

2017

**Raymond M. Snyder Petitioner, Appellant vs. Utah Labor
Commission Western Construction Spec., Utah Property and
Casualty Curantee Assoc., Fremont Insurance Group Respondent,
Appellee**

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

Raymond M. Snyder)	BRIEF OF APPELLANT
Petitioner, Appellant)	
vs.)	
UTAH LABOR COMMISSION)	Appeal No. 20160822
WESTERN CONSTRUCTION SPEC.,)	
UTAH PROPERTY and CASUALTY)	Agency Case No. 14-058
GURANTEE ASSOC., FREMONT)	
INSURANCE GROUP)	
Respondent, Appellee)	

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JURISDICTION

A Petition for Review was filed with the Utah Court of Appeals on October 7, 2016. This Court has jurisdiction over this matter pursuant to Utah Code Ann. Section 78A-4-103 and Rule 14(a) of the Utah Rules of Appellate Procedure.

STATEMENT OF ISSUES ON APPEAL

Did the Labor Commission err in affirming ALJ Newman's denial of Raymond Snyder's claim for disability compensation under the Utah Workers' Compensation Act, ruling the preponderance of evidence, Dr. Hess and the medical panel, weighed against Dr. Greis's, only one of Snyder's 8 treating physicians, to be persuasive with regard to the medical casual connection for Mr. Snyder's need for a right-shoulder replacement and the accident.

Notice is hereby given that Raymond Snyder, Appellant, petitions the Utah Court of Appeals to review the entire record and the Appeals Board's Order Affirming ALJ Newman's Order.

STANDARD OF REVIEW

The Utah State legislature has granted the Labor Commission discretion to determine the facts and apply the law in workers' compensation claims, Utah Code Ann. §34A-1-301. Because the agency has been granted this discretion, its orders are reviewed for reasonableness and its actions will be upheld "unless the determination exceeds the bounds of reasonableness rationality so as to constitute an abuse of discretion." *AE Clevite*

Inc. v. Labor Comm'n 996 P.2d 1072 (Utah Ct. App. 2000). Further, the Commission's findings should only be affirmed if they are "supported by substantial evidence when viewed in the light of the whole record before the court". *Smith v. Mity Lite*, 939 P.2d 684, 696 (Utah Ct. App. 1997). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion". *Id.* At 686. Commission findings should only be affirmed if Respondent's evidence is not based on presumption. "A presumption is merely a burden-shifting device; it is not evidence. " "The main purpose of presumptions is to shift the burden either of producing evidence or of persuasion□ This does not mean that the fact finder may consider or weigh the presumption as evidence *Barron v. Utah Labor Commission*, 274 P.3d 1016 (2012) Ut. App 80, quoting "Massey v. Griffiths, 2007 UT 10, ¶ 11, 152 P.3d 312 (quoting *In re Estate of Swan*, 4 Utah 2d 277, 293 P.2d 682, 690 (1956)). " "A presumption is not evidence of anything, and only relates to a rule of law as to which party shall first go forward and produce evidence sustaining a matter in issue.'" *Id.* (quoting *Security State Bank v. Benning*, 433 N.W.2d 232, 234 (S.D.1988).

Additionally, this Court has held that "we resolve any doubt respecting the right to compensation in favor of the injured employee". *Smith's Food and Drug, Inc. v. Labor Commission*, 2011 UT App. 678.

STATEMENT OF ISSUES

Issue 1: Are the Findings of Fact and Conclusion of Law of the Utah Labor Commission legally inadequate? The standard of appellate review which is to be applied

to the resolution of all of the above issue is “correction of error” since it involves questions of law and no deference to the agency’s view of the law is required, because the appellate court has the power and duty to say what the law is and to ensure that it is uniform throughout the jurisdiction. *Drake v. Industrial Commission*, 939 P.2d 177 182 (Utah 1997). Utah Administrative Procedures Act, Utah Code Annotated, §63-46b-16(4)(d) (Utah 1988). *Mor-Flo Industries v. Board of Review*, 817 P.2d 328 (Utah 1991). *Morton International, Inc. v. Auditing Division of the Utah State Tax Commission*, 814 P.2d 581 (Utah 1991).

Issue 2: Did the Commission err in disallowing Snyder’s request for hearing on underpaid benefits and being removed from a suit between insurers?

Issue 3: Did the Commission err in adopting the Medical Panel report which was presumptive, incomplete, factually erroneous, and which failed to consider all “relevant” medical and evidentiary exhibits relating to Snyder’s shoulder injury and, by adopting the Panel’s report without making an independent evaluation of the facts and evidence, thus finding that the preponderance of evidence shows Snyder’s shoulder condition was unrelated to the industrial accident? Is Labor Commission determination strewn “with varying degrees of strictness, failing anywhere between a review of ‘correctness and a broad ‘abuse of discretion standard.’” *Drake v. Industrial Commission*, 939 P.2d 192 (Utah 1977)?

Issue 4: Did the Commission and ALJ’s Holley, Hann and Newman error in denying Snyder the right to engage in preparation of and inclusion of exhibits into the Medical

Records Exhibit (MRE) in contradiction to the Utah Administrative Code R602-2-1(H2&3) and the Utah Rules of Evidence Rules 401 and 402? Did the Commission err in not providing Snyder a copy of the MRE until months after a hearing before ALJ Holley and only after a second ALJ, ALJ Hann, ordered Respondent furnish Snyder a copy. Did the Labor Commission err in allowing Respondent to include in the MRE only documents it wanted and not requiring Respondents to timely furnish Snyder the MRE in violation of UT Admin Code R602-2-1(H5)?

Issue 5: Did the Commission err in allowing fabricated diagnoses' by Respondent and its physician(s) and false physician statements contrived by Commission ALJ's?

“Judges and attorneys are officers of the Court. A State judge is a state judicial officer, paid by the state to act impartially and lawfully. A federal judge is a federal judicial officer, paid by the federal government to act impartially and lawfully. State and federal attorneys fall into the same general category and must abide by the rules. A judge is not the court.” *People v. Azjic*, 88 Ill.App.3d 477,410 N.E.2d 626 (1980).

Whenever any officer of the court commits fraud during a proceeding in court, he/she is engaged in “fraud upon the court”. In *Bullock v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated “Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury...where a judge has not performed his/her judicial function — thus where the impartial functions of the court have been directly corrupted.”

“Fraud upon the court” has been defined by the 7th Circuit Court of Appeals to “embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial tasks of adjudging cases that are presented for adjudication. “*Kenner v C.I.R.*, 387 F.3d 689(1968); 7 *Moore’s Federal Practice*, 2d ed., p. 512, 60:23. The 7th Circuit further stated “a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final.”

The Supreme Court has ruled and has reaffirmed the principle that “justice must satisfy the appearance of justice”, *Levine v. United States*, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954).

Issue 6: Did the Labor Commission err in holding Snyder (a “layman”, working in the construction industry, who lacked even a basic technical knowledge of the law, to the same standard as a qualified member of the bar, by excluding his “relevant” exhibits, which Mr. Snyder tried several times to have considered, which exhibits, as provided by the Utah Rules of Evidence Rule 401 & 402 and Utah Admin. Code R602-2-2-1(H2 & 3), were and are relevant.

“As a general rule, a party representing himself will be held to the same standard of knowledge and practice as any qualified member of the bar, [yet the Courts] “have also cautioned that ‘because of his lack of technical knowledge of the law and procedure [a layman acting as his own attorney] should be accorded every consideration that may be

reasonably indulged,” *Nelson v. Jacobsen* 669 P.2d 1207, 1213, 1983 Utah LEXIS 1150.

*14 (Utah 1983)(internal citations omitted; second alteration original).

CITATION TO RECORD

ALJ Holley ruled, at hearing, that all Physicians who examined Snyder prior to Dr. Marble agreed Snyder’s work injury on 7/21/1999 caused all Snyder’s shoulder problems, Transcript (T-63-64). Snyder’s rafting consisted of 1 to 2 trips per-year, motoring then rowing larger rapids, and paddling an inflatable-kayak which Snyder hadn’t done in 8-10 years (T-101-104), (S-49-pg.67 & S-50-pg.68).

GROUND FOR REVIEW OF ISSUES NOT PRESERVED AT HEARING

Snyder seeks all exhibits, included in his pleadings, all documents included in the record, Respondent discovery documents UPCIGA-66-pg.62, 84-pg.63, 332-pg.64 and S-6-pg.65, S-48-pg.66 S-49-pg.67 S-50-pg.68 for which Snyder Petitioned the Court to Expand the Record to included in accordance with Utah Rules of Evidence 401, 402 and R602-2-2-1(H2 & 3) of the Utah Administrative Code.

APPLICABLE STATUTORY PROVISIONS

Utah Rules of Evidence Rule 401 and Rule 402. Utah Administrative Code R602-2-1(H2&3), UT Admin Code R602-2-1(H5) and UT Admin Code R602-2-1(H4) UT Admin Code §63-46(4)(d).

EXHIBITS

1. Record Exhibits: R-1 through R-1209;

2. Exhibit 1210: Medical Records Exhibit: MRE-1-181;
3. Exhibit 1211: Hearing Transcripts: T-1-108.
4. Petitioner Discovery docs.: Addendum S-6-pg.65, S-48-pg.66, S-49-pg-67, S-50-pg.68.
5. Respondent Discovery documents: Addendum UPCIGA-66-pg.62 , UPCIGA-84-pg.63, UPCIGA-332-pg.64.

STATEMENT OF THE CASE, NATURE OF CASE

Petitioner Raymond Snyder filed a claim under the Utah Workers' Compensation Act, seeking benefits for injuries he sustained while working for Western Construction Specialties.

On 7/21/99, Snyder was struck on the right-shoulder by a hammer dropped from 70 feet above by an employee for another employer. The blow knocked Snyder down and nearly unconscious (MRE-31). Snyder returned to work.

On 7/21/1999, Snyder was referred to Work Care for an evaluation. X-rays were negative. Snyder tested positive for right-shoulder impingement. Work Care physicians confirmed Snyder's shoulder issues resulted from his work injury. Snyder was placed on light-duty and sent to physical therapy (MRE-28-34). Respondent accepted responsibility.

On 10/14/99, Snyder was referred to Western Neurological for an MRI. The MRI revealed an impingement, rotator-cuff-tear and a small cyst on Snyder's right-shoulder joint directly below the cuff-tear. This is the first time a cyst was diagnosed. Work Care

noted there were no abnormalities in the bone other than the small cyst. The results of the MRI were very minimal (MRE-2-3).

Snyder transferred care to the University of Utah Orthopedic Clinic where doctors. Petron and Greis examined the original x-rays and MRI. Both doctors confirmed Snyder had a rotator cuff tear and impingement. No arthritis was found (MRE-38-39). Snyder had new x-rays and an MRI taken on 03/08/2000, 8 months after the injury. The new MRI showed the first signs of arthritis in Snyder's shoulder described as small spurring about the glenoid, Early DJD (MRE-37).

On 10/15/01 Dr. Greis operated on Snyder's shoulder deburring the arthritis, rotator-cuff and impingement (MRE-106-107).

Snyder's continued seeing doctors. Greis and Petron, on a regular basis, for x-rays, shoulder-injections and pain meds. Snyder's shoulder continued to worsen ultimately requiring a total shoulder replacement on 12/11/12. Respondent accepted responsibility paid and for Snyder's shoulder replacement surgery (MRE-74-75) and physical therapy (Addendum UPCIGA-332-pg.64).

On 10/22/2013 Dr. Greis released Snyder (MRE-104a). Snyder applied for a permanent partial disability (PPD). Respondent employed Dr. Michael Hess to rate Snyder's disability. Dr. Hess declined to rate Snyder claiming Snyder's need for a shoulder replacement did not result from his injury (MRE-172-173). Respondent reversed the position it had held for over 14 years, denied Snyder's current shoulder problems were connected to the accident and denied Snyder benefits.

On 6/26/2013, Respondent's attorney and Dr. Hess collaborated in a review of Hess's original exam of Snyder, embellishing the reasons for denying Snyder's PPD award (MRE-179-180). Snyder obtained an independent rating, an attorney, provided his attorney all his medical records and appealed.

Respondent prepared a Medical Records Exhibit (MRE). The case was assigned to ALJ Aurora Holley who sent the MRE to a Medical Panel review board. Snyder's attorney declined to include exhibits into the MRE Snyder had instructed him to use. Snyder's attorney requested an evidentiary hearing before ALJ Holley, then quit. Snyder was not allowed to participate in providing exhibits to MRE. By the time of hearing Snyder had not received a copy of the MRE nor was he provided one at hearing. ALJ Holley reviewed Snyder's proffered evidence allowing into the record Dr. Hess's office notes which Respondent had declined to include (MRE-173a-173b). ALJ Holley declined to allow other relevant evidence Snyder had brought including (R-227-233) confirming Dr. Hess's exam findings were fabricated. ALJ Holley was replaced by ALJ Hann.

On 8/2/2015, ALJ Hann referred the case, with the MRE Snyder had still not seen, to a second Medical Panel and ordered Respondent furnish Snyder a copy of the MRE (R-495-504). Snyder received the MRE sometime after 8/20/2015. ALJ Hann retired. The case was reassigned to ALJ Newman.

On 2/13/2016 Snyder filed applications for hearing on underpaid benefits and being removed from a suit between insurers. ALJ Newman treated the request as an application

to amend Snyder's first application for hearing before ALJ Holley and denied the request. Newman adopted ALJ Hann's Order as his own (R-495) sending it to a third Medical Panel.

On 2/29/2016 the Medical Panel found Snyder's need for a right-shoulder replacement did not result from his injury (R-586-594).

On 6/ 15/ 2016, ALJ Newman ruled the preponderance of evidence showed Snyder's right-shoulder problems were due to preexisting arthritis and not casually connected to the accident dismissing Snyder's request for benefits (R-1132-1142). Snyder appealed to the Labor Commission's Appeals Board (R1146-1162 & 1163-1179).

On 9/21/2016 the Commission affirmed ALJ Newman's Order (R1203-1209).

On October 7, 2016, Snyder filed a Motion for Review with the Appellate Court.

CRONOLOGICAL BACKGROUND AND ISSUES---STATEMENT OF FACT

NOTE: Respondent Discovery documents are bates numbered UPCIGA000001-000555 (R-610-611). Respondent included in the MRE documents it declined to provide Snyder bates numbered to 001164 (MRE-178) and unnumbered documents, including (MRE-179-180). Respondent concealed records.

On 7/21/1999, at the age of 52, Snyder was struck on the right-shoulder by a hammer dropped from 70' (MRE-28-29). The hammer struck Snyder directly and with such force it knocked Snyder down and nearly unconscious (MRE-31). The employee who dropped the hammer was employed by another contractor. From the date of the injury, aside from the shoulder problems associated with the accident and the need for two shoulder surgeries,

Snyder experienced pain in the shoulder, back, neck, arms and fingers all resulting from the injury (MRE 28-33). Those issues persists today (MRE-174).

Following the injury Snyder continued working. When his pain persisted Snyder was sent to Work Care for an examination. X-rays were negative (MRE-29-30). On different occasions at Work Care Snyder was examined by doctors Scheifer, Canfield, Anderson, Archuleta and Teynor (MRE-28-33). All physicians confirmed Snyder's shoulder problems resulted from the accident on 7/21/1999 (R-207). Work Care noted there was painful impingement testing (MRE-31). Work Care noted there were no preexisting injuries (MRE-34). Snyder was referred to physical therapy. Respondent accepted responsibility and paid for all Snyder's treatment.

On 10/14/99 Snyder was referred to Western Neurological for an MRI. The MRI showed no abnormalities in the bones other than a 'single' small cyst. The MRI showed a possible partial tear of the anterior supraspinatus tendon. The suspected small cyst was directly below the tendon tear (MRE-2-3) where the hammer struck Snyder's shoulder. No pre-existing conditions were noted. No arthritis/abnormality were present in the bones. Dr. Halversen, of Western, noted the MRI was otherwise unremarkable (MRE-3). Dr. Anderson of Work Care reviewed the MRI and stated: "***The results of his MRI Scan are very minimal. Therefore I did not feel that he needed to be referred to an orthopedist.***" Dr. Anderson released Snyder (MRE-33). Snyder transferred care to Dr. David Petron, U of U Orthopedics.

On 02/17/00 Dr. Petron read the MRI done on 10/14/99 (MRE-36). Dr. Petron concluded Snyder was positive for impingement and the MRI showed a partial tear. No arthritis was present. Dr. Petron recommended a follow up MRI.

On March 8, 2000, Dr. Petron ordered and examined the new MRI and x-rays. The x-rays showed a **“NORMAL RIGHT SHOULDER”** (MRE-9). The more detailed MRI showed early changes beginning in Snyder’s shoulder, changes not present in the original MRI. Dr. Petron described these as, *“evidence of glenohumoral head narrowing with small spurring about the glanoid --- “Early DJD of the glenohumeral joint”*. This was the first sign of narrowing and spurring, the early onset of degenerative arthritis/ degenerative-joint-disease (DJD) following the injury 8 months earlier (MRE-37). The cyst noted on the first MRI was not present. Dr. Petron referred Snyder to Dr. Greis (MRE-39).

On 03/21/2000 Dr. Greis examined the records including the 10/14/1999 MRI and agreed with Dr. Petron that the impingement had been going on since 07/21/1999, the date of the original injury. Dr. Greis elected arthroscopic subacromial decompression if the pain worsened (MRE-39).

On 09/28/00 Dr. Petron notes Snyder has 5/5, (full strength) in his right-shoulder (MRE-40).

On July 23, 2001, Respondent/Fremont, sent a request to Dr. Petron asking Dr. Petron about Snyder’s neck and shoulder pain and if it were possible Snyder’s symptoms occurred since his employment and the accident. (MRE-41).

On 7/26/2001, Dr. Petron replied the neck pain and shoulder injury were related to the original injury and NO, to occurred since the accident (MRE-43).

On 10/1/2001, Respondent ask Dr. Petron for his opinion on kayaking as the cause of Snyder's shoulder problems. On the same document, Dr. Petron stated his opinion that the need for surgery was a result of the original injury. Dr. Petron signed the document 10/2 (MRE-44). Dr. Petron noted Snyder had surgery scheduled with Dr. Patrick Greis on 10-15-10." and "*surgery would not have been needed absent the injury.*"

On 10/2/2001, doctors Petron and Greis jointly petitioned Respondent to authorize surgery, reaffirming the original injury and progression of events that followed resulted in Snyder's need for surgery (MRE-45). Dr. Greis and Petron confirmed Snyder's current activities, including kayaking, had no impact on Snyder's need for surgery. Dr. Greis and Dr. Petron stated: "*Surgery was recommended long before the kayaking incident.*" Respondent authorized surgery.

On 10/14/2001, Snyder provided Respondent an Authorization to Release Medical Records (Addendum UPCIGA-66-pg.62). Respondent found no record of preexisting problems in Snyder's right-shoulder.

On 10/15/2001, Dr. Greis operated on Snyder's right-shoulder deburring the shoulder joint, impingement and rotator cuff (MRE-106-107). Respondent paid for Snyder's surgery and physical therapy.

On 3/15/2002, Dr. Greis released Snyder with a 7% whole body impairment (MRE-50).

For the next several years Snyder continued to see Dr. Gries on a regular basis to renew his prescription for arthritis meds, for x-rays and shoulder monitoring.

ALJ's Hann and Newman's Interim Order acknowledges Snyder was paid ***"permanent partial disability compensation at the rate of \$339.00 per week. Exhibit R3."*** (R-500). Every two weeks Snyder received \$678.00 Exhibit E2 (MRE-1122). A claimant is to receive 2/3 of his gross wage for temporary total disability (MRE-1111). At an evidentiary hearing before ALJ Holley 9/2/2015 ALJ Holley noted Snyder may have been underpaid benefits, that Snyder should have received \$509.00 per week. ALJ Holley ordered Respondent furnish documentation confirming Snyder was not underpaid (T-85-91). Respondent furnished the Commission R Exhibits confirming it underpaid Snyder but declined to furnish them to Snyder.

The employer whose employee dropped the hammer injuring Snyder was insured by St. Paul. Respondent/Fremont began subrogation with St. Paul to recover expenses for Snyder's injury. Fremont contacted Snyder and asked if he wanted to be included in a suit against St. Paul. Snyder replied he did.

St. Paul employed Dr. Marble to oppose Respondent (R-208). Dr. Marble's opinioned (R-160-166) that Snyder had preexisting degeneration and impingement prior to the injury. No medical record(s) exist to support Dr. Marble's opinion.

No record(s) showing pre-existing degeneration or impingement exist. At the time of the original MRI there was no arthritis or loss of space between the bones (MRE-2-3).

St. Paul employed Dr. Marble (R-208). But in 2014, in a Stipulated Agreement, Ms. Acosta/Respondent claimed Respondent employed Dr. Marble stating: ***"On January 14, 2003, Respondents asked Dr. Stephen Marble to exam Petitioner's medical records and make a recommendation regarding whether future medical treatment for Petitioner's shoulder would be related to the 1999 industrial accident. (MRE 160 to 166)." (R-32).*** Acosta/Respondent went as far as dating its scam, ***January 14, 2003***, in order to get the case before a Medical Panel in its attempt to deny Snyder's claim (R-32).

On 7/2/2003, Fremont, went bankrupt. The claim was taken over by Utah Property Casualty Insurance Guarantee Association, UPCIGA (Addendum UPCIGA-84-pg.63). Respondent/UPCIGA engaged LWP Claims Solutions and Cambridge Integrated Services Group to administer Fremont claims.

Cambridge accepted the accident caused Snyder's shoulder problems and hired the firm of Dunn & Dunn to continue subrogation with St. Paul (R-207).

On 4/30/2003, Cambridge sent a letter to its attorney expressing liability to be clear, that all doctors agreed Snyder's injury was caused by the original accident (R-207).

On 7/7/2003, Respondent sent a letter to St. Paul stating *“we would also be seeking general and special damages on behalf of Mr. Snyder.”* (R-439-440).

In referring to Work Care’s notes and quoting them, Dr. Marble’s states: *“07/27/99 ---No pain along the cervical spine or the right-shoulder joint.”* (MRE-160). Work Care notes for that date, 07/27/99, state: *“PT HAS PAIN IN RT SIDE OF NECK/RIGHT-SHOULDER, AND DOWN RT ARM-RT FINGERS NUMB/TINGLING* (MRE-28-33) and *“He presents today because the right-shoulder area has remained unchanged and continues to produce pain with left lateral neck rotation and also awakens him at night.”* (MRE-29). Dr. Marble diagnosis was made without reviewing any x-ray or MRI. Dr. Marble’s diagnosis refers to a statement he attributes to Dr. Petron on 07/23/03: *“He just finished a kayaking trip and felt this may have aggravated”* (MRE-161). Looking at the 07/23/03 document Marble references (MRE-45) Dr. Petron and Dr. Greis are requesting the insurer authorize surgery. Both doctors state *“Surgery was recommended long before the kayaking incident.*

On 7/18/2003, Respondent’s attorney, Mark Reinkof, inquired if Snyder still wished to be included in a suit against St. Paul. Snyder said he did. Reinkof contacted Snyder again instructing Snyder Respondent’s would not represent him and that the statute of limitations on filing ran in one day leaving Snyder no time to file (R-441-447 tape included).

Respondent argued against Dr. Marble’s 1/14/2003 opinion. Respondent and St. Paul voluntarily tolled the statute of limitations, drafted and signed (four months after they informed Snyder the statute had ran) a PETITION FOR APPROVAL OF A THIRD

PARTY SETTLEMENT AGREEMENT; a release from St. Paul to Respondent for \$21,000.00 signed by both parties on October 18, 2003, approved and signed by the Labor Commission 10/20/2003 (R-450-454). The Third Party Settlement states in part: ***Cambridge Integrated Services contacted Mr. Snyder to determine if Mr. Snyder would be pursuing legal action against Dow, Inc. Mr. Snyder indicated that he did not wish to pursue any such legal action***". (R-451). Respondent deliberately falsified this statement to obtain the settlement.

On 4/21/2014, Snyder learned of the Third Party Settlement between Respondent and St. Paul when he received it, and other documents from the Commission, which Snyder faxed Respondent's on May 9, 2014 (R-446-455).

On 1/6/2004, Petitioner/LWP sent a letter to Dr. Greis to assess his opinion. Dr. Greis opined that Snyder needed long-term pain medication for arthritis (MRE-55). Respondent accepted responsibility and continued paying for meds and treatment.

On 7/7/2005, Snyder saw Dr. Greis. An X-ray was taken which showed moderate glenohumeral osteoarthritis, joint space narrowing and marginal spurring of the humeral head (MRE-13).

On 7/3/2006 Snyder injured his back. On 5/5/2008, Snyder's treating physician and surgeon, Dr. Michael Elkanich, rated Snyder's disability total and permanent for construction work for the remainder of his life beginning on the date of the injury, 7/3/2006. (MRE-707).

On 11/30/2007, Snyder transferred care to Dr. Michael Daubs at the University of Utah Orthopedic Clinic. Dr. Daubs suggested Snyder not return to work to avoid a very large back-surgery that might not be that beneficial (R-708-709). Dr. Daubs rated Snyder totally permanently disabled for life (R-710). Snyder applied for and received a union disability and a Social Security Disability (R-711).

On 1/8/2008, Snyder saw Dr. Greis. Shoulder x-rays were taken and compared to 7/8/2005. Dr. Greis noted Snyder had a little loss in abduction and pain with resistant abduction and was "*Notable for back pain.*" (MRE-56). Snyder continued seeing Dr. Gries on a regular basis for prescription renewals and monitoring his degenerative shoulder.

On 8/13/2012, Snyder saw Dr. Greis to schedule a shoulder replacement (MRE-70-71). Dr. Greis stated Snyder had *end-stage OA of the right-shoulder, which is limiting his ability to do activities*. Dr. Greis scheduled surgery and requested Respondent authorize. Though Respondent opposed Dr. Marble's opinion in 2003 and obtained a Third Party Settlement in doing so, in an attempt to avoid responsibility for the second surgery, Respondent engaged Dr. Marble for a review of his first review.

On 10/30/2012, in his second opinion, Dr. Marble states: *On the date of the injury there was no tenderness along the cervical spine nor the shoulder joint proper.*" (MRE-187). This statement is as false in Dr. Marble's second opinion as his first. Dr. Marble continues: "*1/16/0: Dr. Greis: He records the examinee has some paracervical pain. He states the shoulder pain in more DJD.*" (MRE-168). There is no record of this exam.

With Dr. Marble's 01/14/03, and his 10/30/12, opinions Respondent declined to authorize surgery and sent Dr. Marble's opinions to Dr. Greis, for review.

On 11/9/2012, Dr. Greis acknowledged receiving Respondent's "*packet of information.*" Following his review Dr. Greis faxed Respondent a request to authorize Snyder's shoulder replacement, reaffirming "*Mr. Snyder has been under my care since 2001 and there was no preexisting condition that caused the arthritis to develop at that time.*" (MRE-170a). Respondent rejected Dr. Marble's second opinion, agreed with Dr. Greis, authorized Snyder's shoulder replacement surgery and physical therapy (Addendum UPCIGA-332-pg.64).

On 11/12/2012, Dr. Greis performed a right-shoulder replacement on Snyder (MRE-75-75).

On 4/26/2013, Snyder underwent a caudal injection ordered by Dr. Michael Daubs for low back pain (MRE-98-100) confirming Respondent's knew of Snyder's back issues, and SS disability, and confirming it declined to provide all documents during discovery.

On 10/22/13 Dr. Greis rated Snyder MMI (MRE-104a). Snyder requested a new disability rating and PPD award from Respondent.

On 11/11/2013, as a result of his back injury in 2006, Dr. Daubs fused Snyder's back for 9-10 levels inside a rack of titanium rods and screws and anchored the rack to Snyder's pelvis with screws (R-233).

On 1/13/2014, 2 months following Snyder's back reconstruction, Dr. Michael Hess examined Snyder right-shoulder for Respondent (MRE-179-180). At the time Snyder still had difficulty standing and walking. Dr. Hess noted Snyder was struck on the shoulder by the hammer with such impact it knocked him unconscious (MRE-171). Dr. Hess states Snyder's "work requires a lot of overhead work." Snyder told Dr. Hess he worked as a foreman (MRE-172). Dr. Hess states Snyder's impingement problem is from over-head work (MRE-173). Dr. Hess states: **"He regained functional motion so he can do most activities of daily living as well as his current job with minimal pain. He does note weakness with overhead activity. His job status has changed to more of a foreman so does not require any heavy lifting. He said prior to the injury he could lift up to 150 lbs. overhead. He says now he can only do about 60 lbs. overhead but again, he is able to function with all his activities of daily living as well as his current status."** (MRE-172). Dr. Hess acknowledges heavy lifting isn't required of a foreman and Snyder is a foreman. Following the injury in July 1999, Snyder informed Dr. Hess he could not put weight on the shoulder and still couldn't (MRE-173c). **NOTE:** Dr. Hess states Snyder is still working as a foreman (MRE-172). On Dr. Hess's Office form, Snyder lists his occupation as retired (MRE-173b). When Snyder saw Dr. Hess, Snyder had been on total disability awards from his union and SSI for 6 years. Snyder's back fusion is listed on Dr. Michael Hess's exam on January 13, 2014, (R-173b), two months prior to Hess's examination. **NOTE:** Dr. Hess states the only image studies or x-ray he had of Snyder's shoulder were done 10/22/13, x-rays taken after Snyder's shoulder replacement (MRE-172). Like Dr. Marble, Dr. Hess reached his opinion without reviewing original x-rays or

MRI's. Dr. Hess refused to rate Snyder stating, ***"I will not render an impairment rating unless that is requested."*** (MRE-173.). Respondent, who sent Snyder to Hess for a rating, yet declined to request one and denied Snyder's claim.

On 3/28/2014 Dr. Greis reaffirmed Snyder's need for a shoulder replacement was a result of the original injury (MRE-181).

On 3/28/2014 Snyder saw Dr. Allen College for a disability rating (MRE-174-178). Dr. College agreed with Dr. Greis that Snyder's shoulder injury in 1999, resulted in his need for surgery. Dr. Greis had rated Snyder 7% whole person disabled (MRE-50) for which Snyder received benefits. Dr. College noted this and states ***"9. 18% - 7% equals an additional 11%, which is what Snyder now qualifies for."*** (MRE-372-378)

Snyder engaged an attorney, provided his attorney, all his records and those furnished him during discovery plus the oldest image studies Snyder could obtain and appealed. The case was assigned to ALJ Aurora Holley.

On 10/9/2014 Snyder's attorney sent his copy of the MRE to ALJ Holley (MRE-293).

On 12/9/2014 as required by Utah Administrative Code R602-2-1(H7), Snyder's attorney provided the oldest x-rays films and the film reads available. The read, (MRE-9-B) required by R602-2-1(H7) to be provided by Snyder, is the only document provided for the MRE by Snyder's attorney (R-306-308).

On 12/24/2014, ALJ Holley prepared an Order referring the matter to a Medical Review Panel and sent it to the parties to sign. ALJ Holley's Order acknowledges when Snyder was hit with the hammer it "knocked him to the ground and he nearly lost consciousness." (R-47). When Snyder questioned his attorney why other paragraphs of the Order included false statements of fact made by ALJ Holley or Respondent, including Dr. Hess stating Snyder's shoulder problem was "*...most likely the natural consequence of repetitive activity in a gentleman of 67 years of age, doing heavy overhead work, for a long period of time.*" (R-51), which was not in documents provided Snyder at the time, Snyder's attorney could not answer. When Snyder declined to sign the Order containing the false statements his attorney filed a Motion to withdraw the Direct Medical Panel Referral, "*to present his case to the Court.*" then quit (R-81).

On 3/15/2015 Snyder filed a Memorandum and Motion for Default Judgement in which he included exhibits relating to his back injury in 2006, reconstruction back-surgery and resulting disability including exhibits (R-228-233). Though Snyder had previously given these documents to his attorney to be included as exhibits, this is the first time Snyder offered these documents to the labor Commission as exhibits. AJL Gunnarson denied Snyder's Motion and set a date for an evidentiary hearing (R-283-284). Prior to this ALJ Holley sent her Order and the MRE to a Medical Panel for review. A Medical Panel examination was held at which Snyder presented the exhibits, a second time, exposing Dr. Hess's diagnosis to be fabricated. Judge Holley recalled the exhibits and disqualified the panel.

On 5/18/2015 a hearing was held before ALJ Holley. ALJ Holley granted Snyder's Motion to present the case to the court but treated it as a medical evidence hearing for exhibits going into the MRE. ALJ Holley had predetermined the case would go to a medical panel (T-1-108). At that time Snyder had still not received a copy of the MRE nor was he furnished one at the hearing. At hearing Snyder produced his exhibits a third time, including the exhibits of his back surgeries showing the diagnoses' of doctors Marble and Hess were fabricated. ALJ Holley refused to allow them (T-78-80). To establish his work status Snyder presented Dr. Hess's office admission MRE pgs. 173a – 173d (T-72-74). ALJ Holley allowed these and all of Dr. Hess's fabricated statements to remain in the MRE and disallowed Snyder's exhibits proving them false, exhibits showing Snyder had been disabled in 2006 and hadn't worked since 2007.

Judge Holley's ORDER states: "***On January 14, 2003, Respondents asked Dr. Marble to exam Petitioner's medical records and make a recommendation regarding whether future medical treatment for Petitioner's shoulder would be related to the 1999 industrial accident.***" (R-48). Again, this is false. Dr. Marble was engaged by St. Paul in 2003 to argue against Respondent's position that Snyder's original injury caused all his shoulder issues (R-208).

ALJ Holley allowed Snyder's exhibit (R-207) into the MRE confirming all doctors prior to Dr. Marble opined there were no preexisting arthritis or problems in Snyder's shoulder and the accident caused all of Snyder's problems (T-63-64). NOTE: It never made it in the MRE or subsequent Orders sent to the Medical Panels.

The fourth and fifth time Snyder offered his exhibits showing doctors Marble and Hess's diagnoses' were fabricated was his first and second Interlocutory appeals (R-341-465).

It was first noticed at the hearing, by ALJ Holley, that Respondent underpaid benefits to Snyder in 2002 (T-85-91). ALJ Holley ordered Respondent furnish documentation to confirm. ALJ Holley was replaced by ALJ Hann who adopted ALJ Holley's ruling.

On 9/2/2016, ALJ Hann's Order, and the MRE, were sent to a second Medical Panel. ALJ Hann ordered Respondent provide Snyder the MRE. (R-498-499). ALJ Hann noted in referring to the hammer strike "*the impact knocked the petitioner to the ground*". (MRE-499).

ALJ Hann states: "*Dr. Marble opined that Petitioner's kayaking trip aggravated the Petitioner's pre-existing degeneration in his shoulder and that lead to Petitioner's need for treatment in 2001 with Dr. Petron.*" (R-500). This quote, attributed to Dr. Marble, was fabricated by ALJ Hann. This statement by Hann added a false cause for Snyder's shoulder issues, kayaking.

On 9/16/2015, over 4 months after the evidentiary hearing, Petitioner sent Snyder a copy of the MRE. Petitioner found several documents in the MRE Respondent declined to furnish during discovery. Respondent provided discovery documents bates numbered UPCIGA 000001 through 000555. The MRE included Respondent documents numbered up to UPCIGA-001164 (MRE-178) and un-numbered documents including a letter from

Dr. Hess to Respondent attorney Grace Acosta (MRE-178-180) the last paragraph of which confirms it was a collaborative *“review”* by Dr. Hess and Ms. Acosta. The Hess/Acosta *“review”* contained fabricated diagnoses which Respondent hid from Petitioner by not furnishing it during discovery and refusing to provide the MRE. Petitioner only discovered these months after he was furnished the MRE following it being sent to 2 Medical Panels as statements of fact. Respondent admits withholding documents beyond UPCIGA-555 including Snyder’s back-surgery documents (R-1044).

The knowingly false statements in the Dr. Hess/Acosta review included:

(1) *“Mr. Snyder was a 67 year old at the time of his injury who worked as an ironworker and his job requires a lot of heavy overhead work”* (MRE-179). Snyder was 52 and a foreman at the time of his accident (MRE-28) whose job only occasionally was heavy (MRE-172). At the examination Snyder informed Hess he’d worked most of his career in supervision.”

(2) *...“he had an MRI done shortly after the injury, 3 months, that demonstrated degenerative cysts in the humerus indicative of underlying arthritis”* (MRE-179). There was a *“single” small cyst* noted. No arthritis was present (MRE-2-3). The single cyst was not present on the MRI done 8 months later (MRE-37) or at surgery 10/15/2001, (MRE-106-107).

(3) Respondent states Snyder had *“rotator cuff disease”* (MRE-179). The Medical Panel performed a shoulder strength test on Snyder and found *“Strength grading 5/5 in all muscle groups”*, which includes the rotator cuff (R-589). Dr. Hess’ examination of Snyder

Dr. Hess states ***“He has 5/5 rotator cuff strength.”*** (MRE-171-173). Snyder’s cuff strength was 100%.

(4) Dr. Hess states: ***“it’s most likely that his rotator cuff disease and his shoulder arthritis developed from repetitive activities over a period of years and there is no way, at least in my mind”*** (MRE-179). *Most likely* and *in my mind* are presumptions.

(5) Dr. Hess/Acosta state Snyder’s shoulder problem was ***“...most likely the natural consequence of repetitive activity in a gentleman of 67 years of age, doing heavy overhead work, for a long period of time.”*** (MRE-180). Dr. Hess and Respondent fabricated this. Without the original x-rays or MRI to review, Dr. Hess’s opinion, as he states, is ***“in my mind”***.

Snyder was 52 at the time of the accident, not 67 as Respondent insist. Snyder had a serious back injury July 2006, had not worked since 2007 and had been on SSI Disability since 2008 (R-228-233). Respondent’s agent Ms. Acosta participated in the fabrication of false medical diagnoses and, knowing them to be false included them in the MRE, and sent them to the Medical Panel as fact.

ALJ Hann retired and was replaced by ALJ Newman. ALJ Newman adopted ALJ Hann’s Order as his own (R-495).

On 12/10/2015, Snyder asked ALJ Newman for the R Exhibits Respondent’s were ordered to provide confirming Snyder was underpaid PPD benefits (R-480).

On 12/22/2015, Respondent provided the R exhibits ordered by ALJ Holley showing Snyder had been underpaid PPD benefits (MRE-507-528).

On 2/13/2016 Snyder filed an application for hearing on underpaid PPD benefits and Respondent removing him from a suit between insurers.

On 6/15/2016, ALJ Newman denied Snyder's application reasoning Snyder should have included the issues in his application for the evidentiary hearing 5/18/2015 (R-1135) though Snyder wasn't provided documentation confirming he was underpaid until after Newman got the case. The Hann/Newman Interim Order, referencing the hearing before ALJ Holley, states: "***The parties agreed at the hearing that the Petitioner is not working and that he was not working at the time of Dr. Hess' evaluation.***" This statement is misleading (R-1137). At the hearing Snyder's exhibits showed his back was fused inside a rack of titanium rods and screws on 11/11/2013 (R228-233). At the hearing Snyder presented documents from doctors Elkanich and Daubs and from the Social Security Administration confirming that he'd been disabled in 2006, hadn't worked since 2007 and had received union and SSI disability benefits since 2008 (R-228-233): At Dr. Hess's examination 2 months later Snyder still had difficulty walking and standing. Snyder informed Dr. Hess that the scar running up his back and his difficulties standing were the result of his back reconstruction 2 months earlier.

On July 7, 2015, ALJ Newman sent a MEMORANDUM to Dr. Holmes, chairman of the Medical Panel, stating: "***Enclosed you'll find all of the available records, radiological films and my Interim Findings of Fact, Conclusion of Law and Order (Interim Order). Please note you are bound by the Findings of Fact, Conclusion of Law and Order.***" (R490-491). Newman ordered the Panel regard the MRE, including the

diagnoses' of doctors Hess and Marble, as fact; the panel did, quoting both physicians word-for-word in its report. The x-rays from Work Care (MRE-29-30), the original MRI from Western Neurological 3 months after the injury (MRE-2-3) showing no arthritis, the x-rays from the U of U, 8 months after the injury, showing a normal right-shoulder (MRE-8) were not included in the records sent the panel. Neither was the ruling by ALJ Holley stating all physicians prior to Dr. Marble agreed Snyder's injury was responsible for his right-shoulder problems. (T-63-64).

On 3/15/2016, The Medical Panel issued its report. It opinioned Snyder had "**2. Chronic age and activity related right shoulder degenerative arthritis**" (R-592). And, Snyder "**...worked as a steel/Ironworker, working mostly as a foreman...**" (R-588).

Dr. Hess noted Snyder was a foreman whose job did not require heavy lifting (MRE-72). The affidavit of Lauara Snyder confirms Snyder worked as a supervisor (R1037-1038).

The Medical Panel acknowledges under Activities and daily living Snyder gave up kayaking in 2006 and that Snyder "**He likes to do kayaking and rowing rafts on rivers but only did it 1-2 times a year.**" (R-587). The Medical Panel acknowledges rowing can cause shoulder discomfort, (R-593). Nowhere in its report does it find rowing caused or contributed to Snyder's degenerative arthritis or address how long Snyder had rafted. Snyder's rafting began in 1998 when he met his wife (R-1038) who introduced Snyder to it. By the time Snyder was injured on 7/21/1999 he could have rafted at most 3 times. Snyder's rafting

consisted of motoring, then rowing through larger rapids perhaps for 60 seconds and inflatable kayak until 2006 (T-101-104), (S-49-pg.67 & S-50-pg.68).

The Medical Panel states: *“Mr. Snyder clearly had significant degenerative arthritis of the right-shoulder joint by the time he was bruised and abraded by the hammer at work.”* (R-592). The original MRI on 10/14/99 found just the opposite *“No abnormal signals are noted in the bone other than a small degenerative cyst... This cyst is ... directly below the suspected tear in the supraspinatus tendon.”* (MRE-2-3). There was no arthritis only an impingement, a suspected tear and a small cyst directly below the tendon tear where the hammer struck Snyder. The Medical Panel made its diagnosis without referencing a single x-rays or MRI (R-586-694), knowing the original doctors had these image studies and found no arthritis. Though Snyder produced films of the oldest x-rays available to the Labor Commission 7/9/14 (R-43-44), the Medical Panel fails to reference any x-ray films or MRI. The “x-ray films”, Snyder provided, are nowhere in the Record (R-1-1209) confirming the Medical Panel never reviewed them.

The Medical Panel accepted Dr. Hess’ diagnoses as fact and found that Snyder had significant degenerative arthritis in his shoulder at the time of the accident (R-592) and that the accident did not contribute to or aggravate Snyder’s preexisting shoulder arthritis (R-593-594). The panels finding of significant degenerative arthritis at the time of the injury is unsupported and at best a presumption.

Dr. Holmes, recorded Snyder's exam. Snyder made two requests for a copy of the recording to rebut the Panel's findings (R-595 & 738). ALJ Newman denied Snyder's requests (R-739).

On 3/15/2016, ALJ Newman sent Snyder a copy of the Medical Panel report instructing Snyder his Objection to it could be 10 pages (R-585).

On 4/4/2016, Snyder filed a 10 page OBJECTION including exhibits from the MRE, and for the sixth time the evidentiary exhibits, showing doctors Marble and Hess's diagnoses' were false (R839-930).

On 6/15/2016, ALJ Newman issued an Order affirming the Panel's report after considering only the first 5 pages of Snyder's 10 page Objection stating Snyder's Objection should have been double spaced, (R-1132-1142). ALJ Newman never inform Snyder his Objection was to be double spaced only that it could be 10 pages (R-585). ALJ Newman declined to consider Snyder's application for Hearing's on underpaid benefits and being removed from a suit reasoning Snyder was attempting to amend his original "application for hearing". At the hearing before ALJ Holley 5/18/2015 it was ALJ Holley who discovered Snyder may have been underpaid (T-12-15). ALJ Holley instructed Respondent's to furnish documentation to confirm. Snyder received the documents only after requesting it from ALJ Newman 12/10/2015 (T480-485). Newman erred. It was impossible for Snyder to have known prior to the hearing. Newman rejected ALL Snyder's exhibits, including those from the MRE, and the exhibits Snyder had tried on numerous occasions to have included, stating: "*Any new evidence should have been filed at the time*

of the hearing” (R1135) though it’s established Snyder had provided that same evidence at hearing (T1-108); in a Memorandum and Exhibits for Summary Judgment 4/17/15, (R179-259); an Interlocutory Appeal 10/15/2015, (R341-430) which included disability certificates from doctors, Social Security and operative reports including an x-ray (R412-419); a Interlocutory Appeal with exhibits 10/19/2015 (R431-465); Plus, ALJ Holley had granted a Motion to present the case before the Court (R-81) at which time Snyder presented the same documents (T-1-108). ALJ Newman failed to review the record and denied all Snyder’s exhibits and his Objection. Though the Medical panel found rowing might only cause shoulder discomfort Newman stated ***“The Medical Panel found that external factors contributed to the right shoulder condition, including: Petitioner’s extensive work history as an iron and steel worker and Petitioner’s participation in rowing and kayaking.”*** (R1139). ALJ Newman statement on rowing inserted into the record a false cause of Snyder’s shoulder arthritis, rowing/kayaking.

On 7/1/2016, Snyder appealed Newman’s Order (R1146-1162).

On 9/21/2016 the Commission issued its Order Affirming ALJ’s Decision (R1203-1209). The Commission acknowledges all agreed the impingement is a result of the accident but refers to only one of Snyder’s treating physicians, Dr. Greis who offer’s ***“Some evidence of medical connection between Snyder’s current right-shoulder condition and the accident in the form of Dr. Greis’s opinion but such evidence is countered by the preponderance of the evidence. The medical panel determined Mr. Snyder had significant degenerative changes in his right shoulder even before the work***

accident and that his work injury did not contribute to his degenerative arthritis or need for arthroplasty. The panel's opinion on this point is supported by that of Dr. Hess, who noted that Mr. Snyder's MRI results showed degenerative changes apart from the impingement syndrome resulting from the accident.” (R1207) The Commission Affirmed ALG Newman's order (R1208).

SUMMARY OF ARGUMENT

Mr. Snyder met the causation requirements thus Mr. Snyder is entitled to receive compensation benefits because he was injured during the course of his employment. The Commission erred in affirming the ALJ's order because when the record is reviewed in its entirety, including the evidence from the MRE, the hearing and Snyder's "relevant" exhibits, all clearly show the contributing cause of Snyder's right-shoulder problems was Snyder's 7/21/1999 injury. Thus, the Commission's action in affirming the ALJ's decision constitutes an abuse of discretion and should be reversed.

ARGUMENT

(1) THE LABOR COMMISSION ERRED IN DISALLOWING SNYDER'S REQUEST FOR HEARING ON UNDERPAID BENEFITS AND BEING REMOVED FROM A SUIT BETWEEN INSURERS.

ALJ Newman disallowed Snyder's request for hearing on underpaid benefits and being removed from a suit between insurers reasoning it was Snyder's second hearing application. However, a review of the record shows that it was at the hearing that ALJ Holley first noticed that Snyder may have been underpaid PPD benefits and advised Snyder it would be a "wise" to file another application for hearing and ordered Respondent to

furnish documents to confirm. Respondent admitted it may have underpaid Snyder's benefits (T-85-91 & 99). Snyder didn't receive the R Exhibits until he requested ALJ Newman have Respondent's furnish them (T-480-482). They were mailed 12/21/2015 (T-507). The Labor Commission's action in affirming the ALJ's decision denying Snyder a hearing on underpaid benefits constitutes an abuse of discretion and should be reversed.

On the second issue, Snyder claimed Petitioner committed fraud when it removed him from a suit between Insurers. ALJ Holley declined to consider arguments on this (T-1-108). The Commission affirmed in its 5/16/2016 ORDER DISMISSING MOTION FOR REVIEW "*Mr. Snyder has been advised that neither the Labor Commission nor the Appeals Board has jurisdiction to adjudicate his allegations of contract fraud...*" (T-1206), leaving the issue to be decided by this court.

On the third issue, the Commission's denial of Snyder's right to additional PPD benefits, the Commission bases its denial on preponderance of evidence without considering all treating physicians opinions, basing its opinion on diagnoses' fabricated by Respondent and Dr. Hess, and on the Medical Panel's presumptions these are accurate.

HISTORY

The employer whose employee dropped the hammer injuring Snyder was insured by St. Paul. Respondent/Fremont began subrogation with St. Paul to recover expenses for Snyder's treatment and surgery (T-438). Respondent asked Snyder if he would like to be included. Snyder said yes.

On 1/24/2003, St. Paul informed Respondent it had engaged Dr. Marble and Dr. Marble found Snyder had been diagnosed with pre-existing degeneration and chronic impingement (T-208). At the time of the original MRI there was no arthritis (MRE-2-3). Dr. Marble's opinion (T-209-215) that Snyder was diagnosed with pre-existing degeneration and impingement is unsupported and contrary to every doctor who had examined him (T-207). ALJ Holley agreed (T-63-64).

On 7/2/2003, Fremont, went bankrupt. The claim was assumed by Utah Property Casualty Insurance Guarantee Association, UPCIGA (Addendum UPCIGA-84-63). UPCIGA engaged LWP Claims Solutions and Cambridge Integrated Services to administer Fremont's claims. Cambridge accepted the accident caused Snyder's shoulder problems and hired the firm of Dunn & Dunn to continue subrogation with the Insurer, St Paul. On 3/30/2003, Cambridge sent a letter to its attorney expressing it saw liability to be clear, that Snyder's injury was caused by the original accident and, that all the doctors agreed (R-207).

On 7/7/2003, Respondent sent a letter to St. Paul stating "***we would also be seeking general and special damages on behalf of Mr. Snyder.***" (R-439). St. Paul engaged doctor Marble to counter Petitioner's physicians---Work Care's 5 and doctors Greis and Petron. (R-208).

In referring to Work Care's notes, Dr. Marble's states: "***07/27/99 ---No pain along the cervical spine or the right shoulder joint.***" (MRE-160). However, Work Care's records for that day state: "***PT HAS PAIN IN RT SIDE OF NECK/RIGHT SHOULDER, AND***

DOWN RT ARM-RT FINGERS NUMB/TINGLING (MRE 28) and ***“He presents today because the right shoulder area has remained unchanged and continues to produce pain with left lateral neck rotation and also awakens him at night.”*** (MRE-29). Dr. Marble refers to a statement attributed to Dr. Petron on 07/23/03. Dr. Marble quotes Dr. Petron as saying ***“He just finished a kayaking trip and felt this may have aggravated”*** (MRE-161). Looking at the 07/23/03 document (MRE-45) Dr. Petron and Dr. Greis are requesting Petitioner authorize surgery. Both state ***“Surgery was recommended long before the kayaking incident.”***

On 7/10/2003 Respondent’s attorney, Mark Rienkof, sent Snyder a letter asking again if Snyder wanted to be a party to suit (S-6-pg.65). Snyder left a message for Mr. Reinkof that he did.

On 7/18/2003, Mr. Reinkof, called Snyder and informed Snyder they would not represent him and the statute of limitations on filing ran in one day leaving Snyder no time to file (R-441-447).

Respondent and St. Paul tolled the statute of limitations, drafted and signed (four months after they informed Snyder the statute had ran) a PETITION FOR APPROVAL OF A THIRD PARTY SETTLEMENT AGREEMENT; a release from St. Paul to Respondent in the amount of \$21,000.00 signed by both parties on 10/18/2003, approved and signed by the Labor Commission 10/20/2003, (R-219-222). The Agreement states in part: ***Cambridge Integrated Services contacted Mr. Snyder to determine if Mr. Snyder would be pursuing legal action against DAW, Inc. Mr. Snyder indicated that he did not***

wish to pursue any such legal action". (R-220). Respondent and St. Paul tolled the statute then falsified this statement to obtain a settlement and deny Snyder his right to be included.

On 4/21/2014, Snyder first learned of the Agreement when he received it and other documents from the Commission which Snyder faxed to Respondent 5/9/2014 (R-448-455).

Respondent's action constitutes fraud as provided by Utah Statute CV 1801.

1. UPCIGA and its agent Mark Reinkoff made false statements about an important fact; and
2. Mr. Reinkof made these statements knowing them to be false without regard for the truth; and
3. Mr. Reinkof intended that Appellant, Raymond Snyder, would rely on the statements(s) and
4. Raymond Snyder reasonably relied on the statement(s); and
5. Raymond Snyder suffered monetary damages as a result of relying on the statement(s)

Whenever any officer of the court commits fraud during a proceeding in court, he/she is engaged in "fraud upon the court". In *Bullock v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents,

false statements or perjury...where a judge has not performed his/her judicial function — thus where the impartial functions of the court have been directly corrupted.”

The Labor Commission in its Order Affirming ALJ’s Decision in referring to Snyder’s application for a hearing on the matter states:”...*neither the Commission nor the Appeals Board has jurisdiction to adjudicate his allegation of contract fraud...*” (R-1206). The Commission leaves the matter to be resolved by this court.

(2) THE LABOR COMMISSION ERRED IN ADOPTING THE MEDICAL PANEL REPORT WHERE IT WAS INCOMPLETE, FACTUALLY ERRONEOUS, DECLINED TO CONSIDER ALL AVAILABLE EVIDENCE AND INCLUDED EVIDENCE FABRICATED BY RESPONDENT

By adopting the Medical Panel’s report without making a full independent evaluation of the facts and evidence then finding the preponderance of evidence shows Snyder’s shoulder condition was unrelated to the industrial accident, the Commission’s determination is strewn “with varying degrees of strictness, failing anywhere between a review of ‘correctness and a broad ‘abuse of discretion standard.” *Drake v. Industrial Commission*, 939 P.2d 192 (Utah 1977).

Following his shoulder replacement Snyder requested an additional PPD award. Respondent referred Snyder to its doctor to save Snyder the expense (S-48-pg-66).

On 1/13/2014, Snyder was seen by Respondent’s doctor, Dr. Hess, for a rating (MRE-171-173). Though he had no copy of the MRI Dr. Hess stated an MRI obtained 10/14/99 showed degenerative cysts. (MRE-171). There was a single small cyst (MRE-2-3); That Snyder was still working; That Snyder worked overhead with 150 lbs. before the accident; That Snyder’s job had changed to a foreman. Dr. Hess acknowledges for his

review he only reviewed an x-ray taken 10/22/13 after Snyder's shoulder replacement. Dr. Hess states Snyder is still working but his job didn't require heavy lifting. Dr. Hess declined to give Snyder a disability rating unless Respondent requested one (R-171-173). Respondent declined to request one and denied Snyder PPD benefits.

On 4/15/2015, long before he was given a copy of the MRE, Snyder tried to include exhibits into the record in his Memorandum for Supporting an Order for Default Judgment (R-114-176) Exhibits including (R-228-238) showing Dr. Hess's examination findings were fabricated. Snyder introduced exhibits showing he'd not worked in 6 years, had undergone back reconstruction surgery 11/12/2013, had been on Social Security Disability since 2008, and had informed Dr. Hess on March 24, 2014 (R-225-227).

On 6/26/2014, unbeknown to Snyder (it wasn't provided with discovery), Respondent attorney, Grace Acosta, and Dr. Hess reviewed and embellished the findings of Dr. Hess's first exam in a letter from Dr. Hess to Ms. Acosta (MRE-179-180). It states: Snyder had "*rotator cuff disease*". The Medical Panel performed a shoulder strength test on Snyder and found "*Strength grading 5/5 in all muscle groups*", which includes the rotator cuff (R-589). Dr. Hess' examination of Snyder Dr. Hess states "*He has 5/5 rotator cuff strength.*" (MRE-173). Snyder's rotator cuff strength was 100%.

Dr. Hess and Acosta state Snyder's shoulder problem was "*...most likely the natural consequence of repetitive activity in a gentleman of 67 years of age, doing heavy overhead work, for a long period of time.*" (MRE179). Snyder was not 67 he was 52 at the time of the accident (MRE-28) Dr. Hess never reviewed the original x-rays or MRI's

nor does he reference the reviews done by the original 5 treating physicians from Work Care who had the image studies and found no arthritis, treating physicians Petron, and Greis, from the U of U, or Dr. Halverson of Western, all of whom reviewed the original x-rays and the first MRI and found no arthritis. Yet Dr. Hess, who admits he had only an image study done on 10/22/13, after Snyder's shoulder replacement and 14 plus years after the accident finds underlying arthritis in Snyder's right-shoulder at the time of the accident (MRE-179). Dr. Hess states: *"it's most likely that his rotator cuff disease and his shoulder arthritis developed from repetitive activities over a period of years and there is no way, at least in my mind"* (MRE-179).

On 5/18/2015, at the evidentiary hearing before ALJ Holley, Snyder still had not received a copy of the MRE nor was he provided one at hearing (T-35-36). At the hearing ALJ Holley stated no medical records would be excluded from the MRI (T-34). Snyder tried to introduce the same medical Exhibits proffered in his Motion for Default. ALJ Holley allowed Dr. Hess's office records but declined the medical records confirming Snyder had been disabled since 2006 confirming Dr. Hess's exam findings were fabricated. This violates the Utah Administrative Code R602-2-1(H1-3) which states:

H. Medical Records Exhibit.

1. The parties are expected to exchange medical records during the discovery period.

2. Petitioner shall submit all relevant medical records contained in his/her possession to the respondent for the preparation of a joint medical records exhibit at least twenty (20) working days prior to the scheduled hearing.

3. The respondent shall prepare a joint medical record exhibit containing all relevant medical records. The medical record exhibit shall include all relevant treatment records that tend to prove or disprove a fact in issue. Hospital nurses' notes, duplicate materials, and other non-relevant materials need not be included in the medical record exhibit.

Snyder furnished exhibits through his attorney.

B. Rule 402

¶ 77 Under rule 402, "other acts" evidence, like all evidence, must be relevant or it is not admissible. Utah R. Evid. 402 ("All relevant evidence is admissible.... Evidence which is not relevant is not admissible."). Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Utah R. Evid. 401. Thus, to be admissible, "other acts" evidence must tend to prove some fact that is material to the cause of action alleged—other than the defendant's propensity to engage in actions in conformity therewith. *Decorso*, 1999 UT 57 at ¶ 22, 993 P.2d 837. Snyder's exhibits were wrongfully denied. They must be considered

During Discovery Respondents furnished Snyder documents bates numbered UPCIGA000001-000555 stating it was everything (R-1020-1021). Respondent included in

the MRE documents numbered to UPCIGA001164 (MRE-178) and un-numbered pages including (MRE-179-180) without Snyder knowing documents beyond UPCIGA-555 existed. Respondent's falsified its declaration that only 555 documents existed.

“Judges and attorneys are officers of the Court. A State judge is a state judicial officer, paid by the state to act impartially and lawfully. A federal judge is a federal judicial officer, paid by the federal government to act impartially and lawfully. State and federal attorneys fall into the same general category and must abide by the rules. A judge is not the court.” *People v. Azjic*, 88 Ill.App.3d 477,410 N.E.2d 626 (1980).

Whenever any officer of the court commits fraud during a proceeding in court, he/she is engaged in “fraud upon the court”. In *Bullock v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated “Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury...where a judge has not performed his/her judicial function — thus where the impartial functions of the court have been directly corrupted.”

“Fraud upon the court” has been defined by the 7th Circuit Court of Appeals to “embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial tasks of adjudging cases that are presented for adjudication. “*Kenner v C.I.R.*, 387 F.3d 689(1968); 7 *Moore's Federal Practice*, 2d ed., p. 512, 60:23. The 7th Circuit further stated “a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final.”

Fabrication of evidence by a party in which an attorney is implicated, will constitute fraud on the court. *Id.* At 1338 (citing *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 64 S.Ct. 997(1944).

The Supreme Court has ruled and has reaffirmed the principle that “justice must satisfy the appearance of justice”, *Levine v. United States*, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954).

Respondent and its agents Dr. Hess and Ms. Acosta committed fraud by fabricating a profile to explain Snyder’s shoulder issues, a profile in which Snyder was 67 at the time of the accident, was still working and worked all those years at heavy over-head work, then knowing these statements false included them in the record, with the intent to have benefits due Snyder denied, which documents the Commission and Medical panel relied and in so doing denied Snyder’s disability benefits.

ALJ Holley ordered Respondent furnish Snyder a copy of the MRI. ALJ Holley was replaced by ALJ Hann who ordered Respondents furnish Snyder a copy of the MRE and sent the case and MRE to a second Medical Panel for review. Snyder received the MRE sometime after 9/16/2015 4 months after the hearing in violation of the Utah Administrative Code R602-2-1(H5) which states:

5. The medical record exhibit prepared by the respondent shall be delivered to the Division and the petitioner or petitioner's counsel at least ten (10) working days prior to the hearing.

The Labor Commission erred in not allowing Snyder to enter all his relevant medical exhibits into the MRE and in allowing Respondent's and its ALJ's to enter fabricated documents and statements of fact into the record. All Snyder's exhibits must be considered in accordance with Utah Administrative Code R602-2-1(H1-3) and Utah Rules of Evidence 401 and 402.

Respondent, in its RESPONSE TO PETITIONER'S OBJECTION TO MEDICAL PANEL REPORT... 4/8/2016, acknowledges Snyder's attorney, Mr. Atkin, as required by Utah Admin Code R602-2-1(H7), supplemented the MRE with a single document 9B (R-1042). Respondent's state Snyder added 7 pages at the evidentiary hearing (R-1043). These 7 are the only pages Respondent did not object to and allowed by ALJ Holley. Snyder's attorney was inadequate. Respondent explains why it didn't furnish all documents during discovery stating: **Petitioner forgets that Respondent collects more records than actually end up in the MRE....When Respondent collected medical records on Petitioner, many records contained references to other medical treatments....conditions including prostate cancer and back surgery, etc....These records are not relevant to the case and were correctly excluded from the MRE. (R-1044).** Snyder's back issues and resulting disability, years before his examination by Dr. Hess, were relevant. Respondent purposefully concealed those and, with Dr. Hess, fabricate evidence and inserted it into the MRE. Snyder's back injury records would have exposed Respondent fabricated evidence. Knowing its evidence was false, Respondent included it in the MRE and excluded Snyder's medical exhibits exposing their diagnoses'

to be fabricated. Just as it hid documents of Snyder's back-surgery, Respondent hid or destroyed the opinions of the 5 treating physicians for Work Care all of whom agreed Snyder's shoulder issues resulted from his injury on 7/21/1999 (R-207).

Though the Medical Panel found Snyder still had decreased right-finger strength (R-589) it ignored it and other documented, accident-caused health issues including Snyder's upper-back, neck, right-arm, right-hand pain and numbness (MRE-28-33, 41, 43, 56) that persist to date (MRE-172-173). The Panel failed to review the complete record and failed to consider all available evidence.

(3) THE LABOR COMMISSION ERRED IN ALLOWING FABRICATED STATEMENTS BY ALJ'S HANN AND NEWMAN INTO THE RECORD, AS TESTIMONY, ADDING A CONTRIVED CAUSE FOR SNYDER'S RIGHT-SHOULDER CONDITION: ROWING AND RAFTING.

ALJ Hann's Interim Order 9/2/2015 states: *"Dr. Marble opined that Petitioner's kayaking trip aggravated the Petitioner's pre-existing degeneration in his shoulder and that lead to Petitioner's need for treatment in 2001 with Dr. Petron."* (R-500). This false quote, attributed to Dr. Marble, was contrived by ALJ Hann. It added a false cause for Snyder's shoulder problems to the record.

ALJ Newman's FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER, states: *"The evidence shows that Petitioner's preexisting shoulder condition was due to other factors including Petitioner's work history as an iron and steel worker, as well as Petitioner's participation in rowing, rafting and kayaking. Therefore the Court shall*

dismiss Petitioner's claim." (R-1040). This diagnosis is manufactured. It's nowhere in the record. The Medical panel found rowing could only cause shoulder discomfort (R-593).

The insertion of false evidence into the record cannot not be tolerated. Invalid "Findings" *cannot* result in valid "Conclusions of Law." ALJ's Hann and Newman's action's in inserting manufactured statements attributed to physician(s) constitutes an abuse of discretion. It should be noted Snyder rafted, at most, a couple of times a year (R-588) and did so with a motor (T-102 & S-49-pg.67).

The Commission erred in allowing the ALJ's false evidence/testimony.

(4) THE LABOR COMMISSION ERRORED IN DENYING SNYDER'S PPD BENEFITS REASONING THE PREPONDERANCE OF EVIDENCE SHOWED IT DID; WHEN IN FACT THE PERPONDERANCE OF EVIDENCE SHOWS THAT MR. SNYDER'S RIGHT-SHOULDER PROBLEMS WERE THE RESULT OF HIS WORK ACCIDENT:

In affirming the ALJ's Order, the Commission erred in considering only Dr. Greis's opinion as *"some evidence of a medical casual connection between Mr. Snyder's current right shoulder condition and the accident..."* (R-1207).

On 7/26/01 Dr. Petron sent a letter to Respondent's stating *"It is my opinion his shoulder injury and neck pain is related to the initial injury date of 7/21/99."* (MRE-43).

Following Dr. Greis's request of Respondent to authorize surgery, Respondent balked and sent a letter to Dr. Petron on 10/1/2001, asking *"Would the right shoulder acromioplasty have been needed at this point absent the trauma of the accident?"* On, 10/2/2001 Dr. Petron answers *"No"*. To *"Please verify if there any preexisting contributing to the*

diagnosis.” Dr. Petron answers “No”. (MRE-44). The verification was also signed by Dr. Greis. Both doctors’ Petron and Greis were treating physicians with all available current and past image studies on which to base their opinions. Their diagnoses’ were based on fact, not presumption, nor were they fabricated.

Following his accident Snyder was examined by doctors Scheifer, Canfield, Anderson, Archuleta and Teynor of Work Care (MRE-28-34). All the Work Care physicians confirmed Snyder’s shoulder problems resulted from the accident on 7/21/1999 (R-207). Work Care noted there was pain in Snyder’s shoulder, neck, back, right arm and fingers (MRE-28-34). Work Care noted that following the injury there was painful impingement testing (MRE-31). Had Work Care physicians not agreed the accident caused Snyder’s right-shoulder problems Respondent would have disallowed Snyder’s claim from the beginning. Work Care physicians were treating physicians with current x-rays and MRI’s on which to base their opinions. Their diagnoses were based on fact, not on presumption, nor were they fabricated.

ALJ Holley over-ruled Respondents objection declaring all physicians prior to Dr. Marble agreed (the original 8 treating physicians) that Snyder’s right-shoulder problems resulted from the injury (T-63-64). Respondent declined to include this in the record or MRE. It was never considered by the Medical Panel. ALJ Hann replaced ALJ Holley and accepted Holley’s rulings (R-496-498). ALJ Newman replaced ALJ Hann and adopted Hann’s Order as his own (R-495). In denying Snyder’s claim, Newman and the Appeals Board erred in ruling Dr. Hess and the 2 panel’s doctors’ opinions considered against only

Dr. Gries's opinion was a preponderance of evidence favoring Respondent. ALJ Newman and the Commission failed to review the record. Clearly, the preponderance of evidence, the 8 treating physicians prior to Marble, then Dr. College's findings, confirm 9 physicians' agree Snyder's need for a right-shoulder replacement was the result of the original accident.

On 10/14/99, when Snyder's pain persisted, Work Care referred Snyder to Western Neurological for an MRI. The MRI showed no abnormalities in the bones other than a single small cyst directly below a suspected anterior supraspinatus tendon tear where Snyder had been struck by the hammer. No preexisting conditions were noted (MRE-2-3). No arthritis was present in the shoulder. Dr. Mark Anderson of Work Care reviewed the MRI and stated: "*The results of his MRI Scan are very minimal. Therefore I did not feel that he needed to be referred to an orthopedist.*" (MRE-32). Dr. Anderson released Snyder (MRE-32). Doctors Halversen and Anderson were treating physicians', reviewing a current MRI on which to base their diagnoses. Their diagnoses were based on fact, not presumptions, nor were they fabricated.

On 4/30/2003, Respondent's, referencing Snyder's right-shoulder, state "*...the doctors have all related the injuries to the accident.*" (R-207). Arguing that all doctors Snyder had seen to that point, Respondent obtained a Third Party Settlement (R-219-222). Respondent's themselves acknowledge all Snyder's doctors, to this point, 5 at Work Care, 2 at the University of Utah Clinic and 1 at Western Neurological, a total of 8, contribute Snyder's shoulder problems to his work injury on 7/21/1999 (R-207). These diagnoses were based on fact, current x-rays, MRI's, not presumption, nor were they fabricated.

Unlike the treating physicians, all of whom had current image studies on which to base a logical diagnoses, Dr. Marble had none, Dr. Hess had one taken after Snyder's shoulder replacement surgery and the Medical Panel had none. Without current image studies the Medical Panel physicians offered opinions based on the treating physicians' notes only. Still their opinions contradicted treating physician diagnoses. These diagnoses are suspect and at best are only presumptions.

On his first exam Dr. Hess stated Snyder was still working when in fact he'd been on disability retirement and SS disability for over 6 years. Dr. Hess stated Snyder used to work overhead with 150 pounds but since the accident he'd become a foreman and his job didn't require that (MRE-171-173). No one can work overhead with that weight. The last paragraph of Dr. Hess/Ms. Acosta 'revised' review states: *"I hope that make this clear. If not, then I'd be happy to review this again with you."* (R-180). Clearly Ms. Acosta participated in this review which states: Snyder was 67 years old at the time of his accident, worked all those years at a job that required heavy, repetitive overhead work and these led to Snyder's shoulder problems (R179-180). It's seems the first diagnosis wasn't strong enough for Ms. Acosta who with Dr. Hess collaborated in further embellishing false facts to better fit a profile that Snyder's shoulder problem resulted from too many years of repetitive, heavy, over-head work. Then Ms. Acosta included the second review in the MRE (R-179-180) and refused to provide Snyder copies. Ms. Acosta scrapped Hess's first opinion and inserted hers and Hess's second review in the Stipulated Agreement along with the lie that Respondent's retained Dr. Marble' (R-32) and sent to it ALJ Holley (R-30-38).

It's well documented Snyder was 52 at the time of the accident and worked the majority of his career in supervision, that he was a supervisor at the time of his accident and his job seldom required heavy work.

Respondent's action constitutes fraud as provided by Utah Statute CV 1801.

1. UPCIGA/Respondent and its agent Ms. Acosta made false statements about an important fact; and
2. Acosta made these statements knowing them to be false without regard for the truth; and
3. Acosta intended that the Labor Commission, would rely on the statements(s) and
4. The Commission reasonably relied on the statement(s); and
5. Raymond Snyder suffered monetary damages as a result of Respondent's actions and the Commission relying on those actions(s).

NOTE: Dr. Hess's own records show that following the injury Snyder could not put weight on the shoulder and still cannot (MRE-173c). Dr. Hess's opinion is "*in my mind*" (MRE-179-180). If you turn a blind-eye, Dr. Hess opinion, is at best a presumption. He claims there is underlying arthritis in Snyder's shoulder at the time of the accident (MRE-179). What is underlying arthritis? Respondent would have you believe it's some abnormal ailment that can't be seen on x-rays or an MRI yet it actually exists. If you have arthritis in a shoulder and it causes you shoulder-pain, the shoulder pain results from the underlying

arthritis. Contrary to what Respondent wants you to believe, arthritis can be seen on x-rays and MRI's. It's undeniable, there was no arthritis in the original x-rays and MRI. Treating physicians stated so when they reported the MRI, 3 months after the injury, showed no abnormalities in the bone other than a single small cyst (MRE-2-3).

The Medical Panel was furnished Dr. Hess's report as a statement of fact and asked to render a decision based on it. The Medical Panel was not allowed to see Snyder's medical exhibits showing Dr. Hess's opinions were fabricated. The Medical Panel quotes Dr. Hess's 6/26/14 letter and states: *6/26/14 IME, ME 179: His problem with right shoulder are not a natural consequence of the hammer striking him but most likely the natural consequence of repetitive activity in a 67yo gentleman, doing heavy overhead work for a long period of time. He mentions the MRI findings of cystic degeneration and arthritis only three mo after the injury and states "Those would not have developed in that short period of time."* (R-592). On the same page the Medical Panel offers its opinion and states in *"Evidence of Disease Mr. Snyder clearly had significant degenerative arthritis of the right shoulder joint by the time he was bruised and abraded by the hammer."* They would have us believe that significant degenerative arthritis was present when the Medical Panel reviewed no "films", either x-ray or MRI, and 8 treating physicians viewing original x-rays by Work Care in 1999, the MRI by Western Neurological 3 months later confirmed there was none. No "reasonable mind" would accept this, *Smith v. Mity Lite* 939P.2d 684, 696. (Utah Ct App 1997).

The Commission affirmed ALJ Newman's Order stating: *"the medical panel's conclusions to be persuasive"* and *"therefore concurs with Judge Newman's decision, based on preponderance of evidence, to dismiss Mr. Snyder's claim for benefits."*

The Commission states in its Order Affirming: *On June 19, 2014, he filed an application for hearing seeking benefits, including the cost of shoulder-replacement surgery (R-1203).* For 14 plus years Respondent paid for all of Snyder's shoulder related medical expenses including two surgeries and the *"shoulder-replacement."* Respondent only stopped when it found a physician with whom they could alter facts. The Commission took the easy way out by confirming ALJ Newman's Order without reviewing the record. The Commission declines to make even the most cursory review of the applicable facts. It provides no analysis of fact finding as to how it reached the conclusion that the Medical Panel report was the most persuasive evidence regarding the medical aspects of Snyder's claim. The Commission cannot simply accept and adopt the ALJ's decision without engaging in fact-finding.

In *Nyrehn v. Industrial Commission*, 815 P.2d 241 (Utah 1991) the Utah Court of Appeals has previously informed the Labor Commission that: In order for us to meaningfully review the findings of the commission, the findings must be 'sufficiently detailed and include enough subsidiary facts as to disclose the steps by which the ultimate conclusion on each factually issue was reached.' *Action v. Deliran*, 737 P.2d 996, 999 (Utah 1987) (quoting *Rucker v. Dalton*, 598 P.2d 1336 fact on material issues renders its findings 'arbitrary and capricious' unless the evidence is clear, uncontroverted and capable of only one conclusion.' *Id.* (Quoting *Kinkella v. Baugh*, 660 P.2d. 233, 236 (Utah 1983).

In *Milne truck lines, Inc. v. Public Service Commission*, 720 P.2d. 1373, 1378 (Utah 1986) the Utah Supreme Court clearly articulated the proper standard regarding findings of fact in Orders from Administrative Agencies like the Utah Labor Commission: “The importance of complete, accurate and consistent findings of fact is essential to a proper determination by an administrative agency. To that end, findings should be sufficiently detailed to disclose the steps by which the ultimate factual conclusion, or conclusions of mixed fact and law, are reached . . . , without such findings, this Court cannot . . . [protect] the parties and the public from arbitrary and capricious administrative action.

Additionally, findings of fact are only adequate when they are supported by “substantial evidence” viewed by the record as a whole. Utah Code Ann. §63-46b-16(4)(g). In applying the substantial evidence test, the Court must review the whole record including, “not only the evidence supporting the board’s factual findings, but **also the evidence that fairly detracts from the weight of the board’s evidence.**” *Grace Drilling Co. v. Board of Review*, 776 P.2d 63 (Utah Ct. App. 1989).

Neither ALJ Newman’s Order nor the Commission’s Order Affirming ALJ’s Decision are based on the evidence. The opinions of Dr. Hess and the Medical Panel aren’t based on image studies, x-ray or MRI. In fact, they ignore all 8 treating physician diagnoses’. The Panel’s findings are, at best, presumptive. The Commission erred in even allowing Dr. Hess’s opinion into the MRE on which the Medical Panel presumed was accurate and based its findings.

In *Barron v. Utah Labor Commission* 274 P.3d 1016 (2012) Utah App 80, the Utah Appellate Court states. 18 A presumption is merely a burden-shifting device; it is not evidence.” “The main purpose of presumptions is to shift the burden either of producing evidence or of persuasion□ This does not mean that the fact finder may consider or weigh the presumption as evidence.”” *Massey v. Griffiths*, 2007 UT 10, ¶ 11, 152 P.3d 312 (quoting *In re Estate of Swan*, 4 Utah 2d 277, 293 P.2d 682, 690 (1956). “ ‘A presumption is not evidence of anything, and only relates to a rule of law as to which party shall first go forward and produce evidence sustaining a matter in issue.’ “*Id.* (quoting *Security State Bank v. Benning*, 433 N.W.2d 232, 234 (S.D.1988).

Snyder timely appealed being removed from a lawsuit between insurers by what amounts to fraud upon the court. There is no statute of limitation on bringing a claim based on fraud upon the court. If there were, Respondents ongoing actions tolled the statute.

“In the 8th Circuit case of *Treanor v. MCI Telecommunications, Inc.*, the court explained that the continuing-violations doctrine "tolls [freezes] the statute of limitations in situations where a continuing pattern forms due to [illegal] acts occurring over a period of time, as long as at least one incident ... occurred within the limitations period.”[13]

(5) THE COMMISSION ERRED IN HOLDING SNYDER TO THE SAME STANDARD AS A QUALIFIED MEMBER OF THE BAR.

“As a general rule, a party representing himself will be held to the same standard of knowledge and practice as any qualified member of the bar, [yet the Courts] “have also

cautioned that ‘because of his lack of technical knowledge of the law and procedure [a layman acting as his own attorney] should be accorded every consideration that may be reasonably indulged,” *Nelson v. Jacobsen* 669 P.2d 1207, 1213, 1983 Utah LEXIS 1150. *14 (Utah 1983)(internal citations omitted; second alteration original).

ALJ Newman instructed Snyder his Objection to the Panel’s report could be 10 pages (R-585) then rejected everything beyond the first 5 pages of Snyder’s 10 page Objection, and all Snyder’s exhibits, reasoning Snyder’s Objection should have been double spaced (R-1132-1142). Snyder, pro se, followed Newman’s instructions exactly unaware there was a double-space requirement. It could be argued ALJ Newman baited Snyder. In his Motion to Review Snyder argued, Utah Administrative Code R602-2-2(K)(d) allows a memorandum to exceed the page limit if permission is obtained (R-1167-1168). Given Snyder’s pro se status, his following Newman’s instructions exactly and Snyder’s “lack of technical knowledge of law and procedure” ALJ Newman erred in holding Snyder to “the same standard of knowledge and practice as a “qualified member of the bar.”

The Commission’s Appeals Board reasoned that only the pages beyond page 10 of Snyder’s Objection were disallowed (R-1188) and that Snyder made the same argument over-and-over raising nothing new beyond the 10 pages. NOTE: Snyder’s Objection was only 10 pages of which only 5 pages were allowed. In his 10 page Objection (R-835-844) Snyder’s Statement of Facts ran from R-835-841, 7 pages, after which his argument began. **Snyder’s Argument was never considered.** Clearly the Commission declined to review

Snyder's Objection. Petitioner is pro se. It's evident by the manner in which he's been battered by the Respondent's and Commission, Snyder is out-of-his-element.

Snyder followed ALJ Newman's instructions exactly. Given this and his pro se status, Snyder should have been given the benefit of allowing his 10 page Objection.

Snyder respectfully request the court allow him "every consideration that may be reasonably indulged."

CONCLUSION

The Labor Commission's denial of Snyder's benefits relies on Respondent's false and manufactured statements that Snyder was 67 at the time of his accident, whose work was repetitive, heavy and overhead and the Labor Commission agents' made-up statements that Snyder's rowing and kayaking contributed to his right-shoulder problems, and the Commission and Medical Panel ignoring the accident caused Snyder other problems including upper-back, neck, right-arm, right-hand pain, numbness, and weakness, which still exist.

The Commission may well have wanted to deny Snyder's claim for benefits based on the panels conclusion that Snyder had "*Chronic age and activity related degenerative arthritis, ... at the time of the accident*" but they couldn't produce a single document supporting this. Instead the Commission based its ruling on the preponderance of doctors stating so, even though those opinions are based on fabricated diagnoses' and the Medical panel's unsupported presumptions that they were true. ALJ Holley ruled that all doctors who examined Snyder prior to Dr. Marble confirmed Snyder's shoulder issues were caused

by the accident. When the “reasonable mind” considers the diagnoses’ of Snyder’s 8 treating physicians and the ninth opinion of Dr. College, the Commission preponderance reasoning fails. The preponderance of doctors agree that Snyder’s shoulder issues were the result of the injury. There’s no question the accident is responsible for Snyder’s shoulder arthritis and resulting need for his shoulder replacement. The Commission’s decision is based on total deference to Dr. Hess’s diagnoses’, the Commission’s presenting his diagnoses’ to the Medical Panel as fact and the Panel’s presumption they were accurate. The Commission’s Order is inconsistent with the evidence. The Commission abused its discretion in holding that the “preponderance of evidence”, the “panels” 2 physicians relying on Dr. Hess’s opinion, weighed against only Dr. Greis’s opinion, confirmed that the degenerative arthritis, in Snyder’s right-shoulder, preexisted his injury. Because the applicable facts rebut the Commission’s findings and confirm Snyder’s work injury was the contributing cause of Snyder’s right-shoulder arthritis, his upper-back, neck, right-arm and hand pain, and necessitated Snyder’s shoulder replacement, Snyder should be awarded, with interest, the additional 11% whole body disability due him.

The record clearly shows Respondent conned Snyder out of his opportunity to participate in a suit between insurance companies, which Snyder has shown amounts to fraud. The Commission declined to adjudicate this issue leaving it to be resolved by this court.

Respondent inserted, into the record, statements of fact it knew were false, which were relied upon as fact ultimately resulting in the Commission denying Snyder the benefits due him. “The Workers Compensation Act is to be applied liberally in favor of

awarding benefits and all doubts as to coverage are to be resolved in favor of the injured worker.” *Smith’s Food v. Labor Commission* 2011 UT App 678. Based on the facts presented herein, the Commission’s Order should be reversed; Snyder granted, with interest, the additional 11% disability due him; and Snyder provided on-going treatment for his right-shoulder, upper-back pain, neck pain and right-arm and hand issues. Respondent’s unlawful actions have been ongoing since 2003. The Third Party Settlement between insurers’ should be set aside, all statute(s) of limitations, with regard to Snyder’s right to file suit against the insurers, set aside and; Snyder given a hearing on underpaid benefits.

DATED this 3rd day of January 2017

Raymond M. Snyder

Raymond M. Snyder

Form 17. Certificate of Compliance With Rule 24(f)(1)

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Utah R. App. P.24(f)(1)

because:

G this brief contains 13,957 words, excluding the parts of the brief exempted by Utah R. App. P.24(f)(1)(B), or

2. This brief complies with the typeface requirements of Utah R. App. P.27(b) because:

G this brief has been prepared in a proportionally spaced typeface using Roman New Times in size 13 font.

Raymond M. Supler Attorney's or Party's Name

Dated: January 1, 2017

I Raymond M. Snyder hereby certify that on January 4th, 2017, I served a copy of the attached MOTION FOR EXTENSION by personal delivery to the following address(s):

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Dated this January 4, 2017

ADDENDUM
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Memorandum

To: Fremont Comp
CC: Lauara Lisk
From: Raymond Max Snyder
Date: 10/14/01
Re: Authorization to Release Medical Records

I give my consent to any health care provider (hospital, clinic, physician, or pharmacy), insurance company or employer to disclose upon request. Information including claim reports, hospital or medical records, x-rays, diagnostic tests, consultations, examination, prescriptions or treatment relating to any illness or injury which I have incurred or suffered in the past fifteen years which in any way could be related to an injury to the neck and right shoulder. This information is being disclosed to Fremont Compensation to assist in determining the extent of my eligibility for insurance benefits relating to a neck and shoulder injury sustained July 21, 1999.

This authorization applies to any insurance company, prior employer, the Social Security Administration, the Veterans Administration any State or Federal agency who has records of my past or present physical or mental condition.

I specifically consent to the disclosure of such information relating to the diagnosis or treatment of any mental or physical condition or alcohol and/or drug abuse which may relate to an injury to my neck and right shoulder incurred July 21, 1999. A photostatic copy of this authorization shall be considered as effective and valid as the original

Signature* Raymond M Snyder Date 10-14-01

Name: Raymond Snyder
Claim #: BIB80087426 / CA105
D/Injury: 7/21/99
Employer: Western Construction Specialties

CONFIDENTIAL

UPCIGA 000066

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NOTES LISTING

Claim #: 01005282

Raymond Snyder

Date Created: 08/31/2006 Net Worth Letter Sent

Author: Marci Harvey

RE: Fremont Insurance
Utah Property and Casualty Insurance Guaranty Association
(UPCIGA)
Western Construction Specialties
Raymond Snyder

To Whom It May Concern:

Fremont Insurance was placed in liquidation on 7/2/03. Subject to the limitations and conditions of the Utah Insurance Guaranty Association Act, UPCIGA will assume responsibility for the obligations of Legion to Utah claimants and insureds.

A critical limitation that may apply in the UPCIGA Act is that UPCIGA may recover the amount of any "covered claim" paid on behalf of an insured from any insured whose net worth exceeds \$25,000,000. Specifically, the statute reads as follows:

"(e) The association may recover from the following persons the amount of any "covered claim" paid on behalf of that person pursuant to this part: (i) any insured whose: (A) net worth on December 31 of the year next preceding the date the insurer becomes insolvent, exceeds \$25,000,000 and (B) liability obligations to other persons are satisfied in whole or in part by payments made under this part."

One step in screening files to determine covered claims status is that UPCIGA must determine, which claims will be affected due to the net worth provisions. Once you have provided the information necessary to establish that the net worth exclusion is or is not applicable to you, UPCIGA can determine how best to proceed to investigate, adjust, compromise, settle and pay covered claims as provided for in our governing statutory requirements.

For your convenience, enclosed is an Affidavit to verify net worth on December 31, 2002. Please complete this Affidavit and furnish supporting documentation such as year-end 2002 financial statements and/or 2002 Federal Tax Return. UPCIGA reserves the right to require additional supporting information at a later time. Please have the appropriate person or officer of your organization execute the Affidavit and return the Affidavit duly notarized to us.

Interim Instructions:

All correspondence and claims activity, including suits, on existing claims which may become covered claims of UPCIGA, should be directed to our offices at the address shown.

Another important limitation at Section 31a-28-213 of the Utah Code is the requirement that insured's and claimants must exhaust all other insurance coverages that may apply to the facts, injury or loss that gave rise to the claim against UPCIGA before seeking recovery from UPCIGA. Any amount recovered or recoverable under such other insurance policies will reduce the amount otherwise payable by UPCIGA on a claim.

Regarding the Exhaustion of Other Insurance limitation, as well as the Net Worth provision, and all other pertinent statutory limitations and conditions, UPCIGA specifically asserts and maintains a reservation of rights related to any payments it may make in respect of your company. UPCIGA also asserts and maintains an absolute reservation of rights in respect of any insurance policy related issues which may be discovered or disclosed. UPCIGA reserves the right to seek reimbursement from you for any and all payments, whether for claims or expense, that UPCIGA may make in respect of your company if, because of the Exhaustion of Other Insurance limitation, the Net Worth provision or any issue relating to legality or enforceability of the policies or any pertinent statutory or policy limitation or condition, it is discovered or decided that the relevant claims were not covered claims.

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UPCIGA 000084

Form 221b

Restorative Services Authorization/Denial - UPPER EXTREMITY *CE# 0100528*

Patient's Last Name: <u>Jander</u>		First: <u>Raymond</u>	Middle: <u>MAX</u>	Referring Physician: <u>Herrick E. Greis</u>	Date of Injury: <u>July 1999</u>
Social Security Number: <u>579-62-0237</u>		Date of Birth: <u>10-14-47</u>		Height:	Weight:
Employer: <u>Western Construction Specialties</u>		Employer Address: <u>No longer in business</u>			
Phone:		FAX:			
Insurance Carrier: <u>Utah Property & Casualty</u>		Provider: <u>Central Utah Physical Therapy</u>			
Address:		Address: <u>20 West 925 North, Richfield, UT 84701</u>			
Adjuster Name: <u>Blake Burriss</u>		Provider Discipline: <input type="checkbox"/> MD <input type="checkbox"/> DO <input type="checkbox"/> DC <input checked="" type="checkbox"/> PT <input type="checkbox"/> PT			
Phone: <u>801-361-5236</u>		FAX: <u>801-361-5116</u>		Tax ID Number: <u>87-0384762</u>	
Diagnosis Specific to Industrial Claim:		Other Conditions or Complicating Factors that May Affect Recovery:			
List from the patient's essential job functions, measurable objective requirements needed to return to work without restrictions (i.e.: lifting, carrying, grip, reaching overhead, standing or sitting duration, bending, etc.):*		Capabilities Recorded on First Visit	Capabilities on 8 th Visit	Capabilities on 14 th Visit	Capabilities on 20 th Visit
Date: <u>12/14/12</u>		Date:	Date:	Date:	Date:
Floor-Waist Max Lb. _____ Freq. _____		Max. Lb. _____	Max. Lb. _____	Max. Lb. _____	Max. Lb. _____
Waist-Shoulder Max Lb. _____ Freq. _____		Max. Lb. _____	Max. Lb. _____	Max. Lb. _____	Max. Lb. _____
Overhead Max Lb. _____ Freq. _____		Max. Lb. _____	Max. Lb. _____	Max. Lb. _____	Max. Lb. _____
Carrying Max Lb. _____ Freq. _____		Max. Lb. _____ Ft. _____	Max. Lb. _____ Ft. _____	Max. Lb. _____ Ft. _____	Max. Lb. _____ Ft. _____
Push/Pull Horizontal force Lb. _____					
Functional ROM O=overhead, S=shoulder, H=horizontal, K=knee, F=floor		Oo So Ho Ko Fo	Oo So Ho Ko Fo	Oo So Ho Ko Fo	Oo So Ho Ko Fo
Grip Strength 2 nd grip span		Max. _____ REQ _____	Max. _____ REQ _____	Max. _____ REQ _____	Max. _____ REQ _____
Pinch Strength		Key _____	Key _____	Key _____	Key _____
		Palmar _____	Palmar _____	Palmar _____	Palmar _____
		Tip _____	Tip _____	Tip _____	Tip _____
Security Test		(Not indicated)			
① Shoulder PROM		90° V, 70° abd, 10° ER			
② Shoulder PROM v. abd, ER					
DASH		44/55			
Hand Function Sort					
Hours required to work per shift / Day		Hrs working / Day	Hrs working / Day	Hrs working / Day	Hrs working / Day
Patient's Reported Average Pain Intensity (0 to 10 Scale)		3-10 / 10	/10	/10	/10
Patient's Reported Average Pain Frequency (% of the Day: 0-10-20-30-40-50-60-70-80-90-100%)		100 %	%	%	%
Treatment Plan: (Visits 1-8, include frequency) <input checked="" type="checkbox"/> Manual Therapy <input type="checkbox"/> Manipulation <input checked="" type="checkbox"/> Therapy Exercise <input type="checkbox"/> Ultrasound <input type="checkbox"/> Electrical Stim <input type="checkbox"/> FCB Testing <input checked="" type="checkbox"/> ADL Instruction <input checked="" type="checkbox"/> Neuromuscular Re-education <input type="checkbox"/> Others (List):		(Visits 9-14)	(Visits 15-20)	Visits (21-26)	
Expected number of visits to reach stated functional goals:					
Attended/Prescribed Visits (Prescribed visits are those that should have been scheduled as per the plan of care)					
Provider Comments:					
Provider signature: <u>Jan F. PT</u> Date: <u>12/14/12</u>					
Payor: Approval for Future Visits <input type="checkbox"/> Yes <input type="checkbox"/> No		(Visits 9-14) <input type="checkbox"/>	(Visits 15-20) <input type="checkbox"/>	Visits (21-26) <input checked="" type="checkbox"/>	
Payor Signature: <u>Nancy Burriss</u> Date: <u>12/14/12</u>					
Payor Comments: <u>8 visits authorized</u>					



Official Form 221b Revised 7/13
 State of Utah * Labor Commission * Division of Industrial Accidents - 160 East 300 South * PO Box 146610 Salt Lake City, UT 84114-8610 * Phone 801-530-6800 * Fax 801-530-6804 *
 Toll Free (800) 530-5090 * www.laborcommission.utah.gov

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F 5282

DUNN & DUNN

A Professional Corporation

TRIAL LAWYERS

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(801) 521-6666 PHONE
(888) DUNNLAW
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TIM DALTON DUNN †
SUSAN BLACK DUNN
ROBERT C. MORTON *
CLIFFORD C. ROSS
PAUL J. SIMONSON
MARK A. RIEKHOF ††
STEPHEN D. ALDERMAN *
STEPHANIE J. HOGGAN

† Also Admitted in Hawaii
* Also Admitted in Wyoming
†† Also Admitted in California
• Also Admitted in Texas

July 10, 2003

Raymond Snyder
P.O. Box 69
Aurora, Utah 84620

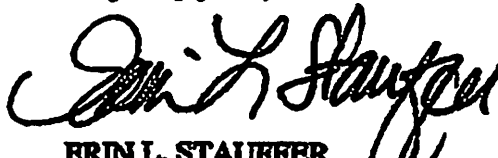
RE: Snyder, Raymond v. (Daw Inc.)
Date of Loss: 07/21/99
Claim No.: KK0780005109T005
Our Case No.: 03S-4411

Dear Mr. Snyder:

This letter is in follow up to my voicemail message left with you today regarding the above-referenced matter. We need to talk to you regarding the lawsuit we will be filing in behalf of Cambridge Integrated Services and whether or not you would like to be named as a party. We would also like to talk to you about the facts of the accident and pain and suffering issues as well.

Please contact me at 888-386-6529 at your earliest possible convenience. The statute of limitations runs on July 21, 2003, so we will need to discuss this with you well before that time. Thank you for your cooperation and assistance.

Very truly yours,


ERIN L. STAUFFER
Legal Assistant to Mark A. Riekhof

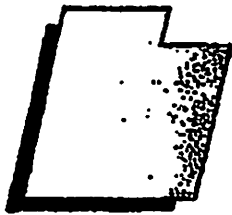
/els

*Received
7-18-03 RML*

*7-18-03
There was no message on recorder
I had Milt turn it off.
Talked w/ Mark Riekhof at about 9:30 AM
he said he was ready to settle without
me but would call me back in
a couple of hours and let you
know if he go ahead & file with me
as a plaintiff as well. He said that
Daw's insurance had offered \$2,000
of the approx. \$2,000 and that
we were considering a counter offer
that he was on the
phone with them
when I called
Raymond Snyder*

9965

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UTAH PROPERTY AND CASUALTY INSURANCE
GUARANTY ASSOCIATION

P.O. Box 1608, Sandy, UT 84091-1608
(801) 561-5233 / (801) 561-5776 - Fax
info@utgi.org
www.utgi.org

March 14, 2014

Mr. Raymond Snyder
P O Box 69
Aurora, UT 84620

RE: Industrial Injury of 7/27/89
Claim Number 01005282

Dear Mr. Snyder,

We have received your phone message and apologize for the delay in getting back with you. We have now received the Impairment Rating evaluation notes from Dr. Hess and a copy is enclosed for you.

Please note that Dr. Hess does not assign any additional impairment rating as a result of your recent surgery. As you know, you received an impairment of 7% in 2002 from Dr. Grais. Our records indicate that you received payments to satisfy this rating.

Based on Dr. Hess' evaluation and advice that there is no additional impairment to be assigned as directly related to the industrial injury of 7/27/89, there is no additional settlement to be considered.

As I believe we have discussed, you are eligible for on-going medical treatment as it is directly related to this injury.

Sincerely,

Diane Burris

Diane Burris
Claims

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