

01_15-CD
/ MARK KICER -vs- CLETUS HELLER et al

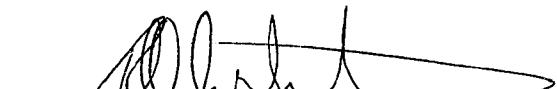
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

MARK KIGER, Plaintiff :
VS. : NO. 2001
: 00-45 -CD
CLETUS HELLER, :
t/d/b/a HELLER SPRING COMPANY :
Defendant :
:

PRAECIPE TO ENTER JUDGMENT

TO THE PROTHONOTARY OF SAID COURT:

Please enter a Judgment in the amount of Twenty-four Thousand and 00/100 (\$24,000.00) Dollars. Please index said judgment in favor of the Plaintiff and against the Defendant pursuant to the Decision of Workers' Compensation Judge Michael E. Koll of the Workers' Compensation Bureau for the Commonwealth of Pennsylvania and attached hereto as Exhibit 'A'.



R. Denning Gearhart, Esquire
Attorney for Mark Kiger

FILED

Dated: 12-12-00

JAN 10 2001
6/8:30/00
William A. Shaw, Prothonotary
PO 200-
NO CERT COPIES
NOTICE TO DEF.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
HARRISBURG, PA 17104-2501

February 16, 2000

The foregoing is hereby certified to be a true and correct copy of Judge Michael E. Koll's
Decisions Circulated November 3, 1999 and November 12, 1999 and Workers'
Compensation Appeal Board Order of December 20, 1999

Mark A. Kiger vs.
in the case of Heller Spring Company, S.S. #163-60-3983, D/I 4/24/97

as full, entire, and complete as the same remains on file in the Bureau of Workers' Compensation of
the Department of Labor and Industry.

Certified this 16th day of February XX 2000

Laura S. Keller
Acting Chief
Records Management Division

ATTEST:

I hereby certify that Laura S. Keller, who signed the foregoing, was at the
time of signing, Chief, Records Management Division, Bureau of Workers' Compensation, and as such,
was the legal custodian of the above-described records.

IN TESTIMONY WHEREOF, I have hereunto
set my hand and caused the seal of the Department
of Labor and Industry to be affixed on
this 16th day of February, XX 2000

Seal of the Department
of Labor and Industry

Sandra J. Neal
Sandra J. Neal



Circulation Date: 11/03/1999

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION

814-765-6398

CLOSED
SUSPENDED

UNIONED TO CJ

MICHAEL KOLL
CLEARFIELD JUDGES OFFICE
306 EAST LOCUST STREET
CLEARFIELD PA 16830-2445

DECISION RENDERED COVER LETTER

Bureau Claim Number: 182316

Insurer Claim Number:

Social Security Number: 163-60-3983

Petitions:

Claim-Pet
Claim-Pet

MARK A. KIGER
R.D. 1, BOX 74A
LUTHERSBURG, PA 15801

THOMAS F. MORGAN, ESQ.
301 EAST PINE STREET
CLEARFIELD, PA 16830

JAMES R. SCHMITT, ESQUIRE
KEISLING, SCHMITT, COLETTA, DEITRICK, P.C.
850 WASHINGTON AVENUE
CARNEGIE, PA 15106

Vs

HELLER SPRING COMPANY
R. D. 3
DUBOIS, PA 15801

QUERINO R. TORRETTI, ESQUIRE
600 EAST MAIN STREET
PO BOX 218
REYNOLDSVILLE, PA 15851

NO INSURANCE

, PA

Judge: Michael E Koll
306 East Locust Street
Clearfield, PA 16830-2445

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 of 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

Mark A. Kiger v. Heller Spring Company

Claim Petitions

Bureau Claim No. 82316

Page 2 of 24

HEARINGS:

1. 10-10-1997 - Pretrial conference held; record made
2. 03-18-1998 - Postponed at request of Defense Counsel
3. 06-30-1998 - Hearing held; testimony taken
4. 11-04-1998 - Hearing held; testimony taken

DATE CASE CLOSED:

July 31, 1999

CLAIMANT'S WITNESSES AND/OR EXHIBITS:

Mark Kiger, Claimant

Alice Kiger

C-1 04-21-1998 Memo from Melissa Frey, P.T., to
Albert L. Varacallo, M.D.

C-2 02-27-1998 Medical Report Form of Albert L. Varacallo, M.D.

C-3 Attorney Schmitt's calculation of Claimant's Average Weekly
Wage, with attached 1998 Workers' Compensation Rate Schedule

C-4 10-30-1997 Letter to Claimant from Bureau of Workers'
Compensation, with attached 06-10-1997 Form Letter to
Claimant from Pennsylvania Compensation Rating Bureau

C-5 Contingent Fee Agreement dated 01-28-1998

C-6 10-20-1998 Deposition of Albert L. Varacallo, Jr., M.D.

C-7 02-01-1999 Deposition of William Craig

C-8 02-01-1999 Deposition of Alice Kiger

C-9 09-18-1997 Letter to Heller spring Company from Richard A.
Himler, Director, Bureau of Workers' Compensation

C-10 Legal Bill of Costs

DEFENDANT/EMPLOYER/INSURER'S WITNESSES AND/OR EXHIBITS:

Shirley Bush

D-A 04-26-1997 DuBois Regional Medical Center Record

D-B 04-26-1997 D.R.M.C. Emergency Department Report of
J. Kightlinger, D.O.

Mark A. Kiger v. Heller Spring Company

Claim Petitions

Bureau Claim No. 82316

Page 3 of 24

D-C 04-26-1997 D.R.M.C. Consultation Report of
K. L. Zeliger, D.O.

D-D 05-02-1996 Reynoldsville Medical Center Accident/Injury
Report

D-E 04-24-1997 Heller Spring Company Invoice

D-F 04-22-1999 Deposition of Shirley Bush

D-G 01-04-1999 Deposition of Vincent F. Morgan, M.D.

D-H 01-04-1999 Deposition of Kathleen Schaffer

JUDGE'S EXHIBITS:

None

FINDINGS OF FACT

1. On or about June 9, and June 27, 1997, the Claimant, Mark A. Kiger, filed Claim Petitions against Defendant/Employer, Heller Spring Company, asserting that he suffered an injury on April 24, 1997, in the nature of severe back pain, radiating into his hips and legs, and into his lower back and rib cage, during the course and scope of his employment with Defendant/Employer.
2. Through the proceedings in this matter, it has been determined that Defendant/Employer's Workers' Compensation Insurance had lapsed and, accordingly, no Workers' Compensation Insurance was maintained, or in effect, as of April 24, 1997.
3. The Petitions were assigned to Workers' Compensation Judge Donald R. Mikesell, on July 1, and August 6, 1997, respectively.
4. On or about July 18, 1997, the Defendant filed a timely Answer to Defendant's Petition, denying the material averments therein. During the course of the proceedings in this matter, Counsel for the Claimant has essentially objected to the Answer, asserting that such should be deemed a nullity, and Defendant deemed to admit the averments of the Petition, as the Defendant's Answer was

Mark A. Kiger v. Heller Spring Company

Claim Petitions

Bureau Claim No. 82316

Page 4 of 24

verified, and submitted by Shirley Bush, the Office Manager of Heller Spring Company.

Claimant's assertion is overruled, and without merit. Counsel for the Claimant has failed to submit any authority from the Workers' Compensation Act providing that an Answer on behalf of the Defendant must be submitted by an attorney. Moreover, consistent with the Pennsylvania Rules of Civil Procedure, it is found that, not only is it appropriate, but preferable, for an individual with actual knowledge of the facts appurtenant to the averments of the Answer, to verify the accuracy of the contents of the Answer.

5. Counsel for Claimant has further asserted that the averments of the second Claim Petition filed in this matter, should be deemed admitted, as no Answer was filed by Defendant. Such objection, or argument, is overruled, and also found to be without merit.

As acknowledged by Attorney Gearhart, who initially represented the Claimant at a pretrial conference held before Judge David A. Cicola, in October, 1997, the Claimant filed the first Claim Petition pro se. Upon Attorney Gearhart's entrance of appearance, he re-filed a photocopy of the initial Petition. Accordingly, Defendant's initial timely Answer is responsive to both Petitions. To hold otherwise would invite claimants to file repetitive, duplicate petitions in order to cause confusion, such that one of the petitions would not be timely answered, and deemed admitted.

6. Due to the retirement of Workers' Compensation Judge Mikesell, this matter has been reassigned to the undersigned for hearing and decision.
7. Hearings in this matter were held before the undersigned on June 30, 1998 and November 4, 1998. At such hearings, the testimony of the Claimant was presented in support of his Petitions. The Claimant testified, in pertinent part, as follows:
 - a. Claimant began working for Defendant/Employer in 1988, performing maintenance or handyman services, including lawn care of Defendant's rental properties and feeding Defendant/Owner, Cletus Heller's, horses. In 1990, he

Mark A. Kiger v. Heller Spring Company

Claim Petitions

Bureau Claim No. 82316

Page 5 of 24

also began installing truck and car springs at Defendant's shop. (06/30/1998 Hearing N.T., pp. 11-12)

- b. Claimant testified that he had a prior history of injuring himself at work, including injuries in 1991, 1995 and 1996, each while carrying or installing car or truck springs. In 1991, the Claimant missed approximately three (3) weeks of work, and was paid Workers' Compensation benefits. In 1995 and 1996, he missed one (1) week of work each time, and was paid his regular wages by Defendant. (06/30/1998 Hearing N.T., pp. 28-31)
- c. Claimant testified that, on April 24, 1997, he was installing truck springs, which weighed approximately one hundred eighty (180) pounds, for Defendant. (06/30/1999 Hearing N.T., pp. 20-21)
- d. While carrying a leaf spring, he felt something give in his back. He indicated that he had to complete the job, so he finished installing the spring, caught his breath and, after a few minutes, reported the injury to the Office Manager, Shirley Bush. Ms. Bush asked the Claimant if he could complete the job, which he did. The following day, Ms. Bush had to be out of the Office, so the Claimant worked, covering the desk, performing no difficult physical labor. (06/30/1998 Hearing N.T., pp. 31-34)
- e. Claimant testified that, on April 25, he had a standing appointment with his chiropractor, which he attended. His back felt a little better after his chiropractic visit. Subsequently, Claimant, his wife and daughter, went to a cookout at his sister-in- law's, who lives approximately ten (10) miles away. Upon returning home, his legs gave out on him as he was getting out of his van, causing him to fall to the floor in his garage. His wife and daughter assisted him into the house, before calling an ambulance, which transported him to the DuBois Emergency Room, at or around 2:40 a.m. on April 26, 1997.

Mark A. Kiger v. Heller Spring Company

Claim Petitions

Bureau Claim No. 82316

Page 6 of 24

(06/30/1998 Hearing N.T., pp. 35-36; 11/04/1998 Hearing N.T., pp. 25-28)

f. Claimant testified that he was released from the Emergency Room on April 26, 1997, and subsequently sought, and received treatment with Dr. Varacallo, who prescribed physical therapy. In approximately three (3) weeks, on or about May 19, 1997, he returned to work for Defendant. Claimant stated that he had continuing problems with his back, but he had to work. Upon returning to work, he found that he could not lift springs weighing approximately seventy (70) pounds, and that he was feeling a lot of pain. At that time, he spoke with Ms. Bush, about filing a Workers' Compensation Claim. Claimant indicated that Ms. Bush told him such would be "no problem".

g. Approximately a week later, the Claimant needed a Workers' Compensation claim number, in order to receive treatment at the Pittsburgh Back Institute. He called Ms. Bush, who advised him that she would have to get back to him with such information. The Claimant subsequently contacted Mr. Heller regarding his problems in getting a claim number. The Claimant stated that Mr. Heller advised him that he was a good worker, and he was not denying anything; to go down to the shop the next morning, and they would get the matter straightened out. Claimant was at the shop the following morning, when Mr. Heller called on the telephone to Ms. Bush. Ms. Bush stated that she had completed the Workers' Compensation forms, but such had been returned, requesting more information. The Claimant asked Ms. Bush if she was denying that he had a work injury, and she said, "no", that she knew he had injured himself at work, but she just did not understand the insurance paper work. The Claimant proceeded to receive treatment from Pittsburgh Back Institute, although he was never provided with the Workers' Compensation information. (06/30/1998 Hearing N.T., pp. 37-47)

Mark A. Kiger v. Heller Spring Company

Claim Petitions

Bureau Claim No. 82316

Page 7 of 24

- h. As of the time of the November 4, 1998 hearing, the Claimant testified that he continued to have pain in his back, right leg and buttocks, for which he treats with Dr. Varacallo, as well as Chiropractor LaBorde. The Claimant testified that, subsequent to May 19, 1997, he has not been capable of returning to work and performing his pre-injury position. The Claimant testified, providing information indicating a pre-injury average weekly wage of \$335.00 per week. (11/04/1998 Hearing N.T., pp. 12-13)
- i. On cross examination, the Claimant acknowledged that he completed his work shift on April 24, 1997, and was capable of working the next day, as he did not do anything physical. The Claimant indicated that he had hurt his back at work before, and had been able to work injured before. The Claimant also acknowledged having seen Dr. Casteel, a chiropractor, on a varying periodic basis, since May 21, 1996. The Claimant indicated that such was the approximate date that he had previously injured himself at work. (11/04/1998 Hearing N.T., pp. 20-21, 46)
- j. Claimant denied telling the ambulance crew that he had fallen earlier in the evening on April 25, 1997. The Claimant indicated that he was in a lot of pain, and could have used the words "fall or fell", when describing his collapse while getting out of the van. He indicated that the collapse had occurred in his garage, which is gravel, and not grass. The Claimant does not recall, and had no idea as to why records from various medical providers reference his having slipped or fallen on grass, but such did not occur. He speculated that the only grass that could have been involved related to his wife and daughter assisting him from his garage into the house after his legs gave out on him while exiting the van. The Claimant indicated that he did advise Dr. Varacallo, on May 5, 1997, of his work injury. The Claimant further indicated that the picnic at his sister-in-law's was on her porch and patio, and not in a

Mark A. Kiger v. Heller Spring Company
Claim Petitions
Bureau Claim No. 82316
Page 8 of 24

grassy area, and that he did not fall at the picnic.
(11/04/1998 Hearing N.T., pp. 28-31, 45-46, 51-53)

- k. Claimant acknowledged that the condition of his back was worse after April 26, 1999, than it was previously. He acknowledged that, since such time, in 1997 and 1998, he has gone fishing and archery hunting a few times, as well as going up to a hunting camp in McKean County, which is approximately one (1) hour away. The Claimant indicated that, for archery hunting, he does not use a tree stand, although he does have one; and that he does use a crossbow, which a friend cocks for him. The Claimant indicated that he has a permit for the crossbow, as he has other shoulder problems. (11/04/1998 Hearing N.T., pp. 39, 48-53)
- l. Claimant, when questioned with respect to his friend, William Craig's involvement, testified that he talked to his friend, William Craig, regarding his injury after he had raised a question with Shirley Bush, on or about May 19, 1997, about filing for Workers' Compensation.
(11/04/1998 Hearing N.T., p. 47)
- 8. In support of Claimant's Petition, the testimony of Alice Kiger, Claimant's wife, was presented at the November 4, 1998 hearing, as well as by deposition of February 1, 1999. Ms. Kiger testified, in pertinent part, as follows:
 - a. Ms. Kiger testified that she was with the Claimant the entire time they went to the picnic at her sister's on April 25, 1997. She indicated the Claimant did not fall on any grass at the picnic. Rather, the Claimant, when exiting their van, fell to the ground in their garage, because his legs were numb. (11/04/1998 Hearing N.T., p. 66; Ms. Kiger's 02/01/1999 Depo., pp. 7-10)

Mark A. Kiger v. Heller Spring Company

Claim Petitions

Bureau Claim No. 82316

Page 9 of 24

- b. Ms. Kiger further testified that she was the one who provided the history to the Emergency Room Nurse, as well as Dr. Kightlinger, regarding the Claimant's legs giving out on him while getting out of his garage. Ms. Kiger testified that there is grass in a hilly area between their garage and the house, but denied that the Claimant fell in the same. (Ms. Kiger's 02/01/1999 Depo., pp. 11-14)
- c. On cross examination, Ms. Kiger testified that the Claimant was in some pain prior to going to the picnic. She indicated that she had asked her husband that morning if he wanted to go to the doctor. She indicated that the Claimant said, no, he had an appointment with Dr. Casteel for after work. She indicated there was just family at the picnic, and that she and her husband left at around 10:30, before anyone else, arriving home at approximately 11:00 o'clock. She acknowledged that it was several hours later before the ambulance arrived. Ms. Kiger indicated that it took a while to get the Claimant into the house and to the couch. She testified that she wanted the Claimant to go to the hospital earlier. (11/04/1998 Hearing N.T., pp. 69-72)
- d. Ms. Kiger testified that she was the one who reported the Claimant off for work on Monday, leaving an answering machine message for Ms. Bush on Sunday, and calling Ms. Bush on Monday morning. She testified that the Claimant did little or nothing, being on the couch or in bed for approximately two (2) weeks after April 26, 1997. Ms. Kiger testified that she took over the feeding of the horse and mowing the grass for Defendant, which the husband had previously performed. (11/04/1998 Hearing N.T., p. 72)
- e. Ms. Kiger testified, upon questioning by this Judge, that the Claimant told her on April 24, 1997, when he came home, that he had hurt his back that day. (11/04/1998 Hearing N.T., p. 73)

Mark A. Kiger v. Heller Spring Company

Claim Petitions

Bureau Claim No. 82316

Page 10 of 24

9. In opposition to Defendant's Petition, the Claimant submitted the testimony of Shirley Bush at the hearing held in this matter on November 4, 1998, together with, by deposition of April 22, 1999. Ms. Bush testified, in pertinent part, as follows:

- a. Ms. Bush has been employed by Defendant/Employer for twenty-three (23) years, performing receptionist, sales and accounts receivable duties, as well as office manager duties for the preceding five (5) years. (11/04/1998 Hearing N.T., pp. 75-76, 100)
- b. Ms. Bush testified that she worked April 24, 1997. She denies that the Claimant advised her that he had injured himself at work, or that she had any knowledge or awareness of the Claimant having any problems on April 24 or April 25, 1997. (Ms. Bush's 04/22/1999 Depo., pp. 77-84)
- c. Ms. Bush confirmed that, on April 24, 1997, the Claimant performed the installation of two (2) front springs and two (2) rear springs, with extra leaf springs, onto a truck. She indicated the rear leaf springs would weigh approximately 169 pounds. She confirmed that the Claimant completed the job. Ms. testified that she was unaware of the Claimant having any back problems in the months prior to April 24, 1997. (Ms. Bush's 04/22/1999 Depo., p. 85)
- d. Ms. Bush testified that the Claimant came in on May 2 and May 9, to pick up vacation paychecks, and made no reference of having injured himself at work. She testified that she first learned the Claimant was asserting he had injured his back at work, during the week of May 19, 1997, when she was so advised by Bill Craig, who came into her office. (Ms. Bush's 04/22/1999 Depo., pp. 87-89)

Mark A. Kiger v. Heller Spring Company

Claim Petitions

Bureau Claim No. 82316

Page 11 of 24

- e. During her deposition, Ms. Bush testified that the Claimant's wife, Alice Kiger, came in to pick up Claimant's vacation paychecks, and did not mention that the Claimant had hurt his back at work. (Ms. Bush's 04/22/1999 Depo., pp. 13-14)
- f. Ms. Bush testified that, on May 23, 1997, she had a meeting with the Claimant, Bill Craig, and Claimant's wife, regarding the Claimant's request for a Workers' Compensation claim number. Ms. Bush denied that she indicated to the Claimant that she was not denying his Workers' Compensation claim. She testified that she did not say one way or another. Ms. Bush did confirm the Claimant's testimony, that she filed Workers' Compensation forms in response to his request, and took such to the Business attorney, Mr. King, when the Insurance Company requested further information. Ms. Bush indicated that she did not keep copies of what she delivered to Mr. King, and does not recall if she took such information to Mr. King before or after the meeting with the Claimant, his wife and Mr. Craig. She indicated it was probably before. (11/04/1998 Hearing N.T., pp. 89-90, 108; Ms. Bush's 04/22/99 Depo., pp. 20-29)
- g. Ms. Bush testified that some of her responsibilities included the handling of Workers' Compensation. She indicated that her responsibilities include advising Mr. Heller as to what bills are due; that he authorizes or provides the money for payment, which she make by either cash or check. Ms. Bush indicated that she had been the Office Manager for five (5) years prior to the proceedings, and that she was not sure how long the Defendant had no Workers' Compensation coverage. She indicated that her husband had been the Office Manager prior to her assuming those duties. She further indicated that it was within her responsibilities to advise Mr. Heller if bills were not paid. She indicated that she first learned there was no Workers' Compensation coverage in 1997, after submitting information to the insurance company on the Claimant's claim and taking the

Mark A. Kiger v. Heller Spring Company

Claim Petitions

Bureau Claim No. 82316

Page 12 of 24

information to Mr. King. (11/04/1998 Hearing N.T., pp. 90-108; Ms. Bush's 04/22/1999 Depo., pp. 22-29)

- h. Ms. Bush confirmed that there was no work to be performed in the shop on April 25, 1997.
- i. During the course of her deposition, Defendant had Mrs. Bush identify an Employer's Report of Occupational Injury. An objection to the submission of such report was raised by Counsel for the Claimant. Such objection is sustained.

10. In support of Claimant's Petition, the Claimant has submitted the deposition testimony of William Craig, obtained February 1, 1999. Mr. Craig testified, in pertinent part, as follows:

- a. Mr. Craig testified that he has known the Claimant since approximately 1991. He testified that he also knew Mr. Heller, having grown up with Mr. Heller's son. (Mr. Craig's 02/01/1999 Depo., pp. 7-8)
- b. Mr. Craig testified that, on or about May 23, 1997, he spoke with Mr. Heller regarding the problems the Claimant was having with Workers' Compensation. He indicated that a day or two (2) prior, or on or about May 21, 1997, he had first learned from the Claimant, that he had a work injury at the end of April, 1997. Mr. Craig testified that, on or about May 23, 1997, he went with the Claimant and Mrs. Kiger, to the spring shop, to talk to Shirley Bush regarding the Claimant's compensation claim. Mr. Craig testified that Ms. Bush, at that point, stated she had already filled out and sent in the compensation papers; that she was not denying the Claimant had hurt himself at work; but she did not understand the insurance paper work, and had sent such to Mr. King. Mr. Craig testified that Ms. Bush provided the same information to Mr. Heller over the phone. Mr. Craig testified that he involved himself in this matter, because he had been friends with both parties, and as he had previously been

Mark A. Kiger v. Heller Spring Company

Claim Petitions

Bureau Claim No. 82316

Page 13 of 24

on Workers' Compensation, he thought he may be able to assist both parties. (Mr. Craig's 02/01/1999 Depo., pp. 8-12, 18, 21-28)

- c. On cross examination, Mr. Craig acknowledged that, approximately twenty (20) years ago, he was found guilty, paid a \$150.00 fine, and served three (3) years probation for a charge of conspiracy to traffic counterfeit money. (Mr. Craig's 02/01/1999 Depo., p. 15)
- d. On cross examination, Mr. Craig testified that he was aware of the assertion, that a history was provided by the Claimant to emergency room personnel and medical providers, of his slipping on grass. Mr. Craig testified that the Kiger's have consistently informed him that the Claimant's legs gave out on him in his garage, which did not involve any grass, or slipping. (Mr. Craig's 02/01/1999 Depo., p. 32)

11. In opposition to the Petition, Defendant has submitted the deposition testimony of Kathleen Schaffer, obtained January 4, 1999. Ms. Schaffer is employed by AMSERV Limited, as crew chief of the E.M.T. Service. Ms. Schaffer testified that she participated in the ambulance transfer of the Claimant on April 26, 1997. Ms. Schaffer identified the report which she prepared regarding such transportation. She notes she obtained a history from the Claimant and his wife of the Claimant falling earlier in the evening. She noted that there was no reference to any work injury. Ms. Schaffer testified that it was her understanding the fall occurred on the Claimant's own premises. She acknowledged that the Claimant was in a lot of pain at the time of her obtaining the history. (Ms. Schaffer's 01/04/1999 Depo., pp. 7-16)

12. In support of the Petition, Claimant presented the deposition testimony of Albert L. Varacallo, Jr., M.D., obtained October 20, 1998. Dr. Varacallo is Board Certified in Family Practice, and has been the Claimant's family physician since July 20, 1987. He testified, in pertinent part, as follows:

Mark A. Kiger v. Heller Spring Company

Claim Petitions

Bureau Claim No. 82316

Page 14 of 24

- a. Dr. Varacallo first saw the Claimant after April 24, 1997, on May 5, 1997. Dr. Varacallo noted that he had treated the Claimant for prior back problems, beginning with a work injury on March 1, 1991. (Dr. Varacallo's 10/20/1998 Depo., pp. 11-12)
- b. Dr. Varacallo, on May 5, 1997, obtained a history from the Claimant, that the Claimant had been lifting heavy springs at work on a routine basis; and that his back had been bothering him at work, for which he had been receiving chiropractic care. Claimant provided a history of having marked difficulty getting out of his van on April 26, 1997, for which he required emergency care. Dr. Varacallo noted that, pursuant to the information obtained by his nurse, the Claimant's back complaints were attributed, by the Claimant, as being work-related. Dr. Varacallo noted that he, at some point, obtained a history from the Claimant as to a specific, April 24, 1997 injury while lifting heavy springs at work. Dr. Varacallo acknowledged that his records do not reflect a documentation of such history until October 20, 1997. (Dr. Varacallo's 10/20/1998 Depo., pp. 13-14, 46)
- c. Dr. Varacallo, on May 5, 1997, performed a physical examination of the Claimant, noting positive responses to straight leg-raise testing, together with a finding of spasms during Claimant's straightening of the lumbosacral area. X-ray reports were read as normal. (Dr. Varacallo's 10/20/1998 Depo., pp. 14-15)
- d. Dr. Varacallo provided continuing follow-up care to the Claimant, having last seen the Claimant on October 16, 1998. He noted that an MRI, obtained at the Allegheny General Back Clinic, reported a finding of herniated disc at the L3-4 and L4-5 levels. (Dr. Varacallo's 10/20/1998 Depo., pp. 14-17)

Mark A. Kiger v. Heller Spring Company

Claim Petitions

Bureau Claim No. 82316

Page 15 of 24

- e. Dr. Varacallo provided an opinion, to a reasonable degree of medical certainty, that Claimant's back complaints and injury were related to the April 24, 1997 lifting incident described by the Claimant. Dr. Varacallo further provided an opinion, to a reasonable degree of medical certainty, that, since May 5, 1997, Claimant was not capable of returning to work at his pre-injury position with Defendant/Employer. (Dr. Varacallo's 10/20/1998 Depo., p. 16-23)
- f. On cross examination, Dr. Varacallo acknowledged that the Claimant had provided a history of falling on the evening of April 26, 1997, after his legs gave away on him while getting out of his van. Dr. Varacallo acknowledged that the documented history provided to his nurse noted the Claimant having slipped on grass while stepping out of his van. Dr. Varacallo acknowledged that the initial history which he obtained did not reference a specific incident on April 24, 1997. Dr. Varacallo noted that Claimant did provide an initial history that he had been lifting three to four hundred (300-400) pounds at work, on a routine basis, and that his back had been bothering him at work. (Dr. Varacallo's 10/20/1998 Depo., pp. 23-28)
- g. Dr. Varacallo acknowledged that he was aware, and/or had an opportunity, prior to his deposition, to review the various medical records from the emergency room and hospital, relating to Claimant's emergency treatment, which reflected a history of Claimant slipping on grass and/or falling on the evening of April 25, or morning of April 26, 1997. Dr. Varacallo testified that, assuming such reports were true, he accepted the Claimant's history of his having ongoing complaints of pain from a work injury, which caused a weakening in the Claimant's legs, resulting in his fall. Dr. Varacallo described the Claimant's condition as a continuum of problems, resulting from his lifting incident. (Dr. Varacallo's 10/20/1998 Depo., pp. 28-39)

Mark A. Kiger v. Heller Spring Company

Claim Petitions

Bureau Claim No. 82316

Page 16 of 24

13. In opposition to Claimant's Petition, the Defendant has submitted the January 4, 1999 deposition testimony of Vincent F. Morgan, M.D. Dr. Morgan, who is Board Certified in Physical Medicine and Rehabilitation, testified, in pertinent part, as follows:

- a. Dr. Morgan performed an independent medical examination of the Claimant on May 19, 1998. Pursuant to such examination, he obtained a history from the Claimant with respect to Claimant having three (3) separate work injuries over the course of six (6) years, including Claimant's relation of the April 24, 1997 incident. Dr. Morgan also obtained a history regarding Claimant's April 26, 1997 incident of falling while exiting his van, together with reviewing the ambulance, emergency room and hospital records and notes regarding Claimant's getting out of his van, not being able to stand, and falling, as well as slipping on grass and falling. Dr. Morgan also had an opportunity to review the records and medical reports of Drs. Casteel and Piasio, together with the MRI report from Allegheny General Back Institute. Dr. Morgan indicated such MRI report noted a possible disc herniation at the L3-4 and L4-5 levels. (Dr. Morgan's 01/04/1999 Depo., pp. 10-36)
- b. Dr. Morgan performed a physical examination of the Claimant, during which he noted finding no specific neurologic findings, but with evidence of symptom magnification, or exaggeration. Dr. Morgan indicated that it was his impression the Claimant had chronic low back pain, with marked evidence of non-organicity and symptom magnification. (Dr. Morgan's 01/04/1999 Depo., pp. 42-52)
- c. Dr. Morgan provided an opinion that he would attribute the Claimant's complaints to the fall sustained in the late evening of April 25, or early morning of April 26, 1997, and not to the described April 24, 1997 work incident. (Dr. Morgan's 01/04/1999 Depo., p. 53)

Mark A. Kiger v. Heller Spring Company

Claim Petitions

Bureau Claim No. 82316

Page 17 of 24

- d. Dr. Morgan further opined that the Claimant's complaints, in the absence of any specific neurological findings consistent with a diagnosis of herniated discs, were exaggerated, and non-physiologic. (Dr. Morgan's 01/04/1999 Depo., pp. 57-58)
- e. Dr. Morgan testified that he does not believe the Claimant had a work injury; that his only injuries were old ones which the Claimant had been tolerating well. It was his opinion the Claimant was capable of returning to work as of the time of his examination, to his pre-injury position. (Dr. Morgan's 01/04/1999 Depo., pp. 58-59)
- f. On cross examination, Dr. Morgan acknowledged that, if Claimant had reported a work injury on April 24, 1997, such would be a consideration. He indicated he would not believe such injury to be more than the ordinary strain, which Claimant had been experiencing in the past, and tolerating. Dr. Morgan acknowledged that the Claimant had been engaged in heavy work, which could possibly expedite the degenerative processes over a course of time. (Dr. Morgan's 01/04/1999 Depo., pp. 67-68)

14. Based upon the foregoing, and review of the record in its entirety, it is further found as follows:

- a. The Claimant suffered a work injury during the course and scope of his employment with Defendant/Employer, Heller Spring Company, in the nature of herniated discs at L3-4 and L4-5, and myofascial low back pain.
- b. The Claimant provided proper and timely notice of his work injury to his Employer, on April 24, 1997.

Mark A. Kiger v. Heller Spring Company

Claim Petitions

Bureau Claim No. 82316

Page 18 of 24

- c. The Claimant's work injury has resulted in a period of disability from April 27, 1997 through October 16, 1998, and continuing thereafter, until such time as the Claimant's condition changes in accordance with the Pennsylvania Workers' Compensation Act, as amended.
- d. In reaching these findings, the testimony of Alice Kiger, the Claimant's wife, is found to be particularly credible, probative and persuasive, and is accepted in its entirety. Ms. Kiger testified in a consistent, straightforward, and non-evasive manner, and with credible demeanor. Her testimony corroborates the Claimant's indication that he hurt himself at work on April 24, 1997, but was intent upon attempting to work through the pain, as he had done after each prior work injury. Ms. Kiger's testimony corroborates the Claimant's indication, that the only time he had fallen on the evening of April 25, morning of April 26, 1997, was when his legs collapsed while exiting from his van in his garage. Ms. Kiger's testimony is consistent with, and corroborates the testimony of both the Claimant and Mr. Craig, regarding the meeting with Ms. Bush. It is further noted that, during the first two (2) week period subsequent to Claimant's injury, when Claimant's activities were limited to his bed or couch, that Ms. Kiger undertook to perform Claimant's work activities of caring for Mr. Heller's horses. It is found that such manner of conduct would not typically be anticipated by an individual attempting to defraud her husband's employer.
- e. In reaching these findings, the testimony of the Claimant is generally found to be credible, and is accepted. The Claimant's testimony, that he incurred a work injury on April 24, 1997, and was having problems relating to the same; together with his testimony as to meetings with Ms. Bush, are consistent with and corroborated by his wife and Mr. Craig's testimony.

Mark A. Kiger v. Heller Spring Company
Claim Petitions
Bureau Claim No. 82316
Page 19 of 24

In reaching these findings as to the credibility of the Claimant, it is further noted that Defendant has not disputed that Claimant had, on at least three (3) prior occasions, injured himself at work; received either compensation, or wages in lieu of compensation; and, on each occasion, returned to work to his pre-injury position, despite ongoing back complaints. The nature of such ongoing, or continuum of work-related back complaints, is consistent with, and supported by the testimony of Dr. Varacallo.

In reaching these findings, it is recognized that an apparent discrepancy exists between the history testified to by the Claimant relating to the events of April 24 through April 26, 1997, and the history set forth in some of the medical records appurtenant to Claimant's treatment at or around such time. In accepting the Claimant's testimony, it is noted that the history provided to the admission nurse at the DuBois Regional Medical Center Emergency Room, of Claimant getting out of his van and not being able to stand and falling to the ground, is consistent with the Claimant's testimony. It is noted that inconsistencies exist between the other reports, with Drs. Kightlinger and Gordon's histories referencing a slipping on grass prior to Claimant getting into his van, without reference to a fall to the ground at that time, followed by Claimant's legs giving out on him as he was getting out of the van. Dr. Zeliger's history references Claimant's slipping on wet grass while getting out of his truck. Although no specific work injury is referenced in such histories, it is noted that Dr. Zeliger's history does specifically note, prior to referencing any fall, of the Claimant's work involving a lot of heavy work, and lifting of springs. Accordingly, in light of the Claimant and his wife's credible testimony, regarding the series of events during this period, and consistent with Dr. Varacallo's testimony, as to a history of Claimant having a continuum of problems from the work injury, even accepting the accuracy of the history contained in such medical reports, Claimant's testimony as to the history and causal-relatedness of his

Mark A. Kiger v. Heller Spring Company

Claim Petitions

Bureau Claim No. 82316

Page 20 of 24

work injury and complaints, is found to be more probative and persuasive than the history contained in the conflicting medical reports.

f. In reaching these findings, the testimony of Ms. Bush is not found to be credible, and is rejected.

In reaching this finding, it is noted that Ms. Bush apparently assumed the role of office manager, from her husband, at or about the time that Defendant's Workers' Compensation coverage lapsed. Her denial of having notice of the asserted work-relatedness of Claimant's back complaints is inconsistent with her acknowledgment that, prior to the May 23, 1997 meeting with the Claimant, his wife, and Mr. Craig, she had already submitted paper work on the Claimant's Workers' Compensation claim; had received paper work back from the insurance company; and had forwarded such on to Defendant's business attorney, as she did not understand it. Her testimony that she first received notice regarding an assertion that Claimant's complaints were work-related, from Mr. Craig, is inconsistent with the accepted credible testimony of the Claimant, that he did not speak with Mr. Craig regarding his work injury until after he had attempted to return to work, and encountered difficulty in getting information from Ms. Bush regarding Workers' Compensation coverage. Such testimony of the Claimant is consistent with the testimony of Mr. Craig. The testimony of the Claimant, Ms. Kiger, and Mr. Craig, that Ms. Bush specifically indicated that she was not denying that the Claimant had been hurt at work, is consistent and compelling. Ms. Bush's testimony, that she did not state such, but, rather, she did not say one way or another, is not found to be logical, probative, persuasive, or credible.

It is further noted that, during the course of her testimony at the hearing on November 4, 1998, before the undersigned, Ms. Bush appeared to be very distressed, nervous, and gripping her wrists as she responded with typically very curt responses, particularly when denying

Mark A. Kiger v. Heller Spring Company

Claim Petitions

Bureau Claim No. 82316

Page 21 of 24

Claimant's assertions, that he provided notice to her of a work injury, as well as during cross examination as to her prior belief that Workers' Compensation coverage had been in effect.

- g. In reaching these findings, the testimony of Ms. Schaffer is found to be credible, but not probative or persuasive, in light of the testimony of the Claimant and his wife.
- h. In reaching these findings, the testimony of Mr. Craig is found to be credible, to the extent such is consistent with that of the Claimant and Ms. Kiger.
- i. In reaching these findings, the testimony of Dr. Varacallo is found to be more credible, probative and persuasive than that of Dr. Morgan. In reaching these findings, it is noted that Dr. Varacallo has been Claimant's treating physician since 1987, whereas Dr. Morgan examined the Claimant on one (1) occasion.

In reaching this finding, it is noted that Dr. Varacallo's opinions are based upon an acceptance of the history provided by the Claimant regarding the work injury, which has likewise been accepted by this Judge, whereas Dr. Morgan essentially rejects the veracity of such history, attributing Claimant's complaints to a slip and fall occurring on the evening of April 25 or the morning of April 26, 1997.

- j. In reaching these findings, it is noted that Dr. Morgan's finding evidence of symptom magnification, and excess of symptoms supported by objective findings, is supported, to some extent, by the reports of Dr. Piasio. Accordingly, although the opinions and testimony of Dr. Varacallo are found to be more credible, probative and persuasive, to the extent of Claimant not being able to return to work at his pre-injury position as of October 16, 1998, it is found that the Claimant is not totally disabled, and should be capable of returning to work in some capacity. However, as there is no evidence of any

Mark A. Kiger v. Heller Spring Company

Claim Petitions

Bureau Claim No. 82316

Page 22 of 24

alternative employment available to the Claimant, at a capacity less than his undisputed heavy duty work, no modification of Claimant's benefits are presently merited.

15. Pursuant to Claimant's testimony, together with calculations provided at the time of hearing, in the absence of any objections from Defendant, it is found that the Claimant had an average weekly wage of \$335.00, with a resultant compensation rate of \$223.33 per week. (06/30/1998 Hearing N.T., pp. 21-23; 11/04/1998 Hearing N.T., pp. 6, 11-12; Claimant's Exhibit C-3)
16. Counsel for the Claimant, Keisling, Schmitt, Coletta & Deitrick, have submitted the following Bill of Costs:

Albert Varacallo, M.D. - Deposition Fee	\$ 500.00
Sargent's Court Reporting Service	
Dr. Varacallo's Deposition Transcript	\$ 245.85
Mark Kiger's Deposition Transcript	\$ 49.50
Alice Kiger & William Craig Depositions ...	\$ 319.00
Sandra L. Brown, Hearing Stenographer	
06/30/1998 Hearing Transcript	\$ 77.39
11/04/1998 Hearing Transcript	<u>\$ 169.50</u>

TOTAL COSTS \$1,361.24

17. The Claimant and his Counsel, Thomas F. Morgan, Esquire and the firm of Keisling, Schmitt, Coletta & Deitrick, have entered into a Fee Agreement providing for an attorney's fee of twenty percent (20%).

CONCLUSIONS OF LAW

Based upon a review of the foregoing Findings of Fact, and the record in its entirety, this Adjudicator concludes the following:

Mark A. Kiger v. Heller Spring Company

Claim Petitions

Bureau Claim No. 82316

Page 23 of 24

1. At all times relevant hereto, the parties are bound by the applicable provisions of the Pennsylvania Workers' Compensation Act, as amended.
2. The Claimant has sustained his burden of proof, through the submission of unequivocal and competent medical evidence, that he sustained a work-related injury during the course and scope of his employment with Defendant/Employer; that he provided proper and timely notice of the same to his Employer; that such work injury has resulted in a period of total disability for the period of April 27, 1997 through October 16, 1998, and continuing thereafter until such time as the Claimant's condition changes in accordance with the Pennsylvania Workers' Compensation Act, as amended.
3. As a consequence of the legitimate dispute as to the history of Claimant's work injury, together with Defendant's submission of the deposition testimony of Dr. Morgan, Defendant has sustained its burden of proof, that its contest of this matter was, at all times, reasonable. Accordingly, no award of attorney's fees is made against the Defendant.
4. As the Claimant has prevailed in this matter, Claimant is entitled to reimbursement of his costs of litigation, which are approved as reasonable.
5. The twenty percent (20%) Fee Agreement executed by the Claimant and his Counsel, is approved as reasonable.

O R D E R

AND NOW, this 3rd day of November, 1999, it is hereby Ordered that the Claim Petition filed by Claimant, Mark A. Kiger, against Defendant/Employer, Heller Spring Company, which Company was uninsured for purposes of Workers' Compensation at the time of the alleged incident of April 24, 1997, is GRANTED.

Mark A. Kiger v. Heller Spring Company

Claim Petitions

Bureau Claim No. 82316

Page 24 of 24

The Defendant/Employer, Heller Spring Company, shall pay total disability benefits to the Claimant for the period beginning April 27, 1997 through October 16, 1998, and continuing thereafter until such time as the Claimant's condition changes in accordance with the Pennsylvania Workers' Compensation Act, as amended.

The Defendant/Employer is responsible for the payment of all medical expenses incurred by the Claimant which are reasonable, necessary and causally-related to the work injury of April 24, 1997.

All deferred payments of compensation shall bear interest at the rate of ten percent (10%) per annum, in accordance with Section 406.1 of the Act.

The Defendant/Employer shall reimburse Claimant's counsel for litigation costs in the total sum of \$1,361.24, as itemized and set forth in Finding of Fact No. 16. Such reimbursement shall be mailed directly to the law firm of Keisling, Schmitt, Coletta & Deitrick, who shall be responsible for appropriate distribution of such funds.

It is further Ordered that the Defendant/Employer shall deduct and pay attorney's fees of twenty percent (20%) of Claimant's disability benefits, directly to the firm of Keisling, Schmitt, Coletta & Deitrick, who shall be responsible for appropriate distribution of such fees with co-counsel, Thomas F. Morgan, Esquire.


MICHAEL E. KOLL
WORKERS' COMPENSATION JUDGE

MEK:lfb



Circulation Date: 11/12/1999

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
814-765-6398

MICHAEL KOLL
CLEARFIELD JUDGES OFFICE
306 EAST LOCUST STREET
CLEARFIELD PA 16830-2445

AMENDED/CORRECTED DECISION COVER LETTER

Bureau Claim Number: 182316

Insurer Claim Number:

Social Security Number: 163-60-3983

Petitions:

Claim-Pet

Claim-Pet

Judge: Michael E Koll
306 East Locust Street
Clearfield, PA 16830-2445

MARK A. KIGER
R.D. 1, BOX 74A
LUTHERSBURG, PA 15801

THOMAS F. MORGAN, ESQ.
301 EAST PINE STREET
CLEARFIELD, PA 16830

JAMES R. SCHMITT, ESQUIRE
KEISLING, SCHMITT, COLETTA, DEITRICK, P.C.
850 WASHINGTON AVENUE
CARNEGIE, PA 15106

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
of the date of this notice.

Vs
HELLER SPRING COMPANY
R. D. 3
DUBOIS, PA 15801

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

QUERINO R. TORRETTI, ESQUIRE
600 EAST MAIN STREET
PO BOX 218
REYNOLDSVILLE, PA 15851

NO INSURANCE

, PA

Employee Witnesses & Exhibits:

None

Employer Witnesses & Exhibits:

None

Employee Counsel Witnesses & Exhibits:

Alice Kiger (11-04-98)

Mark Kiger (06-30-98, 11-04-98)

CLA-1 04/21/98 Memo to Dr. Albert Varacallo from
Melissa Frey, P.T.

CLA-2 02/27/98 Report of Dr. Albert L. Varacallo

CLA-3 Atty Schmitt's calculation of Claimant's
average weekly wage/Workers' Compensation
Rate ScheduleCLA-4 10/30/97 Letter to Claimant from Dept. of L
& I

CLA-5 Contingent Fee Agreement

CLA-6 10/20/98 Deposition of Albert L. Varacallo,
Jr., M.D. (SUBMITTED BY MAIL)CLA-7 02/01/99 Deposition of William Craig
(SUBMITTED BY MAIL)CLA-8 02/01/99 Deposition of Alice Kiger
(SUBMITTED BY MAIL)Insurer Counsel Witnesses & Exhibits:

Shirley Bush (11-04-98)

DEF-A D.R.M.C. Record

DEF-B 04/26/97 D.R.M.C. Emergency Dept Record

DEF-C 04/26/97 Consultation Report of K. L.
Zeliger, D.O.DEF-D Accident/Injury Report of Reynoldsville
Medical CenterDEF-E 04/24/97 Invoice from Heller Spring
CompanyDEF-G 01/04/99 Deposition of Dr. Vincent F.
Morgan, M.D. (SUBMITTED BY MAIL)DEF-H 01/04/99 Deposition of Kathleen Schaffer
(SUBMITTED BY MAIL)DFE-F 04/22/99 deposition of Shirley Bush
(SUBMITTED BY MAIL)Hearings:

11/4/98 00:00:00 Held

10/10/97 00:00:00 Held

Mark Kiger v. Heller Spring Company

Claim Petitions

Bureau Claim No. 182316

Page 2 of 4

AMENDED DECISION

1. On November 3, 1999, a Decision and Order was entered in this matter, granting the Claimant's Claim Petition.

2. The Decision and Order made a finding that the Claimant had an average weekly wage of \$335.00, based upon Claimant's Exhibit C-3, which summarized the Claimant's testimony and calculations of earnings, totaling average weekly wages of \$335.00.

3. Subsequent to the issuance of the November 3, 1999 Decision and Order, Counsel for the Claimant, by correspondence of November 5, and November 8, 1999, indicated that Claimant's Exhibit 3, while correctly listing the Claimant's wages, was inadvertently incorrectly totaled to reflect an average weekly wage of \$335.00, when, in actuality, if the figures are correctly added, such result in an average weekly wage of \$415.00, with a resultant compensation rate of \$276.66 per week.

3. Counsel for the Claimant further indicates that the issued Decision and Order does not address the Commonwealth of Pennsylvania's lien against recovery by the Claimant, for payment of cash assistance benefits. Counsel for the Claimant indicates that correspondence dated September 24, 1998, from the Office of the Inspector General, was submitted, subsequent to the parties submission of Proposed Findings in this matter, by letter of August 13, 1999. Counsel for the Claimant further requests that an additional cost of litigation, in the amount of \$95.65, be approved, for the bill for the deposition transcript of Shirley Bush, completed on April 22, 1999, which was not previously submitted in Claimant's Bill of Costs.

4. Counsel for the Claimant requests that an Amended Order be issued reflecting the above.

5. In all other respects, the prior Decision and Order are hereby reaffirmed.

Mark Kiger v. Heller Spring Company

Claim Petitions

Bureau Claim No. 182316

Page 3 of 4

6. Based upon the foregoing, it is further Ordered as follows. In order to avoid any confusion, the entire Order, as corrected, is copied in full.

AMENDED ORDER

AND NOW, this 12th day of November, 1999, it is hereby Ordered that the Claim Petition filed by Claimant, Mark A. Kiger, against Defendant/Employer, Heller Spring Company, which Company was uninsured for purposes of Workers' Compensation at the time of the alleged incident of April 24, 1997, is GRANTED.

The Defendant/Employer, Heller Spring Company, shall pay total disability benefits to the Claimant at the rate of \$276.66 per week, for the period beginning April 27, 1997 through October 16, 1998, and continuing thereafter until such time as the Claimant's condition changes in accordance with the Pennsylvania Workers' Compensation Act, as amended.

The Defendant/Employer is responsible for the payment of all medical expenses incurred by the Claimant, which are reasonable, necessary and causally-related to the work injury of April 24, 1997.

All deferred payments of compensation shall bear interest at the rate of ten percent (10%) per annum, in accordance with Section 406.1 of the Act.

Prior to the payment of such compensation, the Defendant/Employer shall deduct the sum of \$2,433.10, as reimbursement for Cash Assistance paid to the Claimant. (See Finding No. 3) Such reimbursement shall be made payable to and mailed directly to the Commonwealth of Pennsylvania, Office of Inspector General, P.O. Box 8035, Harrisburg, PA 17105.

Mark Kiger v. Heller Spring Company
Claim Petitions
Bureau Claim No. 182316
Page 4 of 4

The Defendant/Employer shall reimburse Claimant's counsel for litigation costs in the total sum of \$1,456.89. Such reimbursement shall be mailed directly to the law firm of Keisling, Schmitt, Coletta & Deitrick, who shall be responsible for appropriate distribution of such funds.

It is further ordered that the Defendant/Employer shall deduct and pay attorney's fees of twenty percent (20%) of the Claimant's disability benefits, directly to the firm of Keisling, Schmitt, Coletta & Deitrick, who shall be responsible for appropriate distribution of such fees with co-counsel, Thomas F. Morgan, Esquire.

Michael E. Koll
MICHAEL E. KOLL
WORKERS' COMPENSATION JUDGE

MEK:lfb



IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)
NO. 00-
-CD

MARK KIGER,
Plaintiff

VS.
CIETUS HELLER, et al,
Defendant

PRAECIPE TO ENTER JUDGMENT

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

MARK KIGER,

Plaintiff :

VS.

NO. 00- -CD

CLETUS HELLER

t/d/b/a HELLER SPRING COMPANY

Defendant :

NOTICE

Notice is given that a JUDGMENT in the above captioned matter has been entered against you in the amount of Twenty-four Thousand and 00/100 (\$24,000.00) Dollars on January 10, 2000.

William A. Shaw, Prothonotary

By W. Shaw

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY ,
PENNSYLVANIA
STATEMENT OF JUDGMENT

COPY

Mark A. Kiger
Plaintiff(s)

No.: 2001-00045-CD

Real Debt: \$24,000.00

Atty's Comm:

Vs.

Costs: \$

Int. From:

Cletus Heller
Heller Spring Company
Defendant(s)

Entry: \$20.00

Instrument: Workers Compensation Judgment

Date of Entry: January 10, 2001

Expires: January 10, 2006

Certified from the record this 10th of January, 2001

William A. Shaw, Prothonotary

SIGN BELOW FOR SATISFACTION

Received on _____, _____, of defendant full satisfaction of this Judgment, Debt,
Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

Plaintiff/Attorney

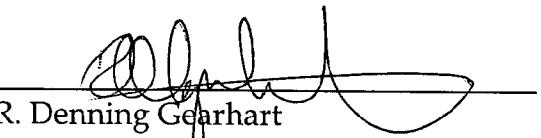
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

MARK A. KIGER, :
Plaintiff :
VS. : NO. 01-45-CD
: :
CLETUS HELLER t/d/b/a :
HELLER SPRING COMPANY, :
Defendant :
:

PRAECIPE TO MARK ACTION SATISFIED AND SETTLED

TO THE PROTHONOTARY OF SAID COURT:

Please mark the above-captioned action satisfied and settled.


R. Denning Gearhart
Attorney for Plaintiff

Dated: November 13, 2001

FILED

NOV 14 2001

R. Denning A. Shaw
Prothonotary

COPY

**IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA**

CIVIL DIVISION

CERTIFICATE OF SATISFACTION OF JUDGMENT

No.: 2001-00045-CD

Mark A. Kiger

Debt: \$24,000.00

Vs.

Atty's Comm.:

Cletus Heller t/d/b/a
Heller Spring Company

Interest From:

Cost: \$7.00

NOW, Wednesday, November 14, 2001 , directions for satisfaction having been received, and all costs having been paid, SATISFACTION was entered of record.

Certified from the record this 14th day of November, A.D. 2001.

Prothonotary

COPIA

FILED

NOV 14 2001
018561 Atty Deenhardt

William A. Shaw
P. O. Box 700

RE Stat. Satis. to
Atty Deenhardt.