 THE TIME; IS THAT CORRECT?
- 14 A. PRETTY MUCH 99 -- 95 PERCENT OF THE TIME, YES, SIR.
- 15 Q. HAS THERE EVER BEEN ANY TIME WHEN YOU WERE TALKING
- 16 TO THE DOCTORS ABOUT YOUR HUSBAND'S CONDITION AT ANY
- 17 POINT WHEN YOU WERE REPORTING COMPLAINTS THAT HE IS
- 18 HAVING OR THINGS THAT YOU'RE NOTICING?
- 19 A. YES.
- 20 Q. ALL RIGHT. AND DO THE DOCTORS TYPICALLY ALLOW YOU
- 21 TO TALK AND PARTICIPATE IN DISCUSSING YOUR HUSBAND'S
- 22 CONDITION?
- 23 A. YES.
- 24 Q. OKAY. DR. WAID, THE FELLOW IN CHARLESTON, WERE YOU
- 25 IN THE ROOM WHEN HE EXAMINED YOUR HUSBAND BOBBY?

- 1 A. NO, SIR.
- 2 Q. OKAY. DID YOU FILL OUT SOME TYPE FORM?
- 3 A. YES, I DID.
- 4 Q. OKAY. AND THEN WHEN YOU WENT TO THE DEFENDANTS'
- 5 DOCTOR, DR. DEYSACH HERE IN COLUMBIA, DID YOU FILL
- 6 OUT SOME KIND OF FORM FOR HIM, TOO?
- 7 A. NO, SIR.
- 8 Q. BUT WERE YOU IN THE ROOM WITH HIM WHEN HE EXAMINED
- 9 YOUR HUSBAND?
- 10 A. NO, SIR.
- 11 Q. OKAY. YOUR HUSBAND'S COGNITIVE OR HIS THINKING, HIS
- 12 MIND, HIS ABILITY TO FUNCTION, IS THERE A DIFFERENCE
- 13 THAT YOU IDENTIFY BEFORE THIS INJURY AND AFTER?
- 14 A. YES, SIR.
- 15 Q. AND WHAT IS THAT DIFFERENCE?
- 16 A. BEFORE AND AFTER, WELL THE ONLY WAY I KNOW TO
- 17 EXPLAIN IT IS THAT HE BEFORE WORKED 80 HOURS A WEEK.
- 18 HE PRETTY MUCH TOOK CARE OF THE HOME AS FAR AS
- 19 FINANCIALY. HE DONE ALL OUR YARD WORK. I MEAN, HE
- 20 KEPT UP WITH EVERYTHING. HE COULD GO TO THE BANK,
- 21 AND, YOU KNOW, PAY BILLS AND THINGS LIKE THAT.
- 22 AFTER THE INJURY, HE -- I NOTICED THAT HE SEEMED
- 23 LIKE HE STARTED FORGETTING THINGS. HE WAS GETTING
- 24 CONFUSED. HE IS NOT NO LONGER ABLE TO PHYSICALLY GO
- 25 OUTSIDE AND DO ANYTHING. HE CAN'T DO ANYTHING IN

1 THE HOUSE. SO, IT'S -- I DON'T KNOW WHAT ELSE TO
2 SAY. I MEAN, IT'S JUST THE FACT THAT HE IS NOT THE
3 SAME MAN THAT HE WAS BEFORE THE ACCIDENT MENTALLY OR
4 PHYSICALLY.

5 Q. ALL RIGHT. YOU'VE TALKED ABOUT SOME OF THE PHYSICAL
6 THINGS. IN TERMS OF HIS DAY-TO-DAY LIVING, DID HE
7 USE A CANE BEFORE?

8 A. NO, SIR.

9 Q. OKAY. AND WHO PRESCRIBED THAT?

10 A. DR. KANG ACTUALLY.

11 Q. OKAY. DID HE AFTER THE INJURY EVER GO BACK TO WORK?
12 DID THEY KEEP A JOB FOR HIM AT THE HILTON?

13 A. NO, SIR.

14 Q. OKAY. DID THEY TERMINATE HIM?

15 A. NO, SIR.

16 Q. ALL RIGHT. SO THERE'S A JOB OR YOU DON'T KNOW?

17 A. AS FAR AS I KNOW, THEY HAVE NOT TERMINATED HIM.

18 Q. OKAY. HAS THERE BEEN ANY OFFER THAT YOU KNOW OF FOR
19 HIM TO RETURN IN ANY CAPACITY AT HILTON?

20 A. NO, SIR.

21 Q. OKAY. IN TERMS OF HIS DAY-TO-DAY ACTIVITY, WHAT IS
22 THE DIFFERENCE NOW IN WHAT HE DOES OTHER THAN
23 WORKING 80 HOURS A WEEK?

24 A. HE BASICALLY LAYS AROUND ON THE COACH AND WATCHES
25 T.V. OR SITS UP IN A RECLINING POSITION.

1 Q. ALL RIGHT. YOU MENTIONED CONFUSION AND
2 FORGETFULNESS. GIVE THE COMMISSIONER AN EXAMPLE OF
3 WHERE YOU'VE SEEN THAT AND WHEN THAT STARTED.

4 A. OKAY. WELL, I NOTICED IT AFTER THE ACCIDENT. I
5 NOTICED A CHANGE IN HIS MEMORY, AND I HAD, YOU KNOW,
6 BROUGHT IF FORTH TO THE DOCTORS, BUT, YOU KNOW, WE
7 DIDN'T -- THEY DIDN'T DISCUSS IT. BUT LIKE IF I
8 WOULD SEND HIM TO GO TO THE GROCERY STORE OR TO THE
9 BANK TO DO SOMETHING, HE WAS ALWAYS FORGETTING WHAT
10 I TOLD HIM TO DO. LIKE IF I SAY "PUT A CERTAIN
11 AMOUNT OF MONEY IN THE BANK," HE WOULD COME BACK
12 HOME, AND HE WOULD ONLY PUT -- SAY IF -- LET ME GIVE
13 AN EXAMPLE. IF I TOLD HIM TO PUT \$500 IN THE BANK,
14 HE MIGHT PUT \$300 IN THE BANK AND BRING BACK THE
15 REST OF THE CHANGE. IF I TELL HIM -- TELL HIM TO GO
16 TO THE GROCERY STORE AND GET SOMETHING, HE MIGHT
17 COME BACK WITH SAY THE GALLON OF MILK BUT NOT THE
18 LOAF OF BREAD, AND THAT'S THE BEST EXAMPLE I KNOW TO
19 GIVE.

20 Q. AND YOU SAID YOU WERE NOT ALLOWED TO DISCUSS THAT
21 WITH THE DOCTORS. WHY WAS THAT?

22 A. WHEN I MENTIONED TO THE DOCTORS THAT I FELT LIKE
23 THAT THEY NEEDED TO EXAMINE HIS HEAD BECAUSE OF --
24 BECAUSE OF THE INJURY HE HAD AND THE THINGS I
25 NOTICED DIFFERENT, THEY WOULD TELL ME THAT THAT WAS

1 NOT TO BE DISCUSSED BECAUSE WORKMANS' COMP HAD NOT
2 APPROVED ---

3 BY MS. TAYLOR:

4 OBJECTION. THAT'S HEARSAY.

5 BY COMMISSIONER LYNDON:

6 TRY NOT TO QUOTE A DOCTOR. SUFFICE IT TO SAY,
7 YOU DID TELL THE DOCTORS.

8 BY THE WITNESS:

9 I DID TELL THE DOCTOR THAT I FELT LIKE HE DID
10 HAVE A PROBLEM, AND THEY TOLD ME THAT WE COULD NOT
11 DISCUSS IT.

12 BY MS. TAYLOR:

13 OBJECTION.

14 DIRECT EXAMINATION RESUMED BY MR. RANKIN:

15 Q. ALL RIGHT. WAS IT YOUR UNDERSTANDING THAT THE
16 DOCTORS ARE NOT AUTHORIZED ---

17 A. THE DOCTORS WAS NOT AUTHORIZED TO DISCUSS IT.

18 Q. ALL RIGHT. AND IS THAT ANY -- WAS THERE A
19 PROGRESSIVE PROBLEM WITH HIS MEMORY OR HIS
20 CONFUSION?

21 A. YES.

22 Q. ALL RIGHT. IN TERMS OF HIS SOCIAL INTERACTION, IF
23 HE IS LAYING AROUND OR WATCHING T.V. OR SLEEPING AT
24 THE HOUSE ---

25 A. RIGHT.

1 Q. --- BEFORE NOT WORK WISE, NOT THE TWO JOBS HE WAS
2 WORKING, BUT THE SOCIAL, THE PERSONALITY, WHAT'S THE
3 DIFFERENCE IN PRE-INJURY AND POST?

4 A. BEFORE WE COULD, YOU KNOW, HAVE FAMILY GET
5 TOGETHERS. HE COULD GO OUT, AND WE COULD, YOU KNOW,
6 GRILL, OR WE COULD GO TO THE BEACH. WE WOULD TAKE
7 THE GRAND KIDS TO THE BEACH AND HAVE PICNICS AND
8 THINGS LIKE THAT. SINCE THE ACCIDENT, HE GOT
9 WITHDRAWN, HE ACTED LIKE HE DIDN'T WANT TO
10 PARTICIPATE OR HAVE NO PART OF IT. LIKE WHEN FAMILY
11 COMES AROUND, HE DOESN'T REALLY COMMUNICATE AS FAR
12 AS -- IT'S LIKE I'M THERE TRYING TO, YOU KNOW,
13 PERFORM FOR EVERYBODY, KEEP EVERYBODY ACTIVE -- KEEP
14 EVERYTHING -- I DON'T KNOW EXACTLY HOW YOU WANT ME
15 TO PUT IT. IT'S LIKE -- IT'S LIKE ME, WHERE I DID
16 HAVE A HUSBAND BEFORE, IT'S LIKE I'M BY MYSELF NOW.
17 IT'S LIKE I'M LEADING HIM AROUND LIKE A CHILD TRYING
18 TO TELL HIM WHAT TO DO. SO I DON'T KNOW NO MORE
19 WHAT I CAN SAY.

20 Q. WELL, SO HIS PERSONALITY IS DIFFERENT?

21 A. YES, SIR.

22 Q. IS THAT DUE TO THE MEDICINES THAT HE IS ON?

23 BY MS. TAYLOR:

24 OBJECTION.

25 BY COMMISSIONER LYNDON:

1 AND THERE'S ANOTHER WAY YOU CAN ASK THAT
2 QUESTION WITHOUT SUGGESTING AN ANSWER.

3 DIRECT EXAMINATION RESUMED BY MR. RANKIN:

4 Q. WHAT DO YOU THINK THE DIFFERENCE IS CAUSED BY?

5 A. I THINK THE DIFFERENCE IS BECAUSE WHATEVER HAPPENED
6 WHEN HE GOT HIT IN THE HEAD. I DON'T KNOW. I'M NOT
7 A DOCTOR, BUT I KNOW THERE'S A CHANGE. HE'S NOT THE
8 PERSON THAT HE WAS.

9 Q. ALL RIGHT. IN TERMS OF YOUR RUNNING THE HOUSEHOLD
10 AND THE DIFFERENCE IN YOUR RELYING UPON HIM TO DO
11 THE THINGS THAT YOU'VE ALREADY TESTIFIED TO, DO YOU
12 ATTRIBUTE THE DIFFERENCE TO THE INJURY?

13 A. YES.

14 Q. ALL RIGHT. BEFORE THIS EVER HAPPENED, MS. BAKER,
15 DID HE EVER EXHIBIT ANY KIND OF FORGETFULNESS ---

16 A. NO, SIR.

17 Q. --- OR CONFUSION?

18 A. NO, SIR.

19 Q. WAS HE WITHDRAWN?

20 A. NO, SIR.

21 Q. WAS HE MOODY?

22 A. NO, SIR.

23 Q. AND IS HE MOODY NOW?

24 A. YES.

25 Q. ALL RIGHT. DOES HIS FAMILY HAVE A HISTORY OF

1 FORGETFULNESS ---

2 A. NO, SIR.

3 Q. --- OR MOODINESS?

4 A. NO, SIR. NOT THAT I'M AWARE OF, NO, SIR.

5 Q. OR ANY TYPE MEMORY PROBLEMS?

6 A. NO, SIR.

7 Q. ANY TYPE DEMENTIA?

8 A. NO, SIR.

9 Q. OR ALZHEIMER'S?

10 A. NO, SIR.

11 Q. ALL RIGHT. IN TERMS OF THE OPERATION NOW OF YOUR
12 HOUSEHOLD, DO YOU RUN THE HOUSEHOLD?

13 A. YES, SIR.

14 Q. ALL RIGHT. DO YOU DO THE GROCERY SHOPPING?

15 A. YES, SIR.

16 Q. DO YOU DO THE BANKING?

17 A. YES, SIR.

18 Q. Y'ALL BEFORE THIS INJURY RAN A BUSINESS WHERE HE WAS
19 A MECHANIC, IS THAT RIGHT?

20 **BY COMMISSIONER LYNDON:**

21 DO YOU WANT TO GO OFF THE RECORD A MINUTE AND
22 GET SOME WATER OR ANYTHING?

23 **BY THE WITNESS:**

24 I'M SORRY. JUST GIVE ME A MINUTE. I
25 APOLOGIZE.

1 BY COMMISSIONER LYNDON:

2 THAT'S ALL RIGHT.

3 DIRECT EXAMINATION RESUMED BY MR. RANKIN:

4 Q. I'M GOING TO TRY TO MOVE IT ALONG. SO, LET'S TALK
5 ABOUT THE BUSINESS BEFORE. Y'ALL HAD A BODY SHOP OR
6 MECHANIC SHOP. WHAT DID YOU HAVE?

7 A. WE HAD AN AUTOMOTIVE GARAGE.

8 Q. ALL RIGHT. AND WHAT DID YOU DO AT THE AUTOMOTIVE
9 GARAGE?

10 A. I WOULD RUN THE OFFICE, ANSWER THE PHONES, AND HE
11 WOULD ACTUALLY DO THE WORK, THE PHYSICAL WORK.

12 Q. ALL RIGHT. AND WAS THIS JUST LIFTING THINGS, OR WAS
13 THIS ASSEMBLING OR DISSEMBLING ENGINES?

14 A. NO, IT WAS -- HE WOULD TAKE MOTORS OUT, TAKE THEM
15 APART, AND PUT THEM BACK TOGETHER.

16 Q. OKAY. SO IT WAS NOT JUST PHYSICAL; IT WAS MENTAL
17 TECHNICAL SKILLS, RIGHT?

18 A. EXACTLY.

19 Q. ALL RIGHT. AND THEN AFTER -- Y'ALL RAN THAT FOR HOW
20 LONG?

21 A. FROM 1984 'TIL 2003.

22 Q. OKAY. DID HE EVER HAVE ANY PROBLEMS BASED ON HIS
23 EDUCATION OR HIS SKILLS OF WORKING AS A MECHANIC AND
24 RUNNING A SUCCESSFUL BUSINESS?

25 A. NO, SIR.

- 1 Q. OKAY. AND THEN AFTER Y'ALL CLOSED IT, HE WENT TO
2 START WORKING FOR HARDWICKS?
- 3 A. YES, SIR.
- 4 Q. OKAY. AND WAS THAT AT THE TIME OF THE INJURY ABOUT
5 FOUR TO SIX MONTHS BEFORE HE STARTED WORKING THERE?
- 6 A. YES.
- 7 Q. SO, IS IT TRUE HE WAS WORKING ABOUT 70 TO 80 HOURS A
8 WEEK IN BOTH JOBS?
- 9 A. AROUND 80 HOURS A WEEK.
- 10 Q. OKAY. DID HE EVER HAVE ANY PROBLEM FORGETTING HOW
11 TO PUT AN ENGINE BACK TOGETHER?
- 12 A. NO, SIR.
- 13 Q. ALL RIGHT. WAS HE EVER DOCKED, THAT YOU KNOW OF, OR
14 REPRIMANDED AT HARDWICKS FOR MESSING UP ANY TYPE
15 ENGINE REPAIR?
- 16 A. NO, SIR.
- 17 Q. OKAY. YOU RAN THE OFFICE, BUT DID HE DO THE
18 BIDDING, DID YOUR HUSBAND?
- 19 A. HE WOULD ALWAYS DO THE PRICING OF ALL THE JOBS. I
20 WOULD TAKE -- I WOULD TAKE THE CALLS AND MAKE THE
21 APPOINTMENTS, AND HE WOULD ASSESS THE JOB AND GIVE
22 THE PRICE. HE WOULD FIGURE OUT THE PRICES, CALL AND
23 GET THE PARTS, WHAT IT'S GOING TO TAKE, FIGURE OUT
24 THE PRICES, GET EVERYTHING TOGETHER, THE TOTAL, AND
25 I WOULD CALL THE CUSTOMER.

- 1 Q. OKAY. HE HAD TO INTERACT WITH THE PUBLIC?
- 2 A. YES, SIR.
- 3 Q. DID HE HAVE PROBLEMS REMEMBERING NAMES?
- 4 A. NO, SIR.
- 5 Q. DID HE HAVE PROBLEMS FORGETTING THE JOB WAS
- 6 SCHEDULED AND MESSING UP THE CALENDAR?
- 7 A. NO, SIR.
- 8 Q. ALL RIGHT. DOES HE NOW HAVE ANY DIFFICULTY
- 9 REMEMBERING PEOPLE'S NAMES?
- 10 A. YES, SIR.
- 11 Q. ALL RIGHT. CHURCH, DID Y'ALL GO TO CHURCH BEFORE
- 12 THIS?
- 13 A. YES, SIR.
- 14 Q. HOW OFTEN WERE YOU THERE?
- 15 A. WELL, A LOT OF PEOPLE SAID EVERY TIME THE DOORS WERE
- 16 OPEN. SUNDAY, SUNDAY NIGHTS AND WEDNESDAYS.
- 17 Q. OKAY. NOW, DO YOU GO, OR DOES HE GO?
- 18 A. SUNDAY MORNING, MOST THE TIME IF ONCE HE GOES SUNDAY
- 19 MORNING, HE IS NOT ABLE TO GO BACK THAT NIGHT
- 20 BECAUSE HE IS NOT ABLE TO SIT.
- 21 Q. OKAY. IN TERMS OF HIS ATTENTION DURING A SERMON OR
- 22 TO A TELEVISION SHOW OR TO A CONVERSATION WITH YOU,
- 23 IS THERE A DIFFERENCE IN HIS ATTENTION SPAN?
- 24 A. YES, SIR.
- 25 Q. WHAT'S THAT?

1 A. IT SEEMS LIKE HE CAN'T STAY FOCUSED ON IT. LIKE IF
2 YOU'RE TALKING TO HIM ABOUT SOMETHING, IT'S LIKE ALL
3 OF A SUDDEN HE'S WATCHING T.V., AND THEN HE STARTS
4 TALKING ABOUT WHAT'S ON T.V., NOT WHAT YOU MIGHT
5 HAVE QUESTIONED LIKE IF I WAS TO ASK HIM A QUESTION,
6 AND I'M LIKE "WELL, THAT AIN'T WHAT I -- I DIDN'T
7 ASK YOU NOTHING ABOUT THE T.V. SHOW. I WAS ASKING
8 YOU ABOUT SOMETHING ELSE." IT'S LIKE HE'S ON A
9 DIFFERENT PAGE.

10 Q. OKAY. CONCENTRATION AND ATTENTION; WHAT ABOUT PACE
11 IN TERMS OF STAYING ON TASK AND DOING SOMETHING.
12 DOES HE (HELP YOU IN THE KITCHEN, OR DOES HE HELP YOU
13 DO ANYTHING THAT --

14 A. HE IS NOT ABLE TO DO ANYTHING.

15 Q. IS THAT FROM THE PHYSICAL SIDE OR THE PHYSICAL AND
16 THE MENTAL SIDE?

17 A. PHYSICAL AND MENTAL.

18 Q. ALL RIGHT. IN TERMS OF YOUR BOOKS NOW OR YOUR
19 BANKING, YOU DO THAT ONLY AND NOT HIM?

20 A. YES, SIR.

21 Q. OKAY. WHAT OTHER AREAS IS THERE A DIFFERENCE IN HIS
22 SOCIAL, HIS INTERACTION, HIS PERSONALITY, OR HIS
23 MIND; WHAT OTHER AREAS THAT YOU HAVE AS EXAMPLES OF
24 THE DIFFERENCE?

25 A. COULD YOU RUN THAT BY ME ONE MORE TIME.

- 1 Q. ARE THERE OTHER AREAS IN YOUR LIFE WITH BOBBY THAT
2 SUPPORT YOUR TESTIMONY THAT THERE'S A DIFFERENCE IN
3 AFTER THIS TILE FELL ON HIS HEAD? WHAT OTHER
4 PROBLEMS OR DEFICITS DO YOU SEE ON A CONSTANT BASIS?
5 HOW ABOUT WITH YOUR FAMILY, DOES HE INTERACT WITH
6 THEM?
- 7 A. HE -- NO. HE IS WITHDRAWN FROM EVERYBODY. IT'S
8 LIKE HE DOESN'T -- HE DOESN'T WANT TO HAVE COMPANY.
9 HE DOESN'T WANT TO HAVE DINNERS OR ANYTHING LIKE
10 THAT. IT'S JUST -- IT'S JUST -- ALL I CAN SAY IS HE
11 JUST -- HE IS LIKE DRAWN AWAY FROM EVERYTHING. IT'S
12 LIKE I -- IT'S LIKE I LIVE BASICALLY BY MYSELF IN
13 ONE WAY OF SPEAKING. THAT'S THE ONLY WAY I KNOW HOW
14 TO EXPLAIN IT. IT'S ALMOST LIKE TENDING TO A CHILD
15 OR A FATHER FIGURE, SOMEBODY THAT'S OLDER AND YOU'RE
16 TRYING TO TAKE CARE OF 'EM.
- 17 Q. AND YOU ARE DESCRIBING THE OLDER PERSON NOW AS YOUR
18 HUSBAND?
- 19 A. YES.
- 20 Q. WHO IS HOW MUCH OLDER THAN YOU?
- 21 A. EIGHT.
- 22 Q. EIGHT YEARS?
- 23 A. YEAH, HE'S EIGHT YEARS OLDER THAN I AM.
- 24 Q. OKAY. HEADACHES, DOES HE COMPLAIN OF HEADACHES?
- 25 A. ALL THE TIME.

1 Q. HOW MANY STITCHES DID HE HAVE IN HIS HEAD?

2 A. HE HAD 13 STAPLES.

3 BY MR. RANKIN:

4 THAT'S ALL I HAVE.

5 BY COMMISSIONER LYNDON:

6 OKAY. ANSWER ANY QUESTIONS COUNSEL MAY HAVE,
7 PLEASE.

8 CROSS EXAMINATION BY MS. TAYLOR:

9 Q. MS. BAKER, JUST A FEW MINUTES AGO WHEN YOU WERE
10 SPEAKING WITH MR. RANKIN, YOU STATED THAT YOU TRIED
11 TO MENTION TO SEVERAL PROVIDERS OTHER PROBLEMS THAT
12 MR. BAKER WAS HAVING.

13 A. YES.

14 Q. IS THAT CORRECT?

15 A. YES, I DID.

16 Q. BUT YOU'VE TESTIFIED FOR VARIOUS REASONS, YOU
17 WEREN'T ALWAYS ABLE TO COMMUNICATE; IS THAT RIGHT?

18 A. I WAS ABLE TO COMMUNICATE. THEY TOLD ME THEY COULD
19 NOT DISCUSS IT.

20 Q. OKAY. NOW, YOU ACTUALLY WENT TO YOUR OWN AUTHORIZED
21 TREATING PHYSICIAN -- NOT AUTHORIZED, BUT YOU
22 ACTUALLY WENT TO GO SEE DR. WILKINS AT SOME POINT;
23 DO YOU RECALL THAT? YOU SAW HIM A COUPLE OF TIMES.
24 DID YOU BRING MR. BAKER TO SEE DR. WILKINS?

25 A. WE WENT TO SEE DR. WILKINS I THINK MAYBE ONE TIME,

1 BUT THAT WAS REFERRED THROUGH BRENDA, WHATEVER, AND
2 THAT WAS TO DECIDE ON THE STIMULATOR.

3 Q. RIGHT.

4 A. THAT WAS NOT TO DISCUSS ANYTHING BUT THAT.

5 Q. OKAY. BUT NOW, IN THAT TREATMENT, DIDN'T DR.
6 WILKINS, SINCE HE WAS A NEW DOCTOR, DO A GENERAL
7 BACKGROUND QUESTION AND ANSWER?

8 A. NO, HE DID NOT.

9 Q. HE DID NOT. HAVE YOU HAD A CHANCE TO REVIEW THE
10 RECORDS PRIOR TO TODAY'S HEARING?

11 A. I THINK HE MIGHT -- HE DIDN'T -- AT THE FIRST
12 MEETING WE WENT TO, HE MIGHT HAVE DONE A SHORT
13 THING. HIS BIGGEST THING AT THAT MEETING WAS TO GO
14 OVER THE RECORDS THAT BRENDA WAS SUPPOSED TO BRING
15 HIM AND DETERMINE THE STIMULATOR, AND THAT WAS
16 BASICALLY WHAT THAT WAS. IT WAS KIND OF A SHORT AND
17 QUICK LITTLE DEAL.

18 Q. OKAY. WERE YOU PRESENT IN THE EXAMINATION ROOM?

19 A. YES, I WAS.

20 Q. OKAY. SO, YOU DO RECALL HIM ACTUALLY PHYSICALLY
21 EXAMINING YOUR HUSBAND; IS THAT CORRECT?

22 A. WELL, PHYSICAL -- YOU HAVE TO EXPLAIN TO ME,
23 PHYSICALLY EXAM, BASICALLY ALL HE DID WAS ASK HIM TO
24 STAND UP, AND HE FELT ON HIS BACK, AND THAT WAS
25 BASICALLY THE PHYSICAL EXAMINATION.

1 Q. OKAY. AND DID HE ASK HIM QUESTIONS ABOUT HIS
2 GENERAL STATUS, HOW HE FELT, HIS OBJECTIVE
3 COMPLAINTS?

4 A. I DON'T REMEMBER ACTUALLY EVERY QUESTION; NO, I DO
5 NOT.

6 Q. THAT IS FINE. NOW, YOU MARRIED MR. BAKER 26 YEARS
7 AGO. HE WAS ALREADY OUT OF HIGH SCHOOL AT THAT
8 TIME; IS THAT CORRECT?

9 A. YES.

10 Q. HE WAS ALREADY WORKING FULL TIME?

11 A. YES.

12 Q. OKAY. SO, YOU HAVE NO INDEPENDENT KNOWLEDGE OF WHAT
13 -- OF WHAT KIND OF STUDENT HE WAS; IS THAT CORRECT?

14 A. NO, I DO NOT.

15 Q. OKAY. NOW, YOU TESTIFIED ALSO THAT HE NEVER FORGOT
16 ANYTHING EVER ---

17 A. WELL ---

18 Q. --- PRIOR TO THIS INJURY. THAT'S NOT TRUE, IS IT?

19 A. NO, THAT'S NOT QUITE TRUE. I'M SURE SOMEWHERE DOWN
20 THE LINE, WE ALL FORGET STUFF.

21 Q. CORRECT. AND THEN YOU ALSO TESTIFIED THAT SOMETIMES
22 YOU MIGHT SEND HIM TO THE STORE WITH A GROCERY LIST,
23 AND HE MIGHT FORGET A THING OR TWO OFF THE LIST; IS
24 THAT CORRECT? FOR EXAMPLE, I WILL REPHRASE, YOU
25 SAID IF YOU SENT HIM TO GET MILK AND BREAD, HE WILL

1 COME BACK WITH THE MILK WITHOUT THE BREAD; IS THAT
2 CORRECT?

3 A. I WAS TRYING TO GET THE POINT ACROSS THAT I NOTICED
4 THAT HE -- THAT I COULD NO LONGER DEPEND ON HIM TO
5 GO TO THE STORE. I WAS TRYING TO GIVE AN EXAMPLE
6 ACROSS. THE REASON WHY IS BECAUSE HE WOULD FORGET
7 TO BRING THINGS BACK THAT I HAD SENT HIM TO GET.

8 Q. OKAY. ISN'T IT TRUE THAT WE HAVE ALL GONE TO THE
9 GROCERY STORE AND FORGOTTEN TO BRING SOMETHING BACK
10 THAT WE WERE SUPPOSED TO?

11 A. I GUESS YOU COULD SAY YOU COULD.

12 Q. OKAY. NOW, YOU TESTIFIED EXTENSIVELY ABOUT THE WAYS
13 IN WHICH MR. BAKER HAS CHANGED, BUT YOU WOULD AGREE
14 WITH ME THAT PREDOMINANTLY YOUR NOTICES OF CHANGE
15 HAVE TO DO WITH HIS ACTUAL PHYSICAL CAPABILITIES;
16 ISN'T THAT CORRECT?

17 A. NO.

18 Q. SO, WHEN YOUR ATTORNEY ASKED -- WELL, WHEN MR.
19 BAKER'S ATTORNEY ASKED YOU EARLIER "CAN YOU TELL US
20 HOW HE HAS CHANGED," YOUR FIRST THREE EXAMPLES WERE
21 "WELL, HE USED TO WORK 80 HOURS PER WEEK. HE USED
22 TO TAKE CARE OF THE HOME. HE USED TO DO ALL OF OUR
23 YARD WORK." YOU WOULD AGREE THAT THOSE ARE ALL
24 PHYSICAL CHANGES IN NATURE; IS THAT CORRECT?

25 A. AND MENTAL.

1 Q. RIGHT. BUT THE THREE THAT WE JUST ENUMERATED, THOSE
2 ARE ALL PHYSICAL; ISN'T THAT CORRECT?

3 A. YES, I GUESS.

4 Q. WORKING, TAKING CARE OF THE YARD, TAKING CARE OF THE
5 HOME?

6 A. WELL, YOU ALSO HAVE TO HAVE MENTAL CAPABILITIES FOR
7 THAT, TOO, BECAUSE THE FACT OF TAKING CARE OF THE
8 YARD, WE HAVE WEED EATERS; WE HAVE BLOWERS, AND YOU
9 KNOW, HE WOULD HAVE TO GO OUT THERE AND, YOU KNOW,
10 LIKE PUT THE PLUGS IN, MIX THE GAS. SO, THAT IS, TO
11 ME, YOU KNOW, MENTALLY. YOU ALSO HAVE TO HAVE A
12 MENTAL PART IN THAT.

13 Q. OKAY. THAT'S FAIR ENOUGH. NOW, YOU TESTIFIED JUST
14 A FEW MINUTES AGO THAT YOU ATTENDED APPROXIMATELY 95
15 PERCENT OF ALL OF THE MEDICAL APPOINTMENTS MR. BAKER
16 ATTENDED; ISN'T THAT CORRECT?

17 A. YES.

18 Q. OKAY. AND YOU WOULD AGREE THAT PREDOMINANTLY IN
19 THOSE MEDICAL APPOINTMENTS, THE DOCTOR INTERACTED
20 WITH MR. BAKER; ISN'T THAT CORRECT?

21 A. YES.

22 Q. OKAY. ALTHOUGH THEY DID SOMETIMES ASK YOU QUESTIONS
23 AND YOU HAD AN OPPORTUNITY TO TALK TO THEM, THEY HAD
24 MOST OF THEIR CONVERSATION WITH REGARD TO CURRENT
25 COMPLAINTS WITH MR. BAKER; ISN'T THAT CORRECT?

1 A. YES.

2 Q. OKAY. AND BASED ON THE MEDICAL REPORTS, THERE ARE
3 NO INSTANCES WHERE THE DOCTORS HAD PROBLEMS
4 COMMUNICATING WITH DR. BAKER; ISN'T THAT CORRECT? --
5 OR MR. BAKER; ISN'T THAT CORRECT?

6 A. THEY WOULD OFTEN LOOK AT ME. THEY WOULDN'T ASK ME,
7 BUT IF THEY WAS NOT SURE WHAT HE WAS SAYING, THEY
8 WOULD EITHER LOOK AT ME OR I WOULD ANSWER FOR HIM.

9 Q. OKAY. BUT JUST A FEW MINUTES AGO, YOU DID AGREE
10 THAT THEY DID MOST OF THE TALKING WITH HIM DIRECTLY;
11 ISN'T THAT CORRECT?

12 A. YES.

13 BY MS. TAYLOR:

14 THAT'S ALL I HAVE, MS. BAKER. THANK YOU.

15 BY COMMISSIONER LYNDON:

16 OKAY.

17 BY MR. RANKIN:

18 VERY BRIEFLY, YOUR HONOR.

19 RE-DIRECT EXAMINATION BY MR. RANKIN:

20 Q. THE REFERRAL TO DR. WILKINS WAS, AND AS HIS NOTE
21 REFLECTS, WITH BRENDA ZITZ. WAS THAT THE CASE
22 MANAGER THAT Y'ALL WENT THERE WITH?

23 A. YES.

24 Q. OKAY. AND THEY MOVED YOU FROM DR. WILKINS TO
25 ANOTHER DOCTOR, CORRECT?

1 A. YES.

2 Q. AND ISN'T IT TRUE THAT MS. ZITZ OR SOME OTHER NURSE
3 CASE MANAGER HAS EFFECTIVELY DRIVEN THIS MEDICAL
4 COURSE OF TREATMENT?

5 A. YES.

6 Q. AND SHE HAS BEEN THERE OR ONE OF THEM HAS BEEN THERE
7 EVERY STEP OF THE WAY, IS THAT RIGHT?

8 A. YES, SIR.

9 Q. AND Y'ALL HAVE, AND I DIDN'T ASK ABOUT IT, BUT IT'S
10 IN THE APAs, THERE'S A \$216 OUT-OF-POCKET
11 REIMBURSEMENT Y'ALL ARE SEEKING, CORRECT?

12 A. YES.

13 Q. OKAY. THE FORGETFULNESS THAT DEFENSE COUNSEL ASKED
14 YOU, IS THERE A DIFFERENCE BEFORE THIS INJURY WHEN
15 YOUR HUSBAND MIGHT FORGET A LOAF OF BREAD AT THE
16 STORE AND NOW IN TERMS OF HOW OFTEN THAT OCCURS?

17 A. ~~ALL~~ ALL THE TIME.

18 Q. ~~OKAY~~. IN TERMS OF YOUR FORGETFULNESS VERSUS YOUR
19 HUSBAND'S, WE ARE ALL HUMAN YOU SAID.

20 A. RIGHT.

21 Q. ARE YOU AS FORGETFUL OR CONFUSED AS YOUR HUSBAND?

22 A. NO, SIR. NO, SIR.

23 Q. OKAY. AND IS THAT DIFFERENCE, IN YOUR OPINION, AS A
24 RESULT OF THIS FALL OR THE CEILING TILE CRASHING ON
25 HIS HEAD?

1 A. YES.

2 Q. OKAY.

3 BY MR. RANKIN:

4 THAT'S ALL I HAVE.

5 BY COMMISSIONER LYNDON:

6 MA'AM.

7 RE-CROSS EXAMINATION BY MS. TAYLOR:

8 Q. MS. BAKER, DID YOU ATTEND THE EMERGENCY ROOM WITH
9 MR. BAKER?

10 A. YES, I DID.

11 Q. OKAY. AND THERE WAS NO NURSE CASE MANAGER PRESENT
12 AT THAT EMERGENCY ROOM VISIT, WAS THERE?

13 A. HIS SUPERVISOR WAS THERE, BUT NOT ---

14 Q. BECAUSE HIS SUPERVISOR ACTUALLY DROVE HIM TO THE
15 EMERGENCY ROOM?

16 A. YES, BUT NO.

17 Q. SO, AT THAT POINT, THE INSURANCE COMPANY WAS NOT
18 INVOLVED WITH HIS MEDICAL TREATMENT, WERE THEY?

19 A. WELL, THEY WERE PAYING THE BILL.

20 Q. WHEN HE WAS TAKEN TO THE EMERGENCY ROOM, AT THAT
21 POINT WHEN HE RECEIVED THE TREATMENT IN THE
22 EMERGENCY ROOM, THE INSURANCE COMPANY WAS NOT
23 INVOLVED, WERE THEY?

24 A. WHAT IS YOUR QUESTION? WAS SOMEONE WITH US? IS
25 THAT YOUR QUESTION?

- 1 A. NO, MA'AM. WAS THE INSURANCE COMPANY OR THE NURSE
2 CASE MANAGER THAT YOU JUST TESTIFIED TO WITH MR.
3 RANKIN, NO ONE FROM THE INSURANCE COMPANY OR A CASE
4 MANAGER WAS PRESENT DURING THAT EMERGENCY ROOM
5 VISIT, WERE THEY?
- 6 A. NO, SIR.
- 7 Q. OKAY.
- 8 A. NO, MA'AM - I'M SORRY.
- 9 Q. THAT'S FINE. NO PROBLEM. AND THEN THE NEXT DAY, HE
10 FOLLOWED UP WITH DOCTORS CARE; ISN'T THAT CORRECT?
- 11 A. THAT IS RIGHT.
- 12 Q. OKAY. AND THERE WAS NO NURSE CASE MANAGER PRESENT
13 AT THE DOCTORS CARE, WAS THERE?
- 14 A. NO.
- 15 Q. OKAY. AND THEN A MONTH AFTER THAT, HE WENT BACK TO
16 DOCTORS CARE, AND THAT'S WHEN HE INITIALLY HAD THE
17 LUMBAR PAIN AND THE PAIN RADIATING INTO HIS LEGS,
18 CORRECT?
- 19 A. YES.
- 20 Q. OKAY. AND THERE WAS NO NURSE CASE MANAGER THERE
21 EITHER, WAS THERE?
- 22 A. CAN I SAY SOMETHING?
- 23 Q. YOU'VE GOT TO ANSWER THAT QUESTION FIRST. I'M
24 SORRY.
- 25 A. OKAY. NO, THERE WAS NOT.

1 Q. OKAY.. SO, YOU WOULD AGREE WITH ME THAT FOR AT LEAST
2 ONE MONTH AFTER HIS INJURY WHEN HE RECEIVED HIS
3 IMMEDIATE MEDICAL INJURY, THERE WAS NO INVOLVEMENT
4 BY THE INSURANCE COMPANY OR A NURSE CASE MANAGER; IS
5 THAT CORRECT?

6 A. THAT'S CORRECT.

7 BY MS. TAYLOR:

8 THAT'S ALL I HAVE. THANK YOU.

9 BY THE WITNESS:

10 OKAY.

11 BY COMMISSIONER LYNDON:

12 OKAY.

13 RE-DIRECT EXAMINATION BY MR. RANKIN:

14 Q. IF YOU WOULD LIKE TO EXPLAIN YOUR ANSWER, I'M NOT
15 SURE WHAT YOU WERE TRYING TO OFFER.

16 A. YEAH, I WAS TRYING TO EXPLAIN MY ANSWER. WHEN HE
17 FIRST GOT HURT, HIS NURSE WAS -- THAT WE HAD TO CALL
18 -- WE DID NOT HAVE A NURSE ASSIGNED TO HIM LOCALLY.
19 SO, WE HAD TO TALK TO HER OVER THE TELEPHONE, WHICH
20 I DID IN THE BEGINNING AND BEGGED HER, YOU KNOW, FOR
21 THINGS, WHICH DID NOT HAPPEN. AND SO, THEN ONCE WE
22 ATTAINED AN ATTORNEY, THEN WE JUST CUT OFF CONTACT,
23 AND THEN THEY FINALLY ASSIGNED BRENDA. SO, THAT'S
24 WHY THERE WAS NOBODY THERE IN THE BEGINNING.

25 BY MS. TAYLOR:

1 RIGHT. THAT'S FINE.

2 RE-DIRECT EXAMINATION RESUMED BY MR. RANKIN:

3 Q. AND JUST ONE FOLLOW UP IF I MAY. ALL THESE DOCTORS
4 THAT YOU HAVE SEEN: STEICHEN, EDWARDS, WILKINS, ALL
5 WERE TO TRY TO SAY THAT "NO, HE DID NOT NEED A
6 SPINAL CORD STIMULATOR," CORRECT?

7 A. CORRECT, THAT'S WHAT IT WAS ALL ABOUT.

8 Q. BECAUSE YOU HAVE SEEN DR. ROSENBERG WHO GAVE YOUR
9 HUSBAND LOTS OF INJECTIONS TO HIS THORACIC AND
10 LUMBAR SPINE, CORRECT?

11 A. CORRECT.

12 Q. AND DID HE NOT RECOMMEND A SPINAL CORD STIMULATOR?

13 A. YES, HE DID.

14 Q. DR. KANG RECOMMENDED A SPINAL CORD STIMULATOR,
15 CORRECT?

16 A. YES, HE DID.

17 Q. SO, BRENDA OR SOMEBODY MOVED YOU FROM WILKINS TO
18 STEICHEN TO EDWARDS IN EFFORTS TO NOT PROVIDE THE
19 STIMULATION, CORRECT?

20 BY MS. TAYLOR:

21 OBJECTION. SHE -- OBJECTION.

22 RE-DIRECT EXAMINATION RESUMED BY MR. RANKIN:

23 Q. HAS THE STIMULATOR BEEN ---

24 BY MS. TAYLOR:

25 THE CLAIMANT HAS -- I MEAN, THE WITNESS HAS NO

1 KNOWLEDGE OF THE REASONING BEHIND THE COURSE OF THE
2 CLAIMANT'S MEDICAL TREATMENT.

3 BY COMMISSIONER LYNDON:

4 I'VE READ SOME OF THE MEDICAL REPORTS WHERE IT
5 WAS NOT INDICATED. WILKINS IN PARTICULAR SAID
6 "ABSOLUTELY NOT," SO. BUT THERE WAS A BATTLE GOING
7 BACK AND FORTH APPARENTLY, SOME DOCTORS SAYING YES
8 AND NO?

9 BY MR. RANKIN:

10 THERE WAS, AND THE ONLY POINT OF THIS IS, AGAIN
11 SHE'S BEEN AT EVERY STEP OF THE ROAD WITH THE
12 TREATMENT. KANG RECOMMENDS IT. WILKINS DOESN'T.
13 THEY SEND HIM TO KANG NEXT. KANG RECOMMENDS IT. HE
14 SENDS HIM TO ROSENBERG. THEY PROVIDE THAT.
15 ROSENBERG RECOMMENDS IT. THEY SEND HIM TO STEICHEN
16 WHO SAYS "NO SURGERY NOR A SPINAL CORD STIMULATOR."
17 THEN THEY SEND HIM TO EDWARDS WHO SAYS "NO SURGERY,
18 NO STIMULATOR." BUT THAT'S THE ONLY ---

19 BY MS. TAYLOR:

20 RIGHT, BUT OUR OBJECTION WAS TO HER KNOWLEDGE
21 OF THE REASONING WHY HE WENT FROM TREATMENT TO
22 TREATMENT. SHE HAS NO -- AND SHE WOULD HAVE NO
23 REASON TO KNOW WHY.

24 BY COMMISSIONER LYNDON:

25 IT WAS MY UNDERSTANDING, ONE OF THE THRUSTS OF

1 THIS IS. HE HAD SEEN SO MANY DOCTORS, BUT THE REASON
2 HE HAD SEEN SO MANY WAS THAT THERE WERE PROS AND
3 CONS TO PUTTING IN A SPINAL CORD STIMULATOR.

4 BY MR. RANKIN:

5 RIGHT.

6 BY COMMISSIONER LYNDON:

7 AND APPARENTLY THE CONS WON.

8 BY MR. RANKIN:

9 CORRECT. AND THE ONLY POINT OF THAT IS IN THE
10 OUTSET, WE TALKED ABOUT ALL THESE DOCTORS. THESE
11 AREN'T PSYCH EVALS.

12 RE-DIRECT EXAMINATION RESUMED BY MR. RANKIN:

13 Q. AND MY BOTTOM LINE QUESTION TO YOU, MA'AM, WHETHER
14 OR NOT IT'S WARRANTED, THERE'S BEEN NO SPINAL CORD
15 STIMULATOR, CORRECT?

16 A. NO.

17 Q. AND THERE'S BEEN NO REFERRAL TO A NEUROPSYCHOLOGIST
18 ---

19 A. NO, SIR.

20 Q. --- BEFORE DR. BRABHAM AND THEN DR. WAID AND THEN
21 DR. McCAFFREY WEIGHED IN ON THIS; IS THAT CORRECT?

22 A. THAT'S CORRECT.

23 Q. THE DEFENDANT HAS NEVER SENT Y'ALL, YOUR HUSBAND, TO
24 ANY PSYCHOLOGIST ---

25 BY MS. TAYLOR:

1 OBJECTION. HE IS LEADING HER THROUGH THIS
2 WHOLE LINE OF QUESTIONING.

3 BY COMMISSIONER LYNDON:

4 JUST DON'T SUGGEST THE ANSWER, AND REPHRASE THE
5 QUESTION.

6 BY MR. RANKIN:

7 I'M ABOUT DONE.

8 RE-DIRECT EXAMINATION RESUMED BY MR. RANKIN:

9 Q. HAS YOUR HUSBAND EVER BEEN REFERRED TO A
10 PSYCHOLOGIST?

11 A. NO, HE HAS NOT.

12 Q. AND YOU HAVE MENTIONED THIS TO DRS. McCAFFREY AND
13 OTHERS, CORRECT?

14 A. YES, I HAVE FROM THE BEGINNING.

15 BY MR. RANKIN:

16 THAT'S ALL I HAVE.

17 BY COMMISSIONER LYNDON:

18 OKAY, MA'AM?

19 BY MS. TAYLOR:

20 I DON'T HAVE ANY FOLLOW UP.

21 BY COMMISSIONER LYNDON:

22 YOU CAN STEP DOWN, AND YOUR HUSBAND CAN COME UP
23 HERE.

24 MR. BAKER, WOULD YOU STATE YOUR FULL NAME FOR
25 THE RECORD, SIR.

1 BY THE WITNESS:

2 BOBBY EARL BAKER.

3 BY COMMISSIONER LYNDON:

4 * * * * * * * * * * * * * * *

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

8 BOBBY BAKER

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

10 BY COMMISSIONER LYNDON:

11 ALL RIGHT. ANSWER ANY QUESTIONS YOUR LAWYER
12 MAY HAVE, PLEASE.

13 DIRECT EXAMINATION BY MR. RANKIN:

14 Q. HOW OLD ARE YOU, BOBBY?

15 A. FIFTY-TWO.

16 Q. AND YOU'VE GOT A BIRTHDAY COMING UP IN MARCH, IS
17 THAT RIGHT?

18 A. YES.

19 Q. OKAY. YOU EVER BEEN IN A COURT ROOM OR A COMMISSION
20 HEARING OFFICE ---

21 A. NO, SIR.

22 Q. --- SEEKING BENEFITS FOR ANY WORK-RELATED INJURY
23 BEFORE?

24 A. NO, SIR.

25 Q. DID YOU EVER SUFFER ANY PHYSICAL OR MENTAL PROBLEMS

1 BEFORE THIS INJURY IN MAY OF '08?

2 A. NO, SIR.

3 Q. AS YOU SIT HERE TODAY AND HAVING HEARD YOUR WIFE
4 TESTIFY AND ALL THE DOCTORS THAT YOU'VE BEEN TO AND
5 THE DEPOSITION THAT YOU PARTICIPATED IN, THE VOC
6 EVALS THAT THEY'VE SENT YOU TO, ALL THESE FOLKS BOTH
7 ON YOUR BEHALF AND THE INSURANCE COMPANY'S BEHALF OR
8 THE DEFENDANTS' BEHALF, HAVE YOU EVER NOT BEEN
9 TRUTHFUL WITH ANY DOCTOR?

10 A. NO, SIR.

11 Q. HAVE YOU EVER BEEN ACCUSED, THAT YOU KNOW OF, OF
12 OVERSTATING OR ANY TYPE OF MALINGERING OR PUTTING ON
13 BY ANYBODY?

14 A. NO, SIR.

15 Q. ALL RIGHT. AND DID YOUR EMPLOYER EVER DOCK YOU FOR
16 LYING OR FOR NOT DOING YOUR JOB?

17 A. NO, SIR.

18 Q. ALL RIGHT. AND WHAT WAS YOUR JOB WITH THE HILTON?

19 A. MAINTENANCE. I WOULD -- I WAS KIND OF LIKE MORE --
20 BECAUSE I WAS ON SECOND SHIFT, TO TAKE CARE OF ALL
21 THE GUESTS, YOU KNOW, THEIR NEEDS, YOU KNOW, IF
22 THERE WERE PROBLEMS OR SOMETHING LIKE THAT.

23 Q. AND DESCRIBE WHAT THOSE REQUIREMENTS WERE. I MEAN,
24 WHAT NEEDS WERE THERE? WERE YOU TENDING TO THE
25 LUGGAGE? WERE YOU A BELLMAN?

- 1 A. LIKE TELEVISIONS, LIGHTS, REFRIGERATORS, FURNITURE.
2 YOU KNOW, ANY KIND OF PROBLEMS WITH THE ROOM, I
3 WOULD HAVE TO FIX IT.
- 4 Q. IN THE RECORDS, THERE ARE SOME F.C.E.s THAT SHOW THE
5 DEMANDS -- THE PHYSICAL DEMANDS OF YOUR JOB BEING
6 HIGHER THAN WHAT YOU ARE CURRENTLY CAPABLE OF DOING.
7 IS THAT FAIR?
- 8 A. YES, SIR.
- 9 Q. WOULD YOU DESCRIBE THE LIFTING REQUIREMENTS OF YOUR
10 JOB AS HEAVY?
- 11 A. YES, SIR.
- 12 Q. ALL RIGHT. WHAT WAS THE HEAVIEST ITEM YOU WOULD
13 HAVE TO PICK UP ON A REGULAR BASIS?
- 14 A. BEDS, COUCH.
- 15 Q. AND THEY WOULD WEIGH HOW MUCH?
- 16 A. OH, THE COUCHES WAS THE ONES THAT HAD THE BEDS IN
17 IT. I DON'T KNOW WHAT YOU CALL THEM, AND THE
18 TELEVISION WAS PRETTY HEAVY, TOO.
- 19 Q. ALL RIGHT. DID YOU DO PLUMBING?
- 20 A. YES, SIR.
- 21 Q. ALL RIGHT. SO, IS IT FAIR TO SAY WEIGHT -- ITEMS
22 THAT WEIGHED MORE THAN 100 POUNDS?
- 23 A. YES, SIR.
- 24 Q. ON A FREQUENT BASIS?
- 25 A. YES, SIR.

- 1 Q. OKAY. DID YOU EVER HAVE ANY TROUBLE EXECUTING OR
2 CARRYING OUT THE INSTRUCTIONS OF YOUR SUPERVISORS OR
3 YOUR BOSSES?
- 4 A. NO, SIR.
- 5 Q. ALL RIGHT. AND DID YOU EVER GET REPRIMANDED FOR NOT
6 DOING SOMETHING CORRECTLY?
- 7 A. NO, SIR.
- 8 Q. ALL RIGHT. YOU WORKED FOR THE HILTON OR THEIR
9 PREDECESSOR OR SUCCESSOR WHATEVER, NOW THEY'RE
10 CALLED KINGSTON PLANTATION?
- 11 A. YES, SIR.
- 12 Q. YOU WORKED WITH THEM HOW LONG?
- 13 A. RIGHT AT FOUR YEARS.
- 14 Q. BEFORE THAT, DID YOU WORK AS A MECHANIC ALSO?
- 15 A. YES, SIR.
- 16 Q. AND AT THE TIME OF THIS INJURY, WERE YOU WORKING FOR
17 HARDWICKS?
- 18 A. YES, SIR.
- 19 Q. AND WHAT WAS YOUR JOB THERE?
- 20 A. I WAS THE MAIN MECHANIC.
- 21 Q. AND AGAIN, WHAT ACTIVITIES DID YOU DO AS A MECHANIC;
22 WHAT WERE YOU PUTTING TOGETHER AND TAKING APART?
- 23 A. DOING BRAKES, REBUILDING ENGINES, REBUILDING
24 TRANSMISSIONS, TUNE-UPS OR ANYTHING LIKE THAT. ANY
25 KIND OF CAR THAT COME IN THERE THAT HAD A COMPUTER

1 PROBLEM, I HAD TO REPAIR IT AND FIX IT.

2 Q. AND DID YOU GO TO SOME TYPE TRAINING TO GET
3 EDUCATION ON FIXING THOSE COMPUTERS, OR WAS IT HANDS
4 ON?

5 A. HANDS ON.

6 Q. OR ON THE JOB, I GUESS?

7 A. YES, SIR.

8 Q. DID YOU HAVE SOMEBODY PHYSICALLY DOING THE WORK FOR
9 YOU, OR WAS IT YOU DOING BOTH THE PHYSICAL SIDE AND
10 THE TECHNICAL MENTAL SIDE?

11 A. I WAS ON MY OWN SO TO SPEAK.

12 Q. OKAY. DID YOU EVER HAVE ANY DIFFICULTY PERFORMING
13 AS A MECHANIC EITHER THE PHYSICAL SIDE OR THE MENTAL
14 SIDE?

15 A. NO, SIR.

16 Q. YOU AND YOUR WIFE RAN YOUR OWN MECHANIC SHOP BEFORE;
17 IS THAT CORRECT?

18 A. YES, SIR.

19 Q. AND HOW MANY YEARS DID YOU DO THAT?

20 A. I DON'T REMEMBER.

21 Q. YEARS?

22 A. YEARS.

23 Q. ALL RIGHT. AND YOU HEARD HER TESTIFY THAT SHE RAN
24 THE OFFICE AND YOU KIND OF RAN THE MECHANIC SIDE,
25 THE SHOP SIDE; IS THAT FAIRLY ACCURATE?

- 1 A. WELL, YEAH. IT'S LIKE FOR YOUR OFFICE, THEY WANT TO
2 SEE LUKE. THEY DON'T WANT TO SEE MARY OR JANE.
3 THEY WANT TO SEE LUKE. SO, EVERYBODY THAT COME IN
4 THE DOOR, THEY WANTED TO SEE BOBBY. SO, I HANDLED
5 ALL OF THAT.
- 6 Q. DID YOU HAVE ANY PROBLEM REMEMBERING PEOPLE'S NAMES?
- 7 A. NO, SIR.
- 8 Q. DID YOU EVER HAVE ANY PROBLEM PERFORMING THE JOBS
9 THEY WOULD HIRE YOU TO DO?
- 10 A. NO, SIR.
- 11 Q. AND DID YOU HAVE PROBLEMS PUTTING TOGETHER OR
12 DISASSEMBLING BRAKES ---
- 13 A. NO, SIR.
- 14 Q. --- OR MOTORS, ET CETERA?
- 15 A. NO, SIR.
- 16 Q. OKAY. YOU DON'T HAVE A HIGH EDUCATION; YOU DIDN'T
17 GO FAR IN SCHOOL, DID YOU?
- 18 A. IT WAS RIGHT AT TENTH GRADE I QUIT.
- 19 Q. OKAY. YOU'VE BEEN TESTED BY, I THINK, EVERYBODY, AT
20 LEAST THE PSYCHOLOGICAL FOLKS, THE VOC EVALS AS
21 HAVING A FAIRLY LOW MATH, READING AND WRITING SKILL;
22 ARE YOU FAMILIAR WITH THAT OR NO?
- 23 A. YES, SIR.
- 24 Q. ALL RIGHT. DID YOU EVER BEFORE THIS INJURY HAVE ANY
25 PROBLEM DOING BIDS OR ESTIMATES FOR THE MECHANIC

1 WORK YOU WERE DOING?

2 A. NO, SIR.

3 Q. DID YOU EVER LOSE MONEY BECAUSE OF YOUR LACK OF
4 TENTH GRADE MATH SKILLS?

5 A. NO, SIR.

6 Q. ALL RIGHT. DID YOU EVER -- WERE YOU EVER SUED FOR
7 NOT PAYING YOUR BILLS?

8 A. NO, SIR.

9 Q. OKAY. AND MANAGING YOUR MONEY, DID YOU BANK BEFORE?

10 A. YES, SIR.

11 Q. ALL RIGHT. DID YOU HAVE ANY PROBLEMS HANDLING YOUR
12 MONEY?

13 A. NO, SIR.

14 Q. ALL RIGHT. WERE YOU EVER SUED FOR NOT PAYING ANY
15 BILL OR FORGETTING TO ANY BILL?

16 A. NO, SIR.

17 Q. OKAY. WHAT HAPPENED ON MAY THE 5TH, BOBBY?

18 A. ME AND MY SUPERVISOR WENT TO THE KITCHEN TO INSPECT
19 THE WALL. THE NEXT THING I KNOW, I'M LAYING ON THE
20 FLOOR, AND I REALLY DIDN'T KNOW THAT. WHEN I WOKE
21 UP, HE WAS HOLLERING "DON'T MOVE. DON'T MOVE," AND
22 THAT'S BASICALLY IT.

23 Q. DO YOU KNOW WHAT HIT YOU?

24 A. NOT AT THAT TIME.

25 Q. ALL RIGHT. AND YOU HEARD THE DEFENSE COUNSEL SAY

1 IT'S AN ADMITTED CASE, AT LEAST THAT YOU GOT HIT.

2 THERE IS NOBODY THAT HAS DENIED THAT, CORRECT?

3 A. NOT THAT I'M AWARE OF.

4 Q. HOW MANY STITCHES DID YOU HAVE TO YOUR HEAD?

5 A. IT'S 13, I THINK.

6 Q. OKAY. YOU HAVE SEEN LOTS OF DOCTORS?

7 A. YES, SIR.

8 Q. ALL RIGHT. WAS THERE EVER A DOCTOR THAT YOU REFUSED
9 TO SEE?

10 A. NO, SIR.

11 Q. ANYBODY THAT THEY TRIED TO SEND YOU, THE INSURANCE
12 SENT YOU THAT YOU SAID "NO, I'M NOT GOING"?

13 A. NO, SIR.

14 Q. ANY VOCATIONAL EVALUATOR THAT YOU REFUSED TO SEE?

15 A. NO, SIR.

16 Q. ALL RIGHT. AND YOU'VE DRIVEN TO COLUMBIA WITH YOUR
17 WIFE TO SEE DR. DEYSACH; IS THAT CORRECT?

18 A. HER BROTHER-IN-LAW DROVE US, OR HER BROTHER DROVE
19 US.

20 Q. OKAY. YOU'VE BEEN TO SEE STEICHEN IN COLUMBIA,
21 CORRECT?

22 A. MM-HMM.

23 Q. THEY SENT YOU THERE FOR WHETHER YOU NEEDED BACK
24 SURGERY, IS THAT RIGHT?

25 A. YES, SIR.

- 1 Q. EDWARDS IN FLORENCE, YOU WENT THERE, CORRECT?
- 2 A. YES, SIR.
- 3 Q. THAT WAS AN ORTHOPEDIST; DO YOU REMEMBER HIM?
- 4 A. YES.
- 5 Q. OKAY. IS THERE ANYTHING THAT YOU HAVE NOT DONE THAT
- 6 HAS BEEN ASKED OF YOU IN THIS CASE BY AGAIN BRENDA
- 7 ZITZ OR MS. LANE, THE FIRST NURSE CASE MANAGER, OR
- 8 ANYBODY HEREAFTER?
- 9 A. I'VE DONE WHAT THEY ASKED ME TO DO AND WAS ALWAYS ON
- 10 TIME.
- 11 Q. DO YOU HAVE PROBLEMS NOW WITH YOUR MIND, MEMORY; DO
- 12 YOU HAVE PROBLEMS REMEMBERING THINGS?
- 13 A. YES, SIR.
- 14 Q. ALL RIGHT. DID YOU HAVE PROBLEMS BEFORE?
- 15 A. NO.
- 16 Q. ALL RIGHT. YOU HEARD YOUR WIFE TALK ABOUT
- 17 FORGETFULNESS OR CONFUSION, IS THAT JUST BECAUSE YOU
- 18 WERE TOO BUSY THAT YOU ARE FORGETTING THINGS OR
- 19 YOU'RE CONFUSED ON THINGS?
- 20 A. NO, BECAUSE IN A MECHANIC'S LINE OF WORK, WHICH IS
- 21 WHAT I'VE ALWAYS DONE MOSTLY OF, YOU CAN'T BE
- 22 FORGETFUL. I MEAN, YOU WILL COST YOU MONEY OR YOU
- 23 WILL TEAR UP SOMEBODY'S CAR; YOU COULD GET SOMEONE
- 24 KILLED IF YOU FORGET TO DO SOMETHING LIKE YOU'RE
- 25 SUPPOSED TO. SO, I WAS NOT BAD ON FORGETTING. I

- 1 REMEMBERED PRETTY GOOD.
- 2 Q. CAN YOU TEAR DOWN A BRAKE DRUM NOW AND PUT IT BACK
3 TOGETHER?
- 4 A. NO, SIR.
- 5 Q. WHY?
- 6 A. I'M NOT PHYSICALLY AND I'M NOT MENTALLY...
- 7 Q. HOW ABOUT -- I'M SORRY.
- 8 A. I'M NOT PHYSICALLY NOR MENTALLY ABLE TO DO THAT.
- 9 Q. ALL RIGHT. IF SOMEONE WERE TO MOVE THE PARTS FOR
10 YOU AND DO THE PHYSICAL SIDE OF IT, WOULD YOU
11 REMEMBER OR KNOW HOW TO PUT SOMETHING BACK TOGETHER
12 AGAIN?
- 13 A. NO, SIR.
- 14 Q. WHY?
- 15 A. I DON'T KNOW. I JUST CAN'T REMEMBER IT.
- 16 Q. ALL RIGHT. BANKING, DO YOU BANK NOW?
- 17 A. NO, SIR.
- 18 Q. WHO DOES THAT?
- 19 A. MY WIFE.
- 20 Q. AND WHY DON'T YOU?
- 21 A. I MADE TOO MANY MISTAKES IN OUR MONEY. I WOULDN'T
22 PUT IN WHAT SHE TOLD US -- WHAT SHE TOLD ME TO, AND
23 IT WOULD COST US MONEY BECAUSE OF OVERDRAFTS, AND
24 I'M JUST NOT -- I JUST CAN'T DO IT.
- 25 Q. ALL RIGHT. YOU ARE ON A LOT OF MEDICATION NOW, IS

1 THAT RIGHT?

2 A. YES, SIR.

3 Q. AND DO YOU THINK YOU ARE HAVING PROBLEMS BANKING OR
4 REMEMBERING HOW TO PUT PARTS OR EQUIPMENT TOGETHER
5 BECAUSE OF THE MEDICINE?

6 A. NO, SIR. NO, I DON'T THINK SO. I THINK IT'S
7 BECAUSE OF MY INJURIES.

8 Q. THE PHYSICAL SIDE OR THE MENTAL SIDE?

9 A. THE MENTAL SIDE.

10 Q. ALL RIGHT. HEADACHES, HOW OFTEN DO YOU HAVE
11 HEADACHES?

12 A. EVERY DAY.

13 Q. AND THERE'S RECORDS OF MIGRAINES IN THERE. DO YOU
14 STILL HAVE THOSE?

15 A. I EXPLAINED IT TO THE DOCTOR THAT IT WAS DIRECTLY
16 INTO THE SCAR. I WOULD HAVE REAL BAD PAINS LIKE I
17 WAS GETTING HIT AGAIN, AND THAT'S THE ONLY WAY I
18 KNOW HOW TO ANSWER THAT.

19 Q. OKAY. YOU GAVE CONSISTENT EFFORT ON EVERYTHING AT
20 LEAST FROM THEIR VOCATIONAL SIDE, THEIR
21 PSYCHOLOGICAL SIDE. THERE IS NO INDICATION THAT YOU
22 DIDN'T GIVE 100 PERCENT.

23 A. I GAVE 100 PERCENT.

24 Q. OKAY. BRENDA ZITZ, DO YOU REMEMBER HER?

25 A. BRENDA, THE NURSE. I DIDN'T KNOW THE LAST NAME.

1 Q. THERE WAS SOMEBODY WITH YOU AT MOST OF THESE DOCTORS
2 APPOINTMENTS, IS THAT RIGHT?

3 A. YES, SIR.

4 Q. OTHER THAN YOUR WIFE?

5 A. YES, SIR.

6 Q. DID YOUR WIFE TELL THE DOCTORS THAT SHE WANTED YOUR
7 MIND OR THE PSYCHOLOGICAL SIDE CHECKED OUT?

8 A. ME AND HER BOTH, YES.

9 Q. ALL RIGHT. AND NOT WHAT WAS SAID, BUT WHAT WAS YOUR
10 UNDERSTANDING OF WHY THAT WAS NOT PROVIDED?

11 A. THEY TOLD ME THAT THEY WERE TO ASSESS ---

12 BY MS. TAYLOR:

13 OBJECTION.

14 BY COMMISSIONER LYNDON:

15 JUST ANSWER THE SPECIFIC QUESTION HE ASKED YOU,
16 AND YOU WON'T GET INTO A HEARSAY ANSWER. HE ASKED
17 YOU -- YOU HAD AN OPINION.

18 DIRECT EXAMINATION RESUMED BY MR. RANKIN:

19 Q. OR YOUR UNDERSTANDING. NOT WHAT THEY TOLD YOU BUT
20 WHAT WAS YOUR UNDERSTANDING OF WHY THAT WAS NEVER
21 PROVIDED?

22 A. THEY SAID IT WASN'T TO BE DISCUSSED.

23 Q. OKAY. HAVE YOU BEEN AUTHORIZED TO SEE ANYBODY PRIOR
24 TO THE DECEMBER VISIT WITH DR. DEYSACH HERE IN
25 COLUMBIA FOR A PSYCHOLOGICAL EVALUATION. DID THE

1 DEFENDANTS SEND YOU TO ANYBODY PRIOR TO DECEMBER
2 2010?

3 A. I DON'T REMEMBER.

4 Q. OKAY. IN TERMS OF YOUR PAIN LEVELS, BOBBY, IN YOUR
5 BODY, WHERE DO YOU HAVE PAIN AND WHAT LEVEL ON A
6 ZERO NO PAIN, TEN MAXIMUM PAIN, DO YOU HAVE THE
7 PAIN? SO, THE FIRST QUESTION IS WHERE DO YOU HAVE
8 PAIN IN YOUR BODY?

9 A. PAIN IN THE TOP OF YOUR HEAD, THE LOWER PART OF MY
10 BACK, AND HIPS AND BOTH LEGS.

11 Q. AND IN THOSE AREAS, AGAIN ON AVERAGE, WITHOUT THE
12 MEDICATION YOU'RE ON, WHAT PAIN LEVEL DO YOU HAVE?

13 A. WITHOUT MEDICINE?

14 Q. YES.

15 A. IT WOULD BE ABOUT A SEVEN TO EIGHT.

16 Q. ALL RIGHT. WHEN YOU TAKE THE MEDICATION, HOW LOW
17 DOES IT GO?

18 A. I WOULD SAY A FIVE, SIX.

19 Q. IS THERE EVER ANY TIME IN THE DAY OR NIGHT WAKING
20 HOURS THAT YOU DON'T HAVE PAIN?

21 A. NO, SIR.

22 Q. AND IS THAT PAIN ON THOSE LEVELS YOU JUST TESTIFIED
23 TO THROUGHOUT YOUR BODY?

24 A. YES, SIR.

25 Q. OKAY. YOU ARE ON AGAIN APPARENTLY OXYCODONE, IS

- 1 THAT RIGHT?
- 2 A. YES, SIR.
- 3 Q. ZOLPIDEM, GABAPENTIN, SOME TYPE CREAM. YOU'VE BEEN
- 4 ON MORPHINE?
- 5 A. YES, SIR.
- 6 Q. OKAY. YOU TALKED ABOUT THE PAIN GOING DOWN. WHAT'S
- 7 THE NEGATIVE EFFECTS OF THOSE MEDICATIONS? WHAT'S
- 8 THE DOWN SIDE OF THOSE?
- 9 A. I DON'T KNOW HOW TO SAY IT. I DON'T KNOW WHAT...
- 10 Q. WELL, DOES IT AFFECT YOUR SLEEP?
- 11 A. OH, YES, SIR. THAT'S THE REASON I'M TAKING THE
- 12 SLEEPING PILLS.
- 13 Q. OKAY. HOW DOES IT AFFECT YOUR SLEEP; DO YOU GET
- 14 MORE SLEEP OR LESS SLEEP?
- 15 A. I'M GETTING A LITTLE BIT MORE THAN WHAT I WAS BEFORE
- 16 I STARTED TAKING THE SLEEPING MEDICINE. I GUESS MY
- 17 LEGS AND STUFF HURTING SO BAD, I CAN'T SLEEP.
- 18 Q. DOES THAT AFFECT YOUR CONCENTRATION DO YOU THINK,
- 19 THE MEDICATION?
- 20 A. I DON'T THINK SO.
- 21 Q. OR YOUR ENERGY LEVEL; DOES IT MAKE YOU MORE
- 22 FATIGUED?
- 23 A. I DON'T THINK SO.
- 24 Q. OKAY. YOUR WIFE TALKED ABOUT YOUR CHURCH ACTIVITY
- 25 BEFORE. SHE SAID Y'ALL WENT TO CHURCH EVERY TIME

1 THE DOORS WERE OPEN, IS THAT RIGHT?

2 A. YES, SIR.

3 Q. DID YOU VOLUNTEER A LOT WITH YOUR CHURCH?

4 A. YES, SIR.

5 Q. ALL RIGHT. WERE YOU PART OF SOCIAL GROUPS IN YOUR
6 CHURCH?

7 A. YES, SIR.

8 Q. AND WHAT TYPE GROUPS, OR WHAT DID Y'ALL DO?

9 A. ~~HAD~~ MASTER MEN, I WAS INVOLVED IN THAT IN ALL OF
10 THEIR MEETINGS, AND THE THING THAT WE DID AS THE
11 MASTER MEN'S GROUP, FOR DIFFERENT PEOPLE WITH NEEDS
12 AND STUFF, AND I HELPED OUT WITH TEENAGERS. I DON'T
13 REMEMBER WHAT WE CALLED THAT. IT WAS, YOU KNOW, A
14 GROUP FOR TEENAGERS TO HAVE THINGS TO DO AND ALL. I
15 WAS INVOLVED IN THAT.

16 Q. YOU'RE WEARING A COAT THAT HAS SOME REFERENCE TO
17 COWBOYS?

18 A. YES, SIR.

19 Q. AND WHAT IS THAT?

20 A. IT WAS COWBOYS FOR CHRIST, IT'S A GROUP OF PEOPLE
21 THAT FORM A GROUP, WHICH IS ALL OVER THE COUNTRY
22 REALLY, AND WE HAD OUR OWN LITTLE GROUP, AND WE DONE
23 FUNCTIONS FOR CHILDREN IN WHEELCHAIRS AND HAD MENTAL
24 ISSUES. WE WENT CAMPING AND RIDING TOGETHER. WE
25 HAD A GREAT GROUP.

1 Q. OKAY. ARE YOU PARTICIPATING IN THAT GROUP?

2 A. NO, SIR.

3 Q. AND WHY IS THAT?

4 A. I'M NOT ABLE TO DO THE THINGS THAT I DID IN THAT
5 GROUP.

6 Q. OKAY. YOU HEARD YOUR WIFE TALK ABOUT YOUR
7 PERSONALITY, YOUR MOODS, YOUR WITHDRAWAL FROM
8 PEOPLE. IS THAT TRUE?

9 A. YES, SIR.

10 Q. ALL RIGHT. AND WHAT DO YOU ATTRIBUTE THAT TO; WHY
11 ARE YOU DIFFERENT?

12 A. I DON'T KNOW.

13 Q. YOU HAVE NEVER BEEN CONVICTED OF CHARGED WITH ANY
14 TYPE CRIME, HAVE YOU?

15 A. NO, SIR.

16 Q. ALL RIGHT. ARE YOU AWARE OF ANYBODY FROM THE HILTON
17 OR NOW THE CURRENT OWNER THAT HAS ANYTHING NEGATIVE
18 TO SAY ABOUT YOUR REPUTATION FOR TRUTHFULNESS?

19 A. NO, SIR. I WAS PROBABLY, AND NOT BRAGGING ON MY
20 SELF -- I'M NOT TRYING TO SAY THAT, BUT I WAS A GOOD
21 EMPLOYEE, BECAUSE THEY ALWAYS -- THEY WOULD DO
22 THINGS FOR ME THEY WOULDN'T DO FOR SOME OF THE OTHER
23 EMPLOYEES.

24 Q. LIKE WHAT?

25 A. PRAISE ME, I GUESS WOULD BE A WORD. TELL ME A DONE

1 A FINE JOB, APPRECIATE WHAT I DID. I HANDLED IT
2 VERY WELL, AND DIFFERENT THINGS LIKE THAT.

3 Q. HAS THERE BEEN ANY OFFER FOR YOU TO RETURN TO ANY
4 LEVEL OF WORK?

5 A. NO, SIR.

6 Q. OKAY. DO YOU KNOW WHETHER THEY TERMINATED YOU, OR
7 HAS THERE BEEN ANY MENTION SINCE '08 OF ANY JOB?

8 A. THEY HAVE NOT, AS FAR AS I KNOW, TERMINATED ME, BUT
9 THEY HAVEN'T CONTACTED ME.

10 Q. OKAY. YOU HAVE HAD TREATMENT WITH ALL THESE
11 DOCTORS, BUT I'M NOT GOING TO GO THROUGH ALL THAT,
12 BUT YOU'VE HAD EPIDURAL STEROID INJECTIONS, ABLATION
13 TO YOUR MIDDLE BACK AND LOW BACK; IS THAT RIGHT?

14 A. YES, SIR.

15 Q. YOU'VE HAD LOTS OF POKING AND PRODDING OF NEEDLES;
16 IS THAT KIND OF A SLANG WAY OF SAYING IT?

17 A. YES, SIR.

18 Q. HAS ANY OF THAT REDUCED THE PAIN LEVEL THAT YOU
19 HAVE?

20 A. NOT REALLY, NO.

21 Q. OKAY.

22 BY MR. RANKIN:

23 THAT'S ALL I HAVE.

24 BY COMMISSIONER LYNDON:

25 OKAY. MS. TAYLOR.

CROSS EXAMINATION BY MS. TAYLOR:

Q. MR. BAKER, I WILL TRY TO BE BRIEF. YOU JUST TESTIFIED TO YOUR ATTORNEY THAT YOU DIDN'T THINK ANY OF THE MEDICATIONS HAD AN AFFECT ON YOUR THINKING OR YOUR COGNITIVE ABILITIES; IS THAT CORRECT?

A. I DON'T THINK SO.

Q. OKAY. NOW, DO YOU REMEMBER COMING UP HERE TO COLUMBIA BACK IN DECEMBER TO SEE DR. DEYSACH?

A. I DON'T KNOW WHO HE WAS. I DON'T REMEMBER HIS NAME.

Q. ALL RIGHT. BUT YOU REMEMBER WHO YOU CAME TO SEE HERE IN COLUMBIA, RIGHT?

A. YES.

Q. YOU ONLY SAW ONE PERSON HERE IN COLUMBIA, RIGHT?

A. YES, MA'AM.

Q. OKAY. THAT WAS DR. DEYSACH. NOW, YOU REPORTED TO DR. DEYSACH THAT YOU GENERALLY TAKE THE OXYCODONE, RIGHT?

A. I TAKE IT LIKE I'M SUPPOSED TO, YES, MA'AM.

Q. OKAY. BUT YOU TOLD HIM THAT PARTICULAR DAY YOU DID NOT TAKE ANY BECAUSE OF YOUR TRIP -- YOU DID NOT TAKE ANY BEFORE THE TRIP BECAUSE OF IT'S IMPACT ON YOUR COGNITIVE FUNCTIONING, MEANING IT AFFECTS YOUR ALERTNESS; ISN'T THAT CORRECT?

A. TO TAKE THIS MEDICINE, YOU HAVE TO EAT, AND WE LEFT TOO EARLY FOR ME TO EAT. IF I HAD TOOK THAT

1 MEDICINE, I WOULD HAVE BEEN SICK, AND YOU KNOW, I
2 JUST DIDN'T WANT TO TAKE NO CHANCES.

3 Q. OKAY. SO, YOU AGREE THAT YOU TOLD HIM IT WAS
4 BECAUSE IT WOULD AFFECT YOUR -- IT WOULD AFFECT YOUR
5 ALERTNESS FOR THE ACTUAL APPOINTMENT; IS THAT
6 CORRECT?

7 A. I NEVER TOLD HIM ABOUT AFFECTING MY ALERTNESS.

8 Q. OKAY. SO, THAT STATEMENT IS NOT TRUE IN THE RECORD?

9 A. NO, NO.

10 Q. OKAY. WHAT ABOUT THE STATEMENT THAT IT HAS AN
11 IMPACT ON YOUR COGNITIVE FUNCTIONING; THAT'S NOT
12 TRUE AS WELL?

13 A. ANYTHING THAT YOU TAKE THAT'S MEDICINE IS GOING TO
14 BRING YOU DOWN SOME.

15 Q. OKAY.

16 A. I MEAN, I WOULD BE TELLING YOU A LIE IF I TOLD YOU
17 THAT.

18 Q. RIGHT, OKAY. THAT'S BASICALLY WHAT WE WERE GETTING
19 AT HERE.

20 A. RIGHT, RIGHT.

21 Q. OKAY. OTHER THAN -- LET'S GET BACK TO THE ACTUAL
22 DATE OF THE INJURY, THE ACTUAL INJURY DATE.

23 A. OKAY.

24 Q. OTHER THAN WHAT YOU WERE TOLD IMMEDIATELY AFTER IT
25 HAPPENED, YOU REALLY DON'T RECALL EXACTLY WHAT

1 HAPPENED AT THE TIME IT HAPPENED; ISN'T THAT
2 CORRECT?

3 A. NO, MA'AM.

4 Q. OKAY. AND I BELIEVE WHEN I TOOK YOUR DEPOSITION
5 BEFORE, YOU TOLD ME, YOU KNOW, YOU WERE INSPECTING
6 THE WALL, AND THE NEXT THING YOU KNOW YOU WERE ON
7 THE GROUND; ISN'T THAT RIGHT?

8 A. YES, MA'AM.

9 Q. OKAY. NOW, NO ONE CALLED AN AMBULANCE, DID THEY?

10 A. I DON'T KNOW.

11 Q. OKAY. BUT YOUR SUPERVISOR ENDED UP TAKING YOU TO
12 THE HOSPITAL?

13 A. YES, MA'AM.

14 Q. OKAY. AND THEN AT THE HOSPITAL, YOU WERE ACTUALLY
15 TREATED FOR THE SCALP LACERATION; ISN'T THAT RIGHT?

16 A. YES, MA'AM.

17 Q. OKAY. AND THEY BASICALLY PUT THE 13 STAPLES IN AND
18 SENT YOU HOME; ISN'T THAT RIGHT?

19 A. NO, MA'AM.

20 Q. OKAY. WHAT ELSE DID THEY DO?

21 A. THEY X-RAYED MY NECK.

22 Q. OKAY.

23 A. 'CAUSE I TOLD THEM THAT MY NECK WAS HURTING. AND
24 SO, THEY X-RAYED THAT SEVERAL DIFFERENT WAYS.

25 Q. OKAY.

1 A. THEY STAPLED MY HEAD AND GIVE ME A SHOT OF MORPHINE,
2 I THINK IT WAS OR SOMETHING.

3 Q. AND THAT WAS FOR THE PAIN, RIGHT?

4 A. YES.

5 Q. THAT WAS THE PAIN IN THE NECK; ISN'T THAT RIGHT?

6 A. THE PAIN EVERYWHERE.

7 Q. THE PAIN IN YOUR HEAD AND THE PAIN IN THE NECK?

8 A. YES, MA'AM.

9 Q. OKAY. AND YOU JUST STATED YOU TOLD THEM THAT YOUR
10 NECK WAS HURTING, SO THEY TOOK THE X-RAYS OF YOUR
11 NECK; ISN'T THAT RIGHT?

12 A. YES, MA'AM.

13 Q. NOW, BEFORE YOU WERE RELEASED FROM THE EMERGENCY
14 ROOM, THE DOCTOR SPECIFICALLY ASKED YOU IF YOU --
15 I'M SORRY, IF YOU SPECIFICALLY HAD ANY OTHER
16 COMPLAINTS OR PROBLEMS WITH PAIN; ISN'T THAT
17 CORRECT?

18 A. YES.

19 Q. AND YOU REMEMBER -- OR YOU EFFECTIVELY TOLD HIM THAT
20 YOU DIDN'T HAVE ANY OTHER COMPLAINTS OTHER THAN WHAT
21 HE HAD ALREADY TREATED YOU FOR; ISN'T THAT RIGHT?

22 A. I DON'T -- I DON'T REMEMBER.

23 Q. OKAY. WELL, YOU WOULD AGREE THAT IF IT'S CONTAINED
24 IN THE MEDICAL RECORDS OTHER THAN THE DISPUTED PART
25 WE ALREADY TALKED ABOUT, THEN IT'S PROBABLY TRUE?

- 1 A. I DON'T HAVE AN ANSWER TO THAT.
- 2 Q. YOU AGREE TO YOUR ATTORNEY THAT YOU WERE OPEN AN
- 3 HONEST WITH THE MEDICAL DOCTORS, CORRECT?
- 4 A. YES.
- 5 Q. OKAY, THANK YOU. NOW, WHILE YOU WERE IN THE
- 6 EMERGENCY ROOM, NO ONE PERFORMED ANY TESTS WITH
- 7 REGARD TO ANY COGNITIVE IMPAIRMENT OR ANY BRAIN
- 8 INJURY; ISN'T THAT CORRECT?
- 9 A. THEY DID NOT.
- 10 Q. OKAY. AND NOW, YOU ACTUALLY WENT TO DOCTORS CARE
- 11 THE FOLLOWING DAY; ISN'T THAT RIGHT?
- 12 A. I DON'T REMEMBER EXACTLY WHEN.
- 13 Q. OKAY. BUT YOU REMEMBER GOING TO DOCTORS CARE REALLY
- 14 SOON AFTER THE INJURY, IS THAT RIGHT?
- 15 A. I ASSUME SO.
- 16 Q. ALL RIGHT. NOW, WHEN YOU WENT TO DOCTORS CARE, THEY
- 17 BASICALLY EXAMINED YOUR HEAD AND YOU WERE RELEASED
- 18 AT THAT FIRST VISIT TO RETURN TO WORK; ISN'T THAT
- 19 CORRECT?
- 20 A. THE ONLY THING THEY DONE WAS CHECK MY STAPLES AND
- 21 WROTE ME UP THE PAPERWORK WHERE I COULD TRY TO GO
- 22 BACK TO WORK.
- 23 Q. OKAY. BUT YOU ACTUALLY DEVELOPED A RESPIRATORY
- 24 INFECTION RIGHT AFTER THAT VISIT; ISN'T THAT
- 25 CORRECT?

1 A. I DON'T KNOW WHAT IT WAS.

2 Q. OKAY. SOME KIND OF SICKNESS, CORRECT?

3 A. IT WAS BAD.

4 Q. AND SO YOU NEVER RETURNED TO WORK BECAUSE OF THAT
5 SICKNESS; ISN'T THAT RIGHT?

6 A. YES, MA'AM.

7 Q. OKAY. NOW, ABOUT A MONTH AFTER AN ACCIDENT, YOU
8 DEVELOPED SEVERE BACK PAIN AND YOU ENDED UP GOING
9 BACK TO THE EMERGENCY ROOM; ISN'T THAT RIGHT?

10 A. YES, MA'AM.

11 Q. OKAY. AND THEN YOU FOLLOWED UP AGAIN WITH DOCTORS
12 CARE FOR THAT LOW BACK PAIN; ISN'T THAT RIGHT?

13 A. I DON'T REMEMBER THAT.

14 Q. OKAY. AT SOME POINT, WHEN YOU -- WHY DID YOU GO TO
15 THE EMERGENCY ROOM?

16 A. MY BACK.

17 Q. THE BACK, OKAY, AND AT SOME POINT THE BACK PAIN
18 BEGAN RADIATING DOWN INTO YOUR LEGS; ISN'T THAT
19 RIGHT?

20 A. YES, MA'AM.

21 Q. AND SO BASICALLY, YOU STARTED ADDITIONAL MEDICAL
22 TREATMENT FOR THAT BACK AND LEG PAIN; ISN'T THAT
23 RIGHT?

24 A. YES, MA'AM.

25 Q. OKAY. AND AFTER YOU WENT TO THE HOSPITAL AND YOU

1 WENT TO DOCTOR'S CARE, THAT'S WHEN YOU STARTED
2 SEEING DR. McCAFFREY; ISN'T THAT RIGHT?

3 A. I THINK SO, YES, MA'AM.

4 Q. ALL RIGHT. AND NOW, YOU WOULD AGREE THAT YOU
5 INITIATED THAT SERIES OF MEDICAL TREATMENT BY GOING
6 TO THE EMERGENCY ROOM, AND AT THAT TIME, YOU DIDN'T
7 REPORT ANY PROBLEMS WITH REGARD TO COGNITIVE
8 PROBLEMS OR COGNITIVE PAIN. YOU JUST WENT TO THE
9 EMERGENCY ROOM BECAUSE YOUR BACK WAS HURTING; ISN'T
10 THAT CORRECT?

11 A. I TOLD THEM I HAD BAD HEADACHES, TOO.

12 Q. OKAY. AND YOUR HEADACHES AS WELL?

13 A. YES.

14 Q. OKAY. NOW, DR. McCAFFREY IS THE DOCTOR WHO TOOK YOU
15 OUT OF WORK FOR GOOD; ISN'T THAT RIGHT?

16 A. YES, MA'AM.

17 Q. OKAY. AND HE TOOK YOU OUT OF WORK BECAUSE OF YOUR
18 SEVERE BACK PAIN; ISN'T THAT RIGHT AND THE LEG PAIN?

19 A. YEAH, I GUESS. YES, MA'AM.

20 Q. ALL RIGHT. AND WHEN YOU FIRST WENT TO SEE DR.
21 McCAFFREY, YOU ACTUALLY HAD TO FILL OUT A VERY LONG
22 QUESTIONNAIRE; ISN'T THAT RIGHT?

23 A. I DON'T REMEMBER.

24 Q. OKAY. DO YOU REMEMBER FILLING OUT ANY PAPERWORK
25 PRIOR TO ANY OF YOUR DOCTOR'S VISITS?

1 A. I KNOW I HAVE SOME. I DON'T REMEMBER WHAT.

2 Q. OKAY. WELL, YOU WOULD AGREE WITH ME THAT YOUR WIFE
3 WOULDN'T HAVE SIGNED YOUR SIGNATURE ON A
4 QUESTIONNAIRE, WOULD SHE?

5 A. NO, MA'AM.

6 Q. OKAY. SO, IF YOUR SIGNATURE IS ON A QUESTIONNAIRE,
7 THEN IT'S LIKELY YOUR SIGNATURE; IS THAT CORRECT?

8 A. YES, MA'AM.

9 Q. OKAY.

10 BY MS. TAYLOR:

11 FOR THE RECORD, COMMISSIONER, I'M REFERRING TO
12 CLAIMANT'S APA SUBMISSIONS PAGES 11 THROUGH 14, AND
13 IT'S A QUESTIONNAIRE THAT THE CLAIMANT FILLED OUT
14 PRIOR TO HIM SEEING DR. McCAFFREY FOR THE FIRST
15 TIME.

16 BY COMMISSIONER LYNDON:

17 OKAY.

18 CROSS EXAMINATION RESUMED BY MS. TAYLOR:

19 Q. MR. BAKER, IS IT YOUR TESTIMONY TODAY THAT YOU HAVE
20 NO KNOWLEDGE OF THE QUESTIONNAIRE WHATSOEVER?

21 A. I JUST DON'T REMEMBER IT.

22 Q. OKAY. BUT YOU WOULD AGREE WITH ME THAT IF YOU
23 FILLED IT OUT, IT WOULD HAVE BEEN AN ACCURATE AND
24 TRUE STATEMENT AS TO YOUR CURRENT STATUS AT THAT
25 TIME, CORRECT?

- 1 A. YES, MA'AM, I DON'T LIE.
- 2 Q. RIGHT, OKAY. NOW, ON THAT QUESTIONNAIRE, YOU
- 3 INDICATED THAT YOU NEVER HAD MIGRAINE HEADACHES.
- 4 SO, WOULD THAT BE THE TRUTH?
- 5 A. I NEVER HAD.
- 6 Q. OKAY. AND YOU INDICATED ON THAT QUESTIONNAIRE THAT
- 7 YOU NEVER HAD MEMORY LOSS; SO WOULDN'T THAT BE THE
- 8 TRUTH?
- 9 A. THAT WOULD BE THE TRUTH.
- 10 Q. OKAY. AND THEN ABOUT TWO MONTHS AFTER THAT INITIAL
- 11 VISIT WITH DR. McCAFFREY AND THAT QUESTIONNAIRE, YOU
- 12 BEGAN TO COMPLAIN OF PHYSICAL PAIN ON YOUR HEAD OVER
- 13 WHERE THE SCAR IS; IS THAT CORRECT?
- 14 A. YES, MA'AM.
- 15 Q. OKAY. NOW ONCE AGAIN, IN THAT TREATMENT, IN THAT
- 16 PHASE OF TREATMENT WITH DR. McCAFFREY, YOU
- 17 COMPLAINED OF THE HEADACHES; YOU COMPLAINED OF THE
- 18 PAIN OVER THE SCAR, BUT YOU NEVER COMPLAINED OF ANY
- 19 MEMORY PROBLEMS TO DR. McCAFFREY, DID YOU?
- 20 A. HE WOULDN'T DISCUSS IT WITH ME.
- 21 Q. BUT YOU NEVER EVEN MADE MENTION OF IT, DID YOU?
- 22 A. IT DIDN'T MAKE NO DIFFERENCE. HE WOULDN'T DISCUSS
- 23 IT. HE JUST TOLD ME "WE CAN'T DISCUSS THIS," AND IT
- 24 WAS STOPPED. NO MORE WAS TALKED ABOUT IT.
- 25 Q. OKAY. SO IT'S YOUR TESTIMONY HERE TODAY THAT YOU

1 ACTUALLY -- YOU ACTUALLY ATTEMPTED TO DISCUSS MEMORY
2 PROBLEMS WITH DR. McCAFFREY?

3 A. I ATTEMPTED TO DISCUSS MY PROBLEMS, AND I WAS ONLY
4 ABLE TO DISCUSS MY BACK AND MY LEGS.

5 Q. BUT THAT'S NOT TRUE, BECAUSE WE JUST TALKED ABOUT
6 HOW YOU DISCUSSED YOUR HEADACHES; ISN'T THAT
7 CORRECT?

8 A. I TOLD HIM I WAS HAVING HEADACHES.

9 Q. OKAY. BUT YOU NEVER TOLD HIM YOU WERE HAVING MEMORY
10 PROBLEMS, DID YOU?

11 A. WE COULDN'T GO NO FURTHER. HE CUT ME OFF RIGHT
12 THERE.

13 Q. BUT HE DIDN'T CUT YOU OFF WHEN YOU TALKED ABOUT THE
14 PAIN ON YOUR HEAD OVER THE SCALP EITHER, DID HE?

15 A. HE DIDN'T HAVE A CHANCE ON THAT ONE.

16 Q. SO, HE TOOK BASICALLY FOUR OUT OF YOUR ALLEGED FIVE
17 COMPLAINTS AND DISCUSSED ALL OF THOSE IN YOUR
18 MEDICAL RECORDS EXCEPT FOR ONE, IS THAT YOUR
19 TESTIMONY HERE TODAY?

20 A. I'M JUST TELLING YOU THAT HE WOULDN'T DISCUSS
21 ANYTHING ABOUT MY HEAD, PERIOD.

22 Q. BUT HE DISCUSS THE PAIN ON YOUR HEAD?

23 A. NO, MA'AM. HE DIDN'T DISCUSS IT. HE LISTENED TO ME
24 TELLING HIM THAT I WAS HAVING PAINS.

25 Q. RIGHT. NOW, YOU HAD AN OPPORTUNITY TO PREPARE FOR

1 THIS HEARING AND REVIEW YOUR MEDICAL RECORDS WITH
2 YOUR ATTORNEY PRIOR TO COMING HERE TODAY?

3 A. YES, MA'AM.

4 Q. OKAY. SO YOU KNOW IN DR. McCAFFREY'S REPORTS IT IS
5 STATED THAT YOU LIST YOUR CURRENT COMPLAINTS AS PAIN
6 OVER YOUR HEAD, YOUR OCCASIONAL -- YOUR RECURRING
7 HEADACHES, YOUR BACK PAIN, AND YOUR LOWER LEG PAIN;
8 IS THAT CORRECT?

9 A. I ASSUME SO, YES.

10 Q. OKAY. NOW, IN 2009, YOU APPLIED FOR SOCIAL SECURITY
11 DISABILITY; ISN'T THAT CORRECT?

12 A. NO.

13 Q. YOU NEVER APPLIED FOR SOCIAL SECURITY DISABILITY?

14 A. NO, MA'AM.

15 Q. YOU'RE NOT CURRENTLY RECEIVING SOCIAL SECURITY
16 CHECKS?

17 A. NO, MA'AM.

18 Q. OKAY. DID YOU EVER ASK DR. McCAFFREY TO FILL OUT A
19 SOCIAL SECURITY DISABILITY QUESTIONNAIRE?

20 A. NO, MA'AM.

21 Q. SO, IF THAT IS CONTAINED IN YOUR MEDICAL RECORDS,
22 YOU HAVE NO KNOWLEDGE OF HOW IT GOT THERE?

23 A. I'M NOT RECEIVING ANY CHECKS EXCEPT FOR THE
24 WORKMANS' COMP AND ---

25 Q. OKAY. BUT DID YOU EVER ---

1 BY MR. RANKIN:

2 IF YOU WILL LET HIM FINISH.

3 CROSS EXAMINATION RESUMED BY MS. TAYLOR:

4 Q. OH, GO AHEAD.

5 A. THE ONLY THING THAT I FILLED OUT AS FAR AS
6 DISABILITY OR ANYTHING WAS MY STICKER FOR MY
7 WINDSHIELD WHERE I CAN PARK IN THE HANDICAP. THAT'S
8 IT.

9 Q. OKAY. SO, YOU NEVER ASKED DR. McCAFFREY TO COMPLETE
10 ANYTHING FOR YOU WITH REGARD TO DISABILITY?

11 A. NO, MA'AM.

12 Q. OKAY. DID YOU HAVE AN OPPORTUNITY TO REVIEW THOSE
13 RECORDS IN YOUR MATERIALS THAT YOUR CLAIMANT(sic)
14 HANDED INTO COURT?

15 A. IF THERE IS ANYTHING OF THAT, I HAVEN'T READ THAT.

16 Q. OKAY.

17 BY MS. TAYLOR:

18 COMMISSIONER, FOR THE RECORD, WE ARE REFERRING
19 TO CLAIMANT'S APA SUBMISSIONS PAGES 57 THROUGH 59.

20 CROSS EXAMINATION RESUMED BY MS. TAYLOR:

21 Q. NOW, MR. BAKER, DR. McCAFFREY, HE PLACED YOU AT
22 MAXIMUM MEDICAL IMPROVEMENT BACK IN 2009; IS THAT
23 CORRECT?

24 A. EXPLAIN THAT.

25 Q. HE BASICALLY -- HE RELEASED YOU. DR. McCAFFREY

- 1 RELEASED YOU BACK IN 2009; IS THAT CORRECT?
- 2 A. THAT'S WHEN THEY MOVED ME TO ---
- 3 Q. TO DR. KANG.
- 4 A. NO. I DON'T REMEMBER WHO THE DOCTOR WAS.
- 5 Q. OKAY.
- 6 A. THEY MOVED ME TO ANOTHER DOCTOR.
- 7 Q. RIGHT. BUT DO YOU REMEMBER STOPPING YOUR TREATMENT
- 8 WITH McCAFFREY IN 2009?
- 9 A. YES.
- 10 Q. OKAY. AND NOW, DO YOU REMEMBER PERFORMING YOUR
- 11 F.C.E. WHERE THEY HAD YOU DO A LOT OF DIFFERENT
- 12 EXERCISES AND TESTS?
- 13 A. I VAGUELY REMEMBER.
- 14 Q. OKAY, ALL RIGHT. NOW, YOU DID REVIEW YOUR RECORDS,
- 15 SO YOU KNOW THAT THE F.C.E. ONLY LISTED YOU AS
- 16 HAVING A 14-PERCENT IMPAIRMENT RATING; IS THAT
- 17 CORRECT?
- 18 A. I GUESS.
- 19 Q. OKAY. DID YOU PARTICIPATE IN THE ACTIVITIES THE
- 20 EXAMINER GAVE YOU 100 PERCENT?
- 21 A. I DID EVERYTHING I COULD IN MY POWER.
- 22 Q. OKAY. NOW, ISN'T IT TRUE THAT YOU TOLD THAT
- 23 EXAMINER THAT YOU WOULD LIKE TO RETURN TO WORK IF
- 24 YOU WERE PHYSICALLY ABLE TO DO SO?
- 25 A. I WOULD LIKE TO RETURN TO WORK, YES, MA'AM.

- 1 Q. OKAY. NOW, EVEN IN THAT F.C.E., THERE WAS NO NURSE
2 CASE MANAGER PRESENT DURING THAT TIME, WAS THERE?
- 3 A. NOT THERE, NO, MA'AM.
- 4 Q. OKAY. AND THEN AGAIN, YOU NEVER MENTIONED ANYTHING
5 ABOUT MEMORY LOSS OR COGNITIVE PROBLEMS DURING THAT
6 EXAM, DID YOU?
- 7 A. THAT WAS TO SEE WHAT I COULD PICK UP AND MOVE. IT
8 WASN'T NOTHING TO DO WITH THE DOCTORS.
- 9 Q. RIGHT. NOW, AFTER THAT TESTING, THAT F.C.E., YOU
10 BEGAN TREATING WITH DR. KANG; ISN'T THAT CORRECT?
- 11 A. I THINK. I DON'T REMEMBER.
- 12 Q. OKAY. BUT YOU REMEMBER AT SOME POINT GOING TO SEE
13 DR. KANG?
- 14 A. I'M SEEING DR. KANG NOW.
- 15 Q. NOW, CORRECT, OKAY. AND YOU AGREE WITH ME THAT
16 YOU'VE ACTUALLY HAD THE MOST PAIN RELIEF YOU'VE EVER
17 HAD NOW THAT YOU ARE SEEING DR. KANG; ISN'T THAT
18 RIGHT?
- 19 A. NO, MA'AM. IT STARTED WITH DR. ROSENBERG.
- 20 Q. OKAY. DR. ROSENBERG, OKAY. BUT SINCE DR. ROSENBERG
21 IS NOT YOUR TREATING PHYSICIAN, WHEN COMPARED TO DR.
22 McCAFFREY, YOU AGREE THAT DR. KANG HAS GOTTEN YOU
23 BETTER RESULTS; ISN'T THAT RIGHT?
- 24 A. HE GIVE ME MEDICATION.
- 25 Q. RIGHT. OKAY. NOW, YOU NEVER MENTIONED ANY PROBLEMS

1 WITH MEMORY OR COGNITIVE FUNCTIONING TO DR. KANG
2 EITHER; IS THAT CORRECT?

3 A. YES, I DID.

4 Q. OKAY. NOW, DR. KANG, IF YOU REVIEWED YOUR RECORDS,
5 YOU KNOW HE LISTED IN EVERY SINGLE MEDICAL RECORD
6 THAT YOU HAD NO COGNITIVE IMPAIRMENT?

7 A. IT FALLS RIGHT BACK TO THE SAME THING FROM THE
8 START. WHEN I MENTIONED ANYTHING ABOUT MY HEAD, IT
9 WAS "CANNOT DISCUSS."

10 Q. OKAY. SO, IT'S YOUR TESTIMONY HERE TODAY THAT
11 ESSENTIALLY ALL OF YOUR MEDICAL PROVIDERS LIED IN
12 THEIR MEDICAL REPORTS, IS THAT RIGHT?

13 A. I'M NOT SAYING THEY LIED.

14 Q. WELL, DR. KANG SAYS YOU DIDN'T HAVE ANY COGNITIVE
15 IMPAIRMENT. SO, IF YOU ARE SAYING YOU TOLD HIM
16 OTHERWISE, THEN YOU'RE SAYING THAT HE LIED; IS THAT
17 CORRECT?

18 A. THAT COULD GO A LOT OF DIFFERENT WAYS.

19 Q. OKAY. NOW, DR. KANG ACTUALLY SENT YOU FOR A SECOND
20 F.C.E.; ISN'T THAT CORRECT? YOU WENT A SECOND TIME
21 TO DO ALL OF THE EXERCISES AND LIFTING; ISN'T THAT
22 CORRECT?

23 A. JUST ONE IS ALL I CAN REMEMBER.

24 Q. OKAY. YOU REMEMBER GOING TO SEE DR. WILKINS; ISN'T
25 THAT CORRECT?

- 1 A. YES, MA'AM.
- 2 Q. OKAY. AND THAT WAS TO DISCUSS THE SPINAL CORD
- 3 STIMULATOR, CORRECT?
- 4 A. YES, MA'AM.
- 5 Q. AND YOU AGREE THAT YOU DID TALK TO AND DISCUSS YOUR
- 6 PROBLEMS WITH DR. WILKINS PRIOR TO HIM EXAMINING
- 7 YOUR BACK; ISN'T THAT CORRECT?
- 8 A. WE DISCUSSED WHAT WAS GOING ON, BUT IF I REMEMBER
- 9 CORRECTLY, I'M THINKING BRENDA WAS PRESENT.
- 10 Q. OKAY. BUT -- YOU CAN'T TECHNICALLY TELL ME WHAT
- 11 THEY SAID EITHER HE OR BRENDA, BUT EVEN IF BRENDA
- 12 WAS PRESENT, YOU HAD A DIRECT ONE-ON-ONE
- 13 CONVERSATION WITH DR. WILKINS; ISN'T THAT CORRECT?
- 14 A. YES, MA'AM.
- 15 Q. OKAY. AND YOU TOLD THEM ABOUT YOUR ONGOING BACK
- 16 PAIN AND LEG PAIN; ISN'T THAT CORRECT?
- 17 A. YES, MA'AM.
- 18 Q. BUT YOU NEVER MENTIONED ANY MEMORY LOSS OR COGNITIVE
- 19 FUNCTIONING TO HIM EITHER, DID YOU?
- 20 A. I COULDN'T DISCUSS IT.
- 21 Q. BUT YOU DIDN'T EITHER WAY?
- 22 A. IT DON'T MAKE NO DIFFERENCE. WE COULDN'T DISCUSS
- 23 IT. HE WOULDN'T LISTEN.
- 24 Q. WELL, YOU DON'T KNOW -- WELL, OKAY. NOW, WE'VE
- 25 ALREADY WENT INTO THIS A LITTLE BIT, BUT YOU AGREE -

1 - YOU KNOW THAT DR. WILKINS DID NOT THINK YOU NEEDED
2 A SPINAL CORD STIMULATOR, CORRECT?

3 A. THAT'S WHAT THEY'RE SAYING.

4 Q. OKAY. AND THEN EVEN WHEN YOU JUST WENT TO SEE DR.
5 EDWARDS IN FLORENCE, YOU ACTUALLY TOLD DR. EDWARDS
6 THAT YOU DIDN'T WANT THE SPINAL CORD STIMULATOR IF
7 IT WASN'T GOING TO GET YOU BACK TO YOUR PREVIOUS
8 LEVEL OF FUNCTIONING; ISN'T THAT RIGHT?

9 A. I DON'T KNOW WHAT I TOLD HIM.

10 Q. OKAY. SO, WE'VE COVERED YOUR VISIT TO THE EMERGENCY
11 ROOM, RIGHT?

12 A. YES, MA'AM.

13 Q. WE'VE COVERED YOUR VISITS TO DOCTORS CARE, RIGHT?

14 A. YES, MA'AM.

15 Q. WE'VE COVERED YOUR TREATMENT WITH DR. McCAFFREY, AND
16 YOUR TREATMENT WITH DR. KANG AND DR. WILKINS, RIGHT?

17 A. YES, MA'AM.

18 Q. NOW, THAT'S OVER TWO YEARS OF MEDICAL TREATMENT THAT
19 WE'VE JUST COVERED, CORRECT?

20 A. A RIGHT GOOD BIT.

21 Q. AND WE HAVE ABOUT BETWEEN THE TWO OF US, 200 PAGES
22 OF MEDICAL RECORDS THAT THE COMMISSIONER HAS BEFORE
23 HIM TODAY; ISN'T THAT RIGHT?

24 A. I DON'T KNOW. I DON'T KNOW.

25 Q. OKAY. BUT YOU WOULD AGREE THAT IN THOSE FIRST TWO

1 YEARS OF MEDICAL TREATMENT, THERE IS NO MENTION OF
2 YOU HAVING ANY COGNITIVE DIFFICULTIES OR PHYSICAL
3 BRAIN INJURY; IS THAT CORRECT?

4 A. WE CAN ARGUE ALL DAY LONG.

5 Q. WELL, I'M NOT -- IT'S JUST A YES OR NO QUESTION.

6 A. I MEAN, I'M JUST SAYING ---

7 Q. YOU AGREE THAT'S IT'S NOT IN THE MEDICAL RECORDS,
8 RIGHT?

9 A. I DIDN'T SEE IT.

10 Q. OKAY. NOW, YOU NEVER HAD ANY CAT SCANS OR M.R.I.s
11 OF YOUR HEAD, HAVE YOU?

12 A. NO, MA'AM.

13 Q. OKAY. EVEN AT THE EMERGENCY ROOM NO ONE DID THAT
14 AND YOU NEVER ASKED FOR IT, CORRECT?

15 A. MY SUPERVISOR WONDERED WHY I DIDN'T GET NONE OF THAT
16 DONE AND WHY I WASN'T KEPT IN THE HOSPITAL OVER
17 NIGHT BECAUSE HIS WIFE'S A NURSE.

18 Q. OKAY. BUT AS FAR AS THE DOCTORS WHO TREATED YOU AT
19 THE EMERGENCY ROOM, NONE OF THEM FOUND IT NECESSARY
20 TO DO THAT?

21 A. I GUESS NOT.

22 Q. OKAY. MR. BAKER, NOW, YOU DROPPED OUT OF SCHOOL IN
23 THE TENTH GRADE, CORRECT?

24 A. YES, MA'AM.

25 Q. OKAY. AND YOU STAYED BACK IN THE FIRST GRADE; ISN'T

1 THAT CORRECT?

2 A. YES, MA'AM.

3 Q. OKAY. YOU ADMIT YOU WERE A POOR STUDENT ALL
4 THROUGHOUT THE YEARS YOU ATTENDED SCHOOL, CORRECT?

5 A. I GUESS SO.

6 Q. OKAY. NOW, ISN'T IT TRUE THAT YOU ADMITTED TO ME IN
7 YOUR DEPOSITION THAT YOU HAD DIFFICULTY PASSING ALL
8 OF YOUR OTHER GRADES AS WELL; ISN'T THAT CORRECT?

9 A. I DIDN'T CARE NOTHING ABOUT SCHOOL.

10 Q. OKAY. YOU DIDN'T CARE ABOUT SCHOOL?

11 A. 'MM-MM.

12 Q. I THINK -- I BELIEVE YOU TOLD ME IN YOUR DEPOSITION
13 YOU ACTUALLY HATED SCHOOL; ISN'T THAT RIGHT?

14 A. YEAH.

15 Q. OKAY. SO, YOU WOULD AGREE YOU WERE NEVER A GREAT
16 READER, CORRECT?

17 A. I COULD READ, BUT I JUST DIDN'T CARE NOTHING ABOUT
18 IT.

19 Q. OKAY. YOU WERE NEVER A GREAT SPELLER, WERE YOU?

20 A. NOT REALLY.

21 Q. OKAY. YOU WEREN'T GREAT AT MATH EITHER REALLY;
22 ISN'T THAT RIGHT?

23 A. NOT GREAT.

24 Q. OKAY. NOW, YOU GOT DISTRACTED A LOT WHEN YOU WERE
25 IN SCHOOL, RIGHT?

1 A. I GUESS SO. I DON'T REMEMBER.

2 Q. OKAY. NOW, YOU TESTIFIED EARLIER ABOUT YOUR
3 BUSINESS THAT YOU AND YOUR WIFE HAD ON YOUR OWN.
4 YOU WOULD AGREE YOU DID THE WORK IN THE SHOP, AND
5 SHE WOULD ESSENTIALLY DO THE OFFICE WORK; IS THAT
6 CORRECT?

7 A. YES, MA'AM.

8 Q. AND I BELIEVE YOU TOLD ME IN YOUR DEPOSITION, SHE
9 WAS ACTUALLY THE ONE WHO KEPT THE BOOKS FOR YOUR
10 BUSINESS; ISN'T THAT RIGHT?

11 A. SHE DID THE BOOKS.

12 Q. OKAY. AND THEN YOU ALSO HAD A C.P.A. WHO YOU FILED
13 YOUR TAXES WITH EVERY YEAR?

14 A. YES, MA'AM.

15 Q. OKAY. SO, YOU NEVER WERE IN CHARGE OF THE ACTUAL
16 MATHEMATIC AND BILLING PART OF THE COMPANY; ISN'T
17 THAT RIGHT?

18 A. I -- EXCUSE ME. I FIGURED ALL MY TICKETS.

19 Q. RIGHT.

20 A. THE ONLY THING SHE DID WAS TAKE THE MONEY AND, YOU
21 KNOW, DONE THE BOOK WORK, THE LEGAL PARTS.

22 Q. RIGHT, OKAY, ALL RIGHT. NOW, WHY DID YOUR BUSINESS
23 CLOSE?

24 A. JUST -- WE JUST CLOSED UP AND WENT ON TO DIFFERENT
25 THINGS.

- 1 Q. OKAY. WERE YOU MAKING ANY MONEY IN YOUR BUSINESS?
- 2 A. YES, MA'AM.
- 3 Q. OKAY. SO YOU JUST DECIDED TO CLOSE?
- 4 A. THE ECONOMY WAS GETTING BAD, SO WE JUST DECIDED TO
- 5 MOVE ON, AND TOO THE GUY WAS WANTING ME TO BUY THE
- 6 BUILDING.
- 7 Q. OKAY, ALL RIGHT. MR. BAKER, YOU WOULD AGREE WITH ME
- 8 THAT ALL OF THE MEDICAL RECORDS AND YOUR OWN
- 9 TESTIMONY HERE TODAY AND BEFORE WHEN YOU TOOK YOUR
- 10 DEPOSITION THAT YOUR BIGGEST CHANGE FROM YOUR PRE-
- 11 LEVEL FUNCTIONING TO YOUR ABILITIES TODAY ARE
- 12 PHYSICAL; ISN'T THAT RIGHT?
- 13 A. I'M HAVING PROBLEMS WITH MENTALLY AND PHYSICAL.
- 14 Q. RIGHT. BUT I'M ASKING WHAT THE BIGGEST OUT OF THE
- 15 TWO?
- 16 A. THE BIGGEST TO ME WOULD BE THE MENTAL.
- 17 Q. REALLY. SO, ARE YOU STATING HERE TODAY YOUR
- 18 GREATEST DISABILITY IS BECAUSE OF YOUR MENTAL AND
- 19 NOT YOUR BACK?
- 20 A. KIND OF BREAK THAT DOWN A LITTLE BIT.
- 21 Q. OKAY. WHAT IS YOUR BIGGEST -- WHAT IS THE BIGGEST
- 22 REASON FOR YOUR CHANGE FROM BEFORE YOUR INJURY TO
- 23 TODAY?
- 24 A. MY INJURIES.
- 25 Q. RIGHT.

- 1 A. I MEAN, MY BACK, MY LEGS, MY HEAD.
- 2 Q. OKAY. NOW, YOU ARE NOT AS MOBILE, RIGHT?
- 3 A. NO, MA'AM.
- 4 Q. YOU'RE NOT AS STRONG, CORRECT?
- 5 A. NO, MA'AM.
- 6 Q. OKAY. AND I BELIEVE WE WENT OVER EARLIER, YOU STILL
- 7 WALK WITH A CANE TODAY?
- 8 A. YES, MA'AM.
- 9 Q. OKAY. AND YOU ARE STILL HAVING LOTS OF PAIN DESPITE
- 10 THE MEDICATION, CORRECT?
- 11 A. YES, MA'AM.
- 12 Q. AND IT'S TRUE THAT YOU'RE NOT RETURNING TO WORK
- 13 BECAUSE YOU DON'T THINK YOU CAN -- YOU KNOW YOU
- 14 CAN'T PHYSICALLY PERFORM THOSE SAME TYPE OF JOBS
- 15 THAT YOU HAD AT HILTON; ISN'T THAT CORRECT?
- 16 A. THAT AND THE DOCTORS TOLD ME I COULDN'T RETURN TO
- 17 WORK.
- 18 Q. RIGHT. OTHER THAN WHAT THE DOCTORS TOLD YOU?
- 19 A. RIGHT.
- 20 Q. OKAY. NOW, YOU WERE NEVER -- YOU NEVER RECEIVED ANY
- 21 KIND OF TESTING OR PSYCHOLOGICAL EXAMINATIONS BEFORE
- 22 THIS INJURY HAPPENED, DID YOU?
- 23 A. NO, MA'AM.
- 24 Q. OKAY. SO, YOU DON'T KNOW WHAT YOUR PRE-LEVEL OR
- 25 PRE-INJURY SCORES WOULD HAVE BEEN ON ANY OF THESE

1 TESTS; ISN'T THAT CORRECT?

2 A. WHAT ARE YOU SAYING?

3 Q. BECAUSE YOU'VE NEVER HAD THE TESTING, YOU DON'T KNOW
4 HOW YOU WOULD HAVE SCORED ON ANY TESTS BEFORE THIS
5 INJURY; ISN'T THAT RIGHT?

6 A. I GUESS NOT.

7 Q. NOW, YOU KNOW WHERE YOU ARE TODAY, DON'T YOU?

8 A. YES, MA'AM.

9 Q. OKAY. WHERE ARE YOU?

10 A. I'M IN A COURT ROOM.

11 Q. OKAY. AND YOU TOOK AN OATH BEFORE YOU TESTIFIED
12 TODAY; ISN'T THAT CORRECT?

13 A. YES, MA'AM.

14 Q. AND WHAT WAS THAT OATH?

15 A. TO TELL THE TRUTH.

16 Q. OKAY.

17 **BY MS. TAYLOR:**

18 JUST A SECOND, COMMISSIONER. OKAY, THAT'S ALL
19 I HAVE RIGHT NOW. THANK YOU.

20 **BY COMMISSIONER LYNDON:**

21 OKAY. MR. RANKIN.

22 **RE-DIRECT EXAMINATION BY MR. RANKIN:**

23 Q. IS IT YOUR TESTIMONY, MR. BAKER, THAT THE REASON YOU
24 CAN'T GO BACK TO WORK IS BECAUSE OF YOUR INJURIES
25 BOTH PHYSICAL AND MENTAL?

1 A. YES, SIR.

2 BY MR. RANKIN:

3 THAT'S ALL I HAVE.

4 BY COMMISSIONER LYNDON:

5 MS. TAYLOR.

6 BY MS. TAYLOR:

7 I DON'T HAVE ANY FOLLOW UP. THANK YOU.

8 BY MR. RANKIN:

9 ASK HIM TO STEP DOWN. I WOULD ---

10 BY COMMISSIONER LYNDON:

11 LET ME JUST ASK. I HAVE ONE QUESTION I WANT TO
12 ASK HIM. LET ME LOOK AT MY NOTES.

13 EXAMINATION BY COMMISSIONER LYNDON:

14 Q. WHEN YOU SAY -- YOU WENT TO SO MANY DOCTORS; WE KNOW
15 THAT. THAT'S IN ALL THE RECORDS, AND WITHOUT
16 RECANTING THE NAMES, WHEN MS. TAYLOR BROUGHT UP THE
17 FACT, AND I BELIEVE YOUR ATTORNEY DID, TOO, TO A
18 CERTAIN EXTENT, THAT THERE'S AN ABSENCE OF ANYTHING
19 THAT HAS TO DO FOR THE FIRST 26 MONTHS, I BELIEVE,
20 OR FOR A GOOD WHILE ABOUT ANY COMPLAINT OF A HEAD
21 PROBLEM. YOU SAID YOU WEREN'T ALLOWED TO BRING IT
22 UP. IS THAT IN EVERY CASE WITH EVERY DOCTOR, YOU
23 JUST COULDN'T BRING IT UP? THEY SAID "DON'T BRING
24 IT UP"?

25 A. THEY WOULD SAY TO ME -- YOU KNOW, LIKE THEY SAY "HOW

1 DO YOU FEEL TODAY?" YOU KNOW, "WHERE ARE YOU
2 HURTING?" AND I WOULD SAY LIKE "I'VE GOT HEADACHES.
3 I'M HAVING" ---

4 Q. WE KNOW YOU HAD HEADACHES. THAT'S IN THE MEDICAL
5 RECORDS.

6 A. RIGHT. BUT THEY WOULD SAY -- WELL, I WOULD SAY
7 "WHAT CAN WE DO? WHAT ARE WE GOING TO DO?" AND THEY
8 WOULD SAY "WE CAN'T DISCUSS IT. WE ARE ONLY ALLOWED
9 TO DISCUSS YOUR BACK. THAT'S ALL THE INSURANCE
10 COMPANY IS ALLOWING."

11 Q. I BELIEVE HER - MS. TAYLOR'S QUESTION WAS DID YOU
12 TALK ABOUT HAVING ANYTHING LIKE MEMORY PROBLEMS
13 OTHER THAN HEADACHES, ANY PROBLEMS THAT WOULD BE
14 ASSOCIATED WITH YOUR ABILITY TO REASON OR ANYTHING
15 OF THAT NATURE OTHER THAN HEADACHES? I MEAN,
16 DOCTORS GENERALLY WRITE DOWN WHAT YOU SAY WHETHER
17 THEY ARE AUTHORIZED TO OR NOT. I'M JUST -- I WAS
18 CURIOUS TO KNOW WHY IN EVERY CASE.

19 A. I DON'T KNOW. I'LL BE HONEST, I JUST DON'T KNOW,
20 BECAUSE I TRIED.

21 Q. YOU ARE SURE IN EVERY CASE YOU SAID YOU WERE HAVING
22 WHAT, AND TELL ME WHAT YOU TOLD THEM YOU HAD.

23 A. I'M HAVING REAL BAD HEADACHES.

24 Q. I KNOW THAT'S IN SOME OF THE RECORDS.

25 A. AND THAT WOULD CUT IT. THAT WOULD BE IT. THEY

1 WOULD -- AND I WOULD TRY TO GET INTO THE
2 CONVERSATION ON WHAT'S GOING ON, AND THEY WOULD
3 STOP. I MEAN "WE CAN'T DISCUSS IT."

4 Q. OKAY. AND THEY USED THOSE WORDS, "WE CAN'T DISCUSS
5 IT"?

6 A. CANNOT DISCUSS IT.

7 BY COMMISSIONER LYNDON:

8 I DON'T BELIEVE I HAVE ANY OTHER QUESTIONS. I
9 DON'T KNOW WHY THE LIGHTS WENT OUT IN THE BACK OF
10 THE ROOM. LET'S GO OFF THE RECORD JUST A MINUTE.

11 (OFF THE RECORD)

12 BY COMMISSIONER LYNDON:

13 WE'RE BACK ON THE RECORD.

14 RE-DIRECT EXAMINATION BY MR. RANKIN:

15 Q. JUST IN FOLLOW UP ON THAT, DID THE DOCTOR OR DID
16 BRENDA ZITZ OR MS. LANE EVER USE THE TERM THAT THEY
17 WERE NOT AUTHORIZED TO PROVIDE PSYCH TREATMENT?

18 A. THEY WAS NOT AUTHORIZED TO DO ANYTHING WITH MY HEAD
19 WAS THE WORD.

20 Q. OKAY.

21 A. NO NOTHING.

22 Q. OTHER THAN DR. McCAFFREY WHO DID TREAT YOU, AND HIS
23 DIAGNOSIS IS FOR HEADACHES AND FOR THE BACK.

24 A. HE GIVE ME SOME PILLS.

25 Q. I'M TALKING ABOUT BEYOND FROM A NEUROPSYCH

1 STANDPOINT. DID THEY USE THE WORDS "WE'RE NOT
2 AUTHORIZED" OR DID BRENDA SAY THEY ARE NOT
3 AUTHORIZED?

4 A. "WE ARE NOT AUTHORIZED TO DISCUSS THAT."

5 Q. OR TO TREAT YOU?

6 A. OR TO TREAT IT.

7 Q. OKAY.

8 BY MS. TAYLOR:

9 I OBJECT -- WELL, OKAY.

10 BY MR. RANKIN:

11 THAT'S ALL I HAVE.

12 BY COMMISSIONER LYNDON:

13 WELL, THE REASON IT CAME UP, AND I'M KIND OF
14 GOING BACK AND FORTH ON THIS IS THAT WOULD BE A
15 FOREGONE CONCLUSION, THEY'RE ORTHOPAEDICS. I JUST -
16 - I WAS QUESTIONING, GENERALLY WHEN YOU COME IN AND
17 HAVE COMPLAINTS, I MEAN, IF IT WAS AN INGROWN
18 TOENAIL, THEY WRITE DOWN EVERYTHING, IT SEEMS LIKE.
19 I MEAN, THIS HAS BEEN MY EXPERIENCE, AND HIS
20 TESTIMONY IS THAT IN EVERY CASE WHEN HE BROUGHT IT
21 UP, IT WAS JUST CUT OFF RATHER THAN JUST SAYING, YOU
22 KNOW, OTHER THAN HEADACHES, HAS COMPLAINTS, AND YOU
23 NAME IT: MEMORY LOSS, UNABLE TO FOCUS. EVEN THOUGH
24 THEY WERE NOT ABLE TO TREAT THAT, I DIDN'T KNOW THAT
25 THEY COULD NOT WRITE THAT DOWN IF HE SAID IT, BUT HE

1 IS SAYING THAT'S WHAT HE TOLD THEM, AND THEN THEY
2 ARE SAYING "STOP," AND THAT WAS LIKE SIX OR SEVEN
3 DOCTORS. EVEN IF IT HAD BEEN ONE DOCTOR OR TWO. HE
4 IS SAYING EVERY DOCTOR WOULD NOT EVEN WRITE DOWN HIS
5 COMPLAINTS AS I UNDERSTOOD HIM, AND I JUST WANTED TO
6 KNOW IF THE COMPLAINTS WENT BEYOND HEADACHES. AND
7 THERE WAS SOMEBODY IN THE ROOM WITH HIM, IS THAT
8 RIGHT? WAS THE NURSE CASE MANAGER WITH HIM?

9 BY MR. RANKIN:

10 WELL, BRENDA ZITZ AND HIS WIFE I THINK 95
11 PERCENT OF THE TIME.

12 BY MS. TAYLOR:

13 AND, COMMISSIONER, FOR THE RECORD, I GUESS I
14 DON'T HAVE ANYMORE QUESTIONS FOR THE WITNESS, BUT IN
15 HIS QUESTIONS THAT I JUST ASKED HIM, THAT'S WHY I
16 WENT TO THAT QUESTIONNAIRE THAT HE ACTUALLY FILLED
17 OUT. SO, THAT WOULD BE A TOTAL 100-PERCENT
18 SUBJECTIVE REFLECTION OF WHAT HIS CURRENT COMPLAINTS
19 WERE AT THAT TIME, AND THERE WOULD BE NO ONE THERE
20 TO SAY "WE CAN'T DISCUSS THAT," BECAUSE HE WAS THE
21 PERSON IN CONTROL OF THE PEN AND PAPER.

22 BY COMMISSIONER LYNDON:

23 ALL RIGHT.

24 BY MR. RANKIN:

25 AND AGAIN, IN ABSENCE OF A DEPOSITION TO DELVE

1 INTO A FELLOW WHO IS DEEMED CREDIBLE, THERE WON'T BE
2 ANY WITNESS TO SAY CONTRARY, WE ARE JUST LEFT TO ---

3 BY COMMISSIONER LYNDON:

4 AND I UNDERSTAND THAT.

5 BY MR. RANKIN:

6 --- DEFINE WHAT DR. McCAFFREY OR DR. WAID OR
7 DR. BRABHAM HAVE FOUND THIS FOR.

8 BY COMMISSIONER LYNDON:

9 AND COUNSEL REPLIED THAT THAT WOULD BE A BURDEN
10 SHIFT, I THINK.

11 BY MS. TAYLOR:

12 AND IT'S IN HIS -- AND BOTH DOCTORS STATE TO
13 THE -- I GUESS TO THE OPINION THAT HE IS -- HE HAS
14 SUFFICIENT COGNITIVE ABILITIES. THERE ARE POSITIVE
15 STATEMENTS IN BOTH TREATING PHYSICIAN'S RECORDS TO
16 THE CONTRARY OF WHAT HE IS TESTIFYING TO.

17 BY COMMISSIONER LYNDON:

18 OKAY. IS THERE ANYTHING ELSE?

19 BY MR. RANKIN:

20 WELL, NOT OF THIS WITNESS. I DO WANT TO CALL
21 MS. BAKER IN REPLY.

22 BY MS. TAYLOR:

23 WE OBJECT, BECAUSE SHE WAS A SEQUESTERED
24 WITNESS, AND NOW SHE... WE OBJECT.

25 BY COMMISSIONER LYNDON:

1 LET'S GO OFF THE RECORD JUST A MINUTE.

2 (OFF THE RECORD)

3 BY COMMISSIONER LYNDON:

4 WE'RE BACK ON THE RECORD. WE HAD AN OFF-THE-
5 RECORD DISCUSSION, AND IT'S ABOUT A QUESTIONNAIRE
6 THAT ACTUALLY CONFUSED ME SOMEWHAT. I THOUGHT IT
7 HAD SOMETHING TO DO WITH SOCIAL SECURITY.
8 APPARENTLY, IT HAS TO DO WITH DISABILITY INSURANCE,
9 AND MR. RANKIN HAS A QUESTION TO ASK THE CLAIMANT.

10 RE-DIRECT EXAMINATION BY MR. RANKIN:

11 Q. I HAND TO YOU, BOBBY, THE FORM THAT YOU WERE ASKED
12 BY DEFENSE COUNSEL AS TO WHETHER YOU HAD APPLIED FOR
13 SOCIAL SECURITY, AND YOU'VE TESTIFIED THAT YOU DID
14 NOT APPLY FOR SOCIAL SECURITY; IS THAT CORRECT?

15 A. I DID NOT.

16 Q. AND THE ONLY CHECK THAT YOU ARE RECEIVING IS THE
17 WORKERS' COMP CHECK?

18 A. YES, SIR.

19 Q. OKAY. WAS THIS FORM, AGAIN PAGES 57 THROUGH 59,
20 GIVEN TO DR. McCAFFREY TO FILL OUT FOR PURPOSES OF
21 YOUR LIFE INSURANCE PREMIUM AND YOUR NOT HAVING TO
22 PAY THAT PREMIUM UPON HIS SIGNATURE?

23 A. YES, SIR.

24 Q. OKAY.

25 BY MR. RANKIN:

1 THAT'S ALL.

2 BY COMMISSIONER LYNDON:

3 OKAY, MA'AM?

4 BY MS. TAYLOR:

5 I DON'T HAVE ANY FOLLOW UP. THAT'S FINE.

6 BY COMMISSIONER LYNDON:

7 ANY OTHER WITNESSES, ANYTHING ELSE?

8 BY MS. TAYLOR:

9 I HAVE SOME OBJECTIONS FOR THE RECORD QUICKLY.

10 I WILL JUST SPIEL THEM OFF ONE BY ONE.

11 BY COMMISSIONER LYNDON:

12 WELL, I THOUGHT I DEALT WITH THAT WHEN I CALLED
13 THE CASE.

14 BY MS. TAYLOR:

15 WELL, WE DID OBJECTIONS TO THE PREHEARING BRIEF
16 BEING A PART OF THE RECORD. THIS IS OBJECTIONS
17 BASED UPON THE TESTIMONY, THE EVIDENCE THAT'S BEEN
18 OFFERED TODAY.

19 BY COMMISSIONER LYNDON:

20 AND THAT WOULD BE WHAT, MA'AM?

21 BY MS. TAYLOR:

22 WE HAVE AS CLAIMANT IS ALLEGING A PHYSICAL
23 BRAIN INJURY, WHICH IF AWARDED WOULD ENTITLE HIM TO
24 LIFETIME BENEFITS, CLAIMANT'S PREHEARING BRIEF
25 REQUESTS PAYMENT IN A LUMP SUM, WHICH WE OBJECT TO

1 AS A VIOLATION OF 42-9-10.

2 BY COMMISSIONER LYNDON:

3 AND WHEN I CALLED THE CASE, THAT WAS NOT
4 MENTIONED NOR WAS UTICA MOHAWK ALLOCATION LANGUAGE
5 MENTIONED, WHICH IS GENERALLY THE CASE, AND IT MAY
6 VERY WELL HAVE BEEN ON THE PREHEARING BRIEF.

7 BY MS. TAYLOR:

8 OKAY.

9 BY MR. RANKIN:

10 FOR HOUSEKEEPING PURPOSES, YOUR HONOR, WE'RE
11 NOT SEEKING LUMP SUM.

12 BY MS. TAYLOR:

13 OKAY.

14 BY COMMISSIONER LYNDON:

15 ALL RIGHT, SIR.

16 BY MS. TAYLOR:

17 THEN I DO NOT HAVE ANY OBJECTIONS.

18 BY COMMISSIONER LYNDON:

19 AND WITH THAT, THAT WOULD CONCLUDE THIS
20 PROCEEDING. THANK YOU VERY MUCH. GOOD LUCK TO YOU,
21 SIR.

22 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
23 CONCLUDED AT THE HOUR OF 12:26 P.M.)

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 0810190

EMPLOYEE/CLAIMANT: BOBBY BAKER

EMPLOYER: HILTON HOTELS CORPORATION

INSURER: ACE AMERICAN INSURANCE COMPANY

I, JAN L. WHITWORTH, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 99 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF BOBBY BAKER TAKEN ON THE 4TH DAY OF JANUARY, 2011.

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

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

IN WITNESS WHEREOF, I HAVE SET MY HAND THIS 18TH DAY OF FEBRUARY, 2011.

JAN L. WHITWORTH
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 3-12-2014

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

STATE OF SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
CASE NUMBER - 0810190

BOBBY BAKER,	)	
	)	
CLAIMANT,	)	FULL COMMISSION HEARING
	)	
VS.	)	BEFORE
	)	
HILTON HOTELS CORP.,	)	PANEL B
	)	
EMPLOYER,	)	COMMISSIONER BECK
	)	
ACE AMERICAN,	)	COMMISSIONER WILLIAMS
	)	
CARRIER,	)	COMMISSIONER BARDEN
	)	
DEFENDANTS.	)	

COPY

WORKERS' COMPENSATION FULL COMMISSION HEARING
TAKEN BEFORE SARA L. QUATTLEBAUM, A NOTARY PUBLIC IN
AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE
HOUR OF 1:24 PM ON TUESDAY, JUNE 21, 2011, WORKERS'
COMPENSATION COMMISSION, 1333 MAIN STREET, COLUMBIA,
SOUTH CAROLINA.

SARA L. QUATTLEBAUM
Independent Court Reporter
148 LAKE HARBOR DRIVE
LEXINGTON, SC 29072
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REPORTED BY

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SARA QUATTLEBAUM, Independent Court Reporter
(803) 447-0272

1 COURT REPORTER: Today is June 21, 2011. This is
2 South Carolina Workers' Compensation Case
3 No. 0810190.

4 This is the case of Bobby Baker, Claimant versus
5 Hilton Hotels Corporation, Employer. And Ace American
6 is the Carrier.

7 The Appellant is the Claimant represented by Luke
8 Rankin. The Respondent is represented by Aisha Grant
9 Taylor.

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

14 COMMISSIONER BECK: Mr. Rankin.

15 MR. RANKIN: Thank you. Good Afternoon.

16 COMMISSIONER WILLIAMS: Good Afternoon.

17 MR. RANKIN: I am here on behalf of Bobby Baker,
18 a fellow who has never suffered an injury before who,
19 along with his wife, Peggy, in fact, testified at
20 their single commission hearing just across the hall
21 in January.

22 I'll tell you that I don't come in here appealing
23 cases without some substantial reason, or in the case
24 that was set before you all earlier today, in reply to
25 an appeal that the other side files.

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1 And I bring attention to that because in my years
2 of doing this, I generally accept your findings. And
3 I generally, absent a question of law, defer to you as
4 your role as a Single Commissioner on your findings of
5 the facts. And absent something unusual or an error
6 of law, again, within your purview, sitting as the
7 initial finder of fact, again subject to the review of
8 the three of you in the full commission hearings, you
9 are generally going to yield to, again, findings in
10 the record, finding of credibility on witnesses. And,
11 though I may disagree, again, generally you are going
12 to be affirmed on appeal by you sitting in the full
13 commission. Or again, the Single Commissioners will
14 be.

15 This is an exception because in my Claimants'
16 burden of proof, I suggest to you that an error of law
17 has occurred - two errors of law have occurred
18 effectively, by the Single Commissioner, who I respect
19 and like; that being Commissioner Lyndon.

20 Our burden of proof as the moving party is to
21 show by a preponderance of the evidence whatever proof
22 we are seeking for a finding of fact for you.

23 And in this case it is a clear case where the
24 preponderance of the evidence supports a finding that
25 the Single Commissioner did not find. And he declined

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1 to endorse the majority opinion of three out of four
2 doctors, one a treating physician; the primary
3 treating physician, in fact. But instead, the Single
4 Commissioner endorsed a curiously-worded late report
5 of a doctor that I had never heard of, a Dr. Deysech
6 or Deysech, I'm not sure how you pronounce it. But
7 anyway, again, and not casting dispersions on Defense
8 Counsel for the lateness of that, but because they got
9 from us Dr. Brabham's report that then was endorsed by
10 Dr. Randy Wade, as I point out in my brief, a highly
11 regarded doctor, the Circuit Court and Court of
12 Appeals has talked about his credibility and his
13 reputation, at least, and his expertise.

14 But he also, the Single Commissioner, disregarded
15 the endorsement by Dr. McCaffrey, who was the treating
16 physician. And instead, the Single Commissioner looks
17 at Dr. Deysech's report and says that he agrees with
18 Dr. Deysech who said that, again, and I know you all
19 read these things, but I would call particular
20 attention to the wording of the only evidence in this
21 record, the only evidence in this record, that
22 Dr. Deysech puts in, effectively saying that the data
23 does not appear to support the presence of an acquired
24 brain injury nor restrictions in productivity and/or
25 quality of life as a result of that physical brain

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1 damage.

2 To his detriment a conclusion of this sort is
3 likely to suggest to him, that being the Claimant, he
4 is damaged beyond the orthopedic injuries and chronic
5 pain he reports from those injuries.

6 In addition to such a conclusion, it is likely to
7 direct attention and treatment away from factors that
8 are most critical for recovery, i.e. exploring
9 activities or productivity and learning to adapt to
10 his present medical condition.

11 The language is circular, at best, by
12 Dr. Deysech. And it is void of any support in this
13 record. The only witnesses you had testify were the
14 Claimant and his wife. There was no video
15 surveillance, there was no manager, there was nobody
16 to support any belief or testimony that Mr. Baker was
17 not credible. So perhaps you might say, well, there
18 is no finding of credibility in the order from
19 Commissioner Lyndon. But I dare say if there was lack
20 of credibility it would have been in that record.

21 So Deysech says in contrast to Dr. Wade that the
22 tests reveal cognitive difficulties. Deysech, their
23 independent psyche eval, disagrees with Wade and also
24 said that these were pre-injury levels of cognitive
25 function allaying this to the academic and

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1 intellectual challenges that this fellow had.

2 He didn't go past the ninth grade. Stark
3 contrast, though, to the credible testimony of both
4 husband and wife, that they ran a business as a
5 mechanic shop. She did the books. He did the bids.
6 He did the engagement with the clients or the
7 customers. He did the work. He had no problems with
8 banking, had no problem with forgetfulness. He had no
9 problem managing a business. It closed because the
10 building that they were in was going to be sold. They
11 didn't want to pay for it.

12 So then he goes to work for Hardwick's Mechanics,
13 in addition to working at the Hilton where this 30-
14 pound tile fell on him, knocked him out, caused him to
15 have a gash, 13 stitches. Later headaches galore,
16 galore, galore; lots of problems that this fellow had.

17 Defense Counsel is not going to say that this
18 fellow is not permanently and totally disabled. What
19 they are here to say is he didn't suffer physical
20 brain injury, and they are here to say that
21 Commissioner Lyndon got it right. And they say that
22 the substantial evidence in this case supports the
23 Single Commissioner's decision.

24 As you peel this onion back, you will not find
25 anything other than Deysech's report. And again, look

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1 at the wording. It's an eight-page short order or
2 short decision. And the final pages, the Defendants'
3 APA 7 and 8 effectively are the areas that you look to
4 see.

5 Again, don't take my word for it. But look at it
6 yourself to say that Wade is wrong. And let's just
7 not call it what it is for fear that it would damage
8 this fellow even further.

9 The other point that Commissioner Lyndon hangs
10 his hat upon in this case is his reliance - and again,
11 look at the order. He says this case - "the factual
12 pattern of this case closely parallels that of the
13 Krist decision, which was a court of Appeals decision
14 in 2010."

15 There are factual and procedural differences in
16 this case that do not suggest a close parallel; in
17 fact, totally different. In that case the Full
18 Commission sided with the Single Commissioner that a
19 fellow who had admitted substance-induced cognitive
20 problems in his pre-injury past did not have a
21 physical brain injury. There were no headaches.
22 There were no stitches to the head. In that case,
23 there may have been headaches, but they were very
24 minor. And one of the defense doctors said that it
25 was very minor. The frequency of the headaches did

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1 not support a physical brain-injury finding. But also
2 in that case, from a procedural standpoint, again, the
3 Full Commission sided with the Single Commissioner. A
4 Circuit Court judge threw out the findings and said
5 that there was substantial evidence that, in fact, the
6 guy had sustained a physical brain injury.

7 The Court of Appeals says that is not the Circuit
8 Court's purview. You are the finders of fact. And
9 there was substantial evidence in that case to support
10 what had been rendered by the Single Commissioner.

11 Procedurally it is not on point. Factually it is
12 not on point. The severity of this guy's problems in
13 Krist compared to the case here with Baker,
14 dramatically different.

15 There was no prior cognitive dysfunction with
16 Mr. Baker. There was no injury. He had had a hernia
17 repair only. He managed his books with his wife's
18 help; he managed his business. And Hilton hired him,
19 had no one there to testify that he was a malingerer,
20 that he was trying to gain the system. And it's a
21 difficult case, perhaps, for you all because you don't
22 want to overrule your partner or your brother or
23 sister on this commission.

24 But it's not about whether you disrespect or
25 reverse. It's about what's in the record. And so if

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1 you're looking at did Commissioner Lyndon get it
2 right, recognizing the legal duties, the legal burden
3 of our having to find by a preponderance of the
4 evidence, you've got three medical experts; Brabham, a
5 PhD, certified. Perhaps you don't like him or maybe
6 you suspect his findings. Endorsed by Wade and
7 endorsed by the treating physician, Dr. McCaffrey and
8 two witnesses who were present in comparison to one
9 Dr. Deysech, who I would submit to you is not
10 substantial evidence.

11 COMMISSIONER BECK: Thank you, sir.

12 Ms. Taylor?

13 MS. TAYLOR: May it please the Commission.

14 The hearing commissioner was absolutely correct
15 to determine that the greater weight of the evidence
16 did not support a finding of the physical brain
17 injury.

18 The Claimant wants to focus his argument on the
19 expert report, but those reports didn't come in until
20 the last minute. The truth of the matter is the
21 Claimant treated for 26 months without any reference
22 to a physical brain injury or any cognitive
23 limitations, whatsoever.

24 Furthermore, it's not as if the record was just
25 void of mentioning his cognitive limitations; the

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1 record specifically referred to Claimant's cognitive
2 state throughout the entire course of treatment.

3 There are several statements such as "oriented the
4 person, place and time, no difficulty with short or
5 long term memory, good attention span and
6 concentration, patient able to repeat phrases and
7 identify objects, patient has no difficulty discussing
8 current events." The medical records are replete with
9 these statements.

10 It isn't until Claimant was placed at maximum
11 medical improvement by Dr. McCaffrey and Dr. Kang that
12 he then goes to see Dr. Brabham. And low and behold,
13 we have a brain injury.

14 Now, I'm not going to get into a sparring match
15 about the credibility of doctors, but it is very
16 ironic that when Dr. McCaffrey treated Claimant for
17 almost two years and saw him every other month, he
18 made positive statements with respect to Claimant's
19 cognitive abilities. But then when Claimant's
20 attorney send him a questionnaire on the day of the
21 originally-scheduled hearing, he all of a sudden
22 checks the box that says he agrees that Claimant has a
23 physical brain injury. At the time of that
24 questionnaire, Dr. McCaffrey had not seen or treated
25 the Claimant in 18 months.

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1 COMMISSIONER BECK: Was he deposed?

2 MS. TAYLOR: He was not deposed, no. He was not.

3 COMMISSIONER BECK: Did you ever inquire as to
4 why that occurred?

5 MS. TAYLOR: We did, but as I stated, that report
6 came in on the day of the originally-scheduled
7 hearing. We were blindsided by it.

8 COMMISSIONER BECK: By your own doctor's report?

9 MS. TAYLOR: By the questionnaire. His reports
10 were current and they were concise and they did not
11 conflict -

12 COMMISSIONER BARDEN: So until the date of the
13 hearing by virtue of the treatment records you didn't
14 have any idea it was going to be a brain injury or
15 whatever?

16 MS. TAYLOR: No idea. And it wasn't until we
17 received a copy of the questionnaire he sent; that's
18 correct.

19 Again, Dr. McCaffrey and Dr. Kang, on every
20 single treatment record has indicated in Claimant's
21 APAs made positive statements with regard to
22 Claimant's cognitive abilities.

23 COMMISSIONER BARDEN: So your argument is the
24 questionnaire is not supported by the treatment
25 records.

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1 MS. TAYLOR: That's correct. That's correct.

2 And Commissioners, it is our position that the
3 hearing commissioner saw through all of this last
4 minute, eleventh hour finagling of the claim to find
5 this claim for a brain injury was not supported by a
6 greater weight of the evidence.

7 As Claimant argues, sure, there is some evidence
8 in the record, but it is our position it is not
9 credible and it carries no weight.

10 Now, the Claimant argues he was told by several
11 physicians that he was not allowed to discuss anything
12 with his head. Well, we know this is not true for
13 several reasons.

14 First, the Carrier didn't become involved with
15 this claim until about two-and-a-half months after the
16 injury. Claimant had been to the emergency room
17 twice, and he had been to Doctors Care twice with only
18 complaints regarding his neck and his lower back.

19 Secondly, we know this is not true because a few
20 times throughout the course of his treatment he did
21 state to Dr. McCaffrey that he had some recurring
22 headaches. Dr. McCaffrey prescribed him medication
23 for these headaches. So clearly he was allowed to
24 discuss other issues.

25 Again, Claimant testified on separate occasions

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1 that he was told he could only discuss issues
2 relating to his back. Well again, we know this is not
3 true because the medical records refer to hemorrhoids,
4 headaches, skin rash, constipation, swelling, choking;
5 a wide variety of complaints. And it's our position
6 that if Claimant hadn't made complaints of cognitive
7 limitations those would have been recorded, as well.

8 The hearing commissioner actually touched on this
9 point on the record, and he correctly noted that
10 typically doctors write down everything a patient says
11 regardless of whether they are authorized to treat it
12 or not.

13 Over the two-and-a-half years leading up to this
14 hearing, Claimant treated with nine different
15 physicians and three physical therapists.

16 It is also important to know he was represented
17 by Counsel throughout the majority of this time, as
18 well. If he had, in fact, had some complaints that
19 were not addressed, surely they would have come up in
20 the record before his testimony at the hearing.

21 Commissioners, the similarities between our case
22 and the Krist case are documented in our brief. They
23 are documented in the decision and order. But in
24 short, Krist was hit in the head. He sustained
25 bruises and abrasions to the back of his head as well

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1 as back injury and a hand injury. Two years went by.
2 He gets ready for the hearing. All of a sudden he
3 submits a report that says he has a brain injury.

4 The hearing commissioner in that case determined
5 there was not substantial evidence in the record to
6 support a finding of a brain injury, just as the
7 commissioner did in our case. And we submit to you
8 that that was correct.

9 Commissioners, the last-minute manipulation of a
10 claim in order to increase an award is an insult on
11 the system. And it is an insult on Claimants who
12 actually have a brain injury. The hearing
13 commissioner was correct to determine that evidence
14 did not support it in this case and we respectfully
15 request that decision be affirmed.

16 Thank you.

17 COMMISSIONER BECK: Thank you.

18 Mr. Rankin?

19 MR. RANKIN: It is also an insult to the record
20 to suggest that the last-minute manipulations or
21 machinations were not with the benefit of a
22 continuance for Defense Counsel in October when this
23 letter was proffered to then get their own expert,
24 Dr. Deysech.

25 To suggest to this Commission that a last-minute

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1 manipulation or machination precluded their
2 opportunity to fully discover why Dr. McCaffrey did
3 endorse and obviously supported Dr. Wade's opinion in
4 addition to Dr. McCaffrey is also perhaps an insult.

5 Plenty of time for Hilton to investigate why
6 their treating physician endorsed this between October
7 and to call this case in January when this was set
8 before Commissioner Lyndon.

9 Dr. McCaffrey is the last medical word in this
10 case. Perhaps you shouldn't be given credence, but
11 they didn't choose to depose him. Now, he is chunking
12 his reputation out the window to endorse something
13 that obviously would be a lie on behalf of a Claimant
14 or an attorney who he is trying to award.

15 COMMISSIONER BARDEN: Can you explain why his
16 treatment suggests something else other than the
17 answers on the questionnaire?

18 MR. RANKIN: Well, I can suggest to you that
19 doctors don't always get it right, Commissioner. And
20 that's why you sometimes have cases where there is
21 something not included in a record. Or you have also
22 heard testimony of a nurse case manager, in this case
23 Ms. Landry and a Brenda Zits who were involved in this
24 case, but the Claimant's testifying credibly that they
25 were told not to - that doctors could not pursue that.

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1 So either you believe a record from a doctor who
2 may or may not always get it right or you believe a
3 doctor who is trained in the field of neuropsychology,
4 as is Dr. Wade and as is Dr. Brabham, to say that, in
5 fact, whose focus will be on a brain injury to get it
6 right. All the medical records before generated about
7 back problems and a stimulator or not a stimulator.
8 Either the folks aren't credible, the Bakers aren't
9 credible when they testify when they were told not to
10 pursue - or the doctors couldn't talk about and we are
11 authorized to treat brain injury.

12 There is no MRI of the brain done before yet the
13 guy had a - he was knocked out, 13 stitches to his
14 head. There is no question that he was unconscious
15 for a brief period of time.

16 COMMISSIONER BARDEN: Isn't it true the brain
17 injury didn't appear before 18 months after the
18 accident?

19 MR. RANKIN: They did. And his wife testified to
20 that.

21 COMMISSIONER BARDEN: I'm talking about
22 documented, not from his wife.

23 MR. RANKIN: When the doctors are forbidden to
24 treat it's a question then of whether you believe a
25 wife who has got no record or a Claimant who has got

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1 no record as to whether they are prevented from
2 getting treatment or not.

3 COMMISSIONER BARDEN: Well, I'm not talking about
4 whether there is an affirmative course of treatment
5 for those body parts, and I'm talking about under
6 review of systems when it says, no memory loss, able
7 to talk, all that stuff. I mean, I don't understand
8 why that was --

9 MR. RANKIN: Well, I dare say to you, if you look
10 at each and every one of those records it's exactly
11 the same as it was the first date that he was treated.
12 There is not one mention -- there is not one word
13 differently. So a PA, as in Dr. Kang's example, is
14 the only person seeing him. There has been no review
15 of these symptoms every time. It's getting more
16 prescription medication. That's all they had with
17 Dr. Kang. Dr. McCaffrey likewise. But if
18 Dr. McCaffrey had it wrong why would he risk his
19 reputation by endorsing a questionnaire of his
20 signature? Why would he make that off to benefit
21 somebody? Why wasn't he cross examined in a
22 deposition? Is that a preponderance of the evidence?
23 If Dr. McCaffrey's is not endorsing these claims, then
24 I'm not here.

25 But again, your view as finders of fact and

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1 deciders of whether one is credible or not, have
2 before you a record that they don't have any testimony
3 to rebut that. If he were cognitively challenged
4 before Commissioner Barden; if he had problems before
5 this injury, don't you think they would have found
6 that? Don't you think they would have brought a
7 record of bad employment, sketchy performance? Don't
8 you think there would be something in his record?

9 COMMISSIONER BARDEN: I'm not talking about his
10 job performance. I was just looking at the medical
11 records.

12 MR. RANKIN: I know. But in terms of his
13 performance. And again, just to finish up, you've got
14 folks that say credibly that he can't do his job; he
15 can't remember how to put a motor back together.
16 Maybe he's scamming everybody. But there are a lot of
17 people that are snookered to say that he is.

18 The Defense would have you be snookered to say
19 that he is, as well. And I would ask you all to - if
20 you have the finding-of-fact ability within your
21 power, to look and peel back this onion, because it's
22 there and there is no basis to support Commissioner
23 Lyndon's decision, respect him though I do.

24 Thank you.

25 COMMISSIONER BECK: Thank you all very much.

SARA QUATTLEBAUM, Independent Court Reporter
(803)447-0272

1 That will conclude this proceeding.

2 (The hearing concluded at 1:56 PM)

3

SARA QUATTLEBAUM, Independent Court Reporter
(803)447-0272

1
2 STATE OF SOUTH CAROLINA)
3)
4 COUNTY OF LEXINGTON) CERTIFICATE
5)
6)

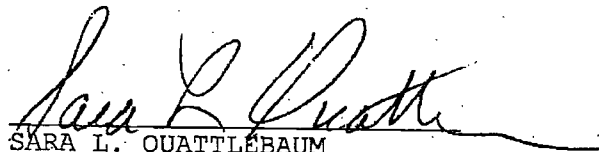
7 BE IT KNOWN THAT I TOOK THE FOREGOING
8 WORKER'S COMPENSATION HEARING;
9

10 THAT I WAS THEN AND THEE A NOTARY PUBLIC IN
11 AND FOR THE STATE OF SOUTH CAROLINA-AT-LARGE;
12

13 THE FOREGOING TRANSCRIPT REPRESENTS A TRUE,
14 ACCURATE AND COMPLETE TRANSCRIPTION OF THE TESTIMONY SO
15 GIVEN AT THE TIME AND PLACE AFORESAID TO THE BEST OF MY
16 SKILL AND ABILITY;
17

18 THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF
19 ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF
20 ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO,
21 NOR INTERESTED IN THE OUTCOME OF THIS ACTION.
22

23 WITNESS MY HAND AND SEAL THIS NINTH DAY OF
24 JANUARY 2012.
25

26
27 
28
29 SARA L. QUATTLEBAUM
30 NOTARY PUBLIC FOR SOUTH CAROLINA
31 MY COMMISSION EXPIRES JULY 12, 2012
32
33

SARA QUATTLEBAUM, Independent Court Reporter
(803)447-0272

In The Matter Of:
Bobby Baker v
Hilton Hotels Corp., et al

Bobby Baker
November 19, 2010

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Original File Baker_Bobby_-_101119.TXT

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
COUNTY OF HORRY

BOBBY BAKER,
Employee/Claimant,

vs. WCC NO. 0810190

HILTON HOTELS CORPORATION,
Employer,

and

SPECIALTY RISK SERVICES,
Carrier/Defendants.

COPY

DEPOSITION OF: BOBBY BAKER

DATE: November 19, 2010

TIME: 9:30 a.m.

LOCATION: Rankin & Rankin
201 Beaty Street
Conway, SC

TAKEN BY: Counsel for the Employer

REPORTED BY: BONNIE L. SABADOS
Registered Professional
Reporter

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ataylor@collinsandlacy.com

12 ALSO PRESENT:

13 Peggy Baker
14
15

16 (INDEX AT REAR OF TRANSCRIPT)
17
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22
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24
25

LAWYER'S NOTES

[illegible]

A. William Roberts, Jr., & Associates (800) 743-DEPO
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STIPULATIONS

It is stipulated by and between Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, Rule 30; and that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent waives reading and signing of this deposition.

* * * * *

BOBBY BAKER

being first duly sworn, testified as follows:

EXAMINATION

BY MS. TAYLOR:

Q. Mr. Baker, we met before. Just for the record, my name is Aisha Taylor. I'm an attorney with Collins & Lacy, and our firm has been retained to represent Hilton Hotels and their insurance carrier which is ACE Insurance Company. ACE American Insurance Company.

Have you ever taken a deposition before?

A. Huh-uh.

Q. Before we get started, there are just a few ground rules for the court reporter's

4

1 convenience.

2 If you can make sure you answer all
3 questions with a yes or a no as opposed to uh-huh
4 or huh-uh, cause when we go back and read it, it's
5 hard to tell.

6 Also, if you can make sure you let me
7 finish the question before you answer, even if you
8 know what I'm going to ask, if you just let me
9 finish. Once again, that's for the court
10 reporter's convenience when we go back and read
11 the record.

12 Now, I am originally from Connecticut,
13 so although I try to speak very slowly, sometimes
14 I tend to get faster and faster and faster. So if
15 I get too fast or jumble my words, just ask me to
16 repeat it or slow down. I won't be offended at
17 all. I'll be happy to do it. Okay?

18 Let's see. If you don't understand a
19 question, just let me know and I'll try to
20 rephrase it in a way that you understand.

21 A. Okay.

22 Q. Have you taken any medication, drugs,
23 or alcohol within the last 24 hours?

24 A. Yesterday.

25 Q. What did you take yesterday?

- 1 A. Oxycodone.
- 2 Q. Anything else?
- 3 A. Neurontin and sleeping pill last
- 4 night.
- 5 Q. Which sleeping pill do you take?
- 6 A. Ambien.
- 7 Q. Ambien, okay. Do you take Ambien
- 8 every night?
- 9 A. Yes, ma'am.
- 10 Q. Okay. Do you think that your taking
- 11 of those three drugs over the last 24 hours will
- 12 impede your ability to give this deposition today?
- 13 A. No, ma'am. I don't.
- 14 Q. Okay. Who has prescribed you those
- 15 three prescriptions?
- 16 A. Dr. Kang.
- 17 Q. And where do you get those
- 18 prescriptions filled?
- 19 A. Rite-Aid.
- 20 Q. Rite-Aid, okay. And is that here in
- 21 Conway?
- 22 A. Yes, ma'am.
- 23 Q. Are the Oxycodone and Neurontin both
- 24 for pain?
- 25 A. Yes, ma'am.

6

1 Q. Okay. Mr. Baker, what's your full
2 name?

3 A. Bobby Earl Baker.

4 Q. Where were you born?

5 A. Marion, South Carolina.

6 Q. Marion?

7 A. Marion.

8 Q. What's your birthday?

9 A.

10 Q. What's your social security number?

11 A. I don't remember.

12 Q. If I read it to you, would you be able
13 to recall it?

14 A. I'll try.

15 Q. I have

16 A. Yeah.

17 Q. Okay. Do you have a South Carolina
18 driver's license?

19 A. Yes, ma'am.

20 Q. How long have you had that?

21 A. I don't remember that now.

22 Q. Okay.

23 A. Whenever I got legal to drive.

24 Q. So since maybe you were a teenager?

25 A. Yes, ma'am.

1 Q. Okay. Are there any restrictions on
2 your driver's license?

3 A. Not yet.

4 Q. When was the last time you had to get
5 your driver's license renewed?

6 A. I don't remember that.

7 Q. What is your current address?

8 A. It's

9 Q. How long have you lived at that
10 address?

11 A. I think about seven years.

12 Q. Now, do you own that home or do you
13 pay rent?

14 A. Own it.

15 Q. Okay. Do you have a mortgage on the
16 home?

17 A. Yes, ma'am.

18 Q. How many years do you have left on
19 your mortgage approximately?

20 A. I'm not sure.

21 Q. Do you think it's over ten years?

22 A. Yeah.

23 Q. Okay. What color is your house?

24 A. I call it cream.

25 Q. What's your telephone number?

8

1 A. The house I don't know. My cell is
2 504-9352.

3 Q. Do you drive a vehicle?

4 A. Every now and then.

5 Q. Okay. Do you own that vehicle
6 that you drive?

7 A. (Pointing)

8 Q. Your wife owns it?

9 A. Uh-huh.

10 Q. What color is it?

11 A. White.

12 Q. What kind of car is it?

13 A. Ford.

14 Q. Is it a sedan or an SUV or a truck?

15 A. SUV.

16 Q. And is that registered here in South
17 Carolina?

18 A. Yeah.

19 Q. Do you or your wife own any other
20 vehicles?

21 A. We got a truck at the house, but I
22 think it's in her name or her brother's. I'm not
23 sure.

24 Q. And what color is that truck?

25 A. It was blue.

1 Q. How long have you been married?

2 A. Twenty-six years.

3 Q. Okay. And your wife is present here
4 at the deposition today; is that correct?

5 A. Yes, ma'am.

6 Q. And what is your wife's full name?

7 A. Peggy Ann Baker.

8 Q. Do you have any children?

9 A. We got two.

10 Q. What are their names and ages?

11 A. My son is Robert Baker. I think he's
12 27.

13 Q. Okay.

14 A. My daughter Keesha Baker.

15 Q. And how old is she?

16 A. Twenty-five.

17 Q. Do either of your children live
18 with you?

19 A. No, ma'am.

20 Q. Okay. Does anyone else live in your
21 home besides you and your wife?

22 A. My grandchildren is in and out.

23 Q. How many grandchildren do you have?

24 A. Four.

25 Q. What is the range of their ages?

10

1 A. The oldest is seven, youngest is four.

2 Q. Okay. Had you ever been married prior
3 to marrying Ms. Peggy?

4 A. Yes, ma'am.

5 Q. When were you divorced?

6 A. I can't remember that.

7 Q. Okay. Was that here in South
8 Carolina?

9 A. Yes, ma'am.

10 Q. What is your ex-wife's name?

11 A. Wanda.

12 Q. Did you ever have to pay any alimony
13 or child support?

14 A. No alimony.

15 Q. Okay.

16 A. Child support for a small period.

17 Q. Mr. Baker, how far did you go in
18 school?

19 A. Ninth, quit in tenth.

20 Q. What was the name of your high school?

21 A. It was Aynor and Conway. We moved.

22 Q. What types of grades did you receive
23 when you were in the ninth grade?

24 A. Poor.

25 Q. And how would you describe poor?

1 A. I hated school.

2 Q. Did you ever fail any classes?

3 A. I just did pass any of them. I know I
4 failed the first.

5 Q. When you dropped out of high school,
6 did you ever later go back to school in any way?

7 A. No, ma'am.

8 Q. Were you ever in the military?

9 A. No, ma'am.

10 Q. Did you ever receive any job training
11 or certifications?

12 A. No.

13 Q. And I didn't ask you this beforehand.
14 But when you do stand up and stretch, do you want
15 to continue to answer questions, or do you want to
16 take a break?

17 A. That's fine.

18 Q. Okay. When did you first start
19 working for Hilton Hotels?

20 A. I don't remember.

21 Q. Do you remember approximately how long
22 you worked there before you were injured?

23 A. Four years.

24 Q. Okay. What was your position at
25 Hilton Hotels?

12

1 A. Maintenance.

2 Q. And in doing maintenance, can you kind
3 of describe for me the different duties you had?

4 A. I guess the best I say we had 255
5 rooms. I was on duty by myself, so I was in
6 charge of the needs of the rooms or any other
7 problems at the hotel that occurred while I was on
8 duty. That could be anything.

9 Q. Did you sometimes have to fix air
10 conditioners?

11 A. Yes, ma'am.

12 Q. Any plumbing?

13 A. Yes, ma'am.

14 Q. What about carpentry work?

15 A. Small amount.

16 Q. Did you have to try to repair broken
17 furniture?

18 A. Yes, ma'am.

19 Q. Who was your supervisor there?

20 A. Shannon Beck.

21 Q. Were you paid hourly or salary?

22 A. Hourly.

23 Q. How much did you make per hour?

24 A. I don't remember now.

25 Q. Do you have an approximate amount?

1 A. I'm pretty sure 11.40.

2 Q. Did you work 40 hours per week?

3 A. Yes, ma'am.

4 Q. Did you receive any health benefits or
5 anything?

6 A. Explain that.

7 Q. Like did you pay for health insurance?

8 A. Yes, ma'am.

9 Q. Other than this injury while you were
10 working for Hilton, did you have any other
11 injuries while working for Hilton?

12 A. No, ma'am.

13 Q. Did you receive a W-2 at the end of
14 each year you worked?

15 A. Yes, ma'am.

16 Q. Did you prepare your own income taxes?

17 A. No, ma'am.

18 Q. Who prepares your income taxes?

19 A. My wife, our lady -- I can't think of
20 her name now.

21 Q. You have a CPA who actually files them
22 for you, do you know?

23 A. She does it for a living.

24 Q. Is she still in business?

25 A. Yes, ma'am.

14

1 Q. Did you use her for this last year's
2 taxes?

3 A. Every year.

4 Q. Do you know her name?

5 A. Betty Benton, I'm pretty sure.

6 Q. Now, I believe as part of this claim,
7 we added wages from another job that you were
8 working at the same time; is that correct?

9 A. Yes, ma'am.

10 Q. What was the name of that company?

11 A. Hardwick's Lube-it.

12 Q. When did you first start working for
13 Hardwick's?

14 A. It weren't as long as the hotel, but I
15 don't remember.

16 Q. So it was a shorter period of time?

17 A. Yes, ma'am.

18 Q. Okay. Did you work there over a year?

19 A. Huh-uh.

20 Q. Okay. Who was your supervisor at
21 Hardwick's?

22 A. Frankie Hardwick.

23 Q. And what was your position there?

24 A. Main mechanic.

25 Q. Mechanic. Did you say main mechanic?

1 A. Yeah.

2 Q. Were you paid hourly or salary?

3 A. Salary.

4 Q. What was your salary there?

5 A. I'm not for sure. I don't remember.

6 Q. What were your hours at Hardwick's?

7 A. 7:30 to two o'clock. All day Fridays.

8 Q. Was Friday the only day of the week
9 you worked?

10 A. The whole day.

11 Q. Right.

12 A. I worked every day.

13 Q. You worked every day?

14 A. Okay. Friday was the only whole day.

15 Q. Okay. What were your hours on the
16 other days?

17 A. For the short days, it's 7:30 to
18 two o'clock.

19 Q. And then Friday was the whole day?

20 A. Yes, ma'am.

21 Q. Okay. Got it. What were your hours
22 when you worked at Hilton Hotels?

23 A. Three to 11:30..

24 Q. So second shift essentially?

25 A. Yeah.

16

1 Q. Did you ever sustain any injuries
2 while working for Hardwick's?

3 A. No, ma'am.

4 Q. When did you stop working for
5 Hardwick's?

6 A. After the accident.

7 Q. Okay. And your actual date of injury,
8 that was your last day at Hilton as well; is that
9 right?

10 A. Yeah.

11 Q. Now, have you ever owned your own
12 business?

13 A. Yes, ma'am.

14 Q. And what was the name of that
15 business?

16 A. Bobby's Automotive.

17 Q. When did you form that company?

18 A. I can't remember that.

19 Q. About how long has that been in
20 business?

21 A. Pretty sure we had it about 14 years.

22 Q. Now, were you operating the business
23 while you were employed with Hilton?

24 A. No, ma'am.

25 Q. When did you stop operating your own

1 business?

2 A. As far as the business of the
3 building, I stopped it before I went to the hotel.
4 But we did side work with like mobile business,
5 auto mechanic repair.

6 Q. Okay. When you operated the mobile
7 business, who worked with you on that?

8 A. My wife.

9 Q. Okay. Was your company ever
10 incorporated or filed with the state?

11 A. What do you mean?

12 Q. I'm sorry. Did you ever have to file
13 paperwork to register your company with the state?

14 A. I had a license.

15 Q. Let's see. When was the last time you
16 had your license renewed?

17 A. I don't remember that now. I don't
18 have them anymore.

19 Q. Okay. When was the last time you
20 operated the mobile service?

21 A. I worked at the hotel two years and
22 quit the mobile business and started with Frankie.

23 Q. So you ended the mobile business
24 before your injury?

25 A. Yes, ma'am.

18

1 Q. Okay. Who kept the books for your
2 business?

3 A. My wife.

4 Q. And did you use the same CPA for your
5 business taxes?

6 A. Yes, ma'am.

7 Q. All right. Now, other than this
8 Workers' Comp accident, have you ever had any
9 other Workers' Compensation claims?

10 A. No, ma'am.

11 Q. What about any motor vehicle
12 accidents?

13 A. No.

14 Q. Do you currently have any other
15 injuries or other health issues unrelated to this
16 claim?

17 A. No.

18 Q. Have you ever been arrested?

19 A. No.

20 Q. Will you give me just a brief
21 description of how you were injured?

22 A. Me and my supervisor was inspecting a
23 wall. He turned around and walked off, and I
24 turned around and walked by him. Next thing I
25 knowed, I was on the floor.

1 Q. So other than people telling you what
2 happened, you don't actually remember what
3 happened to you?

4 A. No.

5 Q. What did you understand your accident
6 to be?

7 A. Ceiling tiles fell in on my head. Or
8 ceiling tile.

9 Q. Do you remember feeling the impact
10 at all?

11 A. No, ma'am.

12 Q. Were you told that you lost
13 consciousness?

14 A. It happened so fast, I don't remember
15 hearing it.

16 Q. Okay. Do you remember what day of the
17 week this occurred on?

18 A. No, ma'am.

19 Q. Do you remember whether it was -- was
20 it in the afternoon or was it at night?

21 A. I remember I didn't have but 30
22 minutes to go.

23 Q. And were you in one of the hotel
24 rooms?

25 A. Kitchen.

20

1 Q. And you said your supervisor was
2 there?

3 A. Yes, ma'am.

4 Q. Okay. What was his name?

5 A. Shannon.

6 Q. Shannon. That's a he?

7 A. Uh-huh.

8 Q. Did they call an ambulance?

9 A. He took me.

10 Q. Okay. You went to the hospital?

11 A. Uh-huh.

12 Q. And I have you going to Grand Strand
13 Regional; is that right?

14 A. Yeah.

15 MR. RANKIN: Do you need to get up?
16 Do you need a break?

17 THE WITNESS: Yeah.

18 MS. TAYLOR: That's fine. We'll go
19 off the record.

20 (A recess transpired.)

21 BY MS. TAYLOR:

22 Q. Now, you have received extensive
23 medical treatment; is that correct?

24 A. Yeah.

25 Q. Did you receive any surgery?

1 A. No.

2 Q. Did you ever receive any injections?

3 A. Yes, ma'am.

4 Q. About how many injections did you
5 receive?

6 A. There was two injections.

7 Q. Did you receive any relief from those
8 injections?

9 A. No, ma'am.

10 Q. When was the last time you had an
11 injection?

12 A. I don't remember.

13 Q. Was it maybe over a year ago?

14 A. Oh yeah.

15 Q. You treated for a long time with Dr.
16 McCaffrey; is that right?

17 A. McCaffrey, I don't remember how long.

18 Q. Okay. Were you satisfied with the
19 treatment you received from Dr. McCaffrey?

20 A. Only thing he did was some type of a
21 test. Other than that, it was medications.

22 Q. Did the medications help you?

23 A. Not really.

24 Q. Are the medications you're currently
25 on, do they help you?

22

1 A. Somewhat.

2 Q. You currently see Dr. Kang; is that
3 right?

4 A. Yes, ma'am.

5 Q. When was the last time you saw Dr.
6 Kang?

7 A. Just got the medicine yesterday.
8 Would be a month ago. I see him every month.

9 Q. Now, we talked about the three
10 prescriptions you took yesterday earlier.

11 Do you have take any other
12 prescription medication?

13 A. They got me on Cialis and some type of
14 cream for my muscles.

15 Q. How often do you take the Cialis?

16 A. I don't know how to answer that.
17 Every now and then.

18 Q. Do you get prescriptions filled every
19 month?

20 A. Yes, ma'am.

21 Q. So I don't want to assume. Can I
22 assume that you are sexually active?

23 A. Not really.

24 Q. I'm sorry. I don't mean to make you
25 blush. I apologize.

1 A. Not really.

2 Q. Okay. Let's see. Where is your pain
3 located now?

4 A. Lower back and legs. Sitting here
5 now?

6 Q. You know, around now, like presently.
7 So not necessarily today, but yesterday, tomorrow,
8 last week?

9 A. Lower back, my legs, and my hips. And
10 I have real bad headaches. On my scar. Like I
11 got hit again.

12 Q. Now, the pain in your lower back, is
13 it in the center, on the right, on the left?

14 A. Center -- I don't know, center.

15 Q. And the pain in your legs, is that
16 both legs?

17 A. Yes, ma'am.

18 Q. Is one leg worse than the other?

19 A. Right.

20 Q. The right is worse than left?

21 A. (Witness moves head up and down.)

22 Q. What about the hips?

23 A. Both.

24 Q. Both hips. Is one side worse than the
25 other?

24

1 A. No.

2 Q. How often do you get headaches?

3 A. About every day.

4 Q. And when you get them, how long do
5 they last?

6 A. I don't remember. I wouldn't know how
7 to answer that. Half a day maybe.

8 Q. Do you take anything for the
9 headaches?

10 A. McCaffrey give me something. It
11 didn't work, and I hadn't received anything from
12 anybody else.

13 Q. Okay. Does the Neurontin sometimes
14 help with the headaches?

15 A. Legs.

16 Q. The Neurontin is for the legs?

17 A. Yes, ma'am.

18 Q. And the Oxycodone is for the --

19 A. All around pain.

20 Q. Okay. And is it Oxycodone or
21 Oxycontin?

22 A. I call it Roxy.

23 Q. Okay. I can find out. It's okay.

24 If you had to rate the back pain on a
25 scale of one to ten, with ten being excruciating

1 pain, what would you rate it as when you're not on
2 medication?

3 A. When I'm not on medicine?

4 Q. Yes, sir.

5 A. Seven.

6 Q. What about when you're on your
7 medication?

8 A. I get some relief. I don't know.

9 Q. But you do get some relief --

10 A. Some.

11 Q. -- for your back. Okay.

12 What about your legs. When you're not
13 on medication, that right leg being the worst leg,
14 what would you rate that right leg at?

15 A. An eight.

16 Q. Okay. And what about when you're
17 taking the Neurontin?

18 A. It's for night.

19 Q. But you're usually asleep?

20 A. I try to sleep.

21 Q. Right. Okay. We can move on. What
22 about the left leg, when you're not on medication,
23 what would you rate that left leg at?

24 A. Probably about a six.

25 Q. And the hips, when you're not on meds,

26

1 what would you rate that at?

2 A. Seven.

3 Q. What about when you're on the meds?

4 A. Six.

5 Q. And the headaches, how would you rate
6 those headaches when they come on?

7 A. Eight.

8 Q. Now, with regard to your memory, would
9 you say your memory has gotten better, worse, or
10 stayed the same since your accident?

11 A. Worse.

12 Q. Okay. If you had to -- say your
13 memory was at a level five on that same scale,
14 just say five, what would you say your memory was
15 at now after this accident?

16 A. Ten.

17 Q. And other than the lower back, legs,
18 the headaches, the hips, and the memory, do you
19 have any other problems, losses, deficits with
20 regard to this claim?

21 A. Other than sexual.

22 Q. Okay. Sorry I missed that. We did
23 talk about that. Okay.

24 Now, is it your understanding -- and
25 I'll go ahead and say if you don't understand a

1 question, it's fine, I'll rephrase. Is it your
2 understanding the sexual loss has come from the
3 medication use?

4 A. Yes, ma'am.

5 Q. Does the Cialis help with the sexual
6 loss?

7 A. Not really.

8 Q. Have you tried or been prescribed in
9 the past for anything else that might have helped
10 better?

11 A. Talking about it.

12 Q. Okay.

13 A. Dr. Kang.

14 Q. I only ask that because it's really
15 expensive. And if it's not working for you, then
16 it's -- you know, we could use that money for
17 something else.

18 A. I think I need to up it.

19 Q. Up the dosage?

20 A. Up the dosage.

21 Q. And you discussed that with Dr. Kang?

22 A. Yeah.

23 Q. In general, what are some things that
24 you can still do despite this injury?

25 A. Watch TV. On the couch. I don't do

28

1 anything.

2 Q. Are you able to play with your
3 grandchildren at all?

4 A. No.

5 Q. How do you get to your doctor's
6 appointments?

7 A. My wife.

8 Q. Does your wife work?

9 A. No, ma'am.

10 Q. I should say work outside the home.
11 I've learned that better than anybody. Because
12 when you're at home, it's a lot of work.

13 What do you understand the doctor's
14 restrictions or recommendations for you to be?

15 A. Explain that.

16 Q. That was a bad question. I'm sorry.
17 Do you know whether your doctors have given you
18 any restrictions or have told you things that you
19 can't do anymore or you should not do?

20 A. That's not been discussed.

21 Q. So now, as far as your present
22 medications, we have the Neurontin, the Oxycodone
23 or Oxycontin, whichever one that is, the Ambien,
24 and the Cialis, and the cream?

25 A. The cream.

1 Q. Are those all your prescription
2 medications?

3 A. Yes, ma'am.

4 Q. Do you take anything for high blood
5 pressure?

6 A. No, ma'am.

7 Q. Any diabetes or anything like that?

8 A. No, ma'am.

9 Q. Since being employed with Hilton and
10 Hardwick's, have you ever filed for unemployment
11 insurance?

12 A. No, ma'am.

13 Q. What about social security disability?

14 A. No, ma'am.

15 Q. Do you plan to file for social
16 security disability?

17 A. Yes, ma'am.

18 Q. Have you already started working on
19 that process?

20 A. No, ma'am.

21 Q. Do you have any pension or anything
22 like that, retirement plans or pension?

23 A. No.

24 Q. Other than your Workers' Compensation
25 checks, do you have any other income?

30

1 A. No, ma'am.

2 Q. Does your wife have any other income?

3 A. No, ma'am.

4 Q. Is your wife retired, or just not
5 working?

6 A. She's being home with me, so she's not
7 working.

8 Q. At some point in your treatment, were
9 you ever placed on light duty or did someone ever
10 tell you you could go back to work in some
11 capacity?

12 A. No.

13 Q. Did Hilton ever offer you any kind of
14 light duty employment?

15 A. There is no light duty.

16 Q. Have you worked anywhere else even if
17 it's just for side jobs since leaving Hilton and
18 Hardwick's?

19 A. No, ma'am.

20 Q. All right. I'll review this real
21 quick.

22 Okay. Have you understood all of my
23 questions I've asked so far?

24 A. Yes, ma'am.

25 MS. TAYLOR: Okay. That's all I have

1 right now. Luke, do you have any follow up?

2 MR. RANKIN: No.

3 (The deposition was concluded at 10:19

4 p.m.)

5

6

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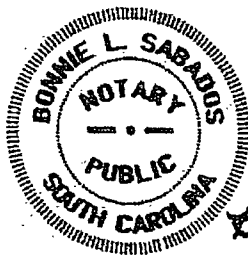
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CERTIFICATE OF REPORTER

I, Bonnie L. Sabados, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 22nd day of November, 2010, at Conway, Horry County, South Carolina.



Bonnie L. Sabados

Bonnie L. Sabados
Registered Professional
Reporter
My Commission expires
July 8, 2015

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REQUESTED INFORMATION INDEX

(No Information Requested)

E X H I B I T S

(No Exhibits Proffered)

BEFORE THE SOUTH CAROLINA

WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 0810190

Bobby Baker,)
Employee,)
Claimant,)
vs.)
Hilton Hotels Corporation,)
Employer,)
And)
Specialty Risk Services,)
Carrier,)
Defendants.)

COPY

**THE DEPOSITION OF
JAMES MYERS**

Monday, October 11, 2010

1:23 p.m. - 2:31 p.m.

The deposition of JAMES MYERS, taken on behalf of
the Claimant, at the RANKIN & RANKIN LAW FIRM,
located at 201 Beatty Street, Conway, South Carolina, on
Monday, October 11, 2010.

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(843) 248-5252

APPEARANCES:

FOR THE PLAINTIFF:

Luke Rankin Esquire
RANKIN & RANKIN LAW FIRM
201 Beatty Street
Conway, South Carolina 29526

FOR THE DEFENDANT:

Aisha Taylor, Esquire
COLLINS & LACY
1330 Lady Street
Sixth Floor Suite 601
Post Office Box 12487
Columbia, South Carolina 29211

COURT REPORTER:

Sharon B. Brock

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JAMES MEYERS

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EXHIBITS

(No exhibits were marked during the deposition.)

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STIPULATIONS

The deposition will be taken before Sharon B. Brock, a Notary Public and Verbatim Court Reporter in and for the State of South Carolina.

It is stipulated and agreed that this deposition is being taken for the purpose of discovery, for possible use during the trial, and for all other purposes permitted under the applicable rules of procedure.

It is stipulated and agreed that all objections, except as to the form of the question, will be reserved until time of trial.

It is stipulated and agreed between counsel and the above witness that the reading and signing of the above deposition be, and the same, are hereby reserved.

1

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1 JAMES MYERS, HAVING BEEN DULY
2 SWORN, WAS DEPOSED AS FOLLOWS:

3 EXAMINATION

4 BY MR. RANKIN:

5 Q: Mr. Myers, Luke Rankin. We've met before.

6 A: Uh-huh (affirmative response).

7 Q: And you understand we're taking your deposition
8 today, and you've given a deposition before; is
9 that correct?

10 A: Yes.

11 Q: All right. How many times have you done these
12 depositions?

13 A: I don't know. I would say more than 20.

14 Q: And you understand the process about letting me
15 ask the question and you giving a verbal response
16 versus ---

17 A: Yes.

18 Q: --- an audible response versus a nod or shake of
19 the head; you understand that, correct?

20 A: Yes.

21 Q: All right. Tell us who you are.

22 A: I'm James Myers. I'm with the Corvel
23 Corporation.

24 Q: And how long have you worked with Corvel?

25 A: I've been with Corvel for approximately 13 years

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1 now.

2 Q: And what do you do for them?

3 A: I am a Certified Rehabilitation Counselor and a
4 Certified Case Manager and a qualified
5 rehabilitation provider and I do ergonomic
6 studies.

7 Q: What is ergonomic studies?

8 A: That's to determine the workplace, making sure
9 that the, the workplace is safe and to, and to
10 help people alleviate from having things like
11 carpal tunnel and things like that.

12 Q: You came to my office last --- a week ago Friday,
13 I believe, right?

14 A: Yes.

15 Q: And that was at the request of ACE American
16 Insurance or Hilton?

17 A: It was at the request of Collins & Lacy.

18 Q: Okay. And you have generated a report that we
19 got in the mail today, emailed Friday at four
20 that you obviously have with you today; is that
21 right?

22 A: That's correct.

23 Q: Is there a CV attached to this report?

24 A: No.

25 Q: Do you have one?

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1 A: Not with me, but I can provide one to you. I may
2 have one. No, I don't have one with me.
3 Q: All right. You can generate that to us by a call
4 to someone and have them email that to me; in
5 fact, can you do that now? You had it with you,
6 your laptop, last week. Where's your laptop?
7 A: I didn't bring my laptop. I, I, I didn't think
8 I'd need it, so I didn't bring it, 'cause I was
9 going to go by my paper reports.
10 Q: Okay.
11 A: But we could probably have it emailed to you.
12 Q: Aisha can email somebody. Why don't you let her
13 do that with her Black Berry? Who can do that
14 for us?
15 A: Midge.
16 MS. TAYLOR: MIDGE.
17 A: She can send it to you immediately.
18 MS. TAYLOR: AND WHAT ARE WE ASKING FOR?
19 MR. MYERS: MY CV.
20 MS. TAYLOR: CV, OKAY.
21 MR. MYERS: YEAH.
22 Q: Who is Mitch?
23 A: Midge is my supervisor.
24 Q: What's his full name?
25 A: Her.

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- 1 Q: What's her name?
- 2 A: Midge Swinney, Swinney.
- 3 Q: Spell the last name
- 4 A: S-W-I-N-N-E-Y.
- 5 Q: Swinnen?
- 6 A: Swinney.
- 7 Q: Swinney.
- 8 A: Yeah.
- 9 Q: And where is Midge?
- 10 A: Columbia.
- 11 Q: Okay. Obviously, you received from me this
- 12 Subpoena Friday a week ago when you were in here
- 13 to interview my client, Mr. Baker; is that
- 14 correct?
- 15 A: That's correct.
- 16 Q: And you understand and have with you today, I
- 17 believe, the Subpoena?
- 18 A: Yes.
- 19 Q: All right. Let's go through the items that I
- 20 requested that you bring today and tell me what
- 21 you've got. First, I said, "All copies of
- 22 documentation of communication between adjuster,
- 23 defense attorney, Corvel and James Myers." What
- 24 do you have?
- 25 A: There's no real correspondence or correlation

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1 between, between us.
2 Q: So how did you communicate with the defense
3 attorney?
4 A: I was -- the emails were just sent, I mean, the
5 documents were just sent to me, I mean, all the
6 medical records were sent to me and a request was
7 made for me to do a vocational evaluation ---
8 Q: And how was that request ---
9 A: --- by, by my company.
10 Q: How was that request communicated?
11 A: Through a, through an email from my superior.
12 Q: Can you generate that email?
13 A: I should've brought that computer. No.
14 Q: Do you have that in your car?
15 A: No.
16 Q: Can you ---
17 A: I can get it to you. That's no problem. I can,
18 I can get it to you.
19 MS. TAYLOR: I THINK I ---
20 MR. MYERS: YOU GOT IT?
21 MS. TAYLOR: I HAVE THEM.
22 MR. MYERS: OKAY.
23 MS. TAYLOR: I'M PRETTY SURE.
24 A: She may have them all,
25 Q: Okay.

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1 A: But they were -- it was an email that was
2 addressed to Midge. I believe, if I'm correct.

3 MS. TAYLOR: RIGHT.

4 Q: Did you understand that that was what I was
5 requesting you to bring today?

6 A: No, I did not.

7 Q: Have you read this?

8 A: I glanced at it. I've been ill, so I, I, I just
9 glanced at it, and I, and I saw the W2s and 1099
10 forms and I haven't done anything, no 1099s that
11 has dealt with this company, Specialty Risk. I
12 don't even know the company, don't even know the
13 adjuster with the company.

14 Q: You've been ill?

15 A: Yes.

16 Q: But you were able to generate a report after
17 meeting with Mr. Baker in my office ---

18 A: Yes, I did do that.

19 Q: --- on that Friday? And you just generated that
20 report on what day?

21 A: 10/2.

22 Q: And that was the day after I handed this Subpoena
23 to you?

24 A: Yes.

25 Q: Okay. Have you reviewed this Subpoena with your

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1 attorney?

2 A: No.

3 Q: Do you have an attorney? Is Aisha your attorney
4 today?

5 A: No.

6 Q: Do you have an attorney?

7 A: No.

8 Q: So you will get for me from Midge the email
9 communication? I don't need all the things that
10 you brought with you, because we copied all that.

11 A: Okay.

12 Q: I'm talking about what you brought on October the
13 1st; but Midge can bring -- That's the contact to
14 get this email?

15 A: The, the CV will come to you. I don't see where
16 a CV is requested in here.

17 Q: Well, that's not what I'm asking you. I'm
18 talking about the communication, all copies,
19 documentation. You can get that from Midge via
20 email?

21 A: Sure.

22 Q: Okay? "Copies of any and all personal and
23 business tax reports, returns, for the past
24 years, five years, excuse me, including all W2s
25 and 1099 forms," did you bring those?

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1 A: No, 'cause they don't pertain to, to -- I don't
2 have anything from Special -- that is associated
3 with Specialty Risk, so I don't have any -- my,
4 my personal tax returns are just my personal tax
5 returns from my company.

6 Q: And what's your company?

7 A: Corvel.

8 Q: Do you see anywhere in that Subpoena where I
9 specified this dealing with ACE American
10 Insurance or Specialty Risk?

11 A: It says, "Which document matters in which you
12 have retained any respect by or liability
13 insurance carrier, including, but not limited to
14 Specialty Risk." I don't have anything from
15 anybody.

16 Q: Do you file tax returns?

17 A: Yes.

18 Q: Okay.

19 A: But I have no 1099 from anybody.

20 Q: But you understand that I'm asking for your
21 personal --

22 A: Why would you want that? Why would you want my
23 personal tax returns when there's nothing on
24 there but the 1099 from my company that just
25 shows my wages?

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1 Q: Because that's what I asked for?

2 A: I know, but why?

3 Q: It's not for you to decide.

4 A: It's not for me to decide?

5 Q: No, sir, it's not.

6 A: Okay.

7 Q: So did you bring those?

8 A: No.

9 Q: Can you get those?

10 A: I don't know if I have the last five years. I
11 only keep three years of tax returns.

12 Q: Who files the returns for you?

13 A: I fax my own -- file my own returns.

14 Q: So you think you got three years?

15 MS. TAYLOR: LOOK, I HAVE TO OBJECT. I
16 DID NOT FILE A MOTION. YOU
17 DIDN'T SERVE ME WITH A COPY
18 OF THE SUBPOENA, SO I DID
19 NOT MAKE A MOTION TO QUASH.
20 I DIDN'T KNOW IT EXISTED,
21 NUMBER ONE; NUMBER TWO. HE
22 WAS RETAINED AS AN EXPERT.
23 I THINK YOU'RE SENDING HIM
24 A SUBPOENA AS A PARTY, BUT
25 HE'S NOT A PARTY. HE'S

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1 JUST A RETAINED EXPERT.
2 HE'S NOT EVEN A DOCTOR,
3 LIKE A DOCTOR WOULD GET A
4 SUBPOENA FOR THE MEDICAL
5 RECORDS AS IT RELATES TO
6 YOUR CLIENT, BUT I DON'T
7 SEE WHERE A RETAINED EXPERT
8 WOULD GET A SUBPOENA FOR
9 HIS PERSONAL FINANCIAL
10 RECORDS. HE'S AN EMPLOYEE.
11 I MEAN, IT'S NOT EVEN LIKE
12 HE'S AN INDEPENDENT VOC.
13 EXPERT. HE WORKS FOR
14 CORVEL CORPORATION, WHICH
15 IS A NATIONAL COMPANY.
16 MR. RANKIN: RIGHT, AND I HEAR YOUR
17 OBJECTION. YOU DIDN'T FILE
18 A MOTION TO QUASH. THIS
19 WAS COPIED TO YOU ON
20 OCTOBER 1ST, THIS SUBPOENA
21 THAT WE ISSUED, AND I
22 BELIEVE IT WAS SENT TO YOU
23 BY EMAIL AS WELL.

24 Q: And the rules of discovery allow a deposition be
25 conducted in terms of this very request that I

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1 made for your information. It's called a Yo ho
2 Subpoena, and you've had one of these served on
3 you before; have you not, Mr. Myers?

4 A: I have never had anybody ask for my W2s, never.

5 Q: Have you had anyone ask for your ---

6 A: In 20 years, I've never had anybody. You're the
7 first.

8 Q: I'm glad to be the first. Ever had anybody ask
9 for your personal return?

10 A: I've had people ask for my personal return, but
11 -- and again, once it was discovered that I was
12 not a separate entity of my company, then it was
13 no longer asked. I mean, I can give it to you.
14 There's no problem with that, but I want to, I
15 also want a letter from you stating that you're
16 going to hold them confidential and, and, and
17 will not release them to anybody.

18 Q: You have my word on this deposition that these
19 will be used for purposes of this discovery in
20 this deposition. In terms of your records which
21 document matters in which you've been retained in
22 any respect by any liability carrier, obviously
23 we're talking Specialty Risk Services, ACE
24 American, all correspondence, including, but not
25 limited to engagement letter, medical records.

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1 summaries, notes, handwritten or otherwise, and
2 payment records relating to your evaluation of
3 claimant, what do you have there?

4 A: I don't have anything from them. I don't know
5 the -- I'm not aware of anything that I would
6 ever have from them.

7 Q: Okay. So how are you paid or how is Corvel paid
8 in this particular case?

9 A: I'm paid by check from my company from Oregon
10 every two weeks.

11 Q: What is your company paid by Collins & Lacy?

12 A: I -- they're not paid anything by Collins & Lacy.

13 Q: By ACE American Insurance?

14 A: I have no idea, 'cause I don't deal with billing.
15 Billing is done out of Portland.

16 Q: You have no idea where your company bills for
17 this report?

18 A: No.

19 Q: And what were you asked to do in this particular
20 case?

21 A: To perform a vocational evaluation, labor market
22 survey.

23 Q: And when was that request made to you?

24 A: Do you have the date there (Addressing Ms.
25 Taylor)?

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1 Q: She can't answer questions for you.
2 MS. TAYLOR: I DON'T, NO.
3 A: I would say approximately, I would say
4 approximately two weeks ago..
5 Q: Two weeks?
6 A: Uh-huh (affirmative response), approximately..
7 Q: Prior to today?
8 A: Yeah..
9 Q: And today is the ---
10 A: 11th..
11 Q: --- 11th. Okay. And what did you review prior
12 to your coming here today?
13 A: The medical records.
14 Q: For this deposition?
15 A: And my reports..
16 Q: Did you review anything different that you didn't
17 have on October 1st or October 2nd?
18 A: No..
19 Q: Have you been provided anything by Ms. Taylor or
20 anyone else ---
21 A: No..
22 Q: --- since your report has been issued on October
23 2nd?
24 A: No..
25 Q: That was a Saturday; was it not?

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1 A: Yes.
2 Q: You came in on Friday and then you generated a
3 report how many hours later?
4 A: The, the report was on 10/7. The labor market
5 survey was completed on 10/7. The initial
6 evaluation was on -- the date I met with the
7 claimant, I believe, was on 10/2; is that
8 correct?
9 Q: No. You met with him on 10/1.
10 A: 10/1. Okay.
11 Q: The date of this report ---
12 A: The initial vocational evaluation was done on
13 10/2.
14 Q: Look at your report.
15 A: I am.
16 Q: Does it not say, "Date of report 10/2/10?"
17 A: No, it says 10/7.
18 Q: So I don't have that. You've not ---
19 A: You don't have the labor market?
20 Q: I'm looking at your initial date of report.
21 A: And you don't have the labor market?
22 Q: Well, you tell me what -- This is what's been
23 provided to me. Let's see, perhaps they're ---
24 MS. TAYLOR: IT IS THE LABOR MARKET.
25 MR. MYERS: THERE'S ANOTHER REPORT IN

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1 A: The next day, I was probably done by four or five
2 o'clock that evening, afternoon. I work
3 Saturday.

4 Q: On the ---

5 A: On 10/2, and then the other one wasn't done for,
6 for three or four days later, because it takes a
7 it takes a while to do a labor market.

8 Q: This would be called an expedited report; would
9 it not?

10 A: Correct.

11 Q: You charge more for an expedited report, correct?

12 A: No.

13 Q: Corvel does?

14 A: No.

15 Q: They don't?

16 A: No.

17 Q: How many cases have you done with Collins & Lacy?

18 A: Probably 15.

19 Q: How many has Corvel done?

20 A: Fifteen. I'm the only vocational expert in the
21 state.

22 Q: How long have y'all been in South Carolina?

23 A: Twenty years.

24 Q: How many in the last year have y'all done?

25 A: One.

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1 Q: One what?

2 A: One, one report with Collins & Lacy.

3 Q: How do you know that?

4 A: Because I'm the only one that does them.

5 Q: So 15 or so in the last --

6 A: Three years.

7 Q: And then the report that you generated on the
8 labor market was done what day?

9 A: 10/7.

10 Q: Have you ever testified in a Court of Law?

11 A: Yes.

12 Q: Where?

13 A: In West Virginia.

14 Q: In South Carolina?

15 A: I've testified at, at depositions here for -- in
16 front of the Administrative Law Judges in, in,
17 in, in South Carolina.

18 Q: When?

19 A: The last one would've been with -- it would've
20 probably been three or four months ago, and it
21 would've been with McAngus.

22 Q: And you were hired by McAngus?

23 A: Yes.

24 Q: Have you ever been hired by a claimant's firm?

25 A: Yes.

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1 Q: Who?

2 A: The Joye Law Firm.

3 Q: Who?

4 A: It would've been -- it's out of Charleston. The,
5 the, the gentleman, I can't remember the
6 gentleman's name out of -- that was the last one
7 I've done with, with a claimant's attorney.

8 Q: How long ago was that?

9 A: Probably about -- let's see, the gentleman I was
10 working with, I guess it's probably been about
11 six, seven months ago.

12 Q: What's the gentleman's name?

13 A: Donaván, Donovan Jordan.

14 Q: Joye?

15 A: Donovan Jordan --

16 Q: Jordan.

17 A: -- is the claimant's name.

18 Q: Who's the attorney?

19 A: I don't remember the claimant's attorney, but I
20 was working with them.

21 Q: Who else?

22 A: And I've worked with another firm out of -- I
23 can't remember the name of it. It was out of
24 Sumter. I can't remember the name.

25 Q: How long ago?

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1 A: That's been about a year ago, year or so ago. He
2 was a truck driver that I was working with.

3 Q: Do you remember his name?

4 A: Not right offhand.

5 Q: All right. Those are two. Give me any others.

6 A: There's no others. I normally don't work with
7 claimant attorneys.

8 Q: Why?

9 A: Because I, I base their -- I'm more interested
10 in, in -- if a person is actually disabled, then,
11 then the claimant attorneys normally call me, but
12 if they're not disabled, they don't call me,
13 because I am very justified in how I, how I
14 perceive disability, as I am a disabled person
15 and I do understand disability.

16 Q: What is your training in disability examinations?

17 A: In disability examinations? It's just from being
18 disabled myself. I've been disabled for over 30
19 years, so I do know about disability and I do
20 know the pain and I do know what people can do
21 and what they can't do.

22 Q: So you're saying that the defense hires you
23 because you will say that most people are not
24 disabled?

25 A: No, I did not say that. I said based on my, my,

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1 my motions are always based -- I'll get calls
2 from claimant attorneys whenever they actually
3 have a person that they know that is permanently
4 disabled, because then I'll, I'll, I'll take.
5 I'll go right with them. If I got a person that
6 the doctor says they could work, then they can
7 work.

8 Q: So it's up to the doctor for you ---

9 A: The doctor, the FCE, and, and then I base it off
10 the, off my, off the DOT, and if they -- if those
11 things fall in line, then those people can work.

12 Q: Ever testified in a Social Security hearing?

13 A: I've testified in Social Security hearings back
14 in West Virginia, but it's been years ago.

15 Q: How long?

16 A: Twenty.

17 Q: How old are you?

18 A: Fifty-two.

19 Q: And you have never testified in a Court of Law in
20 South Carolina?

21 A: I've testified at hearings.

22 Q: At Workers' Comp. hearings?

23 A: Workers' Comp. hearings.

24 Q: And who do you remember going before, what
25 commissioners?

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1 A: I've been in front of so many commissioners.
2 It's mainly -- it's been with -- I don't know all
3 their names. Normally, it's in Greenville and,
4 and Spartanburg, and I'm appearing tomorrow.

5 Q: Who are you appearing for tomorrow?

6 A: I'm appearing for the Danley Law Firm.

7 Q: Who is the Danley -- Are they a defense firm?

8 A: Yes.

9 Q: And they're with ---

10 A: And I'm, I'm going to be in front of a Law Judge
11 tomorrow.

12 Q: And when you say Law Judge, it's a Workers' Comp.
13 Commission?

14 A: Workers' Comp. Commission.

15 Q: You're disabled from what?

16 A: I've got a permanent disability in my lower back
17 at L4-L5. I got a herniated disc very similar to
18 what Mr. Baker has. I've also got a herniated
19 disc at, at C5-C6. I've had -- I have heart
20 disease. I have two stents in my heart, and I
21 have neuropathy in both hands and, and both legs.

22 Q: You got a pretty good handshake, as I recall,
23 from two weeks ago.

24 A: I, I touched your elbow. You were sick.

25 Q: You grabbed it firmly. Has a doctor ever told

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1 you you're disabled from working?

2 A: Yes. I was -- I've got, in fact, I got a
3 permanent disability from Workers' Comp. back
4 from 1981.

5 Q: In what state?

6 A: West Virginia, ten percent lower -- in the lower
7 lumbar.

8 Q: What does that mean, that you've got a permanent
9 ---

10 A: Ten percent permanent partial disability.

11 Q: Did you have an attorney?

12 A: Yes.

13 Q: Did you file a claim for benefits?

14 A: Yes.

15 Q: Did you seek permanent and total disability?

16 A: No, I did not.

17 Q: Have you had any injuries since 1980 or '81?

18 A: Yeah. I had the -- that's when I had the -- like
19 two years ago, I had the -- when I fell and fell
20 off the back of a truck and, I was helping my son
21 move, and herniated my disc at C5-C6, and I just
22 went to Dr. Giddens on that and they're wanting
23 to, you know, surgery, but I'm not going to have
24 surgery.

25 Q: Have you ever applied for Social Security

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1 Disability?
2 A: No. No. No.
3 Q: But you filed for Workers' Comp. in 1980 or '81?
4 A: Yes.
5 Q: And did you go to a hearing then or was that
6 settled?
7 A: No, I had to go to a hearing.
8 Q: And were you satisfied with the award?
9 A: Yes. I wasn't expecting anything.
10 Q: So I would call you only if I knew that my client
11 was disabled? That's the way you see why the
12 defense calls you and the plaintiffs don't?
13 A: Correct, and, and I, I, I will tell the defense
14 -- about 20 percent of my cases, I, I will tell
15 the defense I, I can't -- there's no way I could
16 do positive ratings on people, some people, you
17 know, based on the records review.
18 Q: And what does a positive rating mean?
19 A: It means that I, I can't generate -- "I can't do
20 anything for you."
21 Q: You can't what?
22 A: I can't do anything for the person, you know,
23 they're, they're permanently disabled and I, I
24 can't give a positive report.
25 Q: So positive is -- to the defense firm, positive

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1 is you're using an ---

2 MS. TAYLOR: OBJECTION.

3 Q: --- a different ---

4 MS. TAYLOR: OBJECT TO THE FORM.

5 A: No. I just meant as far as I can't generate a a
6 report stating that the person could work.

7 Q: Have you ever generated a report that said
8 someone is disabled?

9 A: Yes.

10 Q: When?

11 A: That was the last two I've had with the two
12 defense attorneys.

13 Q: Any others?

14 A: I've -- no.

15 Q: And how many years have you been here in South
16 Carolina?

17 A: I've been in South Carolina three years.

18 Q: You've been doing this work how long?

19 A: Over 20 years.

20 Q: Can you recall any other time in 20 years that
21 you've generated a report that said someone is

22 ---

23 A: Yes.

24 Q: --- disabled?

25 A: Yes, not in South Carolina, but in -- yes.

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1 probably hundreds in West Virginia.
2 Q: Who did you work for in West Virginia?
3 A: - I worked for Corvel and also a company called QRS
4 Manage Care, and we would be a West Virginia
5 Workers' Comp., which West Virginia Workers'
6 Comp. is different from South Carolina Workers'
7 Comp., 'cause they don't use attorneys. It's all
8 done through the division. So I have to decide
9 whether or not a person is capable or not capable
10 of working.
11 Q: And QRS, did I hear that?
12 A: Yeah, Qualify -- Quality Rehabilitation Services.
13 Q: Are they in existence, still?
14 A: Yeah. They're in Dunbar, Dunbar, West Virginia,
15 and I worked there for five years.
16 Q: And why did you leave there?
17 A: Because Corvel offered me a better opportunity.
18 Q: And that's been how long now?
19 A: About 20 years.
20 Q: With Corvel?
21 A: I've been with them 13 years.
22 Q: So in 13 years -- You moved from West Virginia
23 how long ago?
24 A: Three years.
25 Q: So in South Carolina, you've been here three

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1 years?

2 A: Three years.

3 Q: And in three years, you've generated two reports
4 in writing that the claimant was disabled?

5 A: Uh-huh (affirmative response).

6 Q: And you were hired by the claimant in those
7 cases?

8 A: Yes, but they knew that --- they had a pretty good
9 idea the person was going to be disabled.

10 Q: In this instance, Collins & Lacy, had you
11 reviewed records that would've told you that Mr.
12 Baker was disabled, you would not have taken the
13 case; is that right?

14 A: Correct.

15 Q: You said 20 percent of the time?

16 A: About ten to 20 percent of the time most of my --
17 the, the cases I come across, I, I will decline.

18 Q: And that's not generating a report, that's
19 telling them in advance?

20 A: That's not generating a report.

21 Q: It's not going to be a favorable report ---

22 A: It will not be a favorable report.

23 Q: --- to the defense firm?

24 A: Correct.

25 Q: So ten to 20 percent of the time? Could it be

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1 less?
2 A: No, it's not less.
3 Q: There's a big difference between ten and 20
4 percent.
5 A: Yeah, I'd say in between ten and 20.
6 Q: But not less than ten percent?
7 A: Not less than ten, no.
8 Q: How many reports do you generate in -- this is
9 2010? How many cases have you been paid to
10 assess and generate a report, and it's October
11 the 11th, 2010? In the last ten months, how many
12 would you ---
13 A: I would say probably 30.
14 Q: And those are reports?
15 A: Those are reports, and probably about, I know at
16 least seven that I, seven that I, that I
17 definitely said no on.
18 Q: Seven?
19 A: Seven reports.
20 Q: That you have ---
21 A: Declined to, to ---
22 Q: You generated a report or you've not ---
23 A: I declined not to, to, to generate a report.
24 Q: You live where?
25 A: Surfside.

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1 Q: And Corvel has you doing these things like you
2 did for Collins & Lacy against Mr. Baker?

3 A: All over the state.

4 Q: And market assessments, whatever you call it ---

5 A: Labor market survey.

6 Q: And what else do you do for Corvel that has you
7 going all over the state?

8 A: When I travel, that's what I do. Other than
9 that, I do take care of -- I've got several
10 states that request my services to do, to work
11 with people that are actually injured, but I'm
12 helping them find employment and do, do -- in
13 other words, I do what the Department of
14 Vocational Rehabilitation Services does. I've
15 got three right now that I'm working with that
16 I'm trying to find a job for and that we're
17 working with their doctors and things to help
18 them find a job.

19 Q: And is that as a result of an order of some state
20 saying that this person is permanently and
21 totally disabled?

22 A: No.

23 Q: Is it not in a Workers' Comp. context?

24 A: It is, it is Workers' Comp. and it's through the
25 -- two are through the State of Maryland, their

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1 Workers' Comp., that have requested my services
2 to help find these people employment down here,
3 and one is through Ohio, State of Ohio, 'cause
4 I'm also vocational experts in both of those
5 states, also. They, they requested my services
6 to do that, and I'm the only one in this state
7 that they, that they request services from.

8 Q: So Maryland and Ohio, and they're Workers' Comp.

9 ---

10 A: Departments.

11 Q: Departments?

12 A: They contact me and they ask me to, to perform
13 the services, their, their, their, their people.

14 Q: And do you know the underlying facts of those
15 cases, whether there's been an order issued that
16 that person you're trying to find a job is
17 disabled?

18 A: Based on what the doctors say. The doctor places
19 them at MMI, then they contact me and say, "Hey,
20 we've got a person with these restrictions, what
21 can you do for him?" And then I'll, I'll say,
22 "Well, we can do these sort of things, we might
23 have to get him retrained." I've got two I've
24 sent back that didn't have their high school
25 diplomas. I've got them right now in Adult

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1 Education Services to get their, their GEDs.

2 Q: Here in Horry County?

3 A: Here in Horry County.

4 Q: Okay. I'm trying to figure out what you do most
5 of the time in South Carolina.

6 A: I do everything.

7 Q: Well, let me finish the question. I'm not trying
8 to cut you off, but you've been contacted,
9 Corvel, you, to look at 37 cases since January?

10 A: Roughly.

11 Q: And how do we quantify that? What do you go to
12 see? You go to Midge? How do you know what book
13 of business you've got?

14 A: I, I've got a clientele. I've got over 20 people
15 that I work with right now that are disabled,
16 that I help them back to work, if they can go
17 back to work. That's what I do. I, I, I do
18 these, also. I also do vocational assessments,
19 and as a Certified Rehabilitation Counselor, I do
20 everything. I help people back to work. I help
21 them do resumes. I help them find jobs. I, I --
22 send them back to school if they need to go back
23 to school. I, I generate reports. I -- we work
24 with the employers to, to see what we, you know,
25 if the employers can accommodate their

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1 restrictions. I also work with doctors, see what
2 type of treatment we need. If we need more
3 treatment, I get the treatment.

4 Q: Are you a nurse case manager?

5 A: I'm also a Certified Case Manager and I do. I do
6 medical case management, yes, I do.

7 Q: Is there a difference in my term and what you've
8 just described?

9 A: Yes, 'cause I'm not a Registered Nurse, but I am
10 a Certified Case Manager, which allows me to, to
11 perform medical case management.

12 Q: Who certifies you for that?

13 A: The Certification Commission -- the Certification
14 of Case Managers. It's a national certification.

15 Q: Is there continuing ed. required with that?

16 A: Yes.

17 Q: What kind of degree do you have to have to get
18 that?

19 A: I have to have a master's degree. I've got a
20 master's degree in psychology.

21 Q: From?

22 A: Marshall University.

23 Q: We are Marshall.

24 A: We are Marshall.

25 Q: You are Marshall, correct?

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1 A: Yeah.

2 Q: You should've been victorious over West Virginia.
3 Wasn't that -- no.

4 MR. RANKIN: OFF THE RECORD.

5 *****OFF THE RECORD*****

6 (ON THE RECORD.)

7 MR. RANKIN CONTINUES:

8 Q: And my question is about this type thing, ---

9 A: Uh-huh (affirmative response).

10 Q: --- and you're touching your Bobby Baker file,
11 I'll call it. Thirty-seven of these you
12 participated in, in 2010?

13 A: Correct.

14 Q: And seven of those you would've told the defense
15 firm, ---

16 A: No.

17 Q: --- "You don't want my opinion?"

18 A: Exactly.

19 Q: And in all of three years there have been only
20 two reports that you've actually generated where
21 you were hired by the plaintiff to render a --
22 Would you call that a negative report or a
23 favorable report?

24 A: It would be a favorable report, and I -- and over
25 the three years there was probably 30 to 40 that

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1 I turned down.

2 Q: Over the three years there have been 30 or 40
3 that you've turned down?

4 A: Correct.

5 Q: You don't want to be known in writing, I guess,
6 as having said someone is disabled; is that
7 correct?

8 A: No, that's not correct. Most of the time the
9 attorneys don't want my report if I'm going to be
10 -- it's going to be negative.

11 Q: And negative means they can work?

12 A: It, it's going to be adverse to their ---

13 Q: Or they can't work?

14 A: Right.

15 Q: "Don't put in writing what you can tell if it's
16 not what you want to hear," fair statement?

17 A: Close, yes.

18 Q: Make it closer.

19 A: Well, that's probably pretty true.

20 Q: In this case, did you determine whether Mr. Baker
21 has a diploma?

22 A: He does not have a diploma.

23 Q: Does he have a GED?

24 A: No.

25 Q: You were talking generally before, about four

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1 minutes ago, that in the cases you're working
2 with where you've sent someone to get ---

3 A: Uh-huh (affirmative response).

4 Q: --- adult education. Does Mr. Baker need that?

5 A: It would not hurt him to have that, because that
6 would increase his, his employability skills;
7 however, you also got to look at how ONET views
8 things, which is the Occupational Network, and,
9 and ONET says that if, if you have a person
10 that's been self-employed like Mr. Baker has,
11 that you look at the amount of time he's been
12 self-employed and in that -- what that does is
13 that moves them into a different job zone, and by
14 doing that, that actually will take -- correspond
15 with the same amount as if he had an actual GED
16 or high school diploma. That's according to
17 ONET, which is the dictionary -- which is put out
18 by the Department of Transportation, and that's
19 the Bible that we follow.

20 Q: Department of Transportation?

21 A: Yeah.

22 Q: That's what DOT stands for?

23 A: Yes.

24 Q: I thought it was the Occupational -- Perhaps I
25 misunderstood.

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1 A: Are you talking about the Dictionary of
2 Occupational Titles?

3 MS. TAYLOR: YES:

4 Q: Yes.

5 A: That's a book, yeah, but the, but it's all put
6 out by the Department of Transportation.

7 Q: So Mr. Baker has the equivalent, in your opinion,
8 of a GED?

9 A: Correct, and it's not according to my opinion.
10 It's according to ONET. It's according to their,
11 their guidelines, that if a person has those
12 skills, then they should be moved into an upper
13 zone level and education should have less
14 bearing, meaning that if he were to go find those
15 -- go to apply for a job, they said, "Hey, you
16 know, we, we normally want somebody with a high
17 school education," he could say, "Look, I've
18 worked for 20 years, I've been in business for
19 myself," and that would pretty well correlate the
20 same as a high school education.

21 Q: You describe him as a self-employed person. What
22 did Mr. Baker do?

23 A: He was an auto mechanic and he owned his own
24 business for 20 years.

25 Q: But he was working at the Hilton. What did he do

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1 there?

2 A: He was a maintenance engineer.

3 Q: Do you know what happened in the injury?

4 A: Yes.

5 Q: What?

6 A: He had a piece of ceiling tile fall out and hit
7 him on the head and it caused a laceration to the
8 back of his head, and he went to the emergency
9 room. They, they, they used staples, then he's
10 had a series of -- he's had a lot of diagnostic
11 treatment, but there's really been no surgery or
12 anything that's ever been -- nothing real
13 definitive on what his condition actually is,
14 from what I'm gathering. He's had, you know,
15 he's had the radio frequency ablation procedure;
16 you know, where they go in and burn the nerves,
17 and that seemed to work, but he had a reaction to
18 it, I mean, it just -- one thing after another
19 with him. It just doesn't seem to work.

20 He had traction. I went through
21 traction, also, and he couldn't do the traction,
22 and the traction was one of the most fabulous
23 things I've ever felt, I mean, it was wonderful.

24 Q: How much did the ceiling tile weigh?

25 A: That, I'm not sure of.

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- 1 Q: Did you ask Mr. Baker that?
- 2 A: No, I did not.
- 3 Q: Did you ask him whether he was knocked
- 4 unconscious?
- 5 A: He did not mention he was knocked unconscious.
- 6 Q: Do the records reveal any of that for you ---
- 7 A: I think ---
- 8 Q: --- that you can recall without looking at the
- 9 records? You don't have many records with you
- 10 today.
- 11 A: No, just ---
- 12 Q: What are you looking at right now?
- 13 A: Just the ratings from the doctors and the MRI.
- 14 That's about all I've got.
- 15 Q: Let's see what you have totally, I guess.
- 16 A: Okay.
- 17 Q: Is there anything else over there?
- 18 A: No, that's it.
- 19 Q: Are these notes?
- 20 A: That was for a different claimant.
- 21 Q: Where are the written notes that you made for Mr.
- 22 Baker?
- 23 A: There are no written notes. I don't do written
- 24 notes. It's all computer.
- 25 Q: Do you have notes that you kept in your computer?

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1 A: No. I, I don't, I don't -- no. All --
2 everything I do is just on the reports.

3 Q: You're typing the report as you are talking to
4 them?

5 A: Correct.

6 MS. TAYLOR: AND FOR THE RECORD, I DON'T
7 MEAN TO INTERRUPT, BUT THE
8 RECORDS WE SENT HIM WAS
9 YOUR APAs, BECAUSE I DIDN'T
10 HAVE A COMPLETE SET, SO I
11 JUST SENT HIM THE FULL COPY
12 OF YOUR APA SUBMISSION.
13 INCLUDING YOUR VOC. THAT
14 YOU HAVE.

15 Q: Did you assess Mr. Baker's cognitive skills?

16 A: Just through the report, and, and, and he was
17 very quick, I mean, his cognitive skills were in
18 line with what they should be, I mean, his affect
19 was appropriate, I mean, he may do, you know, he
20 answered questions appropriately and, and he --
21 appropriate eye contact. His demeanor changed
22 whenever, you know, we talked about certain
23 things. So, I mean, his cognitive, his cognitive
24 function was on average, everybody else I talked
25 to, and I can assess that.

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1 Q: How?

2 A: I got a master's in psychology and I've been
3 doing it for years.

4 Q: Have you ever performed a neuro-psyche
5 evaluation?

6 A: Many years ago, but it's been a while.

7 Q: How many?

8 A: At least 20.

9 Q: You would not consider yourself an expert in the
10 field of neuropsychology?

11 A: No.

12 Q: You would not consider yourself an expert in the
13 field of psychology?

14 A: That, I would have to -- I'm not a layperson in
15 psychology. I'm ---

16 Q: You've never been certified or designated as an
17 expert in the field of psychology in any Court of
18 Law, have you?

19 A: For -- as far as -- I have, and, and -- but it
20 was when I was a -- I was also a Certified
21 Addiction Counselor and I did have to go to court
22 for that.

23 Q: What state was that?

24 A: In West Virginia. I worked for a drug rehab.
25 company. We did a -- we worked at a methadone

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1 clinic.

2 Q: And that's been how many years ago?

3 A: That's been about 15 or 20 years ago, 'cause I
4 worked there also while I was working with
5 Corvel. That was a, that was a clinic, what they
6 call a clinical supervisor, so everything we did
7 was psychology related. We worked off of the
8 actual behavioral plans and things like that.

9 Q: You haven't done any of that in South Carolina?

10 A: No, I haven't.

11 Q: And you've not been certified as an expert in the
12 field of psychology?

13 A: Not in South Carolina.

14 Q: Your expertise in your employment with Corvel is
15 as a vocational evaluator?

16 A: A vocational evaluator.

17 Q: And an ergonomics ---

18 A: And ergonomics.

19 Q: --- expert?

20 A: And also -- and Certified Case Manager and ---

21 Q: Case manager.

22 A: --- also a qualified rehabilitation provider.

23 Q: And you're not aware of what you're paid by the
24 particular job you're doing?

25 A: I'm not paid by any job. I'm just ---

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- 1 Q: You just get a salary?
- 2 A: I just get a salary.
- 3 Q: And what do you get per year?
- 4 A: I get approximately \$50,000 per year.
- 5 Q: And is it an hourly type deal?
- 6 A: No.
- 7 Q: Case specific, more cases you generate, the
- 8 bigger your bonus?
- 9 A: No. I'm paid on 32 hours a week.
- 10 Q: In terms of your assessment of Mr. Baker's
- 11 attention and concentration, what test did you
- 12 specifically use to measure that?
- 13 A: The, the -- through questioning, from answers and
- 14 questions.
- 15 Q: Now, there's a transcript, obviously, of that
- 16 back and forth?
- 17 A: And, and I went through it twice with him and he,
- 18 and he clarified it twice.
- 19 Q: Did you speak to his wife?
- 20 A: No, I did not.
- 21 Q: Do you ever speak to the spouse of the person
- 22 you're interviewing?
- 23 A: If they want to sit in on the interview, I have
- 24 no problem with that.
- 25 Q: That's not what I asked you.

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1 A: Yes, I do.

2 Q: In what cases do you do that?

3 A: Whenever they show up for the interview. If they
4 want to sit in on it, I have no problem.

5 Q: I'm talking about asking them questions.

6 A: Oh, no, I do not normally ask them questions,
7 unless the claimant can't answer and, and they,
8 and they look to her to answer, then I, then I
9 will.

10 Q: You reviewed Dr. Brabham's report?

11 A: Doctor?

12 Q: Brabham?

13 A: No.

14 Q: You were not provided that?

15 A: I don't recall Dr., a Dr. Brabham.

16 Q: Do you know who that is?

17 A: Was he the vocational

18 Q: She can't answer for you.

19 A: Okay.

20 MS. TAYLOR: SORRY.

21 A: No. I don't, I don't normally look at other
22 peoples' vocational evaluations, because I don't
23 want it to influence mine.

24 Q: Can you name a case where someone else's opinion
25 has influenced yours?

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- 1 A: No. No. I normally don't look at their reports.
2 Q: Pain, how does that rate for you as a ---
3 A: Pain is subjective. Everybody's pain level is
4 different. Your pain level is different than
5 mine. Mine's different than Aisha's.
6 Everybody's pain level is different.
7 Q: So you discount it?
8 A: No. I just -- I, I, I -- if a person says
9 they're between a one and seven, then they're
10 between -- or one and ten and they said they're a
11 seven, then I just write down they're a seven. I
12 don't -- that doesn't influence my opinion as
13 much as, as what the doctors tell me their, their
14 actual rating is or the FCE.
15 Q: In this case, do you recall an FCE?
16 A: Yes, the Functional Capacity Evaluation.
17 Q: Who performed that?
18 A: It was done by HealthSouth.
19 Q: And what did that show in this case?
20 A: It actually came out to a light physical demand
21 level and -- which is, which is less than what
22 Dr. Kang recommended, and so I based my report on
23 what Dr. Kang recommended, which was less than
24 than the light.
25 Q: In terms of the job description of Mr. Baker's at

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1 the Hilton, what level was that?
2 A: Seven.
3 Q: What category in terms of physical, heavy?
4 A: It would be medium to heavy.
5 Q: And so Dr. Kang, and as you said, HealthSouth's
6 FCEs ---
7 A: Came back at light.
8 Q: Below that?
9 A: Yes.
10 Q: Do you have an opinion on the orthopaedic
11 condition and the physical, based on the FCE
12 alone, whether the job at the Hilton is available
13 to Mr. Baker?
14 A: He, he did not know whether he was still employed
15 or not.
16 Q: That's not what I asked you.
17 A: I didn't understand the question.
18 Q: The FCE and Dr. Kang revealed to you ---
19 A: That he cannot return to work at, at the Hilton.
20 Q: Is that correct?
21 A: That's correct.
22 Q: Do you have a job description at the Hilton? Has
23 that been provided to you?
24 A: No, but I -- but based on what he told me he did,
25 I could find that through the DOT.

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- 1 Q: Would that be important for the employer to
2 provide to you what the person actually does?
- 3 A: Not necessarily. I can get that from the
4 claimant. Normally, I -- the, the Dictionary of
5 Occupational Title has, has over 12,000
6 occupations in it and I normally can find out
7 exactly what the person did based on their -- the
8 assessment. Sometimes it may take two, two
9 different codes, but I can normally find out
10 exactly what they did.
- 11 Q: Do you typically have that provided to you,
12 though, by the employer or the attorney?
- 13 A: No.
- 14 Q: So who is most important in this medical picture
15 for you? Whose opinion are you looking at?
- 16 A: The end result, where he is today, and that would
17 have to be Dr. Kang and, and the, and the FCE.
18 Those were the last bits of information that
19 actually stated anything to how he was currently
20 functioning, and what I did was -- to, to make it
21 so it was totally accurate, I just used Dr.
22 Kang's opinion of sedentary as the actual.
- 23 Q: How about in terms of pain? Did you rely upon
24 Dr. Kang's assessment of Mr. Baker's pain?
- 25 A: Yes.

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1 Q: And what do you recall that being reported at?

2 A: Well, again, it, it was all subjective.

3 Q: That's not what I asked. Dr. Kang assessed the
4 pain; is that correct?

5 A: I don't see where he addresses pain in his last
6 statement.

7 Q: But you didn't bring all the medicals with you
8 today?

9 A: I've got the 9/8/10, which is the last one that I
10 have. Do you have one later?

11 Q: Do you have anything prior to 9/8/10?

12 A: I got 8/11/10.

13 Q: What does that reveal?

14 A: That there are no neurological deficits noted.
15 He continues to have tenderness and that the
16 claimant reports having low back pain.

17 Q: And does that assess that pain?

18 A: The claimant, but he does not relate to it as, as
19 far as in his report what he signals the pain to
20 be like on any scale.

21 Q: Let's take a look. Let me see that. Do you have
22 a June note with you?

23 A: There it is. Yeah, this talks about the FCE,
24 that he, that Mr. Baker rates his seven to ten,
25 which was consistent with what he rated with me;

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1 but as far as sedentary work, that was where he
2 fits.

3 Q: My question deals with pain. Dr. Kang ---

4 A: I don't see where Dr. Kang -- he has central
5 nervous system side-effects and light-headedness
6 in occasion when he takes the Oxycondone. That's
7 due to the drug. "It has given him some pain
8 relief where he can at least function on a day to
9 day basis. Examination today reveals limited
10 lumbar flexion and extension. He walks with a
11 straight cane. Neurologically, he has no
12 deficits in the lower extremities."

13 Q: The top of that report, Mr. Myers. I'm talking
14 about pain, not the ---

15 A: He continues to have pain radiate. That's
16 according to Mr. Baker.

17 Q: What's the VAS schedule?

18 A: I'm not sure what the acronym is for that.

19 Q: You don't know?

20 A: I'm not aware at all.

21 Q: So is it important or not that Dr. Kang notes
22 pain or do you ---

23 A: I look more in, in -- no. I look more, in fact,
24 whether or not the guy can perform the duties
25 he's supposed -- of a specific occupation. Pain

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1 is subjective. I can't judge it.

2 Q: So pain is not important to you?

3 A: Pain, pain -- it's not that pain is not
4 important. I base it on what the restrictions
5 are. I can't, I can't base pain in my report and
6 neither does the Dictionary of Occupational
7 Titles or any of my -- any of the books that I
8 use or ONET. The Occupational Network does not
9 address pain. It, it addresses deficits.

10 Q: And clearly, Mr. Baker has deficits?

11 A: Yes.

12 Q: And that's born in, you said, HealthSouth's FCE?

13 A: And, and Dr. Kang and, and all the other doctors.
14 They all concur that he has deficits.

15 Q: There's no question but those deficits preclude
16 him from going back to the Hilton?

17 A: Correct.

18 Q: Oxycodone, what is that?

19 A: It's Hydrocodone and, and Oxycontin for -- it's
20 Oxy, oxy mixed.

21 Q: And what is that for?

22 A: Pain.

23 Q: Have you ever taken it?

24 A: I've taken it, yes.

25 Q: How long ago?

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- 1 A: In fact, I just took it about three or four
2 months ago.
- 3 Q: Did it relieve your pain?
- 4 A: Somewhat, not much. My pain is constant.
- 5 Q: What's the pain level you rate yourself having?
- 6 A: Probably about a five or a six constantly.
- 7 Q: Are you on any pain medication now?
- 8 A: No. I can't take pain medication because of my
9 heart. It raises my blood pressure.
- 10 Q: So there can be a counter or negative effect to
11 medication?
- 12 A: Correct.
- 13 Q: Did it reduce your pain, the Oxycodone?
- 14 A: Not really. Pain is ---
- 15 Q: How many were you taking per day?
- 16 A: The therapy helped more than anything.
- 17 Q: How many were you taking a day?
- 18 A: I was taking four tablets per day.
- 19 Q: Do you remember the milligrams?
- 20 A: No. No, I don't.
- 21 Q: Do you remember another negative effect of the
22 Oxycodone?
- 23 A: Impotence.
- 24 Q: Any others?
- 25 A: No.

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1 Q: Did it affect your concentration?

2 A: No, not adversely. I still do my job.

3 Q: Are you aware of the Oxycodone affecting peoples
4 concentration?

5 A: As far as a clinical study, yeah, but it, but it
6 doesn't affect all people the same way, no drug
7 does.

8 Q: And the clinical study would be the barometer for
9 that question; would it not?

10 A: It, it, it says you -- it doesn't quantify what,
11 what the actual restrictions are with the drug
12 itself, I mean, as far as whether or not a person
13 has the ability to operate cars and things like
14 that, it's subjective.

15 Q: The clinical ---

16 A: I don't have the bottle in front of me, so I
17 don't know.

18 Q: There's a warning on that bottle?

19 A: Yes, that's what I'm talking about. There is a
20 warning. It's a warning, correct.

21 Q: But it didn't affect you ---

22 A: No.

23 Q: --- in that regard, only from the ---

24 A: No.

25 Q: --- impotence?

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1 A: Exactly.

2 Q: So there was a negative effect to the medication?

3 A: Yes.

4 Q: I don't recall seeing that on the bottle as a
5 warning. Did you know that ---

6 A: No, I did not.

7 Q: --- there's a negative side-effect?

8 A: No, but all pain medications have a effect on
9 heart.

10 Q: What is Gabapentin?

11 A: Gabapentin.

12 Q: G-A-B-A-P-E-N-T-I-N.

13 A: Gabapentin is a -- it's a drug that helps with
14 anxiety.

15 Q: Why is that prescribed?

16 A: To help people function normally, and it helps
17 reduce pain levels, supposedly.

18 Q: Have you ever taken that?

19 A: No, but my son has.

20 Q: And do you know the negative side-effects of
21 that?

22 A: Of Gabapentin? I really don't know any really
23 negative side-effects from Gabapentin.

24 Q: What is Ambien?

25 A: Ambien is a sleep aid.

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1 Q: And what is the purpose of that?

2 A: To help you sleep at night.

3 Q: Do you know what medications, other than those
4 three, that Bobby Baker is on?

5 A: He was also on a couple for -- taking Cialis for
6 impotence and was taking Neurontin for
7 neuropathy.

8 Q: What is neuropathy?

9 A: Neuropathy is pain and tingling. I know it very
10 well, that goes from your hands, from your elbows
11 to your hands or from the shoulders to the hands
12 and down the legs to the feet.

13 Q: And who prescribed those medications?

14 A: Dr. Kang.

15 Q: So pain affects people differently, you say?

16 A: Uh-huh (affirmative response).

17 Q: If someone is in pain and they're on medication
18 and they are groggy and can't concentrate, do you
19 have any way of assessing whether that would be a
20

21 A: That's up to the doctor to change the
22 medications. I'm not a doctor.

23 Q: In terms of a person being on medication, do you
24 know whether the employer will allow someone who
25 is taking Oxycodone that has the warnings on the

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- 1 label to work?
- 2 A: I do know that employers will allow people to
- 3 work with medications.
- 4 Q: That would be the exception rather than the rule;
- 5 would it not?
- 6 A: Not necessarily. Lately, I've got several people
- 7 that are on Oxycodone, got one that's on,
- 8 actually Oxycontin, that is actually working at a
- 9 -- as a welder, so it's, it's up to the
- 10 employers.
- 11 Q: But if you're advising the employer with an eye
- 12 towards risk management ---
- 13 A: Oh, exactly, I would say, you know, you need to
- 14 have -- talk to the doctor and see if you can't
- 15 -- there's other, there's other drugs that can
- 16 accomplish the same -- I apologize, I've got
- 17 terrible headache. I would advise the, the
- 18 doctor or the employer to change, to talk, to
- 19 have the claimant talk to the doctor.
- 20 Q: And if the doctor does not change the medication,
- 21 what would you advise the employer?
- 22 A: Then it's up to the employer to make that call.
- 23 Q: You're the risk management person.
- 24 A: I'm not the risk manager, though.
- 25 Q: But in this question, hypothetically speaking,

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1 you would not tell your employer to put that
2 person to work, would you?

3 A: No, not, not if, not, not if the drug would
4 preclude him to operate machinery or stuff like
5 that.

6 Q: And Oxycodone?

7 A: Oxycodone, you can normally work with Oxycodone.
8 It's Oxycontin you can't work with.

9 Q: All right. Do you need a break?

10 A: I could use some aspirin if you got it.

11 Q: I don't have any aspirin.

12 ****OFF THE RECORD****

13 (ON THE RECORD.)

14 MR. RANKIN CONTINUES:

15 Q: So Oxycodone is restricted ---

16 A: Yeah. It's just hydro -- it's just a super
17 hydrocodone, a super Lortab, if you want to look
18 at it another way.

19 Q: But you're aware of the restrictions put on the
20 bottles of Oxycodone?

21 A: And all pain medication.

22 Q: And the pill counts that they perform at the
23 doctor's office or is it the pharmacist?

24 A: Correct.

25 Q: And why do you think they're so guarded and

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- 1 regulated about Oxycodone?
- 2 MS. TAYLOR: OBJECTION. OBJECT TO THE
3 FORM.
- 4 A: They all -- they're, they're, they're more
5 guarded about all right now, all pain medication,
6 because drug overdose or drug abuse is so
7 rampant.
- 8 Q: All right. And in terms of the anxiety
9 medication, again, you're not a pharmacist,
10 you're not a doctor, but you testified ---
- 11 A: That shouldn't have anything to do with it. The
12 Gabapentin wouldn't do anything for anybody.
- 13 Q: Good or bad?
- 14 A: Good or bad, taking all that, no. That wouldn't
15 have any -- it'd, it'd help them function
16 normally, you know, as far as it takes the edge
17 off.
- 18 Q: And you've studied that or you've read material
19 about that?
- 20 A: Yes.
- 21 Q: Does it allow someone to be totally functional?
- 22 A: Yes. Yes.
- 23 Q: What does it do?
- 24 A: It does something with the nerve transmitters.
- 25 Q: What do nerve stimulators do?

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1 A: It stimulates the nerves going up and down the
2 leg, as far as trying to help with neuropathy.

3 Q: What is Testim?

4 A: I have no idea.

5 Q: T-E-S-T-I-M.

6 A: Is that the cream he was using? That's the only
7 thing I can think of. It's testosterone cream.

8 Q: What's the significance to you of an increase in
9 the dosage of Oxycodone?

10 A: I have no, you know, I -- again, I'm not a
11 doctor. I, I can't comment on that, really. I
12 don't get into drugs, you know, normally left up
13 to physicians.

14 Q: In August 11th, 2010, Dr. Kang notes, "He is not
15 having adequate pain control at this time on a
16 regular basis, increase the Oxycodone to 30
17 milligrams." What's the significance of that to
18 you?

19 A: That he, that he was increasing the dosage 'cause
20 it wasn't having the same effect. That could be,
21 you know, when, when you're talking with drugs, I
22 mean, he's been, he's been two years, almost two
23 years he's been disabled, so he's been on drugs
24 for two years. So the effects of a, of a drug
25 that he used to be able to take is not the same

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1 as it was two years ago. Your tolerance level --

2 --

3 Q: He's got a resistance, a tolerance?

4 A: Sure.

5 Q: It takes more to ---

6 A: To get the same result. That's why doctors are
7 supposed to mix that stuff up.

8 Q: Do you believe Mr. Baker to be a credible person?

9 A: Yes.

10 Q: He didn't symptom magnify or ---

11 A: Not to my, not to my knowledge.

12 Q: Have you ever seen that before?

13 A: Yes.

14 Q: Dr. Kang has requested a stimulator, a nerve
15 conduction, rather, excuse me, a spinal cord
16 stimulator through Dr. Rosenberg. Are you
17 familiar with that?

18 A: I'm familiar ---

19 Q: Are you aware of that?

20 A: Yeah, I'm familiar with spinal cord stimulators.

21 Q: Do you know why that has not been authorized?

22 A: I have no idea.

23 Q: Do you know whether those are prescribed for
24 minor pain or do you know what warrants ---

25 A: It's for neuropathy, you know, they can't -- if

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1 they can't get the tingling and the stuff to
2 stop, that's what they normally do. They try a
3 spinal cord stimulator. People work with those.
4 They try a trial, a trial study first to see if
5 it works.

6 Q: Was that tried on Mr. Baker?

7 A: No. They never tried a trial.

8 Q: Do you know why?

9 A: No.

10 Q: Do you know that Dr. Kang has prescribed that?

11 A: Yes.

12 Q: And you believe that Mr. Baker has neuropathy?

13 A: I believe Mr. Baker believes he has neuropathy.
14 That, I mean, I don't, I don't know for sure, I
15 mean, I can't ---

16 Q: Have you talked to Dr. Kang?

17 A: No. That's what I mean. I, I, I'd have to be
18 the case manager.

19 Q: Well, if you're a case manager in this case,
20 would you have an opinion about that?

21 A: I present whatever the doctor says to the, to the
22 adjuster, and whatever the adjuster decides is
23 the way it goes.

24 Q: Who's the adjuster on this file?

25 A: I have no idea.

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1 Q: Have you discussed with anybody other than Aisha
2 your finding of this report?
3 A: No.
4 Q: You have discussed it with her, though?
5 A: No. I didn't even discuss it with her.
6 Q: This is Aisha Taylor, by the way.
7 A: I'm sorry.
8 Q: Lovely lady with a beautiful daughter and is a
9 Carolina fan.
10 A: You're the only one I've discussed the case with.
11 Q: And you've had enough of it. I want to find out
12 again to make sure who is important to you in
13 this case. I think you said the treating
14 physician ---
15 A: Uh-huh (affirmative response).
16 Q: --- and the FCE?
17 A: Correct.
18 Q: And you testified that there's no question but
19 that from the FCE alone, Mr. Baker would not be
20 able to go back to this ---
21 A: Correct.
22 Q: --- job at the Hilton?
23 A: Correct.
24 Q: Do you know whether they terminated him?
25 A: I do not know.

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1 Q: Does that matter to you?

2 A: No, because normally, employers terminate people
3 after one year of disability, anyway, I mean,
4 that's just pretty standard, but I think he
5 thinks he's still employed, so I, I don't know.

6 Q: But you said that Mr. Baker has been disabled for
7 two years?

8 A: Yes. Well, since May of '08, year and a half. I
9 guess.

10 Q: That's all I have.

11 EXAMINATION

12 BY MS. TAYLOR:

13 Q: Just one or two questions. Mr. Myers, you
14 testified you're a Certified Rehabilitation
15 Specialist, correct?

16 A: Yes.

17 Q: And your clients are actually the injured
18 workers; isn't that correct?

19 A: Correct.

20 Q: Collins & Lacy is not your client?

21 A: No. Collins & Lacy -- no. My clients are the
22 injured workers.

23 Q: Okay. Thank you. That's all I have.

24 MR. RANKIN: WHO WAS THAT?

25 MS. TAYLOR: COLLINS & LACY.

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RE-EXAMINATION

BY MR. RANKIN:

Q: I totally misheard that. The injured workers are your clients?

A: Always. Always. I -- when I come into an -- that's why I did not do the videography and that's why I stated that in the, also in the thing, was it was because it was against the client's privacy rights.

Q: My client is Bobby Baker.

A: I understand that, and he's also -- when I -- my first duty is to, is to the injured worker.

Q: My client did not employ you in this case?

A: No, he did not.

Q: Mr. Baker never called you, did he?

A: No, he doesn't have to, but I am still required to be an advocate for the injured worker.

Q: So you are testifying today in support of Mr. Baker?

A: I'm testifying -- yes. I, I had his interest when I was, when I was doing this case, yes, I did.

Q: I never have called you --

A: No, you did not.

Q: -- in this case?

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1 A: No, but I -- that is part of my certification.

2 Q: And who is paying you in this case? It's not Mr.
3 Baker, is it?

4 A: No.

5 Q: It's not me?

6 A: No, it's my company.

7 Q: And your company is paid by whom?

8 A: Whatever the name of that company was. I guess
9 it's Specialty Risk Services.

10 Q: So you did not submit to a video interview. My
11 client never asserted a privilege because he did
12 not employ you, Mr. Myers.

13 A: That is correct, and also that it was against our
14 -- as we had spoken, that it was, it, it was
15 against the CRC Code of Ethics to have that done,
16 and that -- but that also included the privacy
17 rights of the client, as far as video and that
18 stuff like that.

19 Q: Is there anything about your testimony that
20 you've rendered today that you would like to
21 change?

22 A: No.

23 Q: That's all I have.

24 ~ MS. TAYLOR: THAT'S ALL I HAVE,

25 *****OFF THE RECORD*****

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1 (ON THE RECORD.)

2 MR. RANKIN CONTINUES:

3 Q: I don't want to confuse this record. I'm going
4 to leave this record open. I'm adjourning this
5 deposition, subject to your providing the items
6 that we requested --

7 A: Oh, that's no problem.

8 Q: --- pursuant to the Subpoena, and Aisha Taylor,
9 the ever able and qualified attorney for Collins
10 & Lacy and ACE American Insurance, is going to
11 provide those to me upon your providing them to
12 her.

13 MS. TAYLOR: THAT'S CORRECT, AND FOR THE
14 RECORD, YOU ACTUALLY JUST
15 RECEIVED HIS CV. IT'S
16 ALREADY BEEN FORWARDED TO
17 YOUR EMAIL.

18 A: So all you need is my tax records?

19 Q: Right, and what's the timeline on your getting
20 those?

21 A: Gosh, I got to find them, I mean, they're on the
22 computer somewhere. I, I -- if I'd just brought
23 the thing, I didn't even think about it. I've
24 never had to use it.

25 Q: What's that?

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1 A: My computer in a deposition, so I've never
2 brought it, and normally, they take offense when
3 I got my computers, and you wanted my computer.

4 Q: Can't satisfy me. That's good, so we'll adjourn
5 the record.

6 MS. TAYLOR: YES.

7 MR. RANKIN: IT WON'T BE CLOSED.

8 MS. TAYLOR: RIGHT.

9 MR. MYERS: OLAH, AND I'LL, I'LL GET
10 THOSE TAX RETURNS TO YOU.

11 (The deposition was adjourned at 2:30 p.m.)
12
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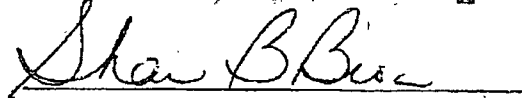
CERTIFICATE

This is to certify that the foregoing deposition of JAMES MYERS, consisting of SIXTY-NINE (69) pages is a true and correct transcript of the testimony given by said deponent after first being duly sworn; said deposition was reported by method of steno mask with backup. This transcript may contain quoted material; said material is transcribed as read or quoted by the speaker.

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

IN WITNESS WHEREOF I have hereunto set my hand and seal this 26th day of OCTOBER, 2010.

COPY



Sharon B. Brock
Verbatim Court Reporter
Notary in and for the State of
South Carolina
My Commission Expires: 5/24/11

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