UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

PROOF OF CLAIM

s129115

Scheduled Claim Ref # 2-F7-11121

YOUR CLAIM IS SCHEDULED AS

UNKNOWN UNSECURED
DISPUTED UNLIQUIDATED

In re

Fleming Companies, Inc

Case Number

03-10945

NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case A "request" for payment o an administrative expense may be filed pursuant to 11 U S C § 503

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim Attach copy of statement giving particulars

☑ Check box if you have never received any notices from the bankruptcy court in this case

☐ Check box if this address differs from the address on the envelope sent to you by the court

The amounts reflected above constitute your claim as scheduled by the Debtor If you agree with the amounts set forth herein and have no other claim against the Debtor you do not need to file this proof of claim EXCEPT as stated below

If the amounts shown above are listed as Contingent Unliquidated or Disputed, a proof of claim must be filed
If you have already filed a proof of claim with the Bankruptcy Court or BMC you do not need to file again

Name of Creditor and Address

0354429415652

MESSA RUSBIERO
2721 NE 10TH TERR
POMPANO BEACH FL 33064

Creditor Telephone Number ( ) 954 783 4385

CREDITOR TAX I D # SS 172 48 1387

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR

Check here if this claim ☐ replaces or ☐ amends a previously filed claim dated _____

1 BASIS FOR CLAIM

☐ Goods sold
☐ Services performed
☐ Money loaned
☑ Personal injury/wrongful death
☐ Taxes
☑ Other (describe briefly)
☐ Retiree benefits as defined in 11 U S C § 1114(a)
☑ Wages salaries and compensation (Fill out below)

Your social security number 172 48 1387

Unpaid compensation for services performed from _____ (date) to _____ (date)

COMPENSATORY STATUTORY DAMAGES

2 DATE DEBT WAS INCURRED

3 IF COURT JUDGMENT, DATE OBTAINED

4 TOTAL AMOUNT OF CLAIM AS OF PETITION DATE

$ ~~5 million~~ (unsecured)	$ 5 million (secured)	$ _____ (unsecured priority)	$ 5 million (total)

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below

☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim Attach itemized statement of all interest or additional charges

5 SECURED CLAIM

☑ Check this box if your claim is secured by collateral (including a right of setoff)

Brief description of collateral

☐ Real Estate
☐ Motor Vehicle
☑ Other STATUTORY claim

Value of collateral $ _____

Amount of arrearage and other charges at time case filed included in secured claim above if any $ 5 million

6 UNSECURED PRIORITY CLAIM

☐ Check this box if you have an unsecured priority claim

Specify the priority of the claim

☐ Wages salaries or commissions (up to $4 650*) earned within 90 days before filing of the bankruptcy petition or cessation of the Debtor's business whichever is earlier - 11 U S C § 507(a)(3)

☐ Contributions to an employee benefit plan - 11 U S C § 507(a)(4)

☐ Up to $2 100* of deposits toward purchase lease or rental of property or services for personal family or household use - 11 U S C § 507(a)(6)

☐ Alimony maintenance or support owed to a spouse former spouse or child 11 U S C § 507(a)(7)

☐ Taxes or penalties owed to governmental units - 11 U S C § 507(a)(8)

☐ Other Specify applicable paragraph of 11 U S C § 507(a) _____

Amounts are subject to adjustment on 4/1/01 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment

7 CREDITS The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim

8 SUPPORTING DOCUMENTS *Attach copies of supporting documents,* such as promissory notes purchase orders invoices itemized statements of running accounts contracts court judgments mortgages security agreements and evidence of perfection of lien DO NOT SEND ORIGINAL DOCUMENTS If the documents are not available explain If the documents are voluminous attach a summary

9 DATE-STAMPED COPY To receive an acknowledgment of your claim, please enclose a self-addressed stamped [illegible] **additional copy of this proof of claim**

Fleming Companies Claim
12082

The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is received on or before 4 00 p m , September 15, 2003, Pacific Daylight Time

BY MAIL TO
Bankruptcy Management Corporation
P O BOX 900
El Segundo, CA 90245-0900

BY HAND OR OVERNIGHT DELIVERY TO
Bankruptcy Management Corporation
1330 East Franklin Avenue
El Segundo, CA 90245

DATE SIGNED 9-11-2003

SIGN and print the name and title if any of the creditor or other person authorized to file this claim (attach copy of power of attorney if any)

Rusbeiro Messa

FILED
SEP 13 2003
BMC

Penalty for presenting fraudulent claim is a fine of up to $500 000 or imprisonment for up to 5 years or both 18 U S C §§ 152 AND 3571

See Other Side For Instructions

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re
Fleming companies, Inc. **Case # 03-10945**
Creditor Rusbeiro Messa

ORDER

AND NOW, this day of , 2003, this Court considering Creditor Rusbeiro Messa's Motions and Petition for Relief, and the response from Debtor Fleming Companies, Inc and from any other creditors or parties in interest in this case,

IT IS ORDERED AND ADJUDGED

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re
Fleming companies, Inc. **Case # 03-10945**
Creditor Rusbeiro Messa

STATEMENT AND MEMORANDUM OF LAW IN SUPPORT OF PROOF OF PRIORITY CLAIM AND OF MOTION FOR IN REM INJUNCTION

I, claimant-creditor Rusbeiro Messa ("I" or "Clamant Messa") a resident of the State of Florida, respectfully files in the above said Court this Memorandum, exhibits and an Affidavit in support of this Motion and of the here attached Proof of Claim

1 This claim is for compensation for permanent personal injuries and damages, which has been fraudulent and deceitfully denied for the last 17 years It is filed pursuant to 77 P S Sections 621 and 71, and/or 28 U S C Section 157(b)(2)(B) as follows

$5 million as compensation and damages consisting of

A) Assessment of wages lost at rate of $526 per week since 3-28-86 and future wages

B) Assessment of past Medical expenses paid by myself and of all medical bills paid under Medicare and payment for present and future recommended medical treatment, such as pain treatment and knee replacements

C) Assessment of Attorney's fees and previous court's expenses

D) Punitive Damages in amount as the Court considers just and appropriate

2 Compensation for work injuries has preference over the assets of the employer (Exhibit "1", 77 P S Section 621) In Cohen v de la Cruz 523 U S 213 (1998), the

Supreme Court stated that all debtor's obligations arising out of fraudulent conduct, including punitive and compensatory damages and attorney's fees, are not subject to discharge in bankruptcy

3 In or about December 2,000, Fleming and or its insurer issued a professional assessment of past and future wages lost and medical expenses and offered me a Settlement stating I was entitled to about $590,000 in wages lost, but I should accept less weekly disability benefits only for next 10 years and medical benefits limited to $7,500 per year only for the next 10 years (Exhibit 2), which I declined as deceitful and unlawful under the provisions of the PaWCA as explained below

4 I was originally an employee of Frankford Quaker Grocery ("Frankford") In 1986, Debtor Fleming Companies, also as Fleming Foods ("Fleming"), purchased Frankford

5 I was an employee of Fleming, as defined under the Pennsylvania Workers' Compensation Act, 77 P S Sections 1 et seq (Hereafter as "PaWCA") In 1987, my employer stated that my average wage salary was $526 00 per week (Exhibit 3)

6 On 3-28-86, I sustained four work injuries in same incident, a knee replacement, left testicle, two low back discs and bilateral inguinal hernia (hereafter as "injuries of 1986") After my employer refused to pay for medical treatment I discovered fraud in this claim and also in a previous claim As result of this frauds and denial of medical benefits, I have been disable and unable to work Employer is liable for employee's work injuries (Exhibit 1, 77 P S Section 431)

7 In January 1988, I discovered my employer had not insured the liabilities for injuries of 1986 by an agreement or Notice of Compensation Payable as required under the PaWCA (Exhibit "1", 77 P S Sections 462 6, 717 1, 731) When employer fails to secure injuries with its insurer, employee may claim compensation by action at law (Exhibit 1, 77 P S Section 501)

8 Instead of insuring liabilities for injuries of March 1986, my employer, with the aid from a senior Referee I Stander, who was uncle of my employer's attorney, M Stander, was paying disability benefits for a false claim covering only one injury under

agreement #WIH 3770143018wc (hereafter as "false claim") (Exhibit 4) which had been previously fabricated to deny compensation for distinct injury sustained on 12-27-85 [1] ("injuries of 1985") An agreement of compensation issued prior date of injury is null and invalid and claimant is not barred to claim damages by action at law (Exhibit "1", 77 P S Sections 71 and 731) After 17 years, disability checks still show payment for the above false agreement number and date of injury 12-09-85 (Exhibit 5)

9 To pay for medical treatment, I had to sell my house and pay for medical coverage by Medicare, which has paid for some and denied others bills as work related Benefits paid by other institutions, may be claimed by action at law (Exhibit 77 P S Section 71)

10 The Pennsylvania Department of Labor certified that my employer did not file a report of the injuries of 1986 (Exhibit 6) Fleming issued an Affidavit stating that it was the insurance carrier who failed to proceed under the PaWCA after knowledge of injuries (Exhibit 7) The PaWCA requires the employer's duty to file a report of injuries with the department of labor and a copy with its insurer (Exhibit 77 P S Section 994) The insurance carrier has denied liabilities alleging employer's failure to secure injuries under an agreement or under the PaWCA

11 In February 1988, Fleming and its insurer filed a notarized Answer to Employee's Claim Petition admitting that the claim of 1986 was being paid as continuance of a previous injury of 12-27-85 and terminated by referee's Order (Exhibit 8) As perjury and misrepresentation to authorities, my employer knew it was paying benefits for a false

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[1] In or about 1988, Fleming had knowledge of Messa's work injuries on 12-27-85 originally secured under the PaWCA by an agreement or Notice of Compensation Payable, but a couple of days later fraudulently terminated by a false Final Receipt of Compensation On the same time, my employer fabricated a false claim, alleging one hernia on 12-09-85, which I never sustained Its insurer issued a false agreement for this claim

After terminating claim of 1985, my employer concealed the surgery results and coerced me to return to work, then I sustained the injuries of 3-28-86 and my employer continued paying for the false agreement The claim of 1985 is still in litigation in Pennsylvania where I have alleged that the insurer never paid me the money alleged in the Final Receipt and I have requested many times to null the false claim On first hearing, the referee coerced my first attorney not to represent me and to withdraw his appearance immediately and thereafter, other state officials have done the same with other attorneys, or, coercing other attorneys to misrepresent me, obligating me to seek help, to learn and painfully represent pro se

claim of 12-09-85 and not for the already terminated 12-27-85

12 Fleming has alleged that paying $336 per week under the false agreement which covers only one injury, is the same as paying compensation for four injuries and $347 per week, which I was entitled to for claim of 1986 77 P S Section 731 provides that " any agreement varying the amount to be paid shall be wholly null and void" and that "it is unlawful for the employer to accept a receipt showing the payment of compensation when in fact no such payment has been made"

13 On 12-19-90, a second Referee, W Stevenson, found my employer in violation of the PaWCA for failing to insure injuries under an agreement with its insurance carrier and for not paying medical benefits He Ordered penalties and attorney's fees, but I have never been paid for these awards (Exhibit 9)

14 Also in 1990, Referee Stevenson, as proposed by my attorney without my consent, denied my petition for agreement of compensation to secure injuries of 1986 and Ordered Fleming to pay total disability benefits as of 3-28-86, however he ordered these benefits suspended while Fleming continued paying for the injuries of 12-27-85 (Exhibit 9) I appealed pro se on basis that again this is a misrepresentation, fraud and deception by a) suspending benefits that my employer has never paid, neither accepted under the PaWCA and b) by ordering continuance of benefits for claim of 12-27-85, despite knowing Fleming was paying weekly benefits for a false claim and c) coercing me to accept the false claim

FRAUDULENT ABUSE OF PROCESS

15 Since January 1986 to the present, Fleming has evaded payment of compensation by multiple tactics of misrepresentation with the aid of State courts and officials, in violation of 77 P S Section 1039 2(8) and (9) (Exhibit 1) In 1994, Fleming's attorney became a Workmen's Compensation Judge, thereafter, referees and other State officials, under several conflict of interest, continued issuing Interlocutory Orders allowing fraudulent termination-suspension petitions filed for the claim of 12-27-85, but instead, not only continued denying disability and medical benefits for the unsecured claim of

1986, also suspended disability checks for the false claim long enough to collect enough money to pay for outstanding medical bills claimed by attorneys representing doctors and hospitals Appeals were denied because each Order contained a notice indicating not to appeal I exhausted twice all State procedures to claim compensation, but due process was denied and the appeal board has refused to release the record

16 In November 1992, Referee Nancy Goodwin, on remanding Order from the Workmen's Compensation Appeal Board, issued findings of law that the knee injury of 1986 was distinct and separate from the hernia injury of 1985, however, the referee failed to issue an Order to award benefits for the claim of 1986 (Exhibit 10) Also, the referee found that the injuries of 1986 consisted of right knee, epididymitis, inguinal hernia, low back and psychiatric injuries (Exhibit 11) During the next 10 years the referee refused to issue the Order requested by the appeal Board In 1997, when Fleming stopped paying benefits for the false claim, I filed a Claim Petition to lift the "suspension" of benefits for the claim of 1986, but Referee Goodwin by Interlocutory Order instructed to treat the Claim Petition as a claim for subsequent injury instead (Exhibit 12) Finally on December 20/ 2,000, Referee Goodwin issued an Order dismissing all my claims and removing herself from this case (Exhibit 13), then, in August 2003, Fleming's former attorney was assigned as a Judge in my claims (Exht 14) In Lugar v Edmondson Oil Co Inc 102 S Ct 2744 (1982) the Court found that joint action with State officials in deprivation of property interest will support claim against private party

17 Where employee is injured in scope of employment and employer has not provided workers' compensation coverage, section of the PaWCA offers employee election to proceed under the Act and accept compensation schedules, or to secure relief outside the Act an action at law for damages against his employer Liberty by Liberty v. Adventure Shops, inc , 641 A 2d 615 (1994) I opted to claim compensation and damages by action at law, because for 17 years Fleming and referees have refused to pay and to Order compensation for claim of 1986 under the PaWCA, but State courts and officials have refused to release the records and denied due process in court and have coerced me to

accept the less compensable false claim and to forget about the medical and disability benefits for the true claim of 1986 In 1989, the appeal board proposed me to set aside the fraudulent final receipt with a condition I promised not to claim money thereafter A second referee questioned Fleming's attorney about who got the money when issuing the final receipt and he reported it to the department of labor, but he died months after issuing final Order of 12-19-90 (Exbt

18 In 2002, the Pennsylvania Department of Labor, the Insurance Commissioner and the Attorney General denied my petition to find the false claim as null and void as provided by the PaWCA, 77 P S Sections 71, 1039 2(8) and (9)

19 In Dec 2002, I filed a civil rights action against Fleming and other defendants in a Florida District Court to claim damages for injuries of 1986, deprived without due process and to find the ruling of the Pennsylvania Supreme Court as unconstitutional, providing immunity even when it is alleged deprivation of benefits by fraud and deception (Exhibit A, a copy of the Amended Complaint was already filed in this Court last April after notice of bankruptcy from Fleming's attorney) A three Judge Court was requested In April 2,003, the court granted Fleming's Motion for Stay on basis of bankruptcy and later dismissed the Complaint without prejudice for parties' failure to schedule discovery procedures (Exhibit 15) Fleming's insurer, Allstate Ins , had not been served summons by the insurance Commissioner as ordered by the Judge and had not filed appearance I will reopen case soon

PETITION FOR RELIEF

WHEREFORE, I, creditor Rusbeiro Messa, respectfully request the Court to find the attached documents and Affidavit as enough evidence to Order the following Relief

a) to allow this Proof of Claim against debtor Fleming Companies and,

b) to Order this claim as statutory priority against Fleming's assets, therefore Ordering In Rem Injunction, where all other creditors and anyone with interests in Fleming's assets be enjoined from interfering with the assets in receivership, and

c) to lift Fleming's petition for Stay, and/or

d) to grant the compensation damages requested above in the amount of $5 million, or

e) to Order assessment of damages, and,

f) to Order assignment of attorney and/or special trustee to avoid conflict of interest,

g) to grant creditor Messa's Motion for Stay, while he finds an attorney and files a Complaint in this Court, or

h) to accept the said Amended Complaint against Fleming previously filed as exhibit in this Court, as original Complaint filed in this Court, now that only this Court may provide relief

i) or, to issue Orders as the Court considers just and appropriate to protect my right of compensatory damages

Respectfully Submitted,

RUSBEIRO MESSA, creditor
2721 NE 10 terrace
Pompano Beach, Fl 33064
954- 783 4385

DATED Sept 11, 2003

cc Bankruptcy Management Corp
1330 East Franklin Ave
El Segundo, Ca 90245

AFFIDAVIT OF CREDITOR RUSBEIRO MESSA

I, Rusbeiro Messa, duly sworn, certifies that the statements and facts in support of this "Proof of Claim" and Motions, are true to the best of my knowledge and belief

I am filing this proceedings myself because I was declined legal representation by about a dozen of attorneys in Delaware and here in Florida, some alleging conflict of interest with other creditors, other demanded a high retaining fees, which I do not have

I had also to represent myself in the Pennsylvania State Courts and workmen's compensation proceedings because state officials have intimidated my attorneys and requested their withdrawal I have opted to claim damages against my employer Fleming by action at law to stop not only tort, but also further damages

I filed this Proof of Claim as a last resource to claim my right of compensation against my employer I am very ill, I need payment for pain treatment recommended by all my employer's physicians and mine since 1986, but some injuries have not been treated due to my employer's malicious litigation and fraudulent tactics I am also very concerned about future knee replacement and psychiatric treatment which has been denied by Medicare because it is related to work injuries covered by private insurer Actually, doctors declined to charge Medicare and have demanded authorization from insurer or employer for payment of treatment, but it has been denied by my employer's adjuster, Mr Grillo, as recent as last week

This claim for compensatory damages is to finally pay for expensive treatment from an Orthopedic, a urologist, a pain specialist and psychiatrist Doctors have issued opinions that I am suffering from severe depression, panic and anxiety due to this unreasonable litigation

I have suffered a lot of damages during the 17 years of misrepresentation and fraud from my employer and I believe I am entitled to compensation I am sure if my employer were not using malice, hate, harassment and fraudulent tactics and had provided medical treatment, I were not disable and I were working I feel my employer has ruined my life and my two children's

I believe that the acceptance of this Proof of Claim as Priority and urgent by this Court, I will be compensated and will try to obtain a normal life

Sept 12, 2003
Kathy Keller
FL Notary License for I.D.

Rusbeiro Messa
2721 NE 10 terrace
Pompano Beach, FL 33064
954- 783 4385

KATHY KELLER
MY COMMISSION # DD 186347
EXPIRES February 20, 2007
Bonded Thru Notary Public Underwriters

EXHIBIT 1

77 P.S. Section 71 Release as bar to claim for damages

No agreement, composition, or release of damages made before the date of any injury shall be valid or shall bar a claim for damages resulting therefrom, and any such agreement is declared to be against the public policy of this Commonwealth The receipt of benefits from any association, society or fund shall not bar the recovery of damages by action at law, nor the recovery of compensation under article three hereof, and any release executed in consideration of such benefits shall be void

77 P.S. Section 431 Acceptance of provisions

Every employer shall be liable for compensation for personal injury to, or for the death of each employee, by an injury in course of employment, and such compensation shall be paid in all cases by the employer, without regard to negligence

77 P.S. Section 462.6 "Proof of insurance" defined

For purposes of subsections (d), (e) and (f) "proof of insurance" shall include a certificate of insurance or self insurance, demonstrating current coverage and compliance with the requirements of this act

77 P.S. Section 501 Insurance of payment by employer

Every employer liable under this act to pay compensation shall insure the payment of compensation in the State Workmen's Insurance Fund, or in any insurance company, or mutual association or company, authorized to insure such liability in this Commonwealth,

In any proceeding against an employer under this section, a certificate of non insurance issued by the official Workmen's Compensation rating and Inspection Bureau and a certificate of the department showing that the defendant has not bee exempted from obtaining insurance under this section,shall be prima facie evidence of the facts therein stated

When any employer fails to secure the payment of compensation under this act as provided in section 305 and 305 2, the injured employee or his dependents may

proceed either under this act or in suit for damages at law as provided by article II

77 P.S. Section 621 Preference right of compensation against assets of employer

The right of compensation granted by this article of this Act shall have the same preference *(without limit of amount)* against the assets of an employer, liable for such compensation, as is now or may hereafter be allowed by law for a claim for unpaid wages for labor Provided however, That no claim for compensation shall have priority over any judgment, mortgage or conveyance of land recorded prior to the filing of the petition, award or agreement as to compensation in the office of the prothonotary of the county in which the land is situated Claims for payments due under this article of this act and compensation payments made by virtue thereof, shall not be assignable (Emphasis added)

717 P.S. Section 717.1 Securing injuries by agreement or Notice of Compensation

The employer and insurer shall promptly investigate each injury reported or known to the employer and shall proceed promptly to commence the payment of compensation due either pursuant to an agreement upon the compensation payable or a notice of compensation payable as provided in section 407, on forms prescribed by the department and furnished by the insurer The first installment of compensation shall be paid not later than the twenty first day after the employer has notice or knowledge of the employee's disability Interest shall accrue on all due and unpaid compensation at the rate of ten per centum per annum

77 P.S. Section 994 Employer's report of injuries

An employer shall report all injuries received by employees in the course of or resulting from their employment immediately to the employer's insurer

An employer shall report such injuries to the Department of Labor and Industry by filing directly with the department on the form it prescribes a report of injury within 48 hours for every injury resulting in death and within three days after the date of injury for all other injuries, except those resulting in disability continuing less than the day, shift, or turn in which the injury was received A copy of this report to the department shall be mailed to the employer's insurer forthwith

77 P.S. Section 1039.2 Offenses

A person, including but not limited to, the employer, the employee, the health care provider, the attorney, the insurer, the State Workmen's Insurance Fund and self

insureds, commits an offense if the person does any of the following
(8) Makes or causes to be made any knowingly false or fraudulent statement with regard to entitlement to benefits with the intent to discourage an injure worker from claiming benefits or pursuing a claim
(9) Knowingly and with the intent to defraud makes any false statement for the purpose of avoiding or diminishing the amount in the payment in premiums to an insurer or self insurance fund

SPECIALITY RISK SERVICES
P.O. BOX 180
SHOWELL, MD 21862
PHONE: 1 888 251 9444
FAX: 1 410 641 8719

October 3, 2000

Rusbeiro Messa
1155 West 77th Street
Apartment 104 C
Hialeah, Florida 33014

Re Rusbeiro Messa
Employer Allstate/Frankford Quaker
File 752 C 20375
Date of Loss 12/09/85

Dear Mr Messa,

I have received authority to begin negotiating a settlement to compromise and release (close out) the indemnity and medical portion of your claim When we spoke, you inquired as to how the indemnity would work for future payment of your wages Taking into consideration your life expectancy the present day value of your wages would be in the area of 200,000

Please keep in mind if we were to continue to pay you for your life expectancy it would cost us this amount as well therefore any offer to commute the indemnity would be a lesser rate or there is no savings

I will be having Jeff Swiggart of Structured Finnancial contact you within the next couple days to discuss your future needs from a medical standpoint and we will then put together some quotes and numbers for you and your legal counsel (pre paid legal services) to review

I look forward to working with you on the ultimate settlement of your claim Please contact me with any questions at 1 888 251 9444

Very truly yours,

Claire M Goodyear
Claims Consultant

Exhibit 2

STRUCTURED FINANCIAL ASSOCIATES

JEFFREY F SWIGART
[illegible]
DONALD B SUSS
[illegible]
WARREN J ADAIR
[illegible]

November 2, 2000

PERSONAL & CONFIDENTIAL

Mr Rusbeiro Messa
1155 West 77th Street, 104C
Hialeaha, FL 33014

Re Workers' Compensation Claim
Employer Frankford Quaker
Date of Injury unknown
Our File No 00-11-6795 WC

Dear Mr Messa

Enclosed please find the structured offer that sets forth the financial terms of the final settlement Please note, however, if the financial terms are acceptable to you, Mr Potako will prepare and submit the Compromise and Release Agreement which will include all the terms of the settlement Your attorney and the workers' compensation judge must approve the entire settlement

Thank you for your consideration Please call me directly regarding the offer

Very truly yours,
STRUCTURED FINANCIAL ASSOCIATES, INC

By Jeffrey F. Swigart
Jeffrey F Swigart, J D
Vice President

JFS dge(messa)

Enclosure

cc (w/enc via facsimile)
Stephen T Potako, Esquire
Claire Goodyear, Hartford Claim No 752 L 20375

OFFICES
Anchorage
Atlanta
Baltimore
Baton Rouge
Boston
Chicago
Cleveland
Dallas
Denver
Des Moines
Detroit
Grand Rapids
Hawaii
Houston
Los Angeles
New York
North Carolina
Oklahoma City
Orlando
Philadelphia
Phoenix
Pittsburgh
Roanoke
Rockford
St. Paul
San Antonio
San Francisco
Seattle
Topeka
Tulsa
Washington D C

INCOME TAX EXCLUDED SETTLEMENT

RUSBEIRO MESSA

03/08/1950

	Guaranteed	Expected
Benefits for RUSBEIRO MESSA		
$1,300 00 monthly for life with 180 months guaranteed, beginning 01/01/2001	$234,000 00	$514,800 00
Custodial Medical Account $7,500 00 annually for 10 payments guaranteed, beginning 03/08/2002 and ending 03/08/2011	$75,000 00	$75,000 00
Total	$309,000 00	$589,800 00

A custodial Medical Account will be established with the ten annual deposits of $7,500. The Account will pay for related medical expenses.

One Bacton Hill Road, South Bldg , Suite 203, P O Box 880, Frazer, PA 19355
Tel 610 647 2611 / Fax 610 647 2674 / Email sfaphila@voicenet com

Exhibit 2

voluntarily accepted the compensability of this claim and paid the claimant the disability rate of $336.00 per week based on an average weekly wage of $526.00 . The claimant returned to work but immediately suffered another injury to his left knee while lifting a box.

ARGUMENT:

At issue is claimant's disability from his lumbosacral strain, possible hernia and right knee injury. The claimant was evaluated by two Board certified physicians, one specializing in internal medicine and the other in orthopedics. To date, the claimant has offered no rebuttal medical evidence. Both the orthopod and the internist find absolutely no reason for the claimant not returning to full activities but for atrophy due to a lack of conditioning in claimant's right quadriceps. Both physicians recommended that the claimant return to light duty employment for four(4) weeks to work out the lack of conditioning problem, to be followed by a complete return to full activities.

To strengthen defendant's Termination Petition, the defendant engaged a vocational specialist to help place the claimant in light duty employment and three positions were located. The Referee should recognize that the vocational consultant met with the claimant, went over his transferrable skills and desires and has located three opportunities within the electronics field. It should be noted that the claimant is currently enrolled in the Biomedical Electronics at Philadelphia Community College.

The vocational counselor has located five(5) employment opportunities which are light duty positions described in Exhibits "DS-2" and "DS-3". The alternative employment positions are as follows:

Audio Aids, electronic assembler position, paying $5.00 per hour, 40 hours per week.

Brooks Manfacturing Corp., assembler position,paying #3.50 per hour, 40 hours per week.

Electro, Tech Systems, electronics assembler position, paying $5-$6.00 per hour, 40 hours per week.

Fairchild-Weston, assembler position, paying $4.50 per hour, 40 hours per week.

Exhibit 3 1 of 2

The Milton Ross Company, factory worker position, paying $4.10 per hour, 40 hours per week.

The vocational counselor has certified that all these positions are within the claimant's abilities and meet the medical restrictions of the physicians. It should also be noted that the counselor points out there has been very little cooperation by the claimant following up with these positions.

The defendant would like to supplement its supersedeas documents by submitting Exhibit "DS-4" which represents two additional positions available to the claimant. The first position is with F.B.F. Industries, a time keeper position paying $6.50-$7.50 per hour, 45 hours per week. The second position with London Harness and Cable, a quality control inspector position paying $7.00-$9.00 per hour is available 40 hours per week.

The defendant would also like to submit as Exhibit "DS-5" the medical reports received to date indicating that the alternative employment positions have received physician approval.

The defendant has submitted uncontested medical documentation that claimant is capable of performing a light duty position for approximately four weeks until he is able to return to full time employment without restrictions. The defendant is also submitting numerous alternative employment positions, in light duty jobs paying a minimun of $3.50 per hour up to $9.00 per hour. It is respectfully submitted that the defendant is entitled to supersedeas relief in total until a decision on the merits is reached.

Very truly yours,

J. DAVY YOCKEY, ESQUIRE
Attorney for defendant,
Frankford Quaker Grocery Co.

JDY:cn
cc: Louis Kattelman, Esquire

Exhibit 3 2 of 2

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
3607 DERRY STREET
HARRISBURG, PA 17111

NOTICE OF COMPENSATION PAYABLE

[redacted]-48-1387
SOCIAL SECURITY NUMBER
WIH377014301 8WC
EMPLOYER/INSURER CLAIM NUMBER
1-27-86
DATE OF THIS NOTICE

This Notice is to be sent to injured employe with the first payment of compensation and a copy filed with the Department of Labor and Industry

Injured Employe Rusheiro Messa
Address 7052 Rutland St. Phila PA 19149
Employer Frankford Quaker Grocery Co
Address I + Erie Ave Phila PA 19124
Nature of Injury left inguinal hernia

Check if injury is
(1) Permanent loss under 306(c) ☐
(2) Eye injury ☐
(3) Radiation injury ☐

Compensation payable as follows

1 Weekly disability rate $ 336

Check applicable
☒ Maximum allowable
☐ Below maximum based on average weekly wage of $_____*

*A completed wage statement in accordance with Section 309 must be attached to this Notice if rate below maximum

2 Payments begin on 1-14-86 for injury which occurred on 12-9-85 (Compensation is not payable for first 7 days of disability unless disability exceeds 13 days)

3 Payments will hereafter be made ☐ Weekly ☒ Biweekly ☐ Other (Specify) _____ until employe returns to work without loss of income or disability otherwise ceases or changes in effect HOWEVER, any termination or modification of these payments must be by agreement or final receipt order of Departmental referee or Workmen's Compensation Board or as otherwise provided in rules and regulations of the Department, or as limited under Section 306(c) for amputation or other specific loss thereunder

4 If injury involves loss under Section 306(c) and employe has returned to work, complete the following information.

(a) Compensation is payable for _____ weeks for loss of _____

(b) Employe returned to work without loss of income on _____

(c) Healing period payable for _____ weeks (Up to (b) above and subject to 7-day waiting period)

(d) Total (a) and (c) payable _____ weeks

5 Remarks _____

NOTICE TO EMPLOYE If any questions arise involving these payments contact representative named at bottom of this Notice. If you cannot resolve any problem with employer representative you may call the Bureau toll free at 800-482-2383

(TYPE ONLY)
Employer/Insurer Northbrook Nat'l 279
Representative Jean M Valentino
Phone Number 215-337-4500

OIDC 495 (2 75)

Exhibit H

UNIFORM PRINTING & SUPPLY WC 1563b (Ed 2 7-

TO Kus FROM Jean

OFFICE OFFICE

Enclosed is your last disability check ~~Please have him/her come in to get it~~. Also enclosed are 3 pink Final receipts. ~~Have~~ Please sign all 3. Return to me the top 2 signed receipts, the last one is for you. ~~You may keep it to have a copy for your file~~. Call me if you have questions 215-337-4500

Thank you.

Return to me in envelope enclosed

DATE 1-23-86

"A Distinctive Service Company"

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
1607 DERRY STREET
HARRISBURG, PA 17111

(TYPE OR PRINT CLEARLY)

FINAL RECEIPT OF COMPENSATION
as Evidence of Termination of Employer's Liability to Pay Compensation under Pennsylvania Workmen's Compensation Act

Rusbeiro Messa (EMPLOYE)	172-48-1387 (SOCIAL SECURITY NUMBER)
Frankford Quaker Grocery (EMPLOYER)	12-27-85 (DATE OF INJURY OR DISEASE)
Northbrook Nat'l (INSURER) — BUREAU CODE 279 — LOC. CODE 46	WIH3770139973 WC (INSURER CLAIM NUMBER)

READ CAREFULLY BEFORE SIGNING

ICE TO EMPLOYE. This receipt shall constitute evidence of termination of the employer's liability to pay compensation you are able to return to work as indicated below. **HOWEVER,** this final receipt may be set aside and claim reopened proof that your disability has recurred, either by agreement of the employer filed with the Department pursuant to Section or by petition filed with the Department within three (3) years from the date compensation terminated pursuant to Section (SEE OTHER SIDE).

iived of Northbrook Nat'l (INSURER) by Check No. 003724665 the sum of $ 192

nal payment of compensation due me under the Pennsylvania Workmen's Compensation Act for the injury or disease incurred ne in the above case. Total amount of compensation received by me, including the final payment shown above, is 864 covering a period of 2 4/7 weeks from the date my disability began on 12-27-85

I was able to return to work on 1-14-86 without loss of earning power due to the injury or disease rred by me. It is further understood that this final receipt shall not affect the payment of medical and hospital services ided under and subject to Section 306(f) of the Pennsylvania Workmen's Compensation Act.

Exhibit 4 2 of 2 [signature] Jan 29/86

EMPLOYE'S SIGNATURE DATE

[illegible] Phila. Pa. 19146

752 C 20375 ALLSTATE/FRANKFORD-QUAKER
Claim Number Account Policy Number Claimant

83 HMC TPB325 MESSA, RUSBEIRO
Issue Date Issue Off Code Nature of Payment

062972663 CD
Number CD

112000 752 TTD BENE 11/10/00-11/23/00 INCL 98W 06297266 3
Type Pay Oper I D A.I. Key File Claim Number Loss Date Agency Name

A WJ4016 CG 120985
MUST BE PRESENTED WITHIN 60 DAYS

SRS
SPECIALTY RISK SERVICES

PAY SIX HUNDRED SEVENTY TWO AND NO/100 DOLLARS $*******672.6

Payable at First Union Bank of Delawa

TR 0

TO THE ORDER OF
RUSBEIRO MESSA
4161 SALEM STREET
PHILADELPHIA PA 19124

Authorized Signature

Issuing Office Name: SRS- PENNSYLVANIA

⑈06297266⑈ ⑆031100225⑆ 8090000322878 4⑈45

Claim Number Account

752 C 20375 ALLSTATE/FRANKFORD-QUAKER
Policy Number Claimant

62-22
311
SRS-1-5GF

83 HMC TPB325 MESSA, RUSBEIRO
Issue Date Issue Off Code Nature of Payment

Number 837991663 CD
Number CD

020399 752 TTD BENE 01/22/99-02/04/99 INCL 4W 83799166 3
Type Pay Oper I D A.I Key File Claim Number Loss Date Agency Name

P JXS NTY 120985
MUST BE PRESENTED WITHIN 60 DAYS

SRS
ITT SPECIALTY RISK SERVICES, INC

PAY SIX HUNDRED SEVENTY TWO AND NO/100 DOLLARS $*******672.00*

Payable at CoreStates Bank of Delaware N.A.

TR 0

TO THE ORDER OF
RUSBEIRO MESSA
4161 SALEM STREET
PHILADELPHIA PA 19124

Authorized Signature

Issuing Office Name: SRS- PENNSYLVANIA

⑈837991663⑈ ⑆031100225⑆ 8090000322878 4⑈45

0 FRANKFORD-QUAKER
NT MESSA,RUSBEIRO
TT
NT FROM 11/27/97 TO 12/11/97

POLICY NUMBER	CLAIM NUMBER
20050310893	3770143018
CONTROL NUMBER	MONTH / DAY / YEAR
973440003901	12 10 97

SIX HUNDRED SEVENTY TWO DOLLARS AND 00 CENTS********** $ *******672.00

PAYABLE AT ANY WELLS FARGO BANK

PAYABLE IF DESIRED
WACHOVIA BANK OF GEOR
2 PEACHTREE ST. N
ATLANTA GA 3038

BUSINESS INSURANCE DIVISION CLAIM CHECK AC

Exhibit 5

RUSBEIRO MESSA

4161 SALEM STREET
PHILADELPHIA PA 19124

PROC CCO	ADJ NO	DESK LOC
377	935	W7M

02303381 7
02303381 7

NORTHBROOK PROPERTY AND CASUALTY
P.O. BOX 61946
KING OF PRUSSIA PA 19406

VOID IF NOT PRESENTED WITHIN ONE HUNDRED AND EIGHTY DAYS OF THE DATE OF ISSUE

AUTHORIZED SIGNATURE

⑈00023033817⑈ ⑆111909634⑆ 47596318 23⑈

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
1171 South Cameron Street, Room 103
Harrisburg, PA 17104-2501
(717) 783-5421, Ext. 636

September 12, 1989

Mr. Rusbeiro Messa
7052 Rutland Street
Philadelphia, PA 19149

Dear Mr Messa:

This is in response to your request for a certified copy of an Injury Report indicating a date of injury of March 28, 1986.

A search of our files indicates no record of a report ever being submitted with this date of injury.

Very truly yours,

F. J. Woodward

Frederick J. Woodward, Chief
Records Management Division

FJW/mh

Exhibit 6

Fleming Companies, Inc.

PHILADELPHIA DIVISION

Egypt & Greentree Rds
Box 935
Oaks PA 19456
215/935-5000

I, Alan Elberson, am employed by Fleming Companies, Inc., as a Safety and Training Manager. My duties include the management of Fleming's workmen's compensation files. Fleming purchased Frankford Quaker Grocery in mid 1986 and I obtained custody of Rusbiero Messa's workmen's compensation file in March 1989. With regard to the claims brought by Mr. Messa, Frankford Quaker has a contract with Northbrook Insurance Company whereby Frankford Quaker would take an initial report of injury from the employee and send it to Northbrook. Northbrook then processed the claim from that point forward. To the best of my knowledge, Frankford Quaker has not taken any improper steps to impede or obstruct Mr. Messa's workmen's compensation claim.

Alan Elberson
Safety and Training Manager
Fleming Companies, Inc.

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 25 DAY
OF July, 1989.

Deborah A. Bell
NOTARY PUBLIC

NOTARIAL SEAL
DEBORAH A. BELL, Notary Public
City of Philadelphia, Phila. County
My Commission Expires April 16, 1990

Exhibit 7

LIBC 74 REV 6-84

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
3607 DERRY STREET
HARRISBURG, PA 17111

DEFENDANT'S ANSWER TO CLAIM PETITION UNDER PENNSYLVANIA WORKMEN'S COMPENSATION ACT

Type or Print Clearly

RUSBEIRO MESSA — EMPLOYE

172-48-1387 — EMPLOYE'S SOCIAL SECURITY NUMBER

CLAIMANT IF OTHER THAN EMPLOYE

7042 Rutland Street — ADDRESS

Philadelphia, PA 19149 — CITY OR TOWN / STATE / ZIP

February 12, 1988

VS.

FRANKFORD-QUAKER GROCERY CO. — DEFENDANT EMPLOYER

"I" & Erie Avenue — ADDRESS

Philadelphia, PA 19124 — CITY OR TOWN / STATE / ZIP

Northbrook Ins. Co. — INSURANCE CARRIER

P.O. Box 548 — ADDRESS

King of Prussia, PA 19406 — CITY OR TOWN / STATE / ZIP

TO YOUR HONORABLE REFEREE:

In answer to the captioned claim, the Defendant respectfully pleads as follows:

(Answers must be identified by numerical order in direct response to corresponding numbered allegations on claim petition.)

1. Admitted.
2. Specifically denied: Proof of same demanded.
3. Specifically denied: Proof of same demanded.
4. Specifically denied: Proof of same demanded.
5. Specifically denied: Proof of same demanded.
6. Specifically denied: Proof of same demanded.
7. No allegation made: therefore no response required.
8. Specifically denied: Proof of same demanded.
9. Specifically denied: Proof of same demanded.
10. Specifically denied: Proof of same demanded.
11. Specifically denied: Proof of same demanded.
12. Specifically denied: Proof of same demanded.
13. Specifically denied: Proof of same demanded.

(SEE OTHER SIDE)

Exhibit 8, 1 of 2

As a further matter of defense, the Defendant respectfully states the following:

This claim was paid previously as a continuation of claimant's work injury of December 27, 1985. On February 3, 1987, the employer filed a Petition for Termination, Suspension or Modification indicating that as of November 11, 1986 all disability had terminated, or in the alternative, that the disability had subsided to the point where the claimant was capable of gainful employment. This case was assigned to Referee Stander who has granted supersedeas as of May 5, 1987, as of December 4, 1987, and as of January 13, 1988. Defendant Defendant requests that this claim be consolidated with the termination proceeding currently before Referee Stander.

WHEREFORE, the Defendant prays that the claim petition be dismissed or in the alternative disallowed.

Frankford-Quaker Grocery

Michael D. Schaff

SIGNATURE

MICHAEL D. SCHAFF, ESQUIRE

SUBSCRIBED AND SWORN TO BEFORE ME THIS 12th DAY OF February, 1988

AT Phila. Pa.

Virginia M Rabchuk

VIRGINIA M RABCHUK
Notary Public, Phila Phila Co
My Commission Expires March 10, 1988

Please enter my appearance for the Defendant:

Michael D. Schaff, Esquire
ATTORNEY

1800 John F. Kennedy Boulevard
ADDRESS

Philadelphia, PA 19103

This answer should be filed directly with the office of the Referee to whom the case is assigned. Answers must be filed within 15 days. Every fact alleged in the claim petition not specifically denied by this answer shall be deemed to be admitted.

NOTE Answer should be filed in original and three copies, either typed or printed. Affidavit need only be made to original.

Exhibit 8 2 of 2

within his restrictions.

4. Claimant has shown that he suffered a work injury on March 28, 1986, to his right knee.

5. Claimant has shown the Defendant failed to issue either an Notice of Compensation Payable or Notice of Compensation Denial for the March 28, 1986 injury

6 Pursuant to Section 306(f) of the Act, Defendant shall pay Claimant's outstanding medical expenses totalling $6,660 88.

7. Pursuant to Section 440 of the Act, Defendant shall pay Claimant's costs totalling $2,447.34.

8. Pursuant to Section 442 of the Act, the Claimant's 20% fee agreement is hereby approved as reasonable.

9. Defendant has presented an unreasonable contest of this Petition.

10 Claimant has shown that Defendant is in violation of Section 306(f) of the Act in not paying medical expenses.

PROPOSED ORDER

AND NOW, on this 29th day of November, 1990, the instant Termination/Modification Petition is **DENIED** and **DISMISSED**. Claimant's Review Petition and SAFR Petitions are denied and dismissed as moot Claimant's Claim Petition, July 12, 1989 Penalty Petition and December 18, 1989 Penalty Petition are granted. Therefore, Defendant is **ORDERED** and **DIRECTED** to pay total disability benefits to Claimant as of March 28, 1986, for the injury; however, those benefits are suspended while Defendant pays on the December 27, 1985 injury.

Further, the Defendant is Ordered and Directed to pay Claimant's medical expenses of $6,660.88, coupled with a 20% penalty.

Further, the Defendant is Ordered and Directed to pay Claimant's litigation costs of $2,447.34.

Further, the Defendant is Ordered and Directed to pay a 20% penalty for failure to issue a Notice of Compensation payable, or a Notice of Compensation Denial on the March 27, 1986 work injury.

Further, the Defendant is Ordered and Directed to pay James J. Muller, Esquire, 20% of the Award as a counsel fee, said fee chargeable solely to Defendant.

Exhibit 9

Wallace J. Stevenson

WALLACE J. STEVENSON, Referee
Philadelphia District

12-19-90

desperately seeking relief of his chronic pain He did pay the hospital in Mexico with his credit card, and he paid the doctors in Mexico with cash All that is submitted here are transportation expenses, and they were reasonable and necessary expenses incurred in the treatment of Claimant's work-injury

20 Although there were many bills incurred by Claimant for which payment was unreasonably delayed, all of those bills were not submitted by Claimant's attorney in this Penalty Petition proceeding However, the bills set forth in the former Finding of Fact number 14 (a), (c), (f), (g), (h) and (k) were reasonable and necessary medical expenses incurred by Claimant in treatment of his work-injuries, payment for which was unreasonably delayed by Defendant

CONCLUSIONS OF LAW

1 Claimant's work-injury on March 28, 1986 was a new injury and not a recurrence of his December 27, 1985 work-injury

2 Although the Defendant violated the Act for not filing a Notice of Compensation Payable or Notice of Compensation Denial for Claimant's March 28, 1986 work-injury, there was no unreasonable delay in the payment of benefits occasioned by this failure which would justify an assessment of a twenty percent (20%) penalty rather than a ten percent (10%) penalty

3 Claimant's medical expenses as set forth in former Finding of Fact number 14 (a), (c), (f), (g), (h) and (k) were reasonable and necessary medical expenses incurred in treatment of his work-injuries and payment for these medical expenses was also unreasonably delayed by the Defendant

4 The medical expenses set forth in the former Finding of Fact 14 (e) and (i) are also reasonable and necessary medical expenses incurred by Claimant in treatment of his work-injury, but payment for these does not appear to have been unreasonably delayed by the Defendant and a twenty percent (20%) penalty should not attach to these

5 The medical expenses set forth in the former Finding of Fact number 14 (b), (d) and (j) do not appear to be related to Claimant's work-injury and, therefore, payment of these medical expenses is not unreasonably delayed

Nancy M. Goodwin
NANCY M. GOODWIN, REFEREE
PHILADELPHIA DISTRICT OFFICE

11/10/92
dr

Exhibit 10

establishes an itemization and determination of reasonableness of each individual medical expense filed by Claimant, particularly those costs associated with Claimant's trip to Mexico.

By Decision of November 17, 1992, the Judge made Findings of Facts and Conclusions of Law in accordance with the Appeal Board's remand. Cross-Appeals were filed by Defendant and Claimant and the Appeal Board again remanded the matter to the Judge for an Order consistent with the Findings of Facts and Conclusions of Law.

At a hearing on March 11, 1993, the parties offered no evidence on these petitions to compel physical examination, but did make statements on the record. The case was then concluded for briefs After a review of the briefs submitted by both parties, the Workers' Compensation Judge makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1 The issues on Appeal presently do not challenge the Claimant's extent of disability or his right to indemnity benefits

2 Claimant's work-related injuries involved a back injury, epididymitis, an inguinal hernia, a right knee injury and a psychic injury

3 Defendant's Petitions herein request examinations for three (3) of the above areas, an examination by an orthopedic surgeon to examine Claimant's right knee, an examination by a general surgeon to examine Claimant's inguinal hernia, and an examination by a psychiatrist to examine Claimant's psyche

4 Defendant contends and Claimant does not deny that the last time the Defendant had Claimant examined for his inguinal hernia or his right knee was on November 11, 1986 The last time the Defendant had the Claimant examined by a psychiatrist was on May 30, 1990

5. The Defendant scheduled the Claimant for a medical examination with Dr Jonathan Bromberg, an orthopedic surgeon, for his knee injury on October 5, 1992. The Defendant scheduled Claimant for an examination of his inguinal hernia with Dr. Allen Barr, a general surgeon, on October 6, 1992 The Defendant scheduled the Claimant for a psychiatric evaluation with Dr Timothy Michals on October 8, 1992. The Claimant did not present himself for examination at any of these scheduled

Exhibit 11

INTERLOCUTORY ORDER

The Subsequent Injury Petition assigned September 19, 1997 will be treated as Claimant's Petition for payment of the medical bills Claimant attached to the Petition, in conformance with the averments Claimant made in the Petition

Hearing on this matter as well as on Claimant's pending Reinstatement Petition will be conducted on November 21, 1997 at 9 30 a m

Nancy M Goodwin

NANCY M GOODWIN, JUDGE

/pc

Exhibit 12 1 of 3

REV 5-91

CLAIM PETITION FOR WORKERS' COMPENSATION

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
1171 S. CAMERON STREET, ROOM 103
HARRISBURG, PA 17104-2501

EMPLOYEE
RUSSEIRO MESSA

SOCIAL SECURITY NUMBER
172 - 48 - 1387

STREET ADDRESS
4161 Salem Street

DATE OF INJURY (month day year)
03 - 28 - 86

COUNTY/CITY/TOWN
Philadelphia, PA 19124

STATE ZIP CODE

TELEPHONE NUMBER
(215) 537 0259

VS

DEFENDANT EMPLOYER
FRANKFORD QUAKER GROCERY

WORKERS COMPENSATION INSURANCE CARRIER
(or adjusting company if self-insured)
NORTHBROOK INSURANCE CO.

STREET ADDRESS
"I" Street and Erie Ave.

STREET ADDRESS
P.O. Box 61578

CITY/TOWN
Philadelphia, PA 19124

STATE ZIP CODE

CITY/TOWN
King of Prussia PA 19406

STATE ZIP CODE

1 Complete description of injury or illness, including all parts of body affected On Jan. 22, 1988 I filed a claim petition of compensation for a right knee injury sustained on 3-28-86 and for aggravation of previous hernia, low back and epidydimi sustained on Dec. 27, 1985. On November 5, 1996, I had a total knee replacement, having some loss of use of leg.

2 If occupational disease, the last date of employment and/or last date of exposure 3-28-86

3 How did the injury or disease happen? Epididymitis first occurred in Dec. 1982, then again in August 1984, again in Dec. 1985 and again in March 1996. In Dec. 1986, by stipulation of all parties, Judge Stevenson found epididymitis as a disease aggravated by heavy lifting, therefor, a compensable injury. On 3-28-86, while lifting, I felt severe pain on low back, hern and left testicle, then falling on the floor banging the right knee.

4 When did it happen? (Give date of injury or onset of disease) 3-28-86 (month day year)

5 Where did it happen? aisle R or S Was it on employer's premises? ☒ Yes ☐ No

6 Notice of injury or disease was served on my employer on 3-28-86 (date) in the following manner I reported to the Union Steward,, then we together reported and fil a report with supervisor "Chuck".

7 Your job title at time of injury or disease? Order selector

Were you working for more than one employer at the time of your injury? ☐ Yes ☒ No

If Yes, name of additional employer(s)

2 of 3

APPENDIX J Exhibit 12

Are you back to work with the same employer? ☐ Yes ☒ No

If Yes, ☐ Regular Job ☐ Other Job (title) _____

11. Are you working with another employer? ☐ Yes ☒ No

If Yes, give name and address of employer _____

12 What were your wages at the time of the injury? (by hour, day or week) average $526 per week

13 If you have returned to work since your injury or illness are you earning ☐ more ☐ same ☐ less than you were at the time of injury? Current earnings? _____ per _____

14 I am seeking (check one or more and explain below)

☒ Payment for loss of wages and/or

☐ Partial disability from _____ (date) to _____ (date)

☒ Full disability from 3-28-86 (date) to today (date)

and

☒ Payment of medical bills (give name of doctor/hospital, address type of treatment and bill below)

☐ Counsel fees to be paid by employer

☒ Loss or loss of use of arm, hand, finger, leg, foot or toe and/or

☐ Disfigurement (scars) of head, face or neck

☒ Additional compensation from the Second Injury Fund (due to existence of prior handicap).

☐ Loss of sight or hearing

Explain On Dec. 19,, 1990 Judge Stevensen ordered total disability compensation f injury sustained in 1986,, but to be suspended while employer pays (336 0 compensation for injury sustained in 1985--Compensation for injury of 1985 has not been paid since Aug. 24, 1994, so since this date I claim compensation for injury of 1986 at the rate of $347.00 per week. Also in 1992, Judge Goodwin found injury of 36 as new injury. In 1996 I had a to knee replacement, having some loss of use of leg. The insurer has refused to pay the attached medical bills, and disability benefits for injury of 198c

15 Is there other pending litigation in this case? ☒ Yes ☐ No

If Yes, explain Petition to Reinstate compensation for injuries of 1985.

A copy of this petition has been sent to the employer

EMPLOYEE'S SIGNATURE

July 30, 1997

ATTORNEY NAME

ATTORNEY SIGNATURE

STREET ADDRESS

CITY/TOWN STATE ZIP CODE

TELEPHONE NUMBER

( ) _____

3 of 3

Exhibit 12

NOTICE This Petition must be filed [illegible]

LTR-005 REV 09/05/00

2nd copy

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
215-560-2488

Circulation Date 12/20/2001

RUSBEIRO MESSA
4161 SALEM STREET
PHILADELPHIA PA 19124

DECISION RENDERED COVER LETTER

Bureau Claim Number 313608

Insurer Claim Number

Petitions
Penalty-Pet
Penalty-Pet
Pet-To Reinstate Compensation Benefits
Phys Exam-Pet
Phys Exam-Pet
Remand

Judge Nancy Goodwin
State Office Bldg
1400 Spring Garden St
Philadelphia, PA 19130

RUSBEIRO MESSA
4161 SALEM STREET
PHILADELPHIA, PA 19124

Vs

FRANKFORD QUAKER GROCERY COMPANY
G STREET & ERIE AVENUE
PHILADELPHIA, PA 19124

NORTHBROOK NATIONAL INS CO
620 FREEDOM BUSINESS CTR
P O BOX 61578
KING OF PRUSSIA, PA 19406

STEPHEN T POTAKO, ESQUIRE
POST & SCHELL PC
1800 JFK BLVD 19TH FL
PHILADELPHIA, PA 19103-7480

ITT/SRS
P O BOX 61512
150 S WARNER ROAD
KING OF PRUSSIA, PA 19406

RUSBEIRO MESSA
1155 W 77TH STREET
APT 104C
HIALEAH, FL 33014

The attached Decision of the Judge is final unless an appeal is taken to the Workers' Compensation Appeal Board as provided by law

If you do not agree with this Decision, an appeal must be filed with the Workers' Compensation Appeal Board within 20 days from but not including the date of this notice

Forms for an appeal may be obtained from the Workers' Compensation Appeal Board,
Capital Associates Building
901 North Seventh Street
Third Floor South
Harrisburg, PA 17102

Exhibit 13 1 of 2

13 Claimant thinks that Defendant's request for an IME is malicious and is retaliatory for his refusal to accept a settlement

14 In Claimant's petition to change the judge on the case as well as the district, he alleges that the Judge has a conflict of interest and is influenced by the Defendant's attorneys

CONCLUSIONS OF LAW

1 Judge Goodwin should recuse herself from deciding any more cases involving this Claimant, because Claimant has requested it Based on his allegations, the Judge will recuse herself and request that any remands be made to the Judge Manager on this location for reassignment to another judge

2 Based on the April 29, 2000 report of Dr Rodriguez, citing the Claimant's need for continuing inpatient care for self-protection and others, and the fact that Claimant cannot hold on to an attorney, no further litigation involving this Claimant will be decided by this Judge It is not clear if Claimant is competent to go forward with litigation at this time

3 Due to the questions about Claimant's competency to proceed in litigation, all of these petitions will be dismissed

4 It is recommended that a court-ordered guardian be appointed for the Claimant for purposes of this litigation He has major depression, recurrent severe with psychotic features, and has no lawyer

5 Claimant's petition for change of judge is granted Judge Goodwin recuses herself

ORDER

The open petitions on the Bureau's computer, which are the February 24, 1994 Remand Petition, the September 19, 1997 Reinstatement Petition, the October 22, 1997 Penalty Petition, the July 8, 1999 Penalty Petition, the October 14, 1999 Physical Examination Petition and the September 14, 2001 Physical Examination Petition are all **DISMISSED**

Judge Goodwin **RECUSES** herself

Nancy M Goodwin

NANCY M. GOODWIN, JUDGE
Philadelphia District Office

/rg

Exhibit 13 2 of 2

LTR*003 REV 01/01/98

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
1171 S Cameron Street, Room 103
Harrisburg, PA 17104-2501
215-560-2488

Date of Notice 08/28/2003

RUSBEIRO MESSA
1155 W 77TH STREET
APT 104C
HIALEAH FL 33014

ASSIGNMENT OF PETITION(S) TO A WORKERS' COMPENSATION JUDGE

Bureau Claim Number 313608

Insurer Claim Number

Judge Susan E Kelley
State Office Bldg
1400 Spring Garden St
Philadelphia, PA 19130

Petitions

Remand - Penalty-Pet
Remand - Penalty-Pet
Remand - Pet-To Reinstate Compensation Benefits
Remand - Phys Exam-Pet
Remand - Phys Exam-Pet
Remand - Remand

Assignment County
Philadelphia (All Other)

RUSBEIRO MESSA
4161 SALEM STREET
PHILADELPHIA, PA 19124

Vs

FRANKFORD QUAKER GROCERY COMPANY
G STREET & ERIE AVENUE
PHILADELPHIA, PA 19124

DISCOVER PROPERTY & CASUALTY INSURANCE CO
5 BATTERSON PARK ROAD
FARMINGTON, CT 06032

STEPHEN T POTAKO, ESQUIRE
POST & SCHELL PC
1800 JFK BLVD 19TH FL
PHILADELPHIA, PA 19103-7480

ITT/SRS
P O BOX 61512
150 S WARNER ROAD
KING OF PRUSSIA, PA 19406

COPY OF PETITION MAILED TO ADVERSE PARTY WITH THIS NOTICE

The Special Rules of Administrative Practice and Procedure Before Referees, 34 Pa Code, Chapter 131, control the conduct of hearings Be prepared to present and/or exchange evidence at the first hearing as directed by the Judge

The Judge will notify all parties of the time and place of the hearing

The responding party (not the party filing the petition(s)) should file an answer with the Judge's office at the address above, within twenty (20) days from the date of this notice Facts alleged in the petition(s) will be deemed to be admitted unless specifically denied The failure of any party to specifically deny a fact alleged in the petition(s) shall not preclude the Judge from requiring proof of such fact at a hearing

If a party fails to appear in person or by counsel at a scheduled hearing without adequate excuse, the Judge shall decide the matter on the basis of the petition and the evidence presented

Accommodation If you require a special accommodation to participate in a hearing due to a physical impairment, or need a translator, or a sign language interpreter without cost, call or write the Judges' office assigned to your case and describe the accommodation The Bureau Headquarters' Administrative Division Chief can also be contacted at the above-listed address or call (717) 783-5421, TDD (800) 362-4228 (for hearing impaired only)

Exhibit 14

COMMONWEALTH OF PENNSYLVANIA

March 15, 1988

SUBJECT: Rusbero Messa vs. Frankfort Grocery
S.S.# 172-48-1387

MAR 16 1988

TO: LaDonna M. Shirk, Chief
Administrative Division

LaDonna M. Shirk

FROM: Thomas S. Cook, Director
Bureau of Workers' Compensation

I have received a telephone call from Referee Stevenson on March 7, 1988. He has heard some very serious allegations about the above case. Apparently, Referee Stander is/was the Referee. A supersedeas request was denied three times. Referee Stevenson was quoting the allegation that the supersedeas was denied because Marcie Stander was representing one of the parties. Ms. Stander is the niece of Referee Stander.

I wonder about this in view of the fact that, to my knowledge, Ms. Stander usually represents defendants. At any rate, we should pull the file and examine it with a view towards investigating any possible improprieties.

Thank you for your kind attention to this matter.

APPENDIX Q

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS COMPENSATION
HARRISBURG PENNSYLVANIA 17111

INTERLOCUTORY
REFEREE'S DECISION

AMENDED INTERLOCUTORY

Rusbeiro Messa
Claimant
7042 Rutland Street
Street Address
Philadelphia, PA 19149
City

vs

Frankford Quaker Grocery Company
Defendant
"I" & Erie Avenue
Address
Philadelphia, PA 19124

S S No. 172-48-1387

Request for Supersedeas as of November 11, 1986 in connection with Defendant's Petition for Termination.

DEFENDANT'S INSURANCE CARRIER:
Northbrook Insurance Company
P.O. Box 548
King of Prussia PA 19130

BEFORE: REFEREE WALLACE J. STEVENSON, PHILADELPHIA DISTRICT

HEARING(S) WERE SCHEDULED AS FOLLOWS: May 23, 1988 at the State Office Building Philadelphia, PA 19130 COURT REPORTER: Mildred Hayes

APPEARANCES:

FOR CLAIMANT
James J. Muller, Esquire
2401 Pennsylvania Avenue, Suite 1C-44
Philadelphia, PA 19130

FOR DEFENDANT
Michael Schaff, Esquire
1800 JFK Boulevard, 19th Floor
Philadelphia, PA 19103

REFEREE'S INTERLOCUTORY ORDER

Upon Reconsideration Supersedeas is Denied as of January 13, 1988.

A 20% counsel fee is awarded to Claimant's counsel and is to be deducted from Claimant's share of the Award.

IMPORTANT NOTICE: This Order does not constitute a Final Disposition of the Defendant's Petition for Termination; but is only a determination of the request for Supersedeas. The parties will be notified of a further hearing to be held before the Referee on the merits of Defendant's Petition for Termination. THIS INTERLOCUTORY ORDER IS NOT SUBJECT TO APPEAL.

Wallace J. Stevenson

WALLACE J. STEVENSON, Referee
Philadelphia District

6/17/88
sd

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS COMPENSATION
HARRISBURG PENNSYLVANIA 17111
INTERLOCUTORY

REFEREE'S DECISION

RECEIVED
MAY 11 1987
Dept of L & I
Bur. of Workers Comp

Risbeiro Messa
Claimant

7042 Rutland St.
Street Address

Phila. PA 19149
City

VS.

Frankford-Quaker Grocery Co.
Defendant

"I" & Erie Ave., Phila. PA 19124
Address

S S No 172-48-1387

Request for Supersedeas as of

November 11, 1986
in connection with Defendant's Petition for Termination.

DEFENDANT'S INSURANCE CARRIER: Northbrook Ins. Co.
P.O. Box 548
King of Prussia, PA 19406

BEFORE IRVIN STANDER REFEREE, PHILADELPHIA DISTRICT

HEARINGS: March 13, 1987 at the State Office Bldg., Phila. PA 19130.

APPEARANCES:

Louis Kattleman, Esquire
COUNSEL FOR CLAIMANT
2 Penn Center Plaza
Phila. PA 19102

J. Davy Yockey, Esquire
COUNSEL FOR DEFENDANT
1800 JFK Blvd., 19th fl.
Phila. PA 19103

REFEREE'S INTERLOCUTORY ORDER

SUPERSEDEAS IS GRANTED as of May 5, 1987.

IMPORTANT NOTICE: This Order does not constitute a Final Disposition of the Defendant's Petition for Termination; but is only a determination of the request for Supersedeas. The parties will be notified of a further hearing to be held before the Referee on the merits of Defendant's Petition for Termination.
THIS INTERLOCUTORY ORDER IS NOT SUBJECT TO APPEAL.

DATE: 5-7-87
ls

IRVIN STANDER, REFEREE
PHILADELPHIA DISTRICT

20a

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

FILED by ___ D C
MAY 19 2003
CLARENCE MADDOX
CLERK U S DIST CT
S D OF FLA MIAMI

Case Number: 02-61785-CIV-MARTINEZ

RUSBEIRO MESSA,

Plaintiff,

vs

ALLSTATE INSURANCE COMPANY, *et al*,

Defendants

CLOSED CIVIL CASE

ORDER OF DISMISSAL AND ORDER DENYING ALL PENDING MOTIONS AS MOOT

THIS MATTER is before the Court *sua sponte* The parties have failed to comply with Local Rule 16 1B, which requires a joint scheduling conference and report It is therefore

ADJUDGED that this action is DISMISSED without prejudice. It is also

ADJUDGED that all pending motions in this case are DENIED as moot

DONE AND ORDERED in Chambers at Miami, Florida, this 19 day of May, 2003

JOSE E MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to
Magistrate Judge Dubé
All Counsel of Record
Rusbeiro Messa, pro se
2721 NE 10th Terrace
Pompano Beach, FL 33064
954-783-4385

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Exhibit 15