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IN THE

Supreme Court of Virginia

AT RICHMOND

CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
JAN 12 1982
RICHMOND, VIRGINIA

RECORD NO. 811126

ISLAND CREEK COAL COMPANY AND
REPUBLIC INSURANCE COMPANY,

Appellants,

v.

LEONARD McKINLEY MILLER,

Appellee.

APPENDIX

Thomas R. Scott, Jr.
STREET, STREET, STREET,
SCOTT & BOWMAN
Post Office Drawer S
Grundy, Virginia 24614

Counsel for Appellants

Larry G. Browning
Post Office Box 156
Lebanon, Virginia 24266

Counsel for Appellee

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INDUSTRIAL COMMISSION OF VIRGINIA
P. O. Box 1794
Richmond, Virginia 23214

APPLICATION FOR HEARING

File No. _____

Employee Leonard McKinley Miller, Box 569, Itmaker, Va. 24260
(Address)

Employer Island Creek Coal Co.
(Address)

Date of Accident Aug 31, 19 79. Average Weekly Wage $ 550 ±

Place Where Accident Occurred Buchanan Co., VA.
(City or County) (State)

Nature of Injury or Occupational Disease: hurt rt knee; piece of steel fell on it.

Date Disability Began: 2 month period after surgery, 19____

Date of Return to Work: _____, 19____, and wage then earned $ 5 11

The applicant requests a hearing before the Industrial Commission of Virginia on the grounds of:

(1) Accidental Injury ..... (✓)

(2) Occupational Disease ..... ( )

(3) Death on _____, 19____, due to Accidental Injury ..... ( )

Occupational Disease ..... ( )

(4) Change in Condition ..... ( )

If application is based on a change in condition, state nature of change: _____

Compensation was last paid at the rate of $ none per week through the _____ day of _____, 19____.

Received
Buchanan Co.
1/9/81
1/13/81
Relatives
McCoy

COPY OF APPLICATION MUST BE SENT TO OTHER PARTY (SO INDICATE BY A CHECK) ☑ YES

Signature of Applicant: X Leonard M. Miller

Address: Box 569

Henaker, Va. 23260

Signed this 5th day of January, 19 81.

Subpoenas for witnesses will be issued by the Industrial Commission on request or may be obtained at the Clerk's Office of the City or County where the hearing will be held (§65.1-21, Code of Va.). Medical reports are acceptable in lieu of physicians' personal appearances.

RECEIVED
JAN 10 81

LEONARD McKINLEY MILLER, Claimant

v. Claim No. 684-216

ISLAND CREEK COAL COMPANY, Employer
-Old Republic Insurance Company, Insurer-

Larry G. Browning, Esq.
P. O. Box 156
Lebanon, Virginia 24266
for the claimant

Thomas R. Scott, Esq.
P. O. Drawer S
Grundy, Virginia 24614
for the defendant

Hearing scheduled before Deputy Commissioner COSTA in Grundy, Virginia on February 25, 1981.

All witnesses having been duly sworn, the following testimony was taken:

DEPUTY COMMISSIONER COSTA:

This is on the claimant's application. Mr. Scott, would you state the employer's grounds of defense for the record please?

MR. SCOTT:

Yes sir Your Honor. It is our position that the fracture of the lip of the medial plateau of the tibia and the tear and removal of his right medial meniscus which produced disability for work was in no way causally related to the industrial accident of 8/31/79.

DEPUTY COMMISSIONER COSTA:

Mr. Browning.

MR. BROWNING:

Your Honor, before we go any further I would like to request written permission to file written interrogatori to Dr. Henderson.

DEPUTY COMMISSIONER COSTA:

What would be the purpose of the interrogatories?

MR. BROWNING:

From reviewing his last report I do not believe that he is aware of the fact that the man has had some treatment on this leg from the time he originally saw him and the time he wrote that report.

DEPUTY COMMISSIONER COSTA:

Mr. Scott what would be your position on that?

MR. SCOTT:

I'm not sure I understand what you are saying.

MR. BROWNING:

It is my inference from the letter that, the last letter from Dr. Henderson, that he is basing...

MR. SCOTT:

The one dated February 2, 1981?

MR. BROWNING:

Right. That he is basing this opinion...his opinion is influenced by the fact that he believes there is no treatment in between this time period. The second reason I would like for him to answer questions is that he just recently informed the client

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of his permanent rating. So, I believe in any event, the Commission, in the event that an award is issued, it would be to all parties' best interest that the issue of how much permanent disability is raised and answered.

MR. SCOTT:

Well, lets just agree to take his deposition.

MR. BROWNING:

Your Honor I think from the claimant's viewpoint the cost of the claimant to take depositions is unreal compared to written interrogatories which are, of course, no charge to the claimant. I can see no reason why an interrogatory cannot serve the same purpose of depositions.

DEPUTY COMMISSIONER COSTA:

Well, as far as the disability issue, you haven't had him examined for that have you?

MR. SCOTT:

No sir. Possibly the man does have a specific disability causally related to the medial meniscus. Common sense dictates he is going to have something but what we are saying is that it is not causally related to the injury sustained in the industrial accident.

DEPUTY COMMISSIONER COSTA:

Right, so any disability rating would not be related either.

MR. SCOTT:

Yes sir.

MR. BROWNING:

First of all Your Honor, we would like to ask him if he knows Dr. Henderson is aware of the treatment by Dr. McVey who has seen him in April of 1980.

DEPUTY COMMISSIONER COSTA:

You would like to ask Henderson?

MR. BROWNING:

I would like to ask Henderson that and if it does change his mind it would be easier and more convenient for all parties for him to assign a rating. It only takes him a second to do and that way we could have one award.

MR. SCOTT:

I would like to point out something. I don't have any objection to Mr. Browning deposing Dr. Henderson or...you know you can couch quesions in interrogatories that maybe can't be as fully explained as they could in a deposition but with regard to Dr. McVey, I just got this report today dated April 11, 1980. It says he was treated on 4/9/80 because of cystic changes in the right ankle. There has never been,on the accident report or anything else, there has never been a report of any injury to the right ankle. So, what does that have to do with the knee.

MR. BROWNING:

Your Honor, the report itself is originally addressed to Old Republic Insurance Company. So, I think the man's testimony today as to the actual treatment would be

insignificant and I do think we should be allowed to ask Dr. Henderson of this.

MR. SCOTT:

What can Dr. Henderson say. The man files his accident report, he alleges a piece of steel or something hit his knee. There has never been any mention of anything about an ankle. The fact that his ankle has been treated, how is that going to change Dr. Henderson's opinion one way or the other. If Dr. McVey had treated the man's knee then that is a horse of a different color.

MR. BROWNING:

I think you are asking the Judge to decide a medical question. What effect that would have on it I think only a doctor can answer.

DEPUTY COMMISSIONER COSTA:

If there was some conflict in Dr. Henderson's reports why couldn't it have been resolved prior to this day. Why couldn't he have been deposed prior to this hearing?

MR. BROWNING:

First of all, we had no written approval to get the interrogatories.

MR. SCOTT:

Mr. Browning always accommodates me, I will accomodate him. The only thing I am saying is that I don't understand how anything about the treatment of

the ankle would change the treatment to the knee unless he is alleging that there is an injury to the ankle which I am not aware of.

MR. BROWNING:

Your Honor, this is a medical question. I cannot answer it nor can any of us answer it. I think it might be significant, the fact that the same leg was treated and Dr. McVey's report, I would like to ask Dr. Henderson about it because I do not believe that a fair reading of his...To me it indicates that he may not know of the other treatment. I would like for Henderson to know of the man's, what he is testifying today and so forth.

MR. SCOTT:

Alright. I'll tell you what. I won't have any objection to that but if I feel there is a necessity for clarification I would like to take Dr. Henderson's deposition.

DEPUTY COMMISSIONER COSTA:

Really, I think, I know there is additional cost to the claimant but the best way to go about something like this is to take a deposition rather than interrogatorie because you are going to get into some technicality even if you neatly respond and it will be long and drawn out whereas if you are both there and he feels a question isn't framed correctly he can object. If he feels that he wants to follow up right there he can object and follow up. In a situation like this I know it is

added expense to the claimant but I would rather see a give and take situation where you are both there and you can both ask the doctor questions. I'll give you thrity days from today's date for a deposition.

MR. BROWNING:

Thank you Your Honor.

LEONARD MILLER, Claimant

BY MR. BROWNING:

Q. Mr. Miller, what is your full name for the record?

A. Leonard McKinley Miller.

Q. Your address please?

A. Box 569, Honaker, Virginia.

Q. Who do you work for sir?

A. Island Creek Coal Company.

Q. What county and what location?

A. Buchanan County at Keen Mountain.

Q. You were working there in August of 1979. Is that correct?

A. Yes sir.

Q. Did you have an injury and if so, what was the date of the injury and briefly what happened?

A. On 8/31/79 I was helping a man put a metal extension in a jack and it slipped and struck me across the leg.

Q. What part of your leg was injured?

A. Inside of my right knee.

Q. Lower or upper?

A. Upper.

Q. Your knee?

A. My knee.

Q. At that time of the injury who did you report the accident to?

A. My boss, David Horne, Mine Foreman.

MR. BROWNING:

Do you have any question that notice was given?

MR. SCOTT:

No sir. The employer filed their first report of accident and we are not contesting that he reported the accident or what happened surrounding the alleged accident to his boss.

DEPUTY COMMISSIONER COSTA:

So, you will stipulate to the industrial accident?

MR. SCOTT:

I'm stipulating that he gave notice of an alleged accident.

BY MR. BROWNING:

Q. After you gave notice of this accident, did you go to any doctors for treatment?

A. I took the weekend off. I went back to work that following Tuesday and worked a while and it kept locking up on me so I went to see a doctor right then.

Q. Which doctor? Was this your right leg?

A. The right leg would lock up, yes sir.

Q. Who did you see first?

A. I believe I saw Dr. McVey first.

Q. When did you first see Dr. Henderson?

A. September 17, I believe.

Q. Did you see him before you saw Dr. McVey?

A. I believe I saw McVey first.

Q. What did Dr. McVey advise you as to the injury?

A. He drew blood out of it and told me I had my cartilage messed up.

Q. What caused you to see Dr. Henderson?

A. He is a surgical doctor and a bone specialist.

Q. What did Dr. Henderson advise you?

A. That I needed surgery on my knee.

Q. Did you miss much time from work from approximately a year from the date the accident happened?

A. No sir.

Q. What is your job with the company?

A. Foreman.

Q. When did you see Dr. McVey again? Do you recall? Did you see him in April?

A. Yes, because of my ankle. Yeah, I saw him on account of that. That was an old injury.

Q. That was prior?

A. Prior, yes sir.

Q. Now, during that year did you have any problems or difficulty with your leg locking up on you?

A. Quite often, yes sir.

Q. Could you give me some idea of how often is quite often?

A. Well, I won't say it done it everyday but I (inaudible) and it has locked up on the jackline and made me fall.

Q. Would it occur twice a month or approximately, your best estimate?

A. I would say on the average once a week it would lock up.

Q. Do you still have this problem with "locking up of your leg".

A. It don't lock up but it pops and cracks.

Q. Now after this happened did you have any other injuries to that leg?

A. No sir, not that I know of.

Q. Did you have any operation to that leg?

A. They operated on my knee and took the cartilages out.

Q. When was the operation and who performed it?

A. Dr. Henderson on September 5, 1980.

Q. Has he advised you if you have any permanent rating regarding the operation,relative to the operation?

A. Yes sir.

Q. How much is that rating?

A. Ten percent.

Q. Did you have any other injuries to the leg since the one in August of 1979?

A. Not that I know of, no sir, not to the leg.

Q. Mr. Miller, you were involved in a fight I guess at the Bluegrass in Russell County Virginia on August 30, 1980?

A. Yes sir.

Q. In your own words, tell the Judge what happened.

A. I liked to got beat to death.

Q. I understand you were a little bit under the weather. Is that correct?

A. Yes sir. Very, very much. Too much.

Q. Was your leg re-injured?

A. It was as sore as it could be before I ever left the house. Saturday morning it was sore and after work Friday night. It was all swelled up. It swelled up on me every night after work.

Q. So, before you went it was swollen?

A. Yes sir.

Q. To the best of your recollection was your leg injured that night at the festival?

A. No sir, not that I know of. It may have give away on me and made me fall, I don't know about that.

Q. I understand most of your injuries (inaudible).

A. My head was all to pieces.

DEPUTY COMMISSIONER COSTA:

What is the period of disability claimed, if any?

MR. BROWNING:

Your Honor, we are trying to establish a permanent disability rating. His medical bills have been paid, as I understand. There is no lost wages claimed because he is a foreman, he has made his wages, we are trying to establish permanent disability.

DEPUTY COMMISSIONER COSTA:

That is the only issue?

MR. BROWNING:

As far as I know.

BY MR. SCOTT:

Q. Mr. Miller, you returned to work on November 10, 1980

pursuant to Dr. Henderson's orders. Is that correct?

A. Yes sir.

Q. And the date of the alleged accident was August 31, 1979?

A. Yes sir.

Q. Before August 31, 1979 hadn't you had an operation on your right knee before that time?

A. Yes sir.

Q. What kind of operation did you have on your knee before that time.

A. Bone biopsy.

Q. Was there a scar on your knee?

A. Yes sir.

Q. Did you go to the Mattie Williams Hospital and see Dr. Emile Khuri?

A. Yes sir.

Q. And I believe you saw him on September 1, 1979 which would have been the date following this alleged accident. Is that correct?

A. I don't remember the exact date sir.

Q. Would that sound about right?

A. About right yes.

Q. And at that time he did what is called aspirating your knee and tried to get some fluid out but couldn't get any fluid out.

A. Right, he didn't get no fluid no.

Q. And he took an x-ray of your knee at that time which didn't show any fracture. Isn't that right?

A. No bones broken no.

Q. After you went to see Dr. Khuri, was he the first physician you saw?

A. I was thinking I saw Dr. McVey before I saw him but...

Q. Was it possible you could have seen Khuri before you saw McVey?

A. Because McVey drew blood out once and Dr. Moore is my family doctor and Dr. Moore turned me over to Dr. Khuri.

Q. Would it sound about right for the first time that you ever seen Dr. Henderson on 9/21/79. Would that sound about right?

A. I believe it was on the 17th.

Q. The 17th.

A. I'm not for sure about that but I believe.

Q. At any rate, you continued to work with regularity after 8/31/79 didn't you?

A. Yes sir.

Q. With regard to this altercation on August 30, 1980, would it be fair to say that you were in a fight and would it be fair to say that you were intoxicated at the time?

A. Yes sir.

Q. And you were taken to the emergency room and saw Dr. Gilmer there?

A. Yes sir.

Q. And at that time after this fight unlike when Dr. McVey tried to get fluid out of your leg, he got 60 cc's of blood when

he aspirated your leg didn't he?

A. Yes sir.

Q. Alright sir. And after this fight you went back to see Dr. Henderson about four days later on September 3, 1980 and of course this is almost a year after the initial alleged accident. Isn't that right?

A. Right.

Q. And it was a short time after that that your leg was operated on by Dr.Henderson?

A. On the fifth.

Q. Okay sir. Dr. Gilmer hospitalized you didn't he?

A. I don't know who put me to bed.

Q. But you were in the hospital after this altercation on August 30, 1980?

A. Right.

Q. I just want to ask you about this. His chart reflects that you complained of pain in your right knee on the 2nd day of your hospital visit. Would that sound about right?

A. I'd say, yes sir.

Q. And that is when he drew the blood out and aspirated your knee?

A. Dr. Horace drew the blood out.

Q. And got some out that time?

A. Right.

Q. Now when you were discharged from the ....How long did you stay in the hospital for the injury sustained in this fight you were in,approximately?

A. They took me on a Saturday night, Sunday, Wednesday Dr. Gilmer come and ...Dr. Horace come up and said son your leg is in bad shape and I said I knowed it. He said well, if I release you will you go to your other doctor and I said yes sir. He said well, Dr. Gilmer will come back and release you.

Q. So you were in the hospital from Saturday,August 30, 1980 through the following Wednesday, whatever day that would have been?

A. Right.

Q. And when you were discharged from the hospital they gave you crutches because of your right leg didn't they?

A. I had crutches.

Q. You mean they didn't give them to you there?

A. No sir.

Q. So you are saying Dr. Gilmer is incorrect when he says he provided you with crutches when you left the hospital?

A. He is incorrect, very much so because they are my crutches I got in Charlottesville.

Q. In Charlottesville?

A. Yes, for the bone biopsy.

Q. Okay. At any rate, did you have to use your crutches when you left the hospital on that Wednesday?

A. Yes.

Q. And you worked all that time before this altercation and didn't use your crutches then. You went to work.

A. I used them at home a lot of the time.

Q. But you didn't use them at work?

A. No, I didn't have any use for them at work.

Q. Now you saw, or your attorney has handed me a report from Dr. McVey. Is he at the Mattie Williams Hospital?

A. Yes sir.

Q. Is he a family practitioner, or do you know?

A. Yes sir he is.

Q. Now you saw him on April 9, 1980. Would that sound about right?

A. Possible, yes sir.

Q. Now, that was about four months before this fight in August of 1980. Is that right?

A. Yes.

Q. And you saw him for your ankle didn't you?

A. I had an (inaudible) in my ankle earlier which they said was broken.

Q. I am just asking you did you see him for an injury to your right ankle?

A. Yes sir.

Q. And that is the reason you saw him at that time?

A. At that time, yes sir.

Q. Now, that injury to your right ankle doesn't have anything to do with this injury you are alleging on August 31, 1979?

A. No sir it does not.

Q. Who is Dr. Scott. Is he in family practice at the

Clinch Valley Physicians, Inc?

A. Well, he became my doctor all of a sudden like. My water stopped on me. I couldn't make water and I don't know...

Q. You had a problem with your urinary tract?

A. Right.

Q. And that is the reason why you saw him?

A. Right.

Q. Well, what it was they called my brother to come and get me and he was working and I got my little children to call my buddy and he got me and he asked me where I wanted to go and I said for God's sake take me to the closest place.

DEPUTY COMMISSIONER COSTA:

So in other words it is not really related to your knee?

A. No, it wouldn't have no relation...

Q. You hadn't seen him for your knee. You only saw him for your urinary problem?

A. Right. But he advised me that I couldn't have nothing done on my knee at that time until I got my kidneys and my urinary tract straightened out. It was in a critical situation.

Q. Your urinary problem was a critical situation?

A. Right. It is still very bad.

Q. Mr. Miller, being fair about it, isn't it fair to say that when you were in this fight or scrap or whatever on August 30, 1980 that you were so intoxicated that you just really don't remember what happened to you and

what parts of your body really do you.

A. Well, in all due respect to you sir, the injury to my leg had been previously done. It would hurt me so bad when I started driving home a lot of times I would have to stop and get out and walk and stretch my leg it was cramping me to death. As far as injury at that Bluegrass festival, the only noticable injury was to my head except my leg was swelled up.

DEPUTY COMMISSIONER COSTA:

You say the only noticable injury, but were you able to notice anything.

Q. You were unconscious when you got to the hospital.

A. Right.

Q. And you didn't get knocked out, you were drunk out of it.

A. I guess both of them.

Q. I appreciate your being fair.

A. I'm going to be honest about it. I'm not going to lie about it.

Q. So that is all I am saying. When you get in a fight you are doing everything you can to protect yourself.

A. That is true.

Q. Unfortunately, you weren't too successful here. Is that right?

A. No sir, I wasn't.

Q. I'm just saying, given the fact that you were involved in this fight, you are doing whatever you can to protect yourself and the fact that you are intoxicated and you get

knocked out because as you say because of alcoholism... or being under the influence, and also with the bloody head, you really don't know what happened to your leg do you?

A. Well, the leg was already hurting.

Q. I'm just saying that you don't know what happened to your leg.

A. I could have twisted it. I'm not saying that.

MR. SCOTT:

That is all.

BY MR. BROWNING:

Q. You mentioned that when you saw Dr. Scott in 1979 that he said something about not being able to work on your knee. Did you talk to Dr. Scott about your knee in September of 1979?

A. Dr. Henderson had already planned for me to have surgery on it in 1979.

Q. Did he tell you this.

A. He told me to come back in for surgery, yes sir.

Q. What did Dr. Scott say about the knee in September of 1979?

A. He said I couldn't afford to have it worked on due to my kidneys.

Q. Mr. Scott asked you if you were working regularly with your leg problem and you said yes but I am asking you if you had difficulty in working with your leg?

A. Yes sir.

MR. SCOTT:

Your Honor, I believe that has already been asked and answered.

DEPUTY COMMISSIONER COSTA:

Thats right. You can go ahead and ask him.

Q. Did you work with difficulty?

A. It hurt me a lot, yes sir.

Q. When you saw Dr. Henderson in September 21, 1979 did he tell you what he was going to do at that time and what he was going to operate on?

A. He told me I would have to have surgery on my knee or it would keep locking up if I didn't.

MR. BROWNING:

That is all the questions I have.

DEPUTY COMMISSIONER COSTA:

Anything further?

MR. SCOTT:

The only thing, I would just like to call your attention to...

MR. BROWNING:

Your Honor, are we going to have arguments or...

DEPUTY COMMISSIONER COSTA:

Yes, that is perfectly permissible. Either side can argue.

MR. SCOTT:

The only thing I point out to you is that he was seen according to the attending physician's report by Dr. Emile Khuri in emergency room or in the Mattie Williams Hospital on 9/1/79, one day following this injury. Dr. Khuri, who is a surgeon, a general surgeon, I think his speciality is thoracic surgery but he is a general

surgeon; was swelling and tenderness in the suprapatella area of the right knee (inaudible) tenderness medially, right knee. The significant thing was that Dr. Khuri attempted to aspirate the knee which the medical reports reflect evidence of a recent injury and his report in the file and at that time reflected that when he attempted to aspirate the knee there was no fluid obtained. And further, the x-ray revealed that there was no fracture. Now, Dr. Henderson, when he saw him sometime after that the man's knee was probably swollen but again there was no aspiration and no fluid taken out of the knee. Now, when this...and the man worked all that time for a year.

DEPUTY COMMISSIONER COSTA:

With difficulties.

MR. SCOTT:

I understand. He said he worked with difficulty but he still worked. Then he has this altercation on 8/30/80 and when you review Dr. Gilmer's reports it says he came in there, he had an unconscious history of intoxication. He was in an altercation with someone. He had an alcoholic breath, all of which the man has admitted. I'm not denying or saying that he hasn't been candid about admitting it. And then on the second day of his hospitalization he complained of pain in the right knee and at that time, the first time, they aspirated the knee after this altercation and drew 60 cc's of blood out of the knee and he continued to have pain and his knee was swollen and, of course, that

doctor says he provided crutches but it could very well be that the man says well I've already got crutches but at any rate, and his discharge diagnosis was acute alcoholism and internal derangement of the right knee with hemarthrosis and advised to see an orthopedist for his right knee. Now he also talked about bruises and abrasions to his head none of which we are concerned about in this industrial accident. Dr. Henderson's attending physician's report of 9/21/79, he took an x-ray which revealed no fracture then he goes back to see Dr. Henderson in 1980, about a year after this alleged accident, specifically, I think Dr. Henderson's February 2, 1981 report speaks for itself and summarizes what has transpired but he says the man didn't relate any altercation to him that occurred on 8/30/80. He had reviewed what Dr. Gilmer had done and he states in this February 2, 1981 report that when you aspirate a knee and you draw blood out of it and this was the first time it was found when Dr. Gilmer does is that that denotes a recent injury and he goes on to say that the blood in the knee is not related to the 8/31. He says 9/21 but that was when he saw him. I am assuming he means 8/31/79 alleged accident and then he talks about his discharge summary of 9/3 to 9/7/80 and he found a fracture of the lip of the medial plateau of the tibia and that is what he operated on the man. And, he said if the fracture had occurred in the 8/31/79 incident

that it would have healed within a years period of time so obviously he concludes that it is causally related to what happened to him on August of 1980 in this altercation and when all these things are considered, we don't have any evidence to the contrary that the man didn't have a piece of steel or whatever he said fall on his knee at work. But the evidence is clear that he was able to work in spite of it with difficulty, as he says. I don't have anything to rebut that but he still worked which is an indication of no disability and then he has this altercation and that is when the blood starts showing up and that is when he is having this hurt and that is what our position is.

DEPUTY COMMISSIONER COSTA:

Did you all pay for the services? Who paid for the surgical charges?

OFF RECORD:

MR. SCOTT:

Some, if I can just state this. The way I see it, clearly the medical evidence shows that the disability and surgery is not causally related to what happened to him on 8/31/79 and he has the burden of proof. This evidence is all submitted by his physicians. At the very best, and I submit the evidence doesn't say this, but at the very best we are talking about possibilities. Whether it is possible it occurred from that altercation, or whether it is possible it occurred from work. I think it is clear that it occurred from the altercation from the medical

then it has to be resolved adversely to the claimant because he has the burden of proof.

DEPUTY COMMISSIONER COSTA:

From your standpoint then, as you said earlier, any permanent or specific disability which might have flowed from the knee then is ultimately not related to the original injury.

MR. SCOTT:

Yes sir.

MR. BROWNING:

Your Honor, I think that Mr. Scott keeps referring to Dr. Henderson's reports. I would urge the Commission to review the original Henderson report of September 21, 197 in which his diagnosis was injury to the right knee and he at that time stated in his report, about returning for possible surgery. The same surgery that he did a year later. I would not attempt to engage in speculation as to when drawing of the fluid means something since I am not...I think that would be sheer speculation as to when the drawing of blood means something and when it doesn't. Even Dr. Henderson says the word, it could indicate. Now, there is no question that there was an accident. I think Mr. Scott, is correct, the man is candid. They really don't question the fact that there was an accident, he was injured and he timely filed it. The report from Dr. Henderson of September 21, 1979 does reveal an injury.

The man returned to work and kept on working. He had urinary problems, Dr. Scott advised him to hold off on the surgery because of urinary problems. He was involved in a fist fight at the festival. He was knocked out and he got drunk but that does not change the fact that on September 21, 1979 Henderson does rerate the tear. I am not going to engage in speculation. I do not know if this kind of tear would even show up on an x-ray. It may or may not. I think Dr. Henderson very carefully avoided saying that. So, I think the record views a whole, the man has indicated and very candidly, that his leg was swollen before he went to the festival, it had locked up on him many times. Dr. Henderson in 1980 performed the same operation he advised the man to have in 1979. Now in 1980 he says it is not related. Why didn't he find it in 1979 and did the same operation. Thank you Your Honor.

DEPUTY COMMISSIONER COSTA:

You might want to pose some of these questions to Dr. Henderson. He is the only expert witness source that we have. You may ask questions in terms of probability and possibility and what might have caused...what might have been the underlying cause that necessitated the surgical procedure. We hold the record open for 30 days for that.

VIRGINIA

IN THE INDUSTRIAL COMMISSION

LEONARD McKINLEY MILLER, Claimant

MAR 3 1 1981

v. Claim No. 684-216

Opinion by COSTA,
Deputy Commissioner

ISLAND CREEK COAL COMPANY, Employer
-Old Republic Insurance Company, Insurer-

Larry G. Browning, Esq.
P. O. Box 156
Lebanon, Virginia 24210
for the claimant

Thomas R. Scott, Esq.
P. O. Drawer S
Grundy, Virginia 24614
for the defendant

Hearing scheduled before Deputy Commissioner COSTA in Grundy, Virginia on February 25, 1981.

This claim is before the Commission upon the claimant's application filed January 9, 1981, alleging an industrial accident on August 31, 1979 while in the employ of the named defendant, and seeking specific disability benefits under Virginia Code §65.1-56(15). Employer, by counsel, asserted as its grounds of defense that the fracture of the lip of claimant's medial plateau of the tibia and his tear and removal of his right medial meniscus, which apparently has produced some permanent disability, was in no way causally related to claimant's industrial accident of August 31, 1979.

On August 31, 1979 claimant was employed as a foreman with Beatrice Pocahontas Coal Company at an average weekly wage of approximately $550.00 which would be productive of the

maximum compensation rate then in effect, i.e., $199.00. He indicated that while at work on the above date, a jack slipped and struck him on his right knee, and that he sought treatment for his knee condition with Dr. W. T. Henderson, Orthopedic Surgeon, on September 21, 1979, as is indicated by a report of injury from Dr. Henderson dated September 21, 1979, a copy of which was sent to the employer. The file reflects that an employer's first report of accident was filed September 19, 1979, indicating that the employer received notice of the accident within the statutory period. Indeed, the parties stipulate that notice of an alleged accident was, in fact, given the employer within the time frame outlined in the Workmen's Compensation Act.

Dr. Henderson's attending physician's report of September 21, 1979 includes a diagnosis of "tear of right medial meniscus", a condition which Dr. Henderson causally relates to claimant's August 31, 1979 industrial accident. Dr. Henderson noted that the claimant's knee was swollen, that it was tender over the medial aspect, and that it had a tendency to lock.

The file also reflects an attending physician's report dated November 1, 1979 from Dr. Emile Khuri, including a diagnosis of "swelling and tenderness in suprapatellar area of right knee, severe tenderness medially, right knee" a condition which Dr. Khuri causally relates to claimant's industrial accident. The Commission is of the opinion that the evidence is unrebutted that claimant did, in fact, sustain an industrial accident to his right knee on August 31, 1979. While claimant apparently missed very little time from work as a result of the industrial accident, he clearly indicated at the hearing that during the

insuing year following the accident, he suffered continuing symptoms on a weekly basis referrable to his knee. Specifically, claimant testified that he experienced difficulty with his knee in terms of locking and popping of the right knee. He indicated that such symptoms were particularly severe at times,but that he was able to continue in his employment on a fairly regular basis.

Claimant indicated that he was involved in an altercation during a Russell County Bluegrass Festival on August 30, 1980, an altercation which resulted in a period of hospitalization commencing August 30, 1980 and terminating September 3, 1980 at the Russell County Medical Center,where he was treated by Dr. Giles Q. Gilmer. Dr. Gilmer's discharge summary of September 15, 1980 indicates that claimant had been drinking heavily upon his admission to the hospital, that he had been in an altercation at the Bluegrass Festival, and that claimant subjectively complained of pain in his right knee. Dr. Gilmer aspirated the knee joint, and obtained approximately 60 ccs. of blood. He was released from Russell County Medical Center with instructions to seek further treatment with an orthopedic surgeon if symptoms referrable to the knee continued. The file reflects the claimant was, in fact, admitted to Clinch Valley Community Hospital on September 3, 1980 under the care of Dr. Henderson, and that he underwent an excision of his torn right medial meniscus on September 5, 1980. He was discharged on September 7, 1980, and the final discharge diagnosis was "torn right medial meniscus".

The file also reflects a letter from Dr. Henderson dated February 2, 1981 to the workmen's compensation carrier,

indicating that claimant had been seen by Dr. Henderson on September 21, 1979, "at which time it was thought that he may have a damaged medial meniscus in his right knee". Dr. Henderson further indicated that he did not see claimant again until September 3, 1980, approximately one year later, at which time the knee appeared to be swollen and tender. It was indicated by Dr. Henderson that he was not aware of the altercation at the Bluegrass Festival but he did note Dr. Gilmer's report concerning the aspiration of the knee, a finding which indicated to Dr. Henderson that there had been a fresh injury to the knee. Dr. Henderson indicated that the blood in the knee joint would certainly not be related to the original industrial accident, in his judgment. He further indicated that it was his opinion that the fracture of the lip of the medial plateau of claimant's tibia was similarly unrelated to the August 1979 industrial accident. Dr. Henderson's reference to an accident on September 21, 1979 is apparently a typographical error on his part. Dr. Henderson concluded by noting:

> In conclusion it would have to be my opinion that the damaged meniscus was a result of the physical altercation incurred on August 30, 1980, and was in no wise related to the old injury of August 31, 1979. Any persisting disability which the patient may have would be related to the incident of August 30, 1980 and unrelated to the incident of August 31, 1979.

While great weight should be given to the testimony of the attending physician, his opinion is certainly not binding upon the Commission. Williams vs. Fugua, 199 Va. 709, 101 S.E.2d 562. Dr. Henderson appears to be somewhat equivocal in his

February 2, 1981 letter with reference to the diagnosis of a medial meniscus from the August 1979 industrial accident. However, his earlier reports from 1979 state without equivocation a diagnosis of tear of right medial meniscus. It is equally clear that Dr. Henderson indicated in his September 21, 1979 report that claimant was advised about "returning in a few days for possible surgical consideration". Dr. Henderson's attending physician's report of September 21, 1979 does not include any qualification of the diagnosis of tear of right medial meniscus. The diagnosis appears to be a definite one, and while Dr. Henderson qualifies the diagnosis in February,1981, we see no such qualification appearing in his September,1979 reports. Similarly, Dr. Henderson felt, apparently, quite comfortable in causally relating the right medial meniscus condition to the August 31, 1979 industrial accident on his attending physician's report. He listed no other cause at that time for claimant's right medial meniscus condition.

Because of the apparent conflict in the medical evidence, it was requested that the parties take the deposition of Dr. Henderson, that deposition has been received, and it has been made a part of the record. Dr. Henderson indicates on page 5 of his deposition that surgery was not performed in September of 1979 because he was not certain as to his diagnosis. Again, if Dr. Henderson had any doubt as to his diagnosis, it certainly is not apparent from his reports of that time period. Dr. Henderson noted that claimant, in September of 1979, had pain, swelling and a tendency to lock involving his right knee. In response to a question from claimant's counsel, Dr. Henderson indicated that

such symptoms would be the normal symptoms for a diagnosis of a tear of the right medial meniscus. It is further indicated on page 6 of the deposition that when claimant returned to Dr. Henderson in September of 1980, he related that the knee had given him trouble on and off ever since the industrial accident, and he complained of many of the same symptoms he related in September of 1979. Claimant's counsel inquired on page 7 of the deposition as to Dr. Henderson's diagnosis in September of 1980, and Dr. Henderson relates that he "still thought he had a torn medial meniscus". With regard to the question of permanency, the following exchange is recorded on page 7 of the deposition:

> Q. Doctor, is there any degree of permanent impairment using guidelines set by the Industrial Commission in this patient due to the tear of the meniscus?
>
> A. I examined him with that in mind on February 21st of 1981. I thought he had reached maximum improvement. I thought he had sustained a ten percent loss of function of his right leg as a result of the injury and meniscectomy.

With regard to claimant's continuing symptoms, the following exchange is recorded on page 10 of the deposition:

> Q. Doctor, if you would assume that he had trouble from August 31st of 1979 on with the knee such as, to be specific, swelling, locking of the knee, giving away of the knee, going with those symptoms, would that influence your opinion in any way?
>
> A. If those situations happened frequently at all and without any other injury, why then, it would influence my opinion.
>
> Q. Would you be less apt to say with reasonable medical certainty? I mean, how would it change your opinion?

A. Well, I'd feel less apt to say, but I believe I would still say.

Q. Let me ask you a question, Doctor. Assuming the man is honest and he did have locking, swelling, pain, difficulty, say, in walking at times, would you be inclined to think that the surgery was related to the first injury?

A. I would say that it would be possible.

In addition, Dr. Henderson was asked on page 13 of the deposition to assume that claimant had a tear of the meniscus in September of 1979, but it was not treated because of other physical problems the claimant was experiencing such as urinary tract problems, whether it would be possible that from time to time blood would collect in the near area, and Dr. Henderson indicated that it would be possible if claimant had additional injuries. Claimant's counsel then inquired as to whether it would have been possible if claimant had kept on working, with all of the attendant stress on the knee involved, and it was Dr. Henderson's opinion that that also was possible. It was further indicated that Dr. Henderson's diagnosis in September of 1979 was exactly the same diagnosis he made in September of 1980, and that the same procedures that he prescribed, or discussed in September of 1979 were actually carried out in September of 1980. Finally, claimant's counsel inquired, and Dr. Henderson affirmed, that basically the same symptoms were present in September of 1979 as in September of 1980.

It should be pointed out that during the Bluegrass Festiva claimant was intoxicated, and became involved in a fight with other individuals in attendance at the concert. Claimant is

not a particularly fruitful source of information relative to whether or not he actually sustained an injury to his knee on the day of the concert, since he remembers very little about the events of that date. While Dr. Henderson indicates that blood in the knee would indicate a fresh injury, having made that observation in his February 2, 1981 letter, it is equally clear from a review of his deposition that the same condition could have been present because of claimant's continued employment, employment which certainly involved a great deal of walking, crawling, and so forth, conditions which would place great stress upon the knee. It is illogical for Dr. Henderson to assert in February of 1981 that the damaged meniscus was a result of a physical altercation in August of 1980 when he is on record as stating that the damaged meniscus was causally related to an August 1979 industrial accident. Clearly, the Workmen's Compensation Act was adopted for the benefit of employees and their dependents, and it should be liberally construed in order to obtain the desired results. Byrd vs. Stonega Coke & Coal Company, 182 Va. 212, 28 S.E.2d 725, (1944). Viewing the evidence in the light most favorable to the claimant, and taking into account the dissimilarity between the 1979 statements of Dr. Henderson and his more recent statements, the Commission is of the opinion that claimant's 10% specific disability to his right knee is causally related to his original industrial accident, and we so find.

Accordingly, an award shall enter.

A W A R D

An award is hereby entered in behalf of Leonard

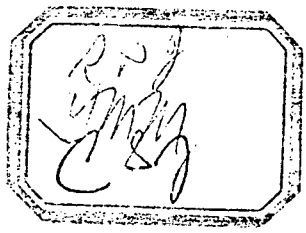
McKinley Miller against Beatrice Pocahontas Coal Corporation, and its insurer, Old Republic Insurance Company, providing for specific disability benefits as per Virginia Code §65.1-56(15) for 10% permanent disability to claimant's right leg, which would entitle claimant to seventeen and one half weeks of compensation at his weekly wage of $199.00. All compensation which has accrued from February 21, 1981, the date of the rating, to the date of this opinion, shall be paid in one lump sum directly to the claimant, and future benefit payments shall be made every two weeks thereafter until the award has been satisfied.

From compensation accrued, there shall be deducted and paid $500 to Larry G. Browning, Esquire, for legal assistance rendered the claimant.

The employer shall be responsible for all reasonable and necessary medical care occasioned by claimant's August 31, 1979 industrial accident for as long as necessary.

There being nothing further before the Commission for determination, this claim is hereby dismissed, and the case is ordered stricken from the hearing docket.

VIRGINIA:
IN THE INDUSTRIAL COMMISSION



LEONARD McKINLEY MILLER, Claimant

v. Claim No. 684-216

Opinion by JOYNER, Chairman

ISLAND CREEK COAL COMPANY, Employer
OLD REPUBLIC INSURANCE COMPANY, Insurer

JUN 12 1981

Larry G. Browning, Esq.
P. O. Box 156
Lebanon, Virginia 24266
for the Claimant.

Thomas R. Scott, Jr., Esq.
P. O. Drawer S
Grundy, Virginia 24614
for the Defendants.

REVIEW before the Full Commission at Richmond, Virginia, on June 5, 1981.

This claim is before the Full Commission for review of the opinion of March 31, 1981. The issue presented is whether or not the claimant's permanent disability of the right leg is causally related to injuries suffered by industrial accident on August 31, 1979 or is the result of any injuries which may have been suffered in a non-work related incident on August 30, 1980. The opinion appealed from reviews in some detail the somewhat conflicting opinions expressed by the treating physician and finds that the claimant's permanent disability is the result of injuries suffered in the earlier industrial accident.

No useful purpose would be served here by a detailed review again of the opinions of the treating physician and the other evidence before the Hearings Commissioner. Suffice it to say

that there was evidence of internal derangement of the claimant's right knee following injury by industrial accident on August 31, 1979. The evidence regarding subsequent injury on August 30, 1980 is somewhat equivocal.

The Full Commission, upon review, adopts the finding of fact and conclusions of law set forth in the opinion of March 31, 1981, which is AFFIRMED with the modification that legal fees for Larry G. Browning, Esq. for legal services rendered the claimant shall be increased to a total of $800.00.

ASSIGNMENT OF ERROR

The Industrial Commission erred as a matter of law in awarding compensation and medical benefits as a result of an industrial accident of August 31, 1979 solely on the basis of the September 21, 1979 report of Dr. W. T. Henderson, claimant's attending physician, notwithstanding the fact that Dr. Henderson's subsequent report of February 2, 1981 and deposition of March 11, 1981 superseded his prior report and unequivocally related claimant's injury and ensuing disability to his subsequent non-industrial accident of August 30, 1980.

EMERGENCY ROOM RECORD

☐ Medicare Patient

S.S. or H.I.B. No.

Last Name: Miller First Name: Leonard Middle Name: McKain | Home Phone: 813-3173 | Admission Date: 9-1-79 | 8:40 A.M. P.M. | Hosp. No.

Address: 134 569 City: Kenmore State: Zip: | Age: 41 | Date of Birth: 11/23/13 | Sex: M F | Civil Status: M S W D Sep. | Religion:

Employer: Beatrice - Ostland Chem.

Relative or Friend; Parent or Guardian if a Minor: Address: Address: Company: Yes No Phone:

Name of Blue Cross and/or Blue Shield Plan: Comp. 8-31-79 Group No. | Contract No. | Effective Date | Subscriber ☐ Dependent ☐ | Family M ☐ Comprehe ☐

Other Hospitalization Insurance: Name: Address: | Cert. or Policy No. | Group No. | Effective Da

Family Doctor: EEM | Notified: Yes ☐ No ☐ | Brought By: Self ☐ Police ☐ Fire ☐ Relative ☐ Other ☐ | Type of Service: XR ☐ PH ☐ PT ☐ Lab. ☐ Ot

Authorizations on Reverse Side of Part One Must Be Signed by Patient or Authorized Person

EMERGENCY ROOM CHARGES
Does Not Include Fee of Attending Physician

ITEM	CHARGE		ITEM	CHARGE	
Emergency Room			Sutures		
Anesthetic			Tetanus Antitoxin		
Antiseptics			Cast Room		
Dressings			Examining Room		
Drugs			EK		
Oxygen					

OTHER SERVICES RENDE

X-ray: Not
Laboratory:
Physical Therapy:

BRIEF HISTORY

If accident state where, when and how injured; if illness describe: Pt. states a metal cutting fell from on right knee.

NOTIFIE
Relative ☐ Co
Police ☐
By Whom:
Time

Nurse's Signature: R.N. | Officer's Signature: Badge: District:

PHYSICIAN'S REPORT

CONDITION ON ADMISSION: Good ☐ Fair ☐ Poor ☐ Shock ☐ Hemorrhage ☐ Coma ☐ Temp. Oral Rectal P. R. BP 124

Treatment: Tetanus Toxoid cc. Tetanus Antitoxin Test Tetanus Antitoxin units

Demerol 75 mg & 50 cc EEM

~~Suturing, tendonous in Sup pa patellar area. Extent tendonous medially~~

Signed Preop Surgery

Diagnosis: ? Chronic Effusion @ depigmentation knee

Disposition of Case: Referred to Dr. Date

INSTRUCTIONS TO PATIENT:

Elevate
Off wt
Ice bag Darvocet - N 100
Try to go back to work on Tues.

(Physician's Signature) (Date) A.M. P.M. Leonard M. Miller (Patient's Signature)

THE USE OF THIS FORM IS REQUIRED UNDER THE PROVISIONS OF THE WORKMEN'S COMPENSATION ACT.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF WORKMEN'S COMPENSATION

INDUSTRIAL COMMISSION OF VIRGINIA

P. O. Box 1794, Richmond, Virginia 23214

File No. _____

Case of _____

ATTENDING PHYSICIAN'S REPORT

All questions in this blank should be answered, and the report should contain an account of all injuries, no matter how trivial. Fill out blank in ink using pen or typewriter, and mail promptly to the employer or the Claim Office of the insurance carrier.

1. NAME OF INJURED EMPLOYEE (First, middle initial, last) Leonard M. Miller	2. DATE OF INJURY (Mo., day, yr.) August 31, 1979
3. EMPLOYEE'S HOME ADDRESS (Number and street, city, state, zip code) Box 569 Honaker, Va.	4. DATE OF BIRTH (or age) (Mo., day, yr.) 41 5. SEX m
6. NAME OF EMPLOYER Island Creek Coal Co	7. EMPLOYER'S ADDRESS (Number and street, city, state, zip code). Keen Mountain, Va.
8. DATE OF FIRST VISIT (Mo., day, yr.) September 21, 1979	9. DATE DISCHARGED (Mo., day, yr.) 10. WHO AUTHORIZED TREATMENT?

11. EMPLOYEE'S ACCOUNT OF HOW INJURY OR EXPOSURE TO OCCUPATIONAL DISEASE OCCURRED

He dropped a piece of metal extension on his right knee.

12. FINDINGS UPON EXAMINATION (INCLUDE RESULTS OF X-RAYS, LABORATORY STUDIES, ETC. NOTE PRIOR INJURIES AND PRE-EXISTING CONDITIONS AND ANY REMARKS AND RECOMMENDATIONS ON THE REVERSE OF THIS FORM.)

General physical examination was not performed. Examination of his right knee reveals an old healed scar on the medial aspect where a bone operation was done many years ago. The knee is swollen. It is tender over the medial aspect and tends to lock. X-ray reveals no fracture dislocation.

13. DIAGNOSIS Tear of right medial meniscus.	14. IS DIAGNOSED CONDITION DUE TO OCCURRENCE DESCRIBED IN ITEM 11? [X] YES [ ] NO IF 'NO', EXPLAIN ON REVERSE OF THIS FORM

15. NATURE OF TREATMENT He was advised about care at home, attempting to contine at work and about returning in a few days for possible surgical consideration.	16. DATES OF YOUR TREATMENT (Mo., day, yr.)
17. WAS EMPLOYEE HOSPITALIZED? [ ] YES [ ] NO (If "Yes," give name and address of hospital in item 19)	18. WERE X-RAYS TAKEN? [ ] YES [ ] NO (If "Yes," give results in item 12)

19. GIVE (1) NAMES, (2) ADDRESSES, AND (3) DATES OF TREATMENTS PROVIDED BY HOSPITALS OR OTHER DOCTORS FOR THIS INJURY

SEP 26 1979

20. WAS THERE DISABILITY FOR WORK? [ ] YES [ ] NO (If "Yes," answer 20-A,B,C) →	A. DATE DISABILITY BEGAN (Mo., day, yr.)	B. DATE ABLE TO RETURN TO LIGHT WORK (Mo., day, yr.)	C. DATE ABLE TO RETURN TO TO REGULAR WORK (Mo. day, yr.)

21. WILL THERE BE PERMANENT DEFECT OR DISFIGUREMENT? [ ] YES [ ] NO
(If "Yes," describe nature and extent of same. Estimate loss of function in % terms.)

R.I.O.

22. NAME OF ATTENDING PHYSICIAN (Type or print) Tillou Henderson, M.D.	23. ADDRESS (Number and street, city, state, zip code) Richlands, Va.

24. I CERTIFY THAT I PERSONALLY EXAMINED AND TREATED THIS PATIENT

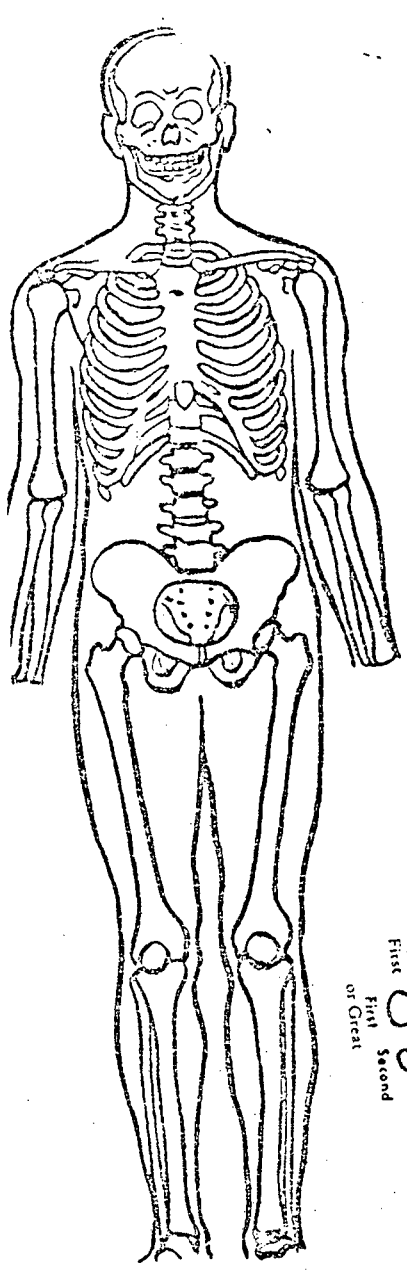
SIGNATURE [signature] M. D
SIGNATURE OF ATTENDING PHYSICIAN

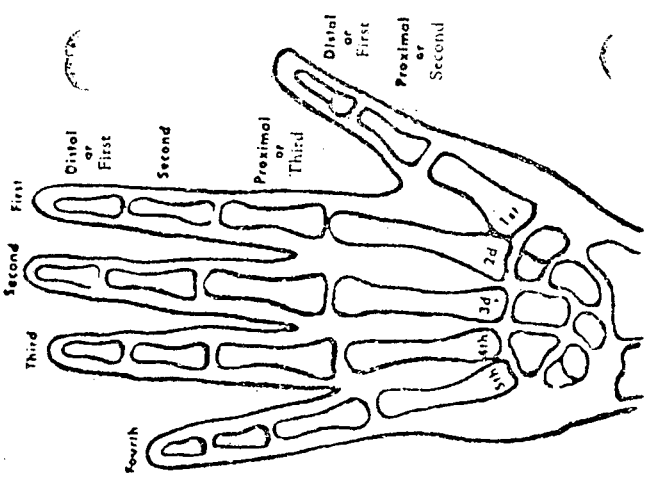
25. DATE OF THIS REPORT
9-21-79

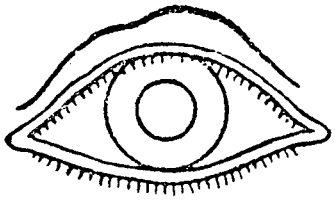
COMPLETE THIS REPORT IMMEDIATELY AFTER SEEING PATIENT FOR THE FIRST TIME.

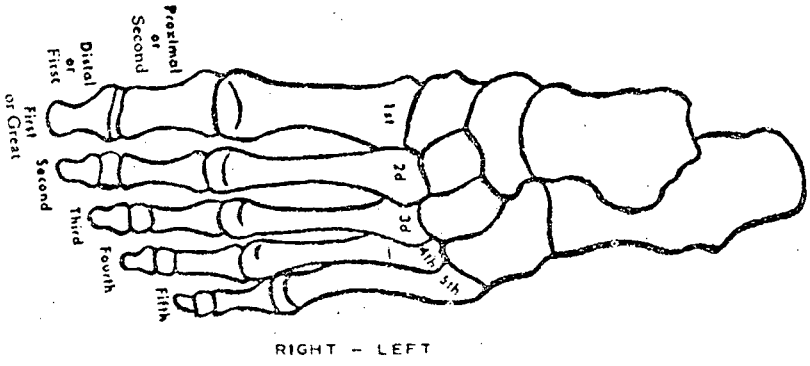
41

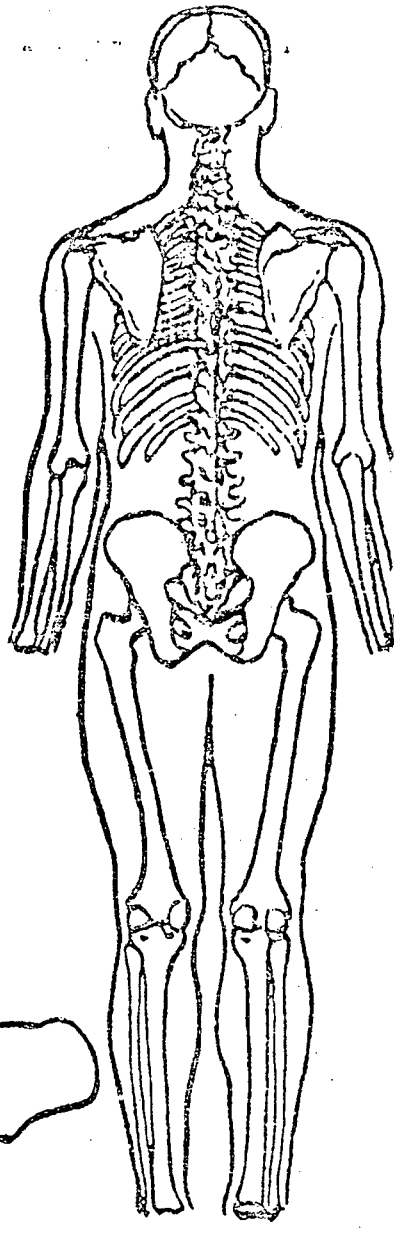
Form No. 6 10-1-77 —400M











REMARKS

OCT 1980
RECEIVED
Industrial Commission of Virginia

THE USE OF THIS FORM IS REQUIRED UNDER THE PROVISIONS OF THE WORKMEN'S COMPENSATION ACT.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF WORKMEN'S COMPENSATION

INDUSTRIAL COMMISSION OF VIRGINIA

P. O. Box 1794, Richmond, Virginia 23214

File No. _____

Case of Leonard McKinley Miller

ATTENDING PHYSICIAN'S REPORT

questions in this blank should be answered, and the report should contain an account of all injuries, no matter how trivial. Fill blank in ink using pen or typewriter, and mail promptly to the employer or the Claim Office of the insurance carrier.

1. NAME OF INJURED EMPLOYEE (First, middle initial, last) Leonard McKinley Miller	2. DATE OF INJURY (Mo., day, yr.) 8-31-79
3. EMPLOYEE'S HOME ADDRESS (Number and street, city, state, zip code) Box 569 Honaker, VA 24260	4. DATE OF BIRTH (or age) (Mo., day, yr.) 11-23-37 5. SEX: M
6. NAME OF EMPLOYER Beatrice-Island Creek	7. EMPLOYER'S ADDRESS (Number and street, city, state, zip code). Keen Mountain, VA 24624
8. DATE OF FIRST VISIT (Mo., day, yr.) 9-1-79	9. DATE DISCHARGED (Mo., day, yr.) 10. WHO AUTHORIZED TREATMENT? Employer

11. EMPLOYEE'S ACCOUNT OF HOW INJURY OR EXPOSURE TO OCCUPATIONAL DISEASE OCCURRED

"A piece of metal extension fell on my right knee."

12. FINDINGS UPON EXAMINATION (INCLUDE RESULTS OF X-RAYS, LABORATORY STUDIES, ETC. NOTE PRIOR INJURIES AND PRE-EXISTING CONDITIONS AND ANY REMARKS AND RECOMMENDATIONS ON THE REVERSE OF THIS FORM.)

Physical examination revealed swelling and tenderness in the suprapatellar area. There was severe tenderness medially. There was a scar from previous surgery. There was questionable fluid so an attempt at aspiration was done with no fluid obtained. X-ray of the right knee revealed no fracture.

13. DIAGNOSIS Swelling and Tenderness in Suprapatellar Area of Right Knee Severe Tenderness Medially, Right Knee	14. IS DIAGNOSED CONDITION DUE TO OCCURRENCE DESCRIBED IN ITEM 11? [XX] YES [ ] NO IF "NO", EXPLAIN ON REVERSE OF THIS FORM

15. NATURE OF TREATMENT

1. Elevate
2. No weight bearing
3. Icebag
4. Darvocet - N 100
5. Try to return to work on on Tuesday, Sept. 4, 1979

16. DATES OF YOUR TREATMENT (Mo., day, yr.)

17. WAS EMPLOYEE HOSPITALIZED? [ ] YES [XX] NO (If "Yes," give name and address of hospital in item 19)

18. WERE X-RAYS TAKEN? [XX] YES [ ] NO (If "Yes," give results in item 12)

19. GIVE (1) NAMES, (2) ADDRESSES, AND (3) DATES OF TREATMENTS PROVIDED BY HOSPITALS OR OTHER DOCTORS FOR THIS INJURY

R I O

20. WAS THERE DISABILITY FOR WORK? [XX] YES [ ] NO (If "Yes," answer 20-A,B,C)	A. DATE DISABILITY BEGAN (Mo., day, yr.) 9-1-79	B. DATE ABLE TO RETURN TO LIGHT WORK (Mo., day, yr.)	C. DATE ABLE TO RETURN TO REGULAR WORK (Mo., day, yr.)

He will try to return on 9-4-79.

21. WILL THERE BE PERMANENT DEFECT OR DISFIGUREMENT? [ ] YES [ ] NO (If "Yes," describe nature and extent of same. Estimate loss of function in % terms).

22. NAME OF ATTENDING PHYSICIAN (Type or print) Emile Khuri, M.D.	23. ADDRESS (Number and street, city, state, zip code) 200 Washington Square Richlands, VA 24641

24. I CERTIFY THAT I PERSONALLY EXAMINED AND TREATED THIS PATIENT

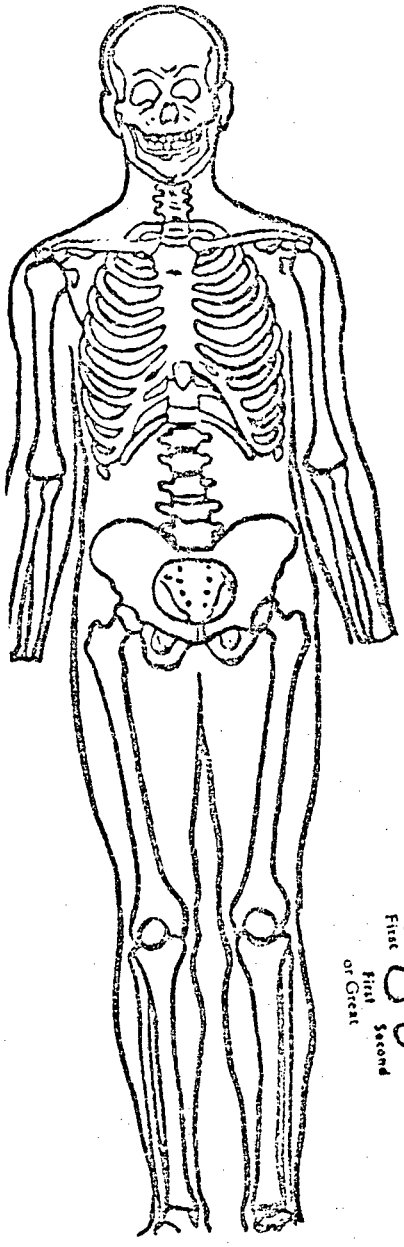
SIGNATURE _____ M. D
SIGNATURE OF ATTENDING PHYSICIAN

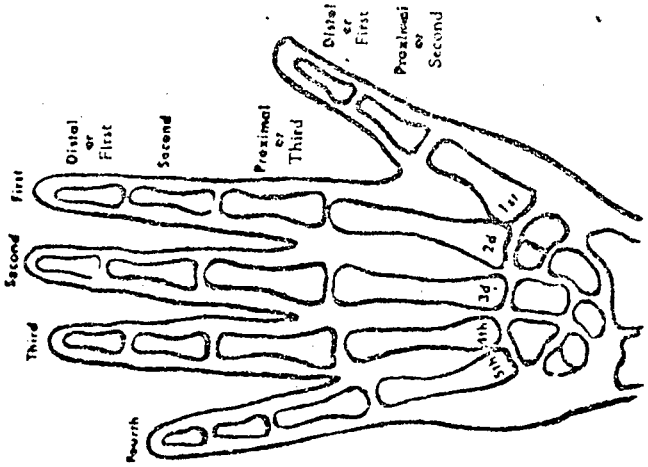
25. DATE OF THIS REPORT: 11-1-79

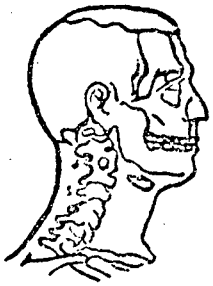
COMPLETE THIS REPORT IMMEDIATELY AFTER SEEING PATIENT FOR THE FIRST TIME.

43

Form No. 6—5-4-78—400M







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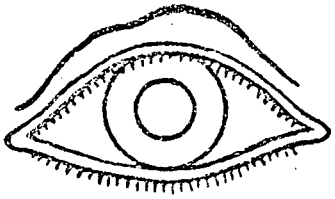

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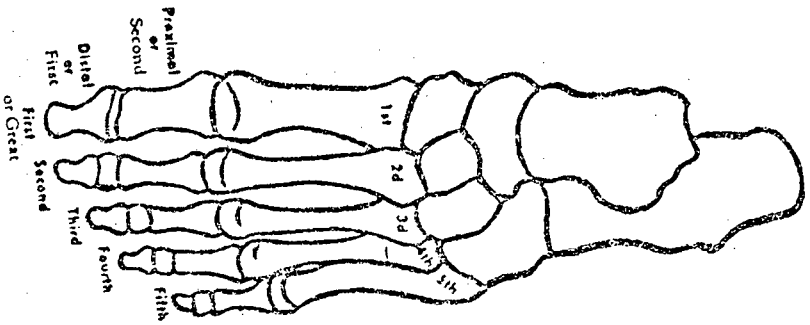
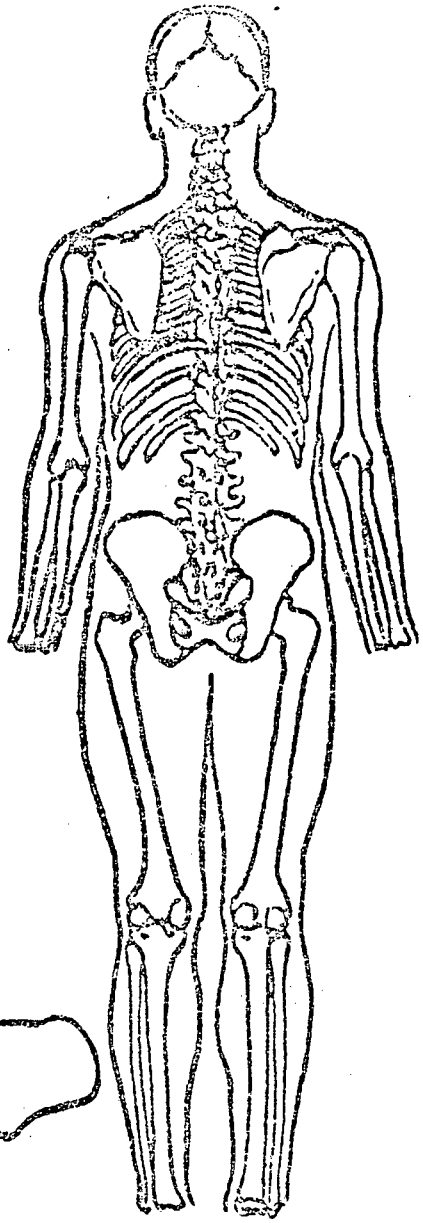




REMARKS

OCT 1980
RECEIVED
Industrial Commission of Virginia

USSELL COUNTY MEDICAL CENTER
BANCH, VIRGINIA

PHYSICAL EXAMINATION

.ME:	Mr. Leonard McKinley Miller	CASE NO.:	7679
DDRESS:	Honaker, Virginia	DATE:	8-30-80
GE:	42	DR.:	Giles Q. Gilmer

C: Unconsciousness.

PI: This man was admitted by way of the Emergency Room where he was brought by way of ambulance in an unconscious condition. Attendants gave the history of him being intoxicated and involved in an altercation with someone.

YSTEMS REVIEW: Not obtainable.

E: He is well developed who is in an unconscious condition with alcoholic breath. Temperature is 98, pulse 84, respirations 20 and blood pressure 120/86.

EENT: Normocephalic. No hematoma or abrasions. The pupils are round and equal. They react to light. Ears are negative. Nose reveals edema, discoloration of the skin with dry blood at the nares.

ECK: Supple.

HEST: Symmetrical.

EART: No murmurs. Regular rhythm.

JNGS: Clear to auscultation.

BDOMEN: Soft with no masses.

ECTAL: Not examined.

ACK: No deformity.

XTREMITIES: No deformity.

KIN: There is some discoloration of the skin of the forearm and hand.

EUROLOGICAL: Reflexes are normal.

IAGNOSIS:
1. Acute alcoholic unconsciousness
2. Possible injuries of the head, nose, right wrist and hand

Giles Q. Gilmer, M.D.

QG/tmh

OCT 10 1980

Dictated; 9-1-80
Transcribed: 9-2-80

634 2/6

LEBANON, VIRGINIA 24266

DISCHARGE SUMMARY

NAME:	Mr. Leonard McKinley Miller	CASE NO.:	7679
ADDRESS:	Honaker, Virginia	DATE TRANSCRIBED:	9-16-80
AGE:	42	DOCTOR:	Giles Q. Gi
DATE ADMITTED:	8-30-80	DATE DISCHARGED	9-3-80

This 42 year old male was admitted 8-30-80 in an unconscious state after having had an altercation with someone. Attendants said that he was drinking heavily at the time. Physica examination revealed him to be unconscious with an alcoholic breath. Pertinent physical findi revealed dried blood in the nares, some discoloration of the skin of the right wrist and hanc The laboratory studies revealed a normal hemogram. Urinalysis was normal. Chemisty 6 was normal. X-ray of the skull, facial bones, nose, right hand, right wrist were considered normal. X-ray of the chest showed diffused pulmonary fibrotic pattern. On the second hospit day he was alert and complained of pain in the right knee. This joint was swollen and fluct X-ray of his knee was negative. About 60 ccs. of blood was aspirated from this joint and culture of this fluid was negative. The knee continued to have pain and swelled again, but it was felt that it was better not to aspirate the second time. He was discharged 9-3-80 with the use of crutches and instructions to see an orthopedist if this knee continued to hurt.

DISCHARGE DIAGNOSIS:
1. Acute alcoholism
2. Internal derangement of the right knee with hemarthrosis
3. Multiple sprains and contusions
4. Pulmonary fibrosis

Giles Q. Gilmer, M.D.

GQG/tmh

OCT 10 1980

46

Dictated: 9-15-80

G.C. #684-216

Clinch Valley Physicians, Inc.

RICHLANDS, VIRGINIA

COMPENSATION PROGRESS RECORD
October 6, 1980

TO: Old Republic Insurance
Drawer FF
Richlands, Va.

NAME:

Leonard Miller

CLAIM NO.:

DATE AND TIME OF INJURY:

August 31, 1979

DIAGNOSIS:

Tear of right medial meniscus.

PROGRESS:

The patient wasseen here again on September 29, 1980 at which time he is improving. He was given weight lifting thrapy and advised about home care.

The patiant was seen here again on October 2, 1980 at which time his recovery seems uneventful. He was given weight lifting therapy and advised about care at home and returning.

TH:bc
cc: Island Creek Coal Co.
Edgar Mullins
Keen MT., Va.

OCT 10 1980

47

TILLOU HENDERSON M.D.

GC # 684-216

Clinch Valley Physicians, Inc.

RICHLANDS, VIRGINIA

COMPENSATION PROGRESS RECORD
November 7, 1980

TO: Old Republic Insurance
Drawer FF
Richlands, Va.

NAME: Leonard Miller

CLAIM NO.:

DATE AND TIME OF INJURY:
August 31, 1979

DIAGNOSIS:

Tear of right medial meniscus.

PROGRESS:

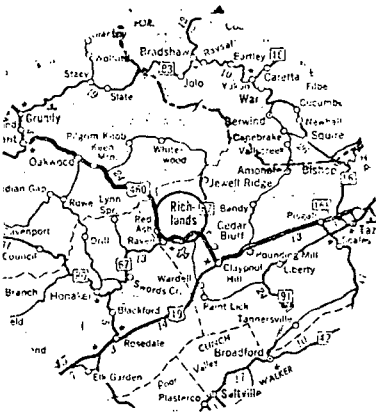
The patient was seen here again on November 6, 1980 at which time he is improved. He was advised he could resume his regular work on 11-10-80.

TH:bc
cc: Island Creek Coal Co.
Edgar Mullins
Keen MT., Va.

TILLOU HENDERSON, M.D.

NOV 12 1980

684-216



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Clinch Valley Physicians, Inc.

2949 West Front Street Richlands, Virginia 24641 Phone 703/964-6771

Joseph S. Serreno, Administrator

February 2, 1981

Old Republic Insurance Company
Mr. Ervin B. Davis, Claims Manager
Drawer FF
Richlands, Virginia 24621

RE: Leonard M. Miller

Dear Mr. Davis:

I have your letter of inquiry dated January 26, 1981, relative to the above named patient. I have reviewed his records here and note that he was seen here on one occasion on September 21, 1979, at which time it was thought that he may have a damaged medial meniscus in his right knee. He was not seen again until September 3, 1980, that is, approximately one year later. When seen on that date, his knee was quite swollen and tender, and I was not aware of the subsequent injury which was said to have occured to his knee is some sort of an altercation on August 30, 1980. I note Dr. Gilmer's report which stated that about 60 ccs of blood was aspirated from his right knee joint on, or about, August 30, 1980. This would indicate that there was a fresh injury to the knee, and the blood in the joint would certainly not be related to his alleged original injury of September 21, 1979. (sic)

I also enclose a copy of my discharge summary for the period of hospital from 9/3 to 9/7/80, at which time it was noted that there was a fracture of the lip of the medial plateau of the tibia. This also would have been a recent injury as a fracture there would have healed had it occured on September 21, 1979.

In conclusion, it would have to be my opinion that the damaged meniscus was a result of the physical altercation incurred on August 30, 1980 and was in no wise related to the old injury of August 31, 1979. Any persisting disability which the patient may have would be related to the incident of August 30, 1980 and unrelated to the incident of August 31, 1979. Trusting this clarifies the situation.

Yours truly,

Tillou Henderson, M.D.
TH:fs

O.C. # 684-216

30-49-45

Clinch Valley Community Hospital

DISCHARGE SUMMARY

NAME Leonard M. Miller HISTORY NUMBER 323,884

ADMITTED 9-3-80 ADDRESS Honaker, Va. AGE 42

DISCHARGED 9-7-80 SERVICE Orthopedic/Surgery

The patient was seen here again on September 3, 1980, fur further examination and treatment of his right knee. It was injured in August of 1979 and has caused trouble off and on ever since. Recently it has swollen and become tender He feels very well otherwise. He has had no recent cold or cough.

He is well nourished, good color and quite lame and using crutches for ambulatic His general physical examination is not remarkable. Examination of his right kn reveals it to be swollen and quite tender over the medial aspect and tending to lock.

In the hospital with general anesthesia on September 5, 1980, the torn right medial meniscus was removed. A fracture of lip of the medial plateau of tibia was noted. His postoperative course was uneventful. He became ambulatory with crutches and was discharged in an improved condition on September 7, 1980, with instructions about care at home and with a prescription for Phenaphen #4 (24).

DIAGNOSIS: Torn right medial meniscus.

TH:fs
T: 9-25-80

Tillou Henderson, M.D.

cc: Old Republic Ins.
cc: Island Creek Coal Co

OCT 3 1980

E-11

INDUSTRIAL COMMISSION OF VIRGINIA

LEONARD McKINLEY MILLER VS. ISLAND CREEK COAL COMPANY AND OLD REPUBLIC INSURANCE COMPANY	I.C. FILE NO.: 684-216

APPEARANCES:

LARRY G. BROWNING, ESQ., Abingdon, Virginia
Counsel for the Claimant

THOMAS SCOTT, ESQ., Grundy, Virginia
Counsel for the Defendant

DEPOSITION OF DR. TILLOU HENDERSON OF MARCH 11TH, 1981

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
DR. TILLOU HENDERSON	3-15	15-24	24-28	28

EXHIBITS:

DEPOSITION EXHIBIT NO. 1 - Letter of Mr. Davis, Old Republic Insurance Co. dated Jan. 26th, 1981

DEPOSITION EXHIBIT NO. 2 - Pathology Report dated 9-5-80

BOB V. BRANSON
COURT REPORTER

The deposition of:

Doctor Tillou Henderson

taken by agreement for the purpose of evidence on behalf of the defendant was duly taken and sworn to commencing at 8:30 o'clock a. m. on March 11th, 1981 at Clinch Valley Physicians, Incorporated, Richlands, Virginia, before B. V. Branson, Notary Public for the State of Virginia and Court Reporter.

The signature of the witness was waived.

DR. TILLOU HENDERSON

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWNING:

Q. Would you state your name and profession?

A. Doctor Tillou Henderson. I am an orthopedist.

Q. You are with Clinch Valley Clinic?

A. Yes, Clinch Valley Physicians.

Q. Doctor Henderson, could you give us a brief resume of your qualifications?

A. After high school in Dallas, Texas I took my premedical training at Southern Methodist University which was also in Dallas. Following premedical education,

I had my medical education at Baylor College of Medicine which, at that time, was also in Dallas, Texas. I had a year internship at Baylor University Hospital in Dallas, followed by a years residency in surgery at the same hospital. That was followed by three years of preceptorship training with an orthopedic clinic in Dallas. Not very long after that I had three years of experience as Chief of an Orthopedic Surgical Team in the United States Army in the Pacific Theater of Operations. I have been engaged in the practice of orthopedics at the Clinch Valley Clinic here in Richlands since that time, since May of 1946.

Q. You have examined Leonard Miller before, I believe, is that correct?

A. Yes, sir.

Q. Concerning his knee injury, when was the first time that you saw him for that?

A. On September 21st of 1979.

Q. What was the results of your examination and why did you examine his right knee?

A. He stated that he had injured his right knee on August 31st, 1979 when he dropped a piece of metal on it. On the examination of his knee, there was an old healed scar on the medial aspect where a bone operation had been

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ABINGDON, VIRGINIA 24210

done many years ago. The knee was swollen. It was tender over the medial meniscus and had a tendency to lock. X-ray revealed no fracture or dislocation. It was thought that he likely had a tear of his right medial meniscus. He was advised about care at home, attempting to continue at work and about returning in a few days for possible surgical consideration.

Q. It's my understanding that the surgery was not performed because he was under Dr. Scott's care for a urinary problem, is that correct?

A. I am not sure. Well, surgery wasn't performed when I saw him on September 21st of '79 because I wasn't that certain as to the diagnosis. I do understand that the patient subsequently had care for some other ailments. I did not have an opportunity to see him relative to surgery for about a year.

Q. But you are aware then that he was being treated by Dr. Scott at this hospital for that problem? I believe it is in your file. Well, let's go on then. Sir, what were the symptoms that he had at the time of the initial examination?

A. He had pain, swelling and a tendency to lock involving his right knee.

Q. Are those the normal symptoms for the

diagnosis of a tear of the right medial meniscus?

A. Yes, sir.

Q. He stated that you gave him a return slip for surgery. Would that be consistent with your notes?

A. It was for possible surgery.

Q. Now, in your letter of February 2nd, 1981, to Mr. Davis - - Well, before we get into that, you saw him again September 3rd, 1980, is that correct; in September of 1980?

MR. SCOTT: September 3rd.

A. Yes, sir.

Q. At that time, what were the symptoms?

A. Well, he was having more pain than ever about his knee and it was swollen and it was still tender over the medial aspect.

Q. What history did he give you at the time?

A. He reminded me that he had been injured in August of 1979 and he stated that the knee had caused him trouble off and on ever since. He said recently it was swollen more and tender. He stated that he thought he was in good health otherwise.

Q. Did you inquire as to the statement, trouble off and on?

A. No, sir.

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ARLINGTON, TEXAS 76017

Q. Did you have the impression that he was referring to trouble off and on for several months?

A. Possibly.

Q. What was your diagnosis after you examined him on that day?

A. I still thought he had a torn medial meniscus.

Q. What was done for it?

A. He was subsequently hospitalized and on the 5th of September the torn right medial meniscus was removed. A fracture of the medial plateau of the tibia was noted. He had an uneventful post-operative course.

Q. Doctor, is there any degree of permanent impairment using guidelines set by the Industrial Commission in this patient due to the tear of the meniscus?

A. I examined him with that in mind on February 21st of 1981. I thought he had reached maximum improvement. I thought he had sustained a ten percent loss of function of his right leg as a result of the injury and meniscectomy.

Q. Doctor, in your letter to Mr. Davis, your letter of February 2nd, 1981 to Mr. Davis, you referred to a fresh injury. I quote, "This would indicate that there had been a fresh injury to the knee." And you also referred to a fight on August 30th, 1980. How did you become

aware of this situation?

A. By communication from Mr. Davis from Old Republic Insurance.

Q. Would you mind if we made a copy of Mr. Davis' letter to you, a part of the record in this claim?

A. No, sir.

Q. You referred to a fight, an altercation, on August 30th. Did Mr. Davis also inform you of that?

A. I'm not certain that an altercation means a fight. I believe that's the term that Mr. Davis used in his communication.

A. There's a note from Mr. Davis on this to you that says, quote, "I would appreciate it very much if I could discuss this case with you on the telephone." Did you, in fact, have a subsequent, private phone call concerning this claim with Mr. Davis?

A. I think I probably did, although I don't have that recorded.

Q. Do you recall what was said over the telephone?

A. I believe that he just reiterated what he had already told me. And I think I told him what my conclusion would be.

Q. Now, you are basing your opinion "this would

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ABINGDON, VIRGINIA 24210

indicate there was a fresh injury." - - Was his information to you of January 26th, 1981, did that form the basis of your opinion?

MR. SCOTT: I'm going to interpose an objection. I mean, certainly I would stipulate that Mr. Davis wrote Dr. Henderson, but he also enclosed some medical reports from Dr. Gilmer that bear out what Mr. Davis told Dr. Henderson in his letter. In addition to that, the man freely admitted - - I mean you're not contesting that there was a fight, are you? He clearly admitted on the witness stand. Anyway, go ahead and answer the question. I am just preserving my objection for the record.

A. Ask me that again.

Q. Okay, Doctor. Let me rephrase it. What forms the basis of your opinion that says that this would indicate there was a fresh injury? I guess the question is basically, does Mr. Davis' letter and his information to you, did that influence your opinion as to the fresh injury?

A. Yes, sir. That and the medical report from the Lebanon doctor. That is the entire basis for my opinion.

Q. Now, the phrase, would indicate, to me you are implying or inferring, you're not saying within reasonable medical certainty, the legal phrase? Is that correct?

A. I thought if the information that I had obtained was correct, that would have been with reasonable medical certainty, the indication.

Q. Did you question - - Did you ask the patient himself directly about this?

A. No, sir. I don't believe I saw him after I got this information. If I did, I don't think that I questioned him particularly about it.

Q. During the follow-up in November after the operation, did you ask him about it? Did you confer with him about it?

A. No, sir, I don't think I did.

Q. In other words, you're saying with reasonable medical certainty that you can say that this was a fresh injury?

A. Yes, sir. That is based on the information that I have in those communications.

Q. Doctor, if you would assume that he had trouble from August 31st of '79 on with the knee such as, to be specific, swelling, locking of the knee, giving away of the knee, going with those symptoms, would that influence your opinion in any way?

A. If those situations happened frequently at all and without any other injury, why then, it would

BOB V. BRANSON
COURT REPORTER

influence my opinion.

Q. Would you be less apt to say with reasonable medical certainty? I mean, how would it change your opinion?

A. Well, I'd feel less apt to say, but I believe I would still say.

Q. You would be less apt to say?

A. Right.

Q. What would be causing - - I mean, you diagnosed a tear in September of '79. If he had the locking of the knee, the giving away of the knee, pain in the knee and swelling in the knee, what would be causing that?

A. I would think it would still be a tear of the medial meniscus, but I don't much think that he could have worked during that time. Maybe he didn't.

Q. Let me ask you a question, Doctor. Assuming the man is honest and he did have locking, swelling, pain difficulty, say, in walking at times, would you be inclined to think that the surgery was related to the first injury?

A. I would say that it would be possible.

Q. Doctor, I notice that you found a fracture on the lip of the medial plateau of the tibia, is that in the same area? Excuse me. I'm a history major. But, is that in the same area of the medial meniscus?

A. Yes, sir.

Q. Now, I notice in reviewing the reports from the Russell County Medical Center, our famed Medical Research Center of Russell County, that they did not find any fracture of that area. I think that Dr. Wolfe, the radiologist, made that finding. I'm referring to an x-ray dated 9-2-80 in the record from Dr. Wolfe, AP and level views of the right knee shows no fracture. Does that influence your opinion in any way?

A. I'm trying to find my discharge summary here. The fracture was not seen in the x-ray. The fracture was seen at the time of the operation.

Q. So the fracture was not treated. I mean, are you saying with reasonable medical certainty that that fracture would have healed by itself in a year if it had occurred back earlier?

A. Yes, sir.

Q. Did you examine the fracture upon the operation?

A. Well, I looked at it. I think that was all that was necessary in the way of an examination.

Q. Do you recall how long, or was it just in passing that you noticed it?

A. Just in passing.

BOB V. BRANSON
COURT REPORTER

Q. Now, if it had been fractured in September of '79 and he kept having trouble, the knee giving away, occasionally snapping down on him, still working on it in underground mining, would that have prevented or interferred with the healing of that fracture?

A. Well, the fracture per se, regardless of when it happened, I don't think it produced any significant disability. It was just noted at the time of surgery that it was there.

Q. I gather from your testimony then that you are relying mostly on the fact that there was blood in the joint to form your opinion, is that correct?

A. That plus the presence of the fracture.

Q. But, do you find blood present in some cases where there is swelling, particularly when you're dealing with the knee joints?

A. Sure. If there had been a recent injury to the knee, most of the swelling would be from blood in the joint.

Q. Assuming he had the tear in September of '79 and it was not treated because of other physical problems that he was having, would it be possible that from time to time blood would collect in the area?

A. It could if he had additional injuries.

Q. Well, would it have been possible if he had kept on working on it?

A. Yes, sir.

Q. But as I understand, Doctor, in closing, your diagnosis in August of '79 or September of '79 was the same diagnosis you made in September of '80, is that correct?

A. Yes, sir.

Q. The same procedures that you prescribed, the same procedures of the operation that you did in September of '80 was the same procedure that you were thinking about doing in September of '79, is that correct?

A. September of '80?

Q. Right.

A. Yes, sir.

Q. You found basically the same symptoms present in September of '79 that you found in September of '80, is that correct?

A. Yes, sir.

Q. Had you dealt with Mr. Miller before? Do you know Mr. Miller? Do you recall?

A. I'm not certain that I knew him. He had been here a good bit in the past, but just superficially looking, I'm not certain that I ever treated him. It

BOB V. BRANSON
COURT REPORTER
PAYNE & BOX 25

seemed like that I did know him, though.

Q. Would you be aware of his job in the mines?

A. No, sir.

Q. You do not know that he was a foreman?

A. No, sir.

Q. Doctor, one final question. If the knee had been swollen or had been hurt and you reached that diagnosis in September of '79 and the tear was not repaired as it was not, would he have trouble from time to time off and on?

A. That would depend on his activity. If he were trying to work, I would say that he would have continued to have trouble.

Q. Would you expect the trouble to be one of a continuous, day after day after day, or one we could say that would come and go?

A. Come and go.

MR. BROWNING: That's all I have at this time.

CROSS EXAMINATION

BY MR. SCOTT:

Q. Doctor Henderson, at the time that you performed the meniscectomy on this gentleman and removed his right medial meniscus in September, 1980, you did not find the meniscus to be shredded, did you?

A. Well, I just described it as being torn. The pathology report is available. The pathologist's report said the meniscus with features of fragmentation and basophilic degeneration. He just said it was a knee cartilage with features of fragmentation, but that would indicate there likely would have been some shredding of it, but not particularly.

Q. All right, sir. So the point I'm getting at though is if there was a whole lot of shredding since there apparently may have been some shredding, but not a whole lot of shredding, then that adds emphasis to your opinion that it wasn't recent; I mean that it was recent.

MR. BROWNING: We'd like to object to one, the leading, since he's your witness, and we object to you testifying.

A. Ask me again.

MR. BROWNING: Would you mind rephrasing it?

Q. Doctor Henderson, you have testified as to what the pathological report stated and the inference from the pathological report. I believe you said there was some shredding, but not a whole lot, is that correct?

A. Yes, sir, that's correct.

Q. All right. Given the some shredding and not a whole lot, could you state whether or not that has any

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ABINGDON, VIRGINIA 24211

2 bearing on your opinion as to the recentness of the tear
3 of the medial meniscus?
4 A. Well, that would indicate to me that at
5 least most of the injury to the meniscus was recent.
6 Q. All right, sir. What does multiple tears
7 and a lot of shredding denote?
8 A. Well, that would indicate that the difficulty
9 had been going on for a longer period of time.
10 Q. All right, sir. And that wasn't found in
11 this case, was it?
12 A. That's true.
13 Q. All right. Dr. Henderson, when you examined
14 this man the first time on September 21st of 1979, you did
15 not aspirate his knee, did you?
16 A. No, sir.
17 Q. Were you aware that he saw Dr. Khuri - -
18 You realized this alleged accident was on August 31st, 1979?
19 A. Yes, sir.
20 Q. All right, sir. Did you know that he saw Dr.
21 Emile Khuri, whom I believe is a thoracic or a general
22 surgeon at the Mattie Williams Hospital on September 1st,
23 1979?
24 A. I don't believe that I was aware of that.
25 Q. That would have been approximately one day

after the injury, September 1st from August 31st?

A. Right.

Q. All right, sir. Doctor Khuri's report is in evidence. I'm going to tell you what it says and I'm going to ask what that tells you.

MR. BROWNING: I'm going to object. I think he should review the medical report.

MR. SCOTT: All right. Let me see if I can find it here.

MR. SCOTT: I'm showing Dr. Henderson, for the purpose of the record, an attending physician's report from Dr. Emile Khuri dated 11-1-79 and it reflects that the date of the first visit of Leonard McKinley Miller was 9-1-79. Is that correct, Doctor?

A. The first visit here?

Q. No, sir, I'm talking about this report right here. You see this is from Khuri?

A. Yes, sir.

Q. All right, sir. Would you review this sentence here; I'm talking about in paragraph twelve; would you review what is stated in paragraph twelve?

A. It says, physical examination reveals swelling and tenderness of suprapatella area. There was severe tenderness medially. There was a scar from previous

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COURT REPORTER

surgery. There was questionable fluid so an attempt at aspiration was done with no fluid obtained. X-ray of the right knee revealed no fracture.

Q. All right, sir. With regard to the note by Dr. Khuri that aspiration was attempted and no fluid was obtained, what would that tell you?

A. Well, either that he stuck him in the wrong place or else there was not enough fluid present to obtain anything on attempted aspiration.

Q. All right, sir. Now, when you saw him on September 21st, 1979, did you aspirate his knee?

A. No, sir.

Q. Did you not feel it was necessary?

A. That's right.

Q. All right, sir. When fluid is obtained, Doctor, generally speaking, could you state whether or not that is an indication of a recent injury?

A. Well, it would depend upon the character of the fluid.

Q. What if it were a bloody fluid?

A. Right.

Q. Would that be indicative of what?

A. Of a recent injury.

Q. All right, sir. Now, Doctor, you testified

that you thought that this man in August of 1979 - - excuse me, in September of 1979, when you first saw him - - You only saw him one time in 1979, isn't that correct?

A. Yes, sir.

Q. All right. You testified that when you first saw him that you asked him to come back for possibly considering surgery. Is that the way it happened?

A. Yes, sir.

Q. All right, sir. Now, what was it that you would have done the second time had he come back to see you to either rule out a medial meniscus or to determine whether he had one, you know? What additionally would you have done in a second examination?

A. I would have examined his knee again. I would have noted the amount of swelling, the location of it, the amount of tenderness and the location of that. I would have also done what is called a grinding test on his knee which is manipulation of the lower leg with the thigh kept still in an attempt to elicit any popping or clicking in the joint. That test is important if it is positive. However, if it's positive, the person could still have the damaged cartilage. I think that he had enough signs and symptoms the first time that I saw him that if those conditions had continued; certainly if they became any worse;

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ROUTE 8 BOX 45

that that would have been enough to indicate surgery.

Q. All right, sir. But you never had the benefit of seeing him for another year?

A. That's right.

Q. Now, Dr. Henderson, when he came back to see you on September 3rd, 1980, which was his next visit, wasn't it?

A. Yes, sir.

Q. When he came back to see you then, he didn't tell you anything about a fight or an altercation in August of 1980, did he?

A. No, sir.

Q. And he didn't tell you that he had been hospitalized in the Lebanon Hospital under Dr. Gilmer's care, did he?

A. He didn't, no, sir.

Q. And he didn't tell you that Dr. Gilmer drew 60 cc's of blood from his knee, did he?

A. No, sir.

Q. What would Dr. Gilmer's drawing of 60 cc's of blood indicate to you in August of 1980?

A. It would indicate that he had an acute injury of consequence of his knee.

Q. All right, sir. The evidence in this case

reveals that this man continued to work from August 31st, 1979 with regularity up until - -

MR. BROWNING: We object to that. There was evidence of hospitalization and treatment at Mattie Williams. Also there was testimony at the hearing to that effect. We feel that the company, if they want to argue regularity of work, that they should introduce a wage chart.

Q. Doctor, I'm not trying to misstate the evidence, but my recollection of the claimant's testimony was that on the date of the injury, with the exception of going to see Dr. Khuri and with the exception of going to see you, in '79 now, up until August of 1980 when this altercation took place, that he worked with a fair degree of regularity. Assuming that to be true, do you have an opinion as to whether or not he had a medial problem with his medial meniscus in light of his work record?

A. I think if he had kept on working like that that the tear which he may have had originally would not bother him very much. I think if the torn piece of cartilage had been getting over in the joint to amount to anything, I think he would have come back and had the operation a whole lot sooner than when he did.

Q. All right, sir. Doctor Henderson, did you release this man to go back to work?

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ROUTE 6 BOX 65

A. No, sir, I don't believe I did. My records -- Well, yes, I told him that he could try to keep on working. But he was advised about care at home and attempting to continue at work.

Q. What's the date of that report?

A. That was the original report; the one dated September 21st of '79.

Q. All right, sir. After you performed the surgery, did you release him to return to work following the removal of the meniscus?

A. Yes, sir.

Q. Do you have that date?

A. He was advised he could go back to work on November 10th of 1980.

Q. All right, sir. And do his regular work?

A. Yes, sir.

Q. And you have opined, if I understand you correctly, that he has a ten percent loss of function of his right leg as a result of the tear and removal of the medial meniscus?

A. Yes, sir.

Q. Doctor, could you state whether or not the objective symptoms found by you on the examination on September 3rd, 1980 whether or not they were increased in

comparison with the symptoms found on September 21st, 1979?

A. Well, as far as symptoms are concerned, he stated that he was worse when I saw him on September 3rd and on examination, I don't have noted the degree of swelling or tenderness, but on his statement, I think, he was worse.

MR. SCOTT: That's all I have.

REDIRECT EXAMINATION

BY MR. BROWNING:

Q. Doctor, if I understand your testimony, you are not ruling out; if I understand you correctly; that he had the injury? You feel that it was just worse after this fight or altercation than originally, is that fair?

A. Well, during the year that I did not see him, it was hard for me to surmise what all might have happened. I think it could be stated as far as a small tear of a cartilage is concerned, it can go for fairly long periods of time without any symptoms or signs in the absence of further injury. However, bad luck overtakes a person and a piece of torn cartilage gets out of the joint, it can be torn again and usually if a person has enough of a tear of a cartilage to think that he may need surgery, it will keep on bothering him to the point where he will be back to have it done within a reasonably short period

BOB V. BRANSON
COURT REPORTER
ROUTE 6 BOX 69
ARTESIA, NEW MEXICO 88210

of time.

Q. So then you are not ruling out that your original diagnosis was incorrect?

A. I am not ruling it out, no, sir.

Q. Now, blood in and of itself does not make it positive that it would have to be a fresh injury; the drawing of the blood from this wound. That in and of itself does not make it positive beyond a doubt that it was a fresh injury, does it?

A. I think it would be positive without any doubt. It would not have to be from another episode of big trauma.

Q. I'm not following you. What do you mean by that?

A. Well, I don't mean a big rock would have to fall on his knee. I think he could just get his knee in a situation where the cartilage could be torn some more. In fact, some of the blood could even be just from a bad sprain of the knee or just a bad contusion of the knee.

Q. Doctor, if you assume that the man is credible and honest and that his knee was swollen throughout the year, would there have been blood present likely, say he was walking in the mines?

A. I kindly doubt it.

Q. You don't think the blood would have been just from ordinary walking?

A. I don't believe so, no, sir.

Q. Dr. Khuri's findings in 1980, they were your same basic findings in September of '79, is that correct?

MR. SCOTT: Just for the purpose of the record, Dr. Khuri saw the man in '79, September 1st, '79. I just want to keep the record straight.

MR. BROWNING: I will rephrase that then.

Q. Dr. Khuri's findings in September of '79 were the same basic findings that you made also in '79, is that correct?

A. Well, Dr. Khuri thought most of the swelling was in the suprapatella pouch, I believe. I thought the swelling was more diffuse. Dr. Khuri did find that the man was tender over the medial aspect of the knee, but Dr. Khuri did not note any tendency to lock about the knee.

Q. But you did note the locking, is that correct?

A. A tendency to lock, yes, sir.

Q. That's an objective finding, if I understand correctly?

A. Well, not really. It can be subjective.

Q. May I see your pathologist report just a second?

BOB V. BRANSON
COURT REPORTER
HOUSTON, TEXAS

A. Yes, sir.

Q. Doctor, for the record, this report was by Dr. Stefanini, the pathologist. There were only segments examined, is that correct? Only segments of the thing was examined, is that correct?

A. Well, I think he first examined the gross description. I think he examined the whole cartilage there.

Q. The specimen, would it have a weight of 5.5 grams?

A. Yes. He examined the whole meniscus grossly. He only examined portions of it under the microscope.

Q. Where did he detect the shredding, on the whole, when he examined it, gross?

A. Here is the statement of shredding. He said there was some fragmentation which I said could have meant a little shredding of the meniscus.

Q. Could we have a copy of this pathologist report for the record?

A. Yes, sir.

Q. What does the term degeneration mean?

A. Usually that means there has been some death, perishing away or death of the material which is examined.

Q. Does that refer to a chronic condition or an acute condition?

A. It can refer to either one.

Q. What does the term basophilic refer to?

A. Basically those are a type of white blood cell that usually are located in tissue that has been damaged. Again that could be an acute or a chronic situation.

Q. So there is evidence on the pathology report of both acute and chronic injury, is that correct?

A. Well, I said it could be, not definitely.

Q. You will release that?

A. I'll have you a copy made of that, yes, sir.

MR. BROWNING: That's all the questions I have.

RECROSS EXAMINATION

BY MR. SCOTT:

Q. Basically the two terms Mr. Browning asked you about, basophilic and degeneration, you indicated that those terms could be indicative of either an acute condition or a chronic condition?

A. Yes, sir.

MR. SCOTT: That's all.

AND FURTHER DEPONENT SAITH NOT.

(Signature waived.)

BOB V. BRANSON
COURT REPORTER
PONTE VEDRA BEACH

STATE OF VIRGINIA)
:
COUNTY OF WASHINGTON)

I, B. V. Branson, a Notary Public for the State of Virginia and Court Reporter, do hereby certify that the foregoing deposition of Dr. Tillou Henderson was duly taken and sworn to at the time and place and for the purpose in the caption mentioned; that the deposition as above set forth was recorded by me with a stenomask and onto a mechanical recorder and was later reduced to typewriting under my personal supervision; that the signature of the witness was waived; and that the foregoing transcript is true and correct to the best of my ability.

Given under my hand and seal on this the 16th day of March, 1981.

B V Branson
Notary Public

My commission expires March 12th, 1984.

Doctor Henderson:

After you have had the opportunity to review the attached correspondence, I would appreciate it very much if I could discuss this case with you on the telephone.

Thank you.

Ervin B. Davis

Ervin B. Davis

P. O. Drawer FF
RICHLANDS, VIRGINIA 24641
Phone: 964-4088

26, 1981

78514-V
hard M. Miller
Inj. 8-31-79
Beatrice Pocahontas Co.

Dr. Tillou Henderson
Clinch Valley Physicians, Inc.
2949 West Front Street
Richlands, VA 24641

Dear Doctor Henderson:

According to our records, this claimant originally sustained an injury on August 31, 1979, and subsequently reported to you for a medical examination on September 21, 1979. It is noted that you diagnosed a "tear of right medial meniscus" at that time.

Our records likewise indicate that there was no lost time from work as a result of the August 31, 1979 injury and the claimant apparently continued to work regular until August 29, 1980. At any rate, we are not aware of any lost time, nor do we have any knowledge of the claimant seeking medical treatment during the interim period of September 21, 1979 to August 29, 1980.

Subsequent to the claimant last working on August 29, 1980, our investigation reveals that he was admitted to the Lebanon General Hospital, Lebanon, Virginia, on August 30, 1980, for multiple injuries sustained as a result of an altercation with someone. I enclose copies of Dr. Giles Q. Gilmer's physical examination and discharge summary records pertaining to the August 30, 1980 admission.

You will note the discharge summary states in part, "On the second hospital day he was alert and complained of pain in the right knee. This joint was swollen and fluctuant x-ray of his knee was negative. About 60 ccs. of blood was aspirated from this joint and culture of this fluid was negative. The knee continued to have pain and swelled again, but it was felt that it was better not to aspirate the socond time. He was discharged 9-3-80 with the use of crutches and instructions to see an orthopedist if this knee continued to hurt."

DEPOSITION EXHIBIT NO. 1

You will also note that the discharge diagnosis in part was, "Internal derangement of the right knee with hemarthrosis."

It is very significant that on the same day the claimant was discharged from the Lebanon General Hospital, that is September 3, 1980, that he promptly reported to you and was hospitalized on the same day for further investigation and treatment of his right leg. I am quite confident that you were not aware of the earlier admission of the claimant to the Lebanon General Hospital since there is no mention of same in your medical reports at the time you admitted him to the hospital on September 3, 1980.

In any event, I request that you please advise, in your opinion, the percentage of disability to the claimant's right leg, if any, as a result of the original trauma sustained on August 31, 1979. In formulating your opinion, I request that you take into consideration that the claimant was able to work regular from August 31, 1979, the date of his original injury, up until August 30, 1980, the date he sustained reinjury to his right knee, which is a period of one year.

I also request that you please advise, in your opinion, if the claimant's disability and subsequent removal of the right medial meniscus was precipitated by the trauma sustained to the knee on August 30, 1980 and not causally related to the original injury of August 31, 1979.

This matter is presently pending in litigation, therefore, your prompt written reply will be most appreciated.

Very truly yours,

Ervin B. Davis ilw

Ervin B. Davis
Claims Manager

EBD/ilw

Enclosures

cc: HO

RUSSELL COUNTY MEDICAL CENTER
LEBANON, VIRGINIA

PHYSICAL EXAMINATION

NAME:	Mr. Leonard McKinley Miller	CASE NO.:	7679
ADDRESS:	Honaker, Virginia	DATE:	8-30-80
AGE:	42	DR.:	Giles Q. Gilmer

CC: Unconsciousness.

HPI: This man was admitted by way of the Emergency Room where he was brought by way of ambulance in an unconscious condition. Attendants gave the history of him being intoxicated and involved in an altercation with someone.

SYSTEMS REVIEW: Not obtainable.

PE: He is well developed who is in an unconscious condition with alcoholic brea Temperature is 98, pulse 84, respirations 20 and blood pressure 120/86.

HEENT: Normocephalic. No hematoma or abrasions. The pupils are round and equal. They react to light. Ears are negative. Nose reveals edema, discoloration of the skin with dry blood at the nares.

NECK: Supple.

CHEST: Symmetrical.

HEART: No murmurs. Regular rhythm.

LUNGS: Clear to auscultation.

ABDOMEN: Soft with no masses.

RECTAL: Not examined.

BACK: No deformity.

EXTREMITIES: No deformity.

SKIN: There is some discoloration of the skin of the forearm and hand.

NEUROLOGICAL: Reflexes are normal.

DIAGNOSIS:
1. Acute alcoholic unconsciousness
2. Possible injuries of the head, nose, right wrist and hand

Giles Q. Gilmer, M.D.

GQG/tmh

82

OCT 10 1980

Dictated; 9-1-80

LEBANON, VIRGINIA 24266

DISCHARGE SUMMARY

NAME:	Mr. Leonard McKinley Miller	CASE NO.:	7679
ADDRESS:	Honaker, Virginia	DATE TRANSCRIBED:	9-16-80
AGE:	42	DOCTOR:	Giles Q. Gil
DATE ADMITTED:	8-30-80	DATE DISCHARGED	9-3-80

This 42 year old male was admitted 8-30-80 in an unconscious state after having had an altercation with someone. Attendants said that he was drinking heavily at the time. Physical examination revealed him to be unconscious with an alcoholic breath. Pertinent physical findin revealed dried blood in the nares, some discoloration of the skin of the right wrist and hand. The laboratory studies revealed a normal hemogram. Urinalysis was normal. Chemisty 6 was normal. X-ray of the skull, facial bones, nose, right hand, right wrist were considered normal. X-ray of the chest showed diffused pulmonary fibrotic pattern. On the second hospital day he was alert and complained of pain in the right knee. This joint was swollen and fluctuar X-ray of his knee was negative. About 60 ccs. of blood was aspirated from this joint and culture of this fluid was negative. The knee continued to have pain and swelled again, but it was felt that it was better not to aspirate the second time. He was discharged 9-3-80 ith the use of crutches and instructions to see an orthopedist if this knee continued to hurt.

DISCHARGE DIAGNOSIS:
1. Acute alcoholism
2. Internal derangement of the right knee with hemarthrosis
3. Multiple sprains and contusions
4. Pulmonary fibrosis

Giles Q. Gilmer, M.D.

GQG/tmh

OCT 10 1980

83

Dictated: 9-15-80

DR. Henderson

BED # C-5 323,884

CLINCH VALLEY COMMUNITY HOSPITAL
RICHLANDS, VIRGINIA 24641

SURGICAL PATHOLOGY

OP. _____

NAME Leonard Miller

	AGE	DATE	PATH
SPECIMEN Right medial meniscus	42	9-5-80	S-80-1

CLINICAL DATA

GROSS DESCRIPTION: The specimen is a single meniscus, of a weight of 5.5 gms., measuring 7 x 0 x 0.7 cms. It is composed of a C-shaped structure, with yellowish color, occasionally bro ish, with a line of fragmentation, 0.9 cms. long, along the convexity. Also present along the convexity are portions of tissue, rosy to yellowish, soft and elastic, for an extent o 1.2 cms. Thickness is of 0.3 cms. Representative portions are submitted.

MICROSCOPIC DESCRIPTION: Portions of fibrous connective tissue shows fragmentation and mild basophilic degeneration. Early calcification is noted. Peripherally portions of synovia are present, lined by mesothelium, supported by fibrous connective tissue containing few clusters of lymphocytes.

PATHOLOGICAL DIAGNOSIS:
1) Meniscus, with features of fragmentation and basophilic degenera tion.
2) Synovitis, chronic

M. Stefanini, M.D. PATHOLOGI

DEPOSITION EXHIBIT NO. 2

84

MS/gr
D/T: 9/9/80

CHART COPY

Space for Typewriter — Marks for Tabulator Appear on this Line

ATIENT'S NAME AND ADDRESS: Leonard M. Miller P.O. Box 569 Honaker, Virginia 24260

DATE OF BIRTH: 11/23/37

SURED'S NAME IF PATIENT IS A DEPENDENT:

AME OF INSURANCE COMPANY: Aetna

POLICY NUMBER:

INSURED'S SOCIAL SECURITY NUMBER: 228-46-7856

GROUP INSURANCE, NAME OF POLICYHOLDER (i.e. Employer, Union or Association through whom Insured): Island Creek Coal Co. (M010)

JTHORIZATION TO PAY BENEFITS TO PHYSICIAN: I hereby authorize payent directly to the undersigned Physician of the Surgical and/or Medical nefits, if any, otherwise payable to me for his service as described below t not to exceed the reasonable and customary charge for those services.

SIGNED (INSURED PERSON): Leonard M. Miller DATE 9-2-80

ITHORIZATION TO RELEASE INFORMATION: I hereby authorize the underined Physician to release any information acquired in the course of my exination or treatment.

SIGNED (PATIENT, OR PARENT IF MINOR): Leonard M. Mille DATE 9-2-80

ART B — ATTENDING PHYSICIAN'S STATEMENT

DIAGNOSIS AND CONCURRENT CONDITIONS (IF DIAGNOSIS CODE OTHER THAN ICDA* USED, GIVE NAME)

Involved in fight

RADIOLOGIC CONSULTATION

IS CONDITION DUE TO INJURY OR SICKNESS ARISING OUT OF PATIENT'S EMPLOYMENT? YES ☐ NO ☐

PREGNANCY? YES ☐ NO ☐ IF YES APPROXIMATE DATE PREGNANCY COMMENCED DATE

REPORT OF SERVICES (OR ATTACH ITEMIZED BILL) (IF PREVIOUS FORM SUBMITTED TO THIS CARRIER, YOU NEED SHOW ONLY DATES AND SERVICES SINCE LAST REPORT)

DATE OF SERVICES	PLACE OF SERVICES †	DESCRIPTION OF SURGICAL OR MEDICAL SERVICES RENDERED	PROCEDURE CODE — IF USED (IF CODE OTHER THAN CPT** USED, GIVE NAME)	CHARGES
3/30/80	IH	Skull Series	70260	20.00
3/30/80	IH	Facial Bone Series	70150	20.00
3/30/80	IH	Nasal Bone Series	70160	12.00
3/30/80	IH	Right Hand Series	73130	12.00
3/30/80	IH	Right Wrist Series	73110	12.00
3/30/80	IH	Chest, PA	71010	9.00
9/01/80	IH	Right Hand Series	73130	12.00
9/02/80	IH	Right Knee Series	73570	12.00

TOTAL CHARGES ▶ $ 109.00

AMOUNT PAID ▶ $

BALANCE DUE ▶ $ 109.00

† O—Doctor's Office IH—Inpatient Hospital NH—Nursing Home
H—Patient's Home OH—Outpatient Hospital OL—Other Locations
*ICDA—International Classification of Diseases
**CPT—Current Procedural Terminology (current edition)

DATE SYMPTOMS FIRST APPEARED OR ACCIDENT HAPPENED.

5. DATE PATIENT FIRST CONSULTED YOU FOR THIS CONDITION.

PATIENT EVER HAD SAME OR SIMILAR CONDITION? YES ☐ NO ☐ IF "YES" WHEN AND DESCRIBE.

7. PATIENT STILL UNDER YOUR CARE FOR THIS CONDITION? YES ☐ NO ☐

PATIENT WAS CONTINUOUSLY TOTALLY DISABLED (UNABLE TO WORK) FROM THRU

9. PATIENT WAS PARTIALLY DISABLED FROM THRU

IF STILL DISABLED, DATE PATIENT SHOULD BE ABLE TO RETURN TO WORK

11. PATIENT WAS HOUSE CONFINED FROM THRU

SEP 1 5 1980

DOES PATIENT HAVE OTHER HEALTH COVERAGE? YES ☐ NO ☐ IF YES PLEASE IDENTIFY

13. I DO NOT ACCEPT ASSIGNMENT. ☐

9/11/80 PHYSICIAN'S NAME (PRINT): W. W. Wolfe DEGREE: M.D.

SIGNATURE: W W Wolfe MD TELEPHONE

INDIVIDUAL PRACTITIONERS-SS#: 234 50 7753

ALL OTHERS-EMPLOYER I.D.#: 62 0782681

MUST BE FURNISHED UNDER AUTHORITY OF LAW

ET ADDRESS CITY OR TOWN STATE OR PROVINCE ZIP CODE

WALTER W. WOLFE, M.D.
RADIOLOGIST
P.O. BOX 21
LEBANON, VA 24266

IRM 799 BRIGGS, Des Moines, Iowa 50306 PRINTED IN U.S.A.

Approved by Council on Medical Services, AMA Feb. 1970
MEMORANDUM REGARDING DISPOSITION OF THIS FORM ON REVERSE SIDE

85

HOSPITAL COMPLETE FOLLOWING AND FURNISH COPY TO	TO AETNA ISLAND CREEK	ADDRESS P O BOX 1 OAKWOOD, VA. 24631

NAME OF POLICYHOLDER	POLICY NUMBER(S)
LEONARD MCKINLEY MILLER	228-46-7856 BEATRICE MINES

ADDRESS-STREET AND NUMBER	CITY	STATE	PHONE
BOX 569	HONAKER	VIRGINIA	

NAME OF PATIENT (IF OTHER THAN POLICYHOLDER)	AGE

DATE ADMITTED	TIME ADMITTED	DATE DISCHARGED	TIME DISCHARGED
08-30-80	10:15 PM AM PM	09-03-80	2:00 PM

OTHER INSURANCE INDICATED BY HOSPITAL RECORDS. IF YES NAME OF COMPANY.

☒ NO ☐ YES

COMPLAINT

DATE OF FIRST SYMPTOMS

DIAGNOSIS FROM RECORDS (If injury, Give Date and Place of Accident)

1. INTERNAL DERANGMENT, RT. KNEE WITHMEMARTHOSIS
2. MULTIPLE SPRAINS & CONTUSIONS
3. STATUS POST PULMONARY FIBROSIS

OPERATIONS OR OBSTETRICAL PROCEDURES PERFORMED (Nature and Date)

NA

HOSPITAL CHARGES (Complete This Section or Attach Copy of Itemized Bill Showing Information Below)

ROOM AND BOARD	☐ WARD DAYS AT $ TOTAL	$	
	☒ SEMI-PRIVATE 4 DAYS AT $110.00 TOTAL	$ 440.00	
	☐ PRIVATE DAYS AT $ TOTAL	$	
	☒ OTHERS EMERG. RM.	$ 20.00	
OTHER CHARGES	OPERATING OR DELIVERY ROOM		
	ANESTHESIA		
	RT HAND, SKULL, FAC BONS, RT. KNEE X-RAY	211.00	
	LABORATORY	117.50	
	EKG BMR		
	PHYSICAL THERAPY		
	AMBULANCE		
	MEDICAL AND SURGICAL SUPPLIES	42.50	
	PHARMACY (Except Take Home Drugs)	19.60	
	INHALATION THERAPY		
	INTRAVENOUS SOLUTIONS		
	TOTAL	$ 850.60	

TOTAL CHARGES $ 850.60

$
$
$

THIS FORM APPROVED BY THE HEALTH INSURANCE ASSOCIATION OF AMERICA AND ACCEPTED FOR USE BY HOSPITALS BY THE AMERICAN HOSPITAL ASSOCIATION.

HIA

HF-1 (1961)

SEP 15 1980

HOSPITAL	ADDRESS
RUSSELL COUNTY MEDICAL CENTER	LEBANON, VIRGINIA 24266
TAKEN FROM RECORDS ON 09-11-80	SIGNED BY N. Larrance INS. CLK.

AUTHORIZATION TO RELEASE INFORMATION: I hereby authorize the above named hospital to release information requested on this form.

Date 8-30 19 80 Signed Leonard M. Miller
Patient (Parent if a Minor)

AUTHORIZATION TO PAY INSURANCE BENEFITS: I hereby authorize payment directly to the above named hospital of the Hospital Benefits otherwise payable to me but not to exceed the hospital's regular charges for this period of hospitalization. I understand I am financially responsible to the hospital for charges not covered by this authorization.

Date 8-30 19 80 Signed Leonard M. Miller
(Policyholder)

Clinch Valley Physicians, Inc.

2949 West Front Street / Richlands, VA 24641 / Phone 703/964-6771

TO: Old Republic Insurance
Drawer FF
Richlands, Va

February 21, 1981

COMPENSATION PROGRESS RECORD
Disability Rating

Name: Leonard M. Miller

Age: 41 Address: Box 569 Honaker, Va.

Employed By: Island Creek Coal Co
(Name and address of Company)

Date and Time of Injury: August 31, 1979

Diagnosis: Tear of right medial meniscus.

Complaints: The patient was seen here again on February 21, 1981, with request for a disability evaluation. He states that his injured right knee is still weak and painful.

Examination: Examination reveals healed surgical scars about the lower thigh and there is a healed scar of meniscectomy on the medial aspect of the knee. The knee lacks the last 10 degrees of extension. There is mild quareiceps atrophy. There is minimal medial co-latteral ligament laxity.

Lab and X-Ray Findings: In this case it is my opinion that the patient has sustained a 10% loss of function of his right leg. I should add, however, that in a previous communication dated February 2, 1981, I stated that it was my conclusion that the damaged meniscus was the result of a physical altercation incurred on August 30, 1980 and was not related to the old injury of August 31, 1979. I have reviewed my records here, and it would still be my opinion that the permanent disability is related to the physical altercation of August 30, 1980 and is unrelated to the old injury of August 31, 1979.

Disability: 1) Quickness of Action % 2) Coordination of Movement % 3) Strength %
4) Security % 5) Endurance % 6) Safety as a Workman %
7) Prestige of normal physique %

TH:fs
cc: Island Creek Coal Co
Edgar Mullins
Keen Mountain, Va.

TOTAL

Tillou Henderson M.D.

Tillou Henderson, M. D.

(Over for additional information)

FEB 27 1981 87

6-22-81- cc SC & PO