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Materials For:

Fife v. County of Mayberry and Blue Devil Municipalities Insurance Company

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FACTUAL BACKGROUND



Fife v. County of Mayberry and Blue Devil Municipalities Mutual Insurance Company

Bernard "Barney" P. Milton Oliver Fife, born May 16, 1962, claims entitlement to worker's compensation benefits for psychological and physical injuries he alleges he sustained in attempting to arrest (and accidentally shooting) a suspect while working as a deputy sheriff for the County of Mayberry on September 1, 2017. Barney is also making a claim for duty disability benefits under Wis. Stats. §40.65. The County of Mayberry was insured for worker's compensation claims by Blue Devil Municipalities Mutual Insurance Company (BDMMIC) at the time of the alleged injurious occurrence. BDMMIC contends that Barney was not exposed to "extraordinary stress" in the occurrence giving rise to his claim, such that his alleged non-traumatic mental stress injury (Post Traumatic Stress Disorder, or PTSD) is not compensable. BDMMIC asserts that medically and psychologically speaking, the conditions for which Barney claims worker's compensation benefits did not arise out of the allegedly injurious occurrence, and has denied his claims on that basis as well. BDMMIC also disputes the claims made by Barney as to the nature and extent of his disability, regardless of causation. A misconduct defense has also been asserted by BDMMIC.

Prior History

Barney was born and raised in Mayberry, Wisconsin. He graduated from Mayberry Union High School in June of 1980, in the same class as his cousin and best friend, Andy Taylor. A more likely duo has seldom been seen – Andy was tall, athletic and popular with his classmates, while Barney...was not.



Andy and Barney both enlisted in the United States Army in 1980, but while Andy fought with the 82nd Airborne Division in Grenada in 1983, ultimately earning a Distinguished Service Cross for his extraordinary heroism in Operation Urgent Fury, Barney served stateside, running a PX library at a base on Staten Island for the duration of his military service.¹ Andy returned to Mayberry a war hero and favorite son in late 1983, and was elected County Sheriff in November of 1984, a position he has held without interruption ever since. One of his first acts as sheriff was to hire his high school classmate, Barney, to be his deputy.² Andy issued Barney his gun, a Colt .38 pistol, upon hiring him in January, 1985, something he lived to regret from time to time thereafter.³



While Barney has always attempted to have others see him as a confident, competent law enforcement officer, and an expert on essentially everything, including firearms, women, singing, and just about any other topic of conversation brought up while he is around, his boss and best friend Andy has known that Barney's false bravado was an affectation, hiding his insecurities and low self-esteem. As a law enforcement officer, Barney often overreacted to benign situations,

1 Barney was nevertheless proud of his war record: "J. Edgar Hoover was a librarian, you know, and overlooking the dressing in women's clothing thing, look at all he did for America!"

2 Nepotism rules were non-existent in Mayberry County in 1985, and Barney has been "grandfathered in" (pun intended) as a deputy sheriff thereafter, despite their subsequent enactment by the Chairman Pike and the Mayberry County Board.

3 <https://www.youtube.com/watch?v=dQBhUzEsO-Y>

taking minor infractions and blowing them out of proportion, with his law enforcement solution frequently more disruptive to life in Mayberry than was the original “crime.” On one occasion, when Andy was forced to leave him in charge, “by the book” Barney panicked and proceeded to arrest and lock up nearly everyone in town, including Andy’s lovable Aunt Bea.



Barney’s nervousness and lack of judgment severely hampered his ability to properly handle his firearm. On one occasion, Barney became overly excited and caught his finger in the trigger guard of the gun, such that he needed Andy’s help to get the firearm out of his hand. Over the years, Barney accidentally misfired his service revolver so often that Andy restricted him to carrying it unloaded, with a single bullet in his shirt pocket, which was to be loaded into his revolver only "in case of an emergency." Despite his clear instructions to the contrary, Barney frequently loaded the bullet into his weapon, and then accidentally shot it into the floor, the ceiling, or his own holster. Although trained in the use of lethal force in the police science course at Mayberry Technical College, and being qualified to carry a sidearm at the local shooting range each year, Barney’s nervousness and lack of dexterity made his every touch of his weapon a cause for concern for his boss and best friend Andy.



Barney was nervous and anxious all his life, and was prescribed Xanax and Ativan beginning at an early age to treat his symptoms. Barney had many somatic complaints, claimed to be allergic

to virtually everything, and was regarded by his primary care physician at the Mayberry Clinic, Thomas Peterson, M.D., as a hypochondriac.⁴ He complained frequently about his back, but he had complaints regarding virtually every bodily system, all of which defied diagnosis through medical testing.

In 1977, Barney slipped on a bar of soap in the shower in the boys' locker room at Mayberry Union High School, and injured his lower back. He treated at the emergency room at Mayberry Memorial Hospital for what was initially diagnosed as a strain/sprain injury. X-rays taken at the hospital showed Barney to have a spondylolysis condition at L5-S1, with *spina bifida occulta*, but no fracture. Barney was treated conservatively and released. He periodically undertook chiropractic adjustments for intermittent back and left lower extremity complaints at Mayberry Chiropractic⁵ thereafter, both as a high school student, and after he returned from the military in 1983.

Records from Mayberry Memorial Hospital from February 1, 2016 reveal that Barney treated in the Emergency Room for complaints of headaches and pain in his neck and back following a motor vehicle accident in which he was involved that afternoon. Barney is described as having been an unrestrained passenger in a vehicle driven by his girlfriend, Thelma Lou, which was struck from behind by a vehicle driven by Gerald Whitfield⁶ at the intersection of Forrest and Lewis Streets in Mayberry. Barney was diagnosed with a flexion/extension (“whiplash”) injury to his neck and back, and was given a soft collar, prescribed Flexeril and Vicodin, and released, with instructions to follow up with his primary care physician at Mayberry Clinic if he had further difficulties with his neck or back.

Following the accident, Barney’s chiropractor, Dr. Doyle Bennett, helped him treat his spinal complaints with a home traction unit purchased online from Subluxation.com.



⁴ Barney carried with him at all times a list of 25 substances to which he believed himself to be allergic, including salt water taffy, stink bug bites, and Campbell’s Spaghetti-O’s.

⁵ “Let Us Take a Crack at YOUR Back Complaints!”

⁶ Interestingly enough, Thelma Lou later married and divorced Whitfield. You could look it up.

Barney reported ongoing neck and back complaints to Dr. Bennett, with whom he treated daily for several weeks following the motor vehicle accident. Dr. Bennett diagnosed him with vertebral subluxations at Levels C5-6 and L5-S1, which he said were manifested on x-rays, and which he treated with adjustments. He also diagnosed Barney with cephalgia, cervicalgia, and lumbalgia. He authorized Barney to remain off of work entirely for four weeks following the motor vehicle accident, and then released him to return to work with restrictions which were liberalized gradually over the next six weeks, at which time all restrictions were lifted. As time passed, the frequency of chiropractic visits diminished, but when Barney was seen on September 1, 2016 for a “final” evaluation, he was not without symptoms: he reported headaches, pain in his neck, and lower back pain, with radiation down his left thigh to the level of his knee. Dr. Bennett indicated on September 1, 2016 that Barney had sustained permanent injuries to his neck and back in the February 1, 2016 motor vehicle accident, and that he would need chiropractic care for the rest of his life to treat them.



Barney also treated medically at the Mayberry Clinic with Dr. Peterson, his primary care physician, following the motor vehicle accident, beginning February 7, 2016. He was diagnosed with headaches and a neck and back strain, and prescribed Vicodin for pain and Flexeril as a muscle relaxant. At his next appointment on February 14, 2016, Barney was prescribed two weeks of physical therapy at Mayberry Memorial Hospital, and his Vicodin and Flexeril prescriptions were renewed. Barney filled his prescriptions, but failed to follow through with the prescribed course of physical therapy after the first scheduled appointment at Mayberry Memorial Hospital on February 15, 2016, expressing his intention to treat with his chiropractor instead. When seen by Dr. Peterson again on February 28, 2016, Barney indicated that he was no better, and that he was experiencing numbness and tingling down his left leg to the level of his toes, in addition to neck and back pain. Dr. Peterson switched Barney from Vicodin to OxyContin, a longer-acting narcotic, and referred him to Mayberry MRI and Radiation Oncology Center for an MRI scan of his lower back.

Barney undertook the prescribed MRI scan on March 1, 2016. The scan reportedly showed Grade I spondylolisthesis of L5 on S1, *spina bifida occulta* at L5-S1, and a central and left-sided disk bulge at the same level, which was felt to impact the thecal sac but not to result in stenosis. When Barney reported continuing complaints of numbness and tingling in his left lower extremity to the level of his toes on March 7, 2016, and having reviewed the MRI scan report, Dr. Peterson referred his patient to Lou Bailey, M.D., an orthopedic surgeon at Bailey Orthopaedics, S.C. for a consultation regarding a possible spinal fusion procedure. An appointment was made for Barney with Dr. Bailey on March 14, 2016, but his records reveal that Barney failed to show up for the appointment.

Barney hired a “prominent”⁷ local Mayberry attorney, Neil Bentley, to represent him in a personal injury claim against Thelma Lou, Gerald Whitfield, and their respective liability insurance carriers, stemming from the February 1, 2016 motor vehicle accident in Mayberry. Suit was filed in Mayberry County Circuit Court, and depositions were taken, including that of Barney. Attorney Bentley alleged in the personal injury litigation that Barney had sustained permanent injuries to his neck and back in the motor vehicle accident, which resulted in pain, suffering and loss of earning capacity. Attorney Bentley asserted on behalf of his client that he would require lower back surgery as a result of the injuries he sustained in the motor vehicle accident. Drs. Bennett, Peterson and Bailey were named as medical experts, and the September 1, 2016 report from Dr. Bennett was filed and served per the circuit court’s scheduling order in support of the personal injury claim. A vocational consultant, Jedediah Wakefield, was named as an expert witness by Attorney Bentley, but a vocational evaluation was not performed by him, as the personal injury claim settled at a court-mandated mediation session on April 13, 2017 for \$100,000.

Barney continued receiving chiropractic care for neck and back complaints intermittently after settling his personal injury claim. Dr. Bennett adjusted his neck and back for “subluxations” on three occasions the week of August 28, 2017, including one session on August 31, 2017, the day before Barney now claims to have been injured.

Barney was taking Xanax for his anxiety complaints, prescribed by Dr. Peterson, at the time of the September 1, 2017 occurrence.

Occurrence

On the morning of September 1, 2017, while attempting to retrieve a baseball lost by Andy’s son Opie at the old Rimshaw house in Mayberry, Barney, Andy and a (sometimes) special deputy for Mayberry County, Gomer Pyle, discovered that a methamphetamine (meth) laboratory had been

⁷ “Prominent” in his own mind, if no one else’s.

set up in the basement by two locals, Otis Campbell and Ernest T. Bass. The two men were caught in the act of “cooking” meth in the basement by Andy. Otis Campbell was arrested at the scene, and transported to the Mayberry County Jail for booking and questioning, but Ernest T. Bass escaped. Barney secured the premises until agents from the Drug Enforcement Administration (DEA) and State Crime Laboratory arrived to process the crime scene, and then returned to the jail to question Otis Campbell, both to develop the criminal case against him, and ascertain the whereabouts of Ernest T. Bass, his partner in crime.



Barney insisted that his “mad interrogation skills” made him the man to question Otis Campbell. Despite his misgivings, Andy gave permission to Barney to lead the interrogation of Otis Campbell as to the whereabouts of Ernest T. Bass



As was frequently the case with Barney, his estimation of his skills and his actual capabilities proved to be inconsistent. After Barney found Otis Campbell to be “a tough nut to crack,” Andy took over questioning and soon learned that Ernest T. Bass could be found living in a Winnebago motor home (and meth lab) near Wright Field, the airport on the outskirts of town. Having dealt

with Ernest T. Bass on many occasions in the past,⁸ Andy told Barney that he was confident that the two of them could take him into custody at the RV, so long as they used the cover of darkness to cloak their approach. It was agreed that Andy and Barney would drive out to Wright Field that evening, after Ernest T. Bass was in for the night, and take him into custody.

Barney returned to his room at Mrs. Mendelbright's boarding house to pick up a jacket, and then headed over to the Bluebird Diner for the Friday fish fry. Barney had more than fried walleye on his mind in visiting the diner that late afternoon – he also wanted to spend some time flirting with Juanita, the “hot” waitress there.⁹ Barney learned from Juanita that she was dancing later at “Amateur Night” at “Pea Picker’s,” the gentlemen’s club on River Road, located just northeast of the trailer park on the outskirts of town.¹⁰ Barney decided that if he and Andy could get Ernest T. Bass into custody quickly enough that evening, he would swing by “Pea Picker’s” for a brandy Old Fashioned and some “eyeball time” with the lovely Juanita.

Barney returned to headquarters, and met with Andy before heading to the airport to arrest Ernest T. Bass. Andy had obtained an arrest warrant for Ernest T. Bass from Judge Cranston of the Mayberry County Circuit Court. The men looked at an aerial view of the airport online, and noted that there were two driveways in to the area of Wright Field in which the Winnebago was supposed to be located. Andy suggested that Barney drive the squad car in without lights or siren activated and block the west entrance to the area, somewhat out of sight of the Winnebago. After Barney was set up there, he was to call Andy and let him know that he was in position. Andy would then approach the Winnebago from the east, driving his personal vehicle, so as not to tip off Ernest T. Bass that police officers were present if he should look out the window. Andy would walk up to the door of the Winnebago, with Barney stationed on the other side, and knock. Ernest T. Bass could come quietly, which is what Andy expected him to do, but if he attempted to flee out of the driver’s side door of the Winnebago, Barney would be there to take him into custody.

Barney unconsciously touched the grip of his Colt .38 when the latter possibility was mentioned; he had a history with Ernest T. Bass, and thought he was “a nut.” Andy had once made Barney dress up in a wedding dress and a veil, to thwart Ernest T. Bass in his quest to kidnap Charlene Darling from her wedding to Dud Wash, and while the strategy had worked at the time, Barney was still embarrassed about the experience.

⁸ Ernest periodically came in to Mayberry after having “sampled his own merchandise” and chucked rocks through windows, earning him some time in the Mayberry County Jail. He once let slip that he deliberately got himself booked into the Mayberry County Jail because of the delicious meals provided for the inmates there by Andy’s Aunt Bea.

⁹ See <https://www.youtube.com/watch?v=7OVMgTeeodI>. See also <https://www.youtube.com/watch?v=0yHuv0tufcE>.

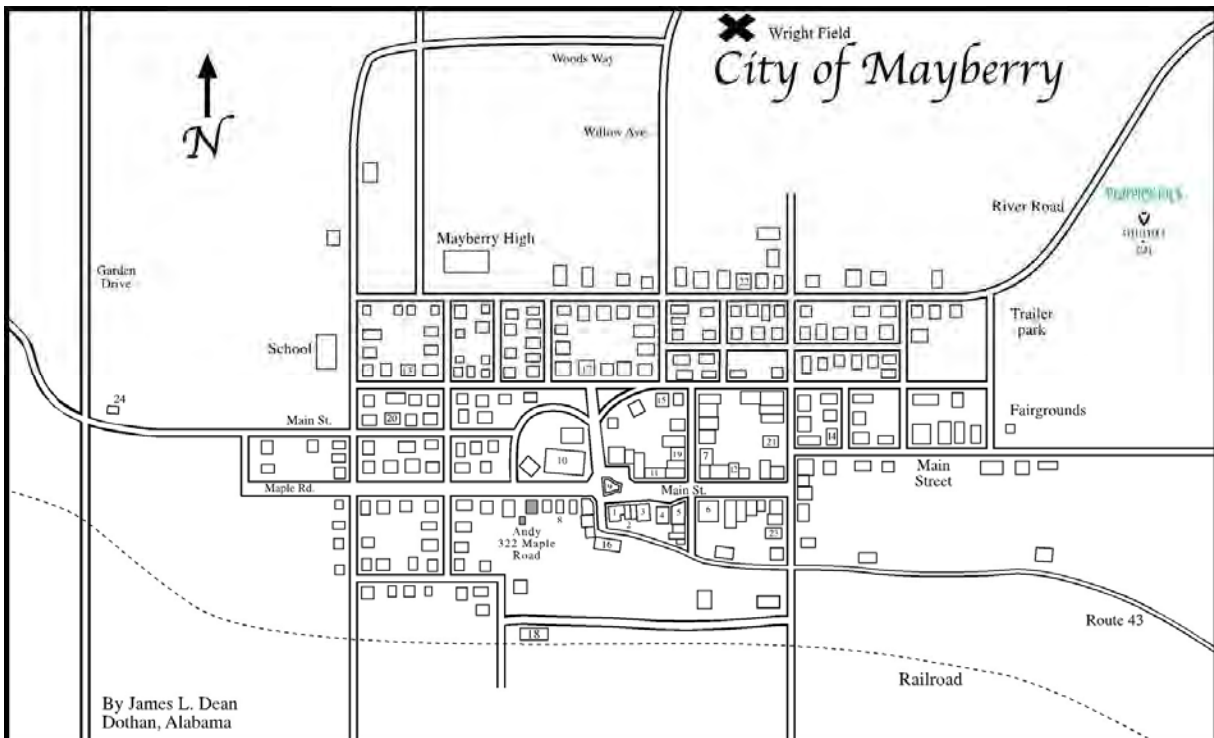
¹⁰ Somewhat surprisingly, Pea Picker’s was jointly owned by Howard Sprague and his mother. It’s always the quiet ones.



Before he left for the airport, Andy reminded Barney that he was to “keep his bullet in his pocket.” Ernest T. Bass was frequently “a little peculiar,” he observed, but other than chucking rocks, he had never been violent. Barney listened, but thought to himself that when he arrived at Wright Field, his bullet was going to be loaded into his gun, “just in case.”



Barney drove the squad car north out of Courthouse Square, and took Willow Avenue past Woods Way into the farm country north of Mayberry. It was just getting dark when he reached the entrance to the airport, and pulled in. He stopped the squad at the side of the driveway, got out, and loaded his bullet into his Colt .38. Barney holstered the gun, re-entered the squad car and pulled to the edge of the area in which the arrest was to occur. Barney was screened from a direct line of sight to the Winnebago, but he could see that lights were on, and smelled a “rotten eggs” smell that he knew meant that meth cooking was going on nearby.



Barney intended at that moment to radio Andy to inform him that he was in place, but instead of the radio, he accidentally activated the squad's emergency lights and siren, alerting anyone within at least a quarter mile of his presence. Barney realized immediately that if he was present in the Winnebago, Ernest T. Bass would hear the siren, see the lights, and run away in an effort to escape arrest. Barney jumped out of the squad, drew his gun, and ran toward the door of the Winnebago. His gun hand shook nervously as he ran. Ernest T. Bass emerged from the door of the Winnebago, dressed only in a t-shirt and boxer shorts, boots, and a gas mask. With his gun pointed in Ernest T. Bass's general direction, Barney yelled, "Hold it right there, Ernest T. Bass!" He tried to come to a quick stop, tripped, and accidentally pulled the trigger of the gun, causing it to discharge in the general direction of his suspect. Barney then fell to the ground near the feet of Ernest T. Bass, twisting as he fell. On the ground, Barney looked at the smoking gun in his hand in horror, and then looked at Ernest T. Bass, who was crumpling to the ground, having been shot in the leg.

Andy had been awaiting the call he expected Barney to make at the other end of the area. When he heard the siren and then saw the lights, he put his car in gear and raced toward the Winnebago. He arrived just in time to see Barney shoot Ernest T. Bass. He immediately called for an ambulance, and then jumped out of his vehicle to administer first aid. Barney stood by helplessly, stunned by what had occurred, and dreading the nightmarish future he knew to lay in store for him. The front of his uniform was covered in dirt, the left knee of his uniform was torn, and he felt

humiliated.

It took roughly fifteen minutes for an ambulance to arrive and take Ernest T. Bass in for treatment at Mayberry Memorial Hospital. In the meantime, Andy stopped the flow of blood from Ernest T. Bass's wound with pressure, as he had been taught to do in the military. He observed that Ernest T. Bass had what appeared to be a through-and-through flesh wound, with no bone or artery impacted. After the EMTs had taken over care at the scene, Andy turned his attention to Barney, who sat dazed at the steering wheel of the squad car, his pistol laying on the seat beside him. Andy told Barney that he would have to take custody of his weapon, and that the shooting would have to be investigated by an outside agency. He told Barney that per Department policy, he would have to take three days of paid administrative leave before he would be considered for reinstatement, given that he had been involved in a shooting occurrence. Andy told Barney that he would also have to be cleared to return to work as a deputy sheriff by a qualified mental health professional before he would be permitted to do so. Andy reminded Barney that he had specifically told him to keep his bullet in his pocket, and indicated that Barney was looking at discipline for insubordination, in addition to the accidental shooting.



Andy asked Barney if he felt he could drive home, or if he needed a ride; Barney said that he would drive the squad car back to the Mayberry County Courthouse, and then walk home. Andy asked Barney if he needed medical attention, and Barney said that he did not. Andy observed Barney carefully while he was answering, and felt that although Barney was clearly upset, he was capable of driving back into Mayberry. He took custody of Barney's gun, and then stepped out of the squad to meet with investigators from the State who had shown up at the scene to investigate the shooting. He told the investigators that he had given his deputy permission to go home, and that any statement-taking would have to occur at the Courthouse the following day. Occupied as he was, he failed to notice that Barney exited the airport by driving out the east driveway, toward River Road, rather than the west driveway, upon which he had entered the scene.

Barney had not chosen consciously to leave the scene of the shooting by the east driveway – he was just driving to get away. (Had he thought about it, he would have realized that driving south on Willow Road was by far the fastest, most direct route to the Courthouse.) It was only later, after he had driven several miles east on Clark Road, and then southwest on River Road back toward Mayberry, that he realized that he was nearing Pea Picker’s, where Juanita was dancing. He drove into the parking lot at Pea Picker’s, exited the squad car, and entered the building, intent on drowning his sorrows with a brandy Old Fashioned and some consoling words from Juanita. Barney was in no condition, psychologically speaking, for drinking alcohol or taking in pole dancing. Barney tried to tell Juanita about the shooting occurrence, but rather than consoling words, Juanita encouraged Barney to drink (she was given a 25% “kickback” by Pea Picker’s on drinks sold to her “clients”), and within an hour, he was clearly under the influence. Tears streaming down his face, he headed for the door, walked to the squad car, and then drove it back to the Courthouse. He was “feeling no pain” when he walked home several blocks to Mrs. Mendelbright’s boarding house, and fell (fully dressed, minus his service revolver) into bed.

Subsequent Medical History

Barney awoke at noon the next day with a splitting headache. He took some ibuprofen, which seemed to help a little. He cooked himself a can of beans on the hotplate he surreptitiously kept in his room, against Mrs. Mendelbright’s house rules. Despite his hangover, he had a clear recollection of the shooting occurrence up until the point at which the gun went off and he fell, but he remembered little beyond that point in time. He still felt “out of it.” He dreaded the thought of investigations, suspensions and even (potentially) termination, all of which might likely result from his accidental shooting of Ernest T. Bass. He was still in his uniform from the night before, and noticed the dirt and the tear in his uniform; he changed into civilian clothing with some difficulty, and put the uniform in the laundry basket for Mrs. Mendelbright to wash for him. He had a date with Thelma Lou that night, and he was not looking forward to having to explain to her what had happened to him – and to his career in law enforcement – the night before. He put on his suit coat and hat, and headed toward Floyd’s Barber Shop, to get a trim before he met Thelma Lou for their date that evening.



As he began trimming Barney’s hair, Floyd Lawson sensed that something was bothering him.¹¹ Barney was initially reluctant to share his embarrassing story, but encouraged by his friend’s concern over his condition, Barney ultimately told Floyd about the events of the night before – about having pulled his gun against orders, and having fallen, and having accidentally shot Ernest T. Bass while attempting to arrest him. The ever-compassionate Floyd asked, “Did you hurt yourself when you fell?” Barney almost blurted out a quick “No,” but then paused to think about how an injury in the course of duty might help him to save his career, or at least ease the financial consequences of losing his job as a deputy sheriff. He said, “You know, I did twist when I fell, and now my back hurts, and I’ve got that sciatica running down my leg.” Floyd suggested that Barney ought to go to urgent care to get some treatment, and then went off at length about his own “rheumatism” and the profound effect it had had on his horseshoe pitching capabilities.



After his haircut, Barney walked to Thelma Lou’s, a distance of several blocks, and noticed that his back and left leg pain seemed to increase with every step. By the time he reached Thelma Lou’s front porch, Barney was noticeably limping. When Thelma Lou had listened to Barney’s

¹¹ Something other than Floyd’s chronic inability to evenly trim his sideburns.

“tale of woe,” (which now included an immediate onset of burning pain running down his leg when he fell the night before) and discovered that her special therapeutic kisses failed to alleviate Barney’s symptoms, she told Barney that she was taking him to the Emergency Room for treatment. She assisted Barney to her car, and drove him several blocks to Mayberry Memorial Hospital.

Barney was seen in the Emergency Room at Mayberry Memorial Hospital, where he complained of lower back and left lower extremity symptoms. He said that his current medications included Xanax and ibuprofen. Barney handed the nurse who took his history a copy of his list of the 25 substances to which he believed himself to be allergic. Barney indicated to the nurse and doctor who took histories from him that thought he might have injured his lower back the previous evening in a work-related shooting occurrence. He admitted that he had previous lower back injuries and treatment, but indicated that he had recently “been better.” He complained of a sharp pain down the back of the leg into his left foot. He described his pain as shooting, burning and electric. On examination, Barney was felt to have muscle weakness of the big toe extensors, ankle extensors and ankle flexors, resulting in an inability to extend the ankle while walking, which in turn resulted in foot drop. Barney complained of feelings of numbness and tingling in the posterior leg and foot, which he described as a “pins and needles” sensation. Barney was felt to have a diminished Achilles tendon reflex on neurological examination. X-rays were taken of his lower back, which reportedly revealed the previously seen Grade I spondylolisthesis of L5 on S1 and *spina bifida occulta* at L5-S1, with diminished disk space and osteophytes at that level. The Emergency Room physician prescribed Vicodin, Flexeril and ibuprofen, and suggested that Barney should rest and ice his back for the next several days for what he diagnosed as a strain or sprain injury, with a possible herniated L5-S1 disk and radiculopathy. It was suggested to Barney that he follow up with his primary care physician if he had further difficulties after the Labor Day weekend.

Barney saw Dr. Peterson at the Mayberry Clinic on an urgent basis on Tuesday morning, September 5, 2017, with continuing complaints of pain and spasms in his lower back, and numbness and tingling in the side of his left leg to the level of his foot. He indicated that he had injured his back on September 1, 2017 when he twisted and fell during a work-related shooting occurrence outside of Mayberry; he did not indicate that he had previously experienced or treated for any back or left lower extremity difficulties. He indicated that he had been treated at Mayberry Memorial Hospital, where he had been prescribed Vicodin, Flexeril and ibuprofen, and that he was out of Vicodin. He indicated that he was unable to stand up completely, or walk even 50 feet without doubling over with pain. Records from Mayberry Clinic indicate that he was “sobbing” while describing his symptoms and that he had difficulty telling Dr. Peterson about the shooting occurrence. Dr. Peterson noted that Barney said that he “was convinced that he screwed up this time to the point that even Andy will have to fire him.” On examination, Dr. Peterson noted Barney

to have absent reflexes at the Achilles on the left, positive straight leg raise testing on the left, and muscle spasm in his lower back. Dr. Peterson felt that Barney had objective evidence of a possible disk herniation on the left at Level L5-S1 on examination, and ordered an MRI scan. He prescribed Vicodin and Flexeril, and authorized Barney to remain off of work until re-examined. He noted that Barney's anxiety condition was exacerbated by the shooting occurrence of September 1, 2017 and by the discipline he expected to be imposed because of it, and renewed Barney's Xanax prescription. He suggested that if things did not improve for Barney soon, psychologically speaking, he would likely have to consult with a mental health professional; he suggested Dr. Bob Hartley, a local psychologist.

Barney limped back to the rooming house after seeing Dr. Peterson on September 5, 2017, stopping at Walker's Drugstore along the way to fill his prescriptions. He was worried about losing his job, and decided to put his plan for keeping it into action. Barney called Andy, and told him Dr. Peterson had taken him off of work, ordered an MRI scan, and mentioned the possibility of a back surgery if he was found to have a herniated disk in his back. He told Andy that he felt that he had injured his back during the shooting occurrence, and that he wanted his claim reported to the worker's compensation insurer. Barney said he was upset about the shooting, and that Dr. Peterson had mentioned that he might need to see Dr. Hartley for psychological evaluation and treatment. Barney noted that seeing Dr. Hartley about the shooting occurrence might "kill two birds with one stone,"¹² since he needed clearance by a mental health professional to return to work after the shooting occurrence anyway. Although Andy was aware of Barney's prior back and psychological complaints, and had his doubts about the possibility of returning Barney to work in the aftermath of the shooting for disciplinary reasons, and noted that Barney had not reported any work injury within three days after the September 1, 2017 occurrence, he did fill out an injury report on a Mayberry County "First Report of Injury" form, along with a WKC-12 "Employer's First Report of Injury or Disease," and sent the documents to Clara Edwards in the Human Resources Department to be forwarded to the worker's compensation insurance carrier, Blue Devil Municipalities Mutual Insurance Company. Clara, who took a dim view of "all things Barney," penciled a note at the top of the WKC-12 form suggesting that the "Claim should be investigated and denied – prior back injury, and always had a screw loose."



¹² Probably not the best choice of words under the circumstances.

An MRI scan was performed at Mayberry MRI on September 8, 2017. The MRI scan reportedly showed Grade I spondylolisthesis of L5 on S1, *spina bifida occulta* at L5-S1, and a central and left-sided disk herniation at the same level, which was felt to obliterate the nerve root on the left and cause significant spinal stenosis. The radiologist who read the scan felt that the results were consistent with the subjective complaints voiced by Barney. On September 12, 2017, after reviewing the MRI scan report, and re-examining his patient, Dr. Peterson referred Barney to Dr. Bailey at Bailey Orthopaedics, S.C. for a consultation regarding a surgery. Dr. Peterson renewed the Vicodin prescription, and authorized Barney to remain off of work until further notice.

Barney was seen by Dr. Bailey on September 19, 2017. He acknowledged a prior history of back and left lower extremity complaints, but added that until the September 1, 2017 shooting occurrence, he had been doing better, as far as his back and leg complaints were concerned. He did not tell Dr. Bailey about his ongoing recent chiropractic care. Dr. Bailey examined Barney, and reviewed the MRI scan performed on September 8, 2017, and indicated to Barney that he might very well be a candidate for a discectomy, laminectomy and spinal fusion procedure at Level L5-S1. Dr. Bailey indicated that he was reluctant to perform surgery on Barney without first attempting more conservative care, consisting of a series of three epidural steroid injections and physical therapy. Barney was prescribed physical therapy and epidural steroid injections. Dr. Bailey insisted that Dr. Peterson remain the only health care provider to prescribe narcotic pain medication for Barney, and declined to give him OxyContin or Vicodin for his pain complaints.

Barney did follow through with physical therapy at Mayberry Memorial Hospital between September 19 and October 24, 2017, without resolution of his symptoms. The prescribed series of epidural steroid injections were administered by an anesthesiologist at Mayberry Memorial Hospital, Dr. Martha Hollister, with only temporary relief reported after each injection. On November 7, 2017, after a pre-operative evaluation by Dr. Peterson, Dr. Bailey performed a bilateral laminectomy, discectomy and posterior fusion procedure at Level L5-S1 at Mayberry Memorial Hospital. Barney was discharged from Mayberry Memorial Hospital on November 10, 2017, with Vicodin for pain, and instructions to follow up with Dr. Bailey in due course.

Perhaps predictably, subjectively speaking, Barney has not experienced a good result from his November 7, 2017 fusion procedure. X-rays taken December 28, 2017 showed his fusion mass to be solidifying. When Barney had lingering complaints of numbness and tingling in his left lower extremity following surgery, Dr. Bailey referred him to Mayberry Neurology for an EMG and nerve conduction study, which was performed on January 19, 2018, with reportedly normal results. Dr. Bailey indicated on June 11, 2018 that it would take a year from the date of surgery to determine the ultimate outcome, but that objectively speaking, Barney appeared to have obtained a good result. Dr. Bailey suggested that Barney should undertake a multi-disciplinary pain

management program, including psychological treatment, to deal with his subjective pain complaints, and that he should be weaned from narcotic pain medication. (Some of Dr. Bailey's notes seem to suggest that "secondary gain" considerations, particularly including a desire for narcotic pain medication and recovering worker's compensation and duty disability benefits, may be the underlying explanation for Barney's lingering subjective pain complaints.) Dr. Bailey indicated that Barney was still within the healing period, but could return to sedentary work; he prohibited Barney from returning to work as a deputy sheriff. Based upon the history given to him by Barney, Dr. Bailey opined that the shooting occurrence of September 1, 2017 aggravated, accelerated and precipitated Barney's pre-existing, degenerative back condition beyond ordinary progression, and that the surgery performed on November 7, 2017 was at least partially attributable to it.

On November 12, 2018, one year after the surgery, Dr. Bailey re-examined Barney. X-rays were performed which reportedly revealed a solid fusion mass at L5-S1. Barney continued to complain of numbness and tingling in his left leg and foot, and of pain in his lower back. Barney continued to take OxyContin prescribed for him by Dr. Peterson for his pain complaints. Dr. Bailey indicated that Barney had reached a healing plateau, and assessed him as having 15% of permanent, total disability for functional loss. He indicated that Barney could never return to police work, with permanent restrictions against lifting over 25# frequently, and further limitations on bending, pushing, or pulling more than occasionally, with frequent changes in position required. He indicated that Barney's pain complaints, and the use of pain medication to treat them, would make it difficult for him to concentrate. Dr. Bailey again suggested that Barney should undertake a multi-disciplinary pain management program, including psychological treatment, to deal with his subjective pain complaints, and that he should be weaned from narcotic pain medication. He indicated that because the fusion at L5-S1 would likely cause additional stress at the next adjacent disk level (L4-5), it was possible that Barney would require a future laminectomy, discectomy and fusion at that level as well.



On June 25, 2018, Barney consulted at the Excruciating Pain Management Clinic with Dr.

Hackenbush¹³ on referral from Dr. Bailey, to explore the potential that a multi-disciplinary pain management program might be of assistance to him. Dr. Hackenbush mentioned a long list of potential treatment options to Barney as potentially being of assistance to him, including facet joint injection, intradiscal electrothermal therapy (IDET), intrathecal pump implant, lumbar sympathetic nerve block, and radiofrequency nerve ablation, all of which seemed terrifying and disturbing to Barney (as did Dr. Hackenbush himself). In the end, Barney concluded that he was better off continuing with the pain medication Dr. Peterson was willing to prescribe than he was “letting some quack turn him into a pin cushion” at Excruciating Pain Management, and he never returned.



Blue Devil Municipalities Mutual Insurance Company commissioned a records review by Marcus Welby, M.D., an orthopedic surgeon.¹⁴ On October 31, 2017, Dr. Welby issued a report indicating that assuming that the September 1, 2017 occurrence took place as alleged, Barney sustained at most a temporary lower back strain or sprain, superimposed over his pre-existing degenerative and congenital back condition, which should have resolved without residuals and without surgery by October 16, 2017, with no permanency. He indicated that the proposed discectomy, laminectomy and fusion procedure was occasioned by the pre-existing degenerative and congenital back condition, and not the residuals of the September 1, 2017 occurrence. He opined that the surgery did not constitute reasonable or necessary medical care, regardless of causation, and indicated that given his prior medical and psychological history, Barney’s prognosis following surgery would be poor. Dr. Welby’s report was provided to both Barney and Dr. Bailey prior to the November 7, 2017 surgery, but surgery took place as scheduled anyway.

On December 10, 2018 Dr. Welby examined Barney at the request of Blue Devil Municipalities

¹³ <http://www.youtube.com/watch?v=YcDdaNNIOls>

¹⁴ According to his curriculum vitae, Dr. Welby is currently employed by the United States Navy as a physician at Great Lakes Naval Base near Chicago. His services were obtained by Blue Devil Municipalities Mutual Insurance Company through Axiom Medical Services, Inc., a provider of medical and vocational experts.

Mutual Insurance Company. He reiterated his opinions on the causation issue. Regardless of causation, he indicated that Barney had reached an endpoint in healing following surgery on November 12, 2018. He indicated that while (predictably, he said) Barney subjectively felt that he had obtained a less than good result from surgery, he had (objectively) obtained an excellent result, and experienced 10% of permanent, total disability for functional loss regardless of causation. He indicated that Barney was capable of medium work, with a 50# lifting restriction, and no other restrictions. He specifically indicated that he could resume police work with some accommodations for lifting. He indicated that he needed no additional medical or psychological care. He specifically indicated that further use of narcotic pain medication was not medically reasonable, and was in fact detrimental to Barney in his recovery from surgery.

Repercussions of Shooting Occurrence



After Ernest T. Bass was hospitalized and finished treating for his gunshot wound following the September 1, 2017 occurrence, he was charged with the unlawful manufacture and sale of methamphetamines in Mayberry County Circuit Court. He was incarcerated in the Mayberry County Jail, which was not entirely displeasing to him, given that he was fed a steady diet of Aunt Bea's cooking while incarcerated. Ernest T. Bass was ultimately convicted of the charges brought against him, but in a plea agreement with the Mayberry County District Attorney, was sentenced to two years of probation, six months in the Mayberry County Jail as a condition of probation, and psychological counseling.¹⁵ The DA indicated at the sentencing hearing that the State was taking account of the fact that Ernest T. Bass was shot during the arrest process in recommending a lenient sentence, despite his long prior criminal history.

¹⁵ It appears that Barney may have had it right when he described Ernest T. Bass as "a nut." See: https://www.youtube.com/watch?v=ztrLMXY_9TA.



Although his relationship with the family got off to something of “a rocky start,”¹⁶ Ernest T. Bass had been accepted by “The Darlings,” an extended family of methamphetamine, marijuana and “Hillbilly Heroin” (OxyContin) dealers and bluegrass musicians¹⁷ from rural Mayberry County, as one of their own by the time of the September 1, 2017 shooting. Ernest T. Bass was cooking meth for the Darling Clan in their Winnebago immediately prior to the shooting. Rumors circulated in the aftermath of the shooting suggesting that Briscoe Darling, the “capo di tutti” within the Darling Clan, had put out a \$50,000 contract on the life of Barney Fife after he learned of the shooting, but a witness to this rumored threat was never actually located. While it could never be proven that Ernest T. Bass actually “chucked rocks” at Barney’s rooming house, it was strongly suspected that it was he who threw them; occasionally, Barney was present, and showered with broken glass when windows were broken.¹⁸ The Darlings funded a personal injury lawsuit on behalf of Ernest T. Bass against Barney, Andy and the County of Mayberry for physical and mental injuries sustained as a consequence of the shooting, and muttered threats against Barney’s life were allegedly made by Ernest T. Bass and members of the Darling Clan at depositions and court proceedings, until the case was settled for \$300,000 by the County on December 31, 2018. Barney reported these alleged incidents and threats to Andy and the State Bureau of Criminal Investigations, headed by State Police Detective George Kennedy, but nothing could be proven, and no charges were filed against anyone in relation to them. Barney nevertheless told friends and healthcare providers that he feared for his life, and that he was concerned that if he was able to return to police work, he would “be in the crosshairs” as far as Ernest T. Bass and the Darling Clan was concerned for the rest of his life.

¹⁶ See: <https://www.youtube.com/watch?v=MJUmluc1X5s>.

¹⁷ Occasionally performing with Andy in the Mayberry County Jail, see: <https://www.youtube.com/watch?v=WeNe5MLgyHM>.

¹⁸ See: <https://www.youtube.com/watch?v=PZTfkzyrRzo>



Ultimately, Barney failed in his effort to keep his job as a deputy sheriff following the September 1, 2017 shooting occurrence. Clara Edwards, the Human Resources Administrator for Mayberry County, had never liked Barney, privately calling him “incompetent, badge-heavy and dangerous” on more than one occasion in the past. In addition to complaints by Mayberry citizens regarding “nit-picking” citations and mass incarcerations, Clara had had to deal with an incident in which Barney was seen in uniform, in a compromising position with a blonde in the back of the squad car, and multiple occasions in which he put holes in County property due to accidental gunfire. She had suggested that Barney was “a lawsuit waiting to happen,” and she was delighted when he “gave her the ammunition” she needed to fire him for cause by shooting Ernest T. Bass as he did. Barney was never brought off of his mandatory three day administrative leave following the September 1, 2017 shooting, but rather, was terminated for negligent handling of his service revolver and insubordination (loading his weapon contrary to Andy’s orders) in the occurrence. Clara pressed the district attorney to charge Barney with a crime in relation to the shooting (injury by reckless use of a firearm), but Andy was able to convince the district attorney that the loss of his job after so many years of service should be enough punishment for Barney.

In addition to his worker’s compensation claim, Barney brought a duty disability claim under Wis. Stats. §40.65.

Subsequent Psychological History



On December 14, 2017, Barney began treating with Dr. Robert Hartley, a psychologist at Mayberry Mental Health Institute, on referral from Dr. Bailey. Barney told Dr. Hartley that following the shooting occurrence, he had been spending much of his free time at Pea Picker's, drinking and watching strippers, and that he had ended his long term relationship with Thelma Lou and taken up with Juanita. He said that he could not shake himself from memories of the shooting, and that he felt he was reliving the occurrence in nightmares while sleeping and flashbacks while awake. Barney said that he worried constantly about the loss of his job, and was always looking over his shoulder to see if the Darlings were finally going to get him back for shooting Ernest T. Bass. Barney said that even the thought of picking up his service revolver made him physically nauseous, and that he could not watch police dramas on television without thinking about and reliving the shooting occurrence. He said that he could not concentrate on even the simplest tasks, and felt that the shooting occurrence made any thought of returning to employment in law enforcement laughable. Barney said that he knew he was overusing and abusing narcotic pain medication, and that he should not be drinking and using narcotics as he was, but he said he no longer cared enough to stop. Dr. Hartley diagnosed Barney with having aggravated his chronic anxiety condition, and being subject to Post Traumatic Stress Disorder and depression related to the shooting occurrence and his consequential job loss. Dr. Hartley indicated that as a consequence of his mental health conditions, Barney is unable to return to work in the law enforcement or security fields. He indicated that because of his depression condition, Barney will need to take a 5 minute break every 60 minutes to help him regroup cognitively, and that his compromised cognitive functioning would require accommodation to allow him more time on tasks than what the competitive marketplace would allow. He anticipated that Barney will miss 3 or more days per month due to his depression. Based on these restrictions, Dr. Hartley indicated that Barney can work in simple, low-stress jobs that allow him to work at his own pace or at a minimum at a pace that is lower than pressured professional jobs. Dr. Hartley indicated that Barney will need antidepressants, anti-anxiety medication, painkillers and mental health counseling for the foreseeable future. He opined that Barney has sustained a 20% permanent partial disability to the body as a whole for his psychological conditions.

Dr. Hartley acknowledged that any law enforcement officer required to carry a gun had to be prepared to use it, and that a shooting occurrence in and of itself did not constitute extraordinary stress for a law enforcement officer. However, he noted that at the time of the shooting in question, Ernest T. Bass was not a threat to Barney or others, and that Barney had no cause to shoot Ernest T. Bass; that the shooting occurrence had not been deemed to have been justified by investigating authorities; that Barney had lost his job and a civil lawsuit as a consequence of injuring Ernest T. Bass in the shooting; and that Barney had been the subject of death threats by the Darlings following the shooting. Dr. Hartley indicated that he felt these additional factors made the shooting occurrence and its aftermath extraordinarily stressful.



On February 9, 2019, Frasier Crane, Ph.D. examined Barney at the request of Blue Devil Municipalities Mutual Insurance Company for purposes of an independent psychological evaluation. Dr. Crane issued a report dated February 22, 2019. In that report, Dr. Crane diagnosed Barney with temporary aggravations of his pre-existing anxiety and depression conditions following the shooting occurrence, which he felt to have resolved with no permanency by March 7, 2018. Dr. Crane indicated that after March 7, 2018, Barney had returned to his pre-injury baseline; he observed that as evidenced by his “25-point list of allergens,” Barney was “pretty crazy” even before he shot Ernest T. Bass. Dr. Crane indicated that insofar as Barney was a law enforcement officer at the time of the shooting, who had been trained in the use of lethal force, there was no unusual stress associated with the shooting occurrence. He indicated that based upon his experience, threats by suspects and others were an expected part of police work, and that any threats made by the Darlings would not constitute extraordinary stress for a police officer such as Barney. Dr. Crane was also critical of the prescription of medication to treat Barney’s diagnosed PTSD, noting that to the extent he actually experienced the condition, it should be treated with desensitization training and not medication. Dr. Crane indicated that Barney would benefit from counseling and anti-anxiety and anti-depressant medication, but that such treatment would be directed to his pre-existing mental health issues, and not the residuals of the shooting occurrence. Dr. Crane questioned whether Barney had been a suitable candidate for police work even prior to the shooting occurrence, psychologically speaking, but he indicated that nothing that happened during or after the shooting occurrence prevented him from returning to law enforcement or security work. Dr. Crane observed that Barney had many financial and other reasons to hold himself out as psychologically disabled, and that “any baboon with Internet access can figure out what to say to get diagnosed with PTSD these days,” suggesting that malingering might be a more accurate diagnosis than PTSD in Barney’s case.

Vocational and Other Issues

The permanent physical and psychological restrictions imposed by Barney’s treating health care

providers precluded him from returning to work as a deputy sheriff. Barney looked for work within his restrictions elsewhere in Mayberry, but discovered that his officious, abrasive public *persona* as a deputy sheriff made it difficult for him to find Mayberry employers willing to give him a chance.¹⁹ At the suggestion of Dr. Bailey, Barney did contact the State of Wisconsin Department of Workforce Development Division of Vocational Rehabilitation (DVR) about placement assistance or retraining, and was accepted for services by the agency effective July 2, 2018. Upon receipt of the final report from Dr. Bailey of November 12, 2018, establishing permanent work restrictions, the DVR counselor recommended that Barney apply for Social Security disability benefits, as she did not believe Barney to be employable, and the DVR closed Barney's file. Barney expressed an interest in applying for social security disability benefits, but has taken no action to date in that regard.

When BDMMIC denied his worker's compensation claim, Barney submitted medical bills for treatment of his lower back and psychological condition to his health insurer, Smoky Mountain Mutual Insurance Company (SMMIC), which paid them. SMMIC asserts entitlement to reimbursement for medical expenses paid on Barney's behalf from any worker's compensation benefits recovered by him from BDMMIC under ERISA law.

¹⁹ In particular, the occasion mentioned above in which he had arrested essentially everyone in town and locked them in the jail in Andy's absence was "off-putting" to potential employers in the general labor market.

HEARING APPLICATION

Please Read Instructions.

Provision of your Social Security Number (SSN) is mandatory under Section 111 of Medicare, Medicaid and SCHIP Extension Act 2007 (42 U.S.C. s. 1395y (b) (7) & (8)) and will be used to identify the claimant. Failure to provide it may result in penalties and delayed payment of benefits.

Personal information you provide may be used for secondary purposes [Privacy Law, s. 15.04 (1)(m), Wisconsin Statutes].

1. Employee Name, Address, City, State, Zip Bernard P. Milton Oliver Fife Mendelbright Park Apartments 411 Elm St Mayberry, WI 53773		2. Employer Name, Address, City, State, Zip (At Time Of Injury) County of Mayberry Courthouse 10 Main Street Mayberry, WI 53773		3. WC Insurance Carrier, Address, City, State, Zip Blue Devil Municipalities Mutual 2138 Campus Drive Durham, NC 27708	
		3a. Insurance Carrier Telephone No. (Area Code) (579) 993 - 9754		3b. Date of Injury (Mo/Day/Yr) 09/01/2017	
1a. Employee Social Security No. 366-56-6887		2a. Federal Employer Identification Number (If Known) 62-923779		3c. Last Date Employee Worked Before Disability 09/01/2017	
1b. Employee Telephone No. (Include Area Code) (608) 582 - 6482		2b. Employer Telephone No. (Include Area Code) (608) 628 - 5625		3d. Date Notice of Injury Given to Employer 09/05/2017	
1c. Date of Birth (Mo/Day/Yr) 05/16/1962	Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F	2c. Nature of Employer Business Municipality		4. Have You Applied for or are You Receiving Social Security Benefits? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
1d. Employee Attorney (if any) Name & Full Address Neil Bentley Shyster Plaza Fifteen Main Street Mayberry, WI 53773		2d. Employee Occupation When Injured Deputy Sheriff		4a. Have You Applied for or are You Covered Under Medicare? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, Medicare Claim Number N/A	
1e. Is the Certification of Readiness included with this Application? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		2e. Employee Gross Weekly Wage When Injured \$1029.44		Answer Questions 5 To 5c If Claim Is Made For Death Benefit	
1f. Attorney's Telephone No. (Include Area Code) (608) 753 - 2991		5. Name of Deceased and Date of Death N/A		5a. Are You a Dependent of the Deceased? <input type="checkbox"/> Yes <input type="checkbox"/> No	
6. How did the Injury or Death Occur? If Possible, Specify if Single Event or Long-Term Exposure. Single Event -- Effectuating Arrest		5b. Applicant's Relation to Deceased <input type="checkbox"/> Husband <input type="checkbox"/> Wife <input type="checkbox"/> Child <input type="checkbox"/> Other		5c. Did You Live with the Deceased? <input type="checkbox"/> Yes <input type="checkbox"/> No	
		6a. Describe Parts of the Body Affected Back, traumatic and non-traumatic psychological injuries.			
7. Check the Boxes Below for which Compensation is being Sought and Specify Detail, if known.					
7a. <input checked="" type="checkbox"/> Temporary Total Disability (Day, Month and Year) From 9/1/2017 To 5/18/2019					
7b. <input type="checkbox"/> Temporary Partial Disability From _____ To _____		7c. <input checked="" type="checkbox"/> Transportation Costs (Mileage) TBD			
7d. <input type="checkbox"/> Permanent Partial Disability 15 % of Body Part PTD (Back), 20% PTD (Psyche)		7e. <input checked="" type="checkbox"/> Permanent Total Disability Starting Date 5/18/2019 (LOEC)			
7f. <input checked="" type="checkbox"/> Medical Expense Denied \$ TBD Has Treatment Ended? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		7g. <input type="checkbox"/> Penalty		7h. <input checked="" type="checkbox"/> Other URR, Multiple Injury Increase	
8. Names of Medical Practitioners who Treated Applicant Mayberry Clinic, Mayberry Memorial Hospital, Dr. Bailey, Dr. Hartley				9. Is the Employee Working Now? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
10. Were Medical Expenses Paid <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, By Whom?			11. Are You Currently Receiving Worker's Compensation Disability Benefits? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
12. Have Sickness and Accident Benefits/Income Continuation been Paid for Lost Wages? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		12a. If Yes, Indicate by whom and the Amounts N/A			
13. I will be Ready for a Formal Hearing in <input checked="" type="checkbox"/> Due Course <input type="checkbox"/> Due Course but not before this Date		14. I Request the Hearing be Scheduled at the Wisconsin City shown here Wisconsin Dells			
15. <div style="text-align: right; margin-right: 100px;"> Barney Fife -- 03/30/22 _____ Employee Signature Date Signed </div> If Represented, do you agree that an Attorney's Fee, fixed by the Department at no more than 20% of your Recovery, may be paid directly from the Compensation you Recover? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		16. FOR OFFICE USE ONLY: HR PT NR Issues _____ <input type="checkbox"/> GL35 <input type="checkbox"/> GL35A <input type="checkbox"/> GL48 Length _____ <input type="checkbox"/> GL33 <input type="checkbox"/> GL70 <input type="checkbox"/> GL34 Date _____ <input type="checkbox"/> GL33A <input type="checkbox"/> GL39 <input type="checkbox"/> GL31			



State of Wisconsin DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator

Office of Worker's Compensation Hearings
P.O. Box 7922
Madison, WI 53707

Telephone: (608) 266-7709
FAX: (608)266-0018
Email: DHAWCMail@wisconsin.gov

ADMISSION TO SERVICE AND ANSWER TO APPLICATION

You are the RESPONDENT in this matter.

Provision of your Social Security Number (SSN) is voluntary. Failure to provide it may result in an information processing delay. Personal information you provide may be used for secondary purposes [Privacy Law, s. 15.04 (1)(m), Wisconsin Statutes].

Table with 2 columns: Claimant/Respondent Information and Employer/Insurance Information. Rows include WC Claim Number, Employee Name, Employee Social Security Number, Employer Name, Date of Alleged Injury, Employer Mailing Address, Insurance Company Name, Insurance Company Mailing Address, Respondent Attorney Name, and Respondent Attorney Mailing Address.

The enclosed hearing application must be answered within 20 days by mailing a copy of the answer to the Office of Worker's Compensation Hearings and to applicant's attorney or applicant if unrepresented. Provide such responses as are now known and amend your responses later as necessary. The worker's compensation insurer has a duty to defend and submit an answer on behalf of the employer except that the employer must defend and submit its own answer as to the following claims: (I) 15% increased compensation for safety violation, Wis. Stat. 102.57; (II) refusal to rehire, Wis. Stat. 102.35 (3); (III) penalty for late payment against employer, Wis. Stat. 102.22; (IV) penalty for illegal employment of minor, Wis. Stat. 102.60; and (V) bad faith against employer, Wis. Stat. 102.18 (1) (bp). Failure by the employer or insurer to file a timely answer may result in liability by default order.

In answer to the application, using reverse side if additional space is necessary, the respondent states as follows:
1. The accident or occupational exposure occurred as alleged [] Admit [X] Deny
2. The relationship of employer and employee existed [X] Admit [] Deny
3. The parties were subject to the worker's compensation act [X] Admit [] Deny
4. At the time of alleged injury, the employee was performing service growing out of and incidental to employment [] Admit [X] Deny
5. The accident or disease causing injury arose out of the alleged employment [] Admit [X] Deny
6. Notice of injury was given to employer within 30 days/2 years of alleged injury [X] Admit [] Deny
7. Applicant was temporarily disabled for the period claimed [] Admit [X] Deny
If denied, state disability admitted: 0%
8. Applicant is permanently disabled to the extent claimed [] Admit [X] Deny
If denied, state disability admitted: 0%
9. The rate of wage claimed is correct [X] Admit [] Deny
If denied, state wage admitted: and attach a fully updated WKC-13-A
10. The alleged employer was insured or self-insured under the Worker's Compensation Act [X] Admit [] Deny
11. Do you contend that additional parties must be joined for a complete resolution of applicant's claim? If "yes," attach expert opinions supporting joinder and explain who should be joined and why. [] Admit [X] Deny
12. Do you contend the employee was discharged or suspended for misconduct or substantial fault after being released to return to a restricted type of work during the healing period? [X] Admit [] Deny
13. Do you contend that indemnity or death benefits were not paid because the employee violated the employer's policy on alcohol or drug use and the violation was causal to injury? [] Admit [X] Deny
14. Describe any matters in dispute not already noted above and state all reasons for denying liability not already noted above. Apportionment may be appropriate per Sec. 102.175(3), Wis. Stats. Dispute vocational claim. As courtesy to employer, dispute URR claim. Sec. 102.35(3), Wis. Stats.

Insurance Carriers & Self-Insured Employers must attach an up-to-date WKC-13 and if wage is disputed, an up-to-date WKC-13-A.

Respondent Signature: Harold Mosby Date Signed: 04/10/2022
Printed Name: Harold Mosby Title: Attorney Phone Number: (608) 666 - 6639
Representing: [X] Insurance carrier and the insured interests of employer [] Insurance Carrier [] Employer

Certification of Readiness for Hearing and Request to Schedule a Hearing or Settlement Conference

Certification of Readiness by the applicant's representative is required before scheduling will begin. Failing to submit the Certification of Readiness may ultimately result in dismissal of the Application for Hearing.

Explanation:

- Submission of a Certification of Readiness (COR) by the applicant's representative is verification that the matter is ready for hearing or settlement conference. It is intended to allow for scheduling without the risk that the applicant will request an adjournment.
- The COR also is intended to encourage settlement discussions, resulting in earlier case resolution without the necessity of a scheduled hearing.

General Instructions:

- A copy of both pages of the COR, along with all supporting documentation must be sent to the insurer or self-insured employer or their attorney at the time it is filed with the Worker's Compensation Division (WCD).
- Do not submit a COR if the applicant believes that it may be necessary to implead additional parties.
- Do not submit a COR unless the WKC-16B or alternative medical report was previously submitted or it is included with the COR.
- The WCD will try to schedule the hearing at a location no more than 100 miles from the address of the employee or the employer unless the employee indicates a willingness to travel farther.
- In addition to the dates of unavailability for the attorney provided on this form, the attorney should continue to notify the WCD's calendar section of any future dates of unavailability.

Please note the following general guidelines for scheduling hearings:

- No postponements will be granted except under extraordinary circumstances. Difficulty in gathering medical proof **IS NOT** an extraordinary circumstance.
- Issues in addition to those listed on the COR form may be heard at the scheduled event if the notice and filing requirements in Wis. Stat. ch. 102 and Wis. Admin. Code ch. 80 are met or by stipulation of the parties.
- Unless waived by the parties, statutory filing deadlines apply. The applicant's representative is required to file all medical and vocational proof prior to submitting the Certification of Readiness.
- If the status or nature of the claim changes after the COR is filed and the employee is no longer ready to proceed, the applicant's representative must immediately notify the WCD in order to prevent scheduling of a hearing or settlement conference.

Insurer or self-insured employer instructions for objecting to the COR:

Any objection to the COR must be noted at the bottom of this form, filed with the WCD and a copy sent to the applicant's attorney, within 15 days of receipt of the COR. The specific reasons for the objection must be clearly stated, along with the additional time requested.

**Department of Workforce Development
Division of Worker's Compensation**

201 E. Washington Avenue
P.O. Box 7901
Madison, WI 53707
Telephone: (608) 266-1340
Fax: (608) 267-0394
e-mail: DWDDWC@dwd.wisconsin.gov

**Certification of Readiness
and Request to Schedule a Hearing or Settlement
Conference**

*The provision of your social security number is voluntary. Failure to provide it may result in an information processing delay. Personal information you provide may be used for secondary purposes [Privacy Law, s. 15.04 (1)(m), Wisconsin Statutes].

Employee Name Bernard P. Milton Oliver Fife		Social Security Number* 366-56-6887	Claim Number 2017-046637	Date(s) of Injury: 09/01/2017 Is Date of Injury in Dispute? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Employee Street Address 411 Elm Street		City Mayberry	State WI	Zip Code 53773	Phone Number 608-439-2639
Employer Name: Sheriff's Department -- County of Mayberry Street address: Courthouse, 10 Main Street		City Mayberry	State WI	Zip Code 53773	Phone Number 608-628-5625
WC Carrier Name: Blue Devil Municipalities Mutual Address: 2138 Campus Drive Durham, NC 27708		WC Carrier Contact Name: Mike Krzyzewski Phone Number: 579-993-9754		Can Employee Travel more than 100 miles? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Indicate the event you wish to schedule: <input checked="" type="checkbox"/> Formal Hearing OR <input type="checkbox"/> Settlement Conference					
ISSUES TO BE HEARD – PLEASE MARK THE APPROPRIATE BOXES BELOW					
Average Weekly Wage (Claimed/Admitted) <input type="checkbox"/> Yes \$ 1029.44 <input checked="" type="checkbox"/> No		Medical Causation? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Medical Expense? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Estimate of Medical Bills: \$100000	
Order for Future Medical Care? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		If Yes, explain the nature of the treatment at issue: Interlocutory Order			
Temporary Total Disability? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If Yes, indicate the dates at issue below: 9/1/2017 to 5/18/2019			Temporary Partial Disability <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, indicate the dates at issue below:		
Permanent Partial Disability? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Percentage Claimed and Body Part: 15% Back, 20% Psyche Percentage Conceded and Body Part: None			Loss of Earning Capacity? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Percentage Claimed: 100% Percentage Conceded: 0%		
Interpreter Needed? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		If Yes, language needed: Southern			
Other Issues Ready to be Heard (Specify in Detail) Multiple Injury Increase, URR					
Employee's Attorney Name Sam Liverseed	Street Address 3970 N. Oakland Ave., Suite 201	City Milwaukee	State WI	Zip Code 53211	Phone Number 414-967-5656
Insurer's Attorney Name Dan Pedriana	Street Address 411 E. Wisconsin Ave., Suite 1800	City Milwaukee	State WI	Zip Code 53202	Phone Number 414-273-3910
Employer's Attorney Name	Street Address	City	State	Zip Code	Phone Number
List all dates for which the attorney or representative will NOT be available in the next 120 Days All are available 5/18/22 at 2:45 p.m.					
Certification: I, the undersigned Applicant's representative, attest that I am fully ready and prepared to proceed to a formal hearing or settlement conference as indicated for the issues identified above. I further attest the insurer's representative has either denied the claim(s) in full or has had at least 90 days' notice of the claimed issues in order to investigate. I believe this matter cannot be resolved without a formal hearing or settlement conference.					
Applicant's Attorney Signature			Date Signed		
Insurer's or Self-insured employer's objection to the COR (Must be Filed within 15 Days): If more space is needed, attach a separate statement setting forth specific reasons. See Page 1 for Instructions.					
Insurer or Self-Insured Employer Representative Name and Signature				Date Signed	



Blue Devil Municipalities Mutual Insurance Company

SUPERVISOR'S ACCIDENT ANALYSIS AND PREVENTION REPORT

SUPERVISOR'S REPORT

INSTRUCTIONS:

1. Within 24 hours of notice of the accident, complete this report.
2. Send report to the Worker's Compensation Coordinator.
3. If you were not present at the time of injury, interview the employee.

Employee Name <i>Barney Fife</i>	Social Security Number <i>366-56-6887</i>	Job Classification <i>Deputy Sheriff</i>
Employer <i>County of Mayberry</i>	Department Name and Location <i>Sheriff's Department</i>	
Date of Accident <i>09/01/2017</i>	Time of Accident <i>Approximately 20:00</i>	Date injury reported <i>09/05/2017</i>

ACCIDENT DESCRIPTIONS: From your analysis, describe in detail the action, occurrence or event that resulted in the accident. Identify the exact location where the accident took place: *Employee tripped and accidentally discharged firearm while attempting to apprehend suspect, wounding suspect. This took place near a Winnebago/meth lab just outside of town. He says he hurt his back and has Post Traumatic Stress Disorder.*

What action could be taken to prevent a similar accident? *Employee should follow instructions and obey orders.*

Do you agree with the employee's account of the accident? Yes No If NO, Please explain.

Has the employee ever reported any previous physical condition(s) associated with work or non-work activities (second job, sports, etc.) that could be related to or aggravated by this injury / illness? Yes No If YES, please explain. *Employee has complained about back and treated with a chiropractor in the past. Employee was anxious and nervous previously, and took medication for it.*

Supervisor's Name (Please Print) <i>Andrew Jackson Taylor</i>	Date <i>9/5/2017</i>
Title <i>Sheriff</i>	Phone # <i>(608) 628-5625</i>
If injury involved repetitive motion or material handling, Supervisor must complete reverse side	

SUPERVISOR'S EVALUATION OF REPETITIVE MOTION AND/OR

MATERIALS HANDLING ACTIVITIES

Repetitive Motion: What specific activities does the employee perform with his/her wrists, hands, arms, shoulders, and/or neck?

Material Handling Injury: Description of object/person being handled/lifted at time of injury.

With what frequency, pace and duration is the object/person handled/lifted? (eg, 10 times/hour for 3 hours)

What material handling equipment and/or safety devices were available to the employee? Were they used properly?

Has the employee received training in proper body mechanics/lifting techniques? If YES, please indicate approximate date and type of training given.

Wright Field
City of Mayberry



Garden Drive

Woods Way

Willow Ave.

River Road

Mayberry High

School

Trailer park

Fairgrounds

Main St.

Maple Rd.

Main St.

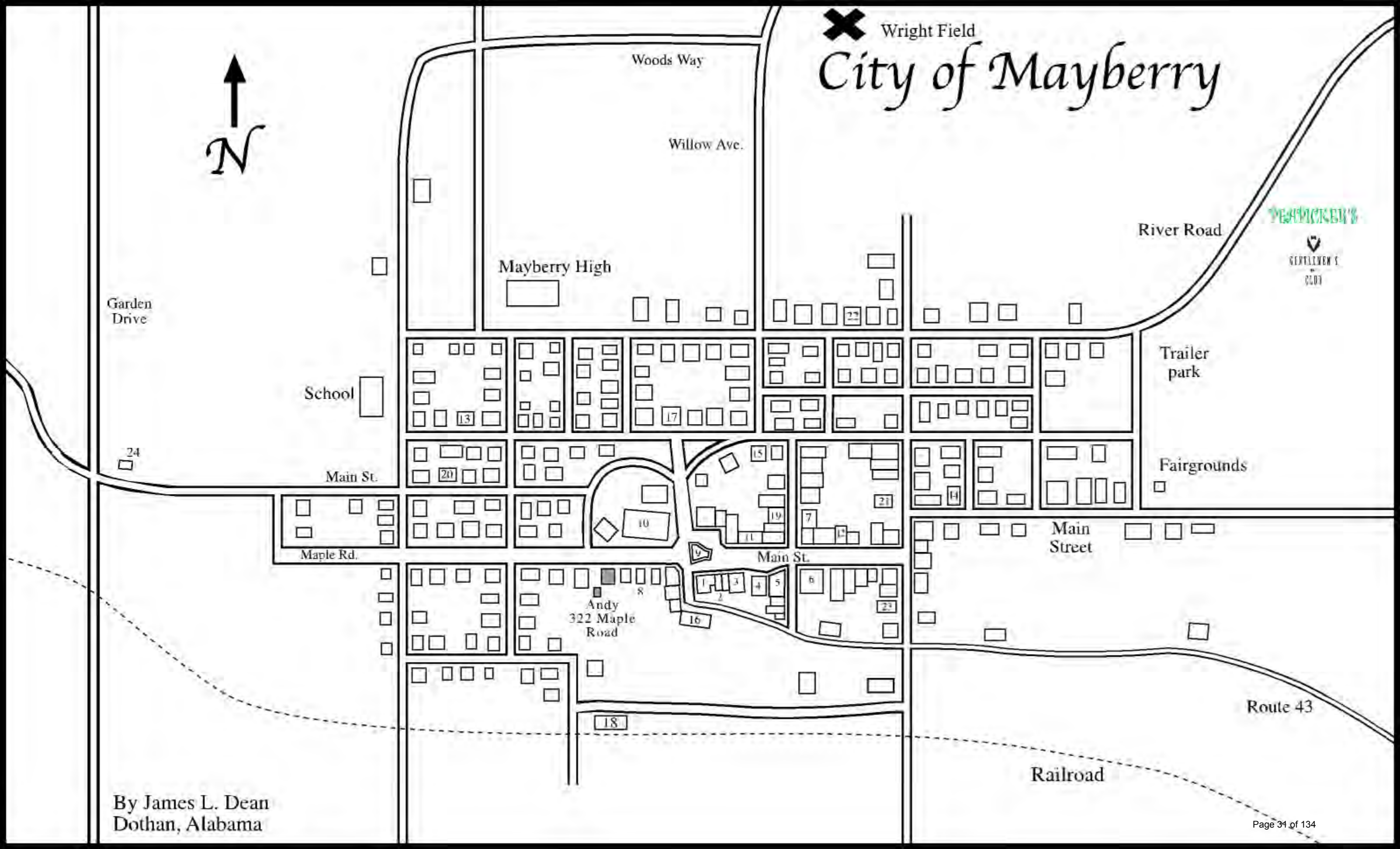
Main Street

Andy
322 Maple
Road

Route 43

Railroad

By James L. Dean
Dothan, Alabama



EMPLOYEE'S WORK
INJURY AND ILLNESS REPORT

PLEASE TYPE OR PRINT

FOR AGENCY USE ONLY	
Claim Number	366566887-PM
Claim Examiner / Representative	Peggy McMillan

INSTRUCTIONS:

1. Complete within 24 hours of the injury.
2. Sign and date the completed report
3. Submit to your supervisor to complete the WKC-12 form.
4. Direct any questions to your immediate supervisor.

Employee Name (as it appears on payroll) Bernard P. Milton Oliver Fife		Time of Injury 8:00	AM <input checked="" type="radio"/> PM	Date of Injury 9/1/17
Work Telephone (608) 628-5625	Home Telephone (608) 582-6482	Social Security Number * 366-56-6887		
Was Medical Treatment Required? First aid only Time Lost From Work Last day worked (MM / DD / YY)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No 9/1/17	Name and Address of Treating Practitioner/Facility Mayberry Memorial Hospital Dr. Peterson		
Exact location of where accident took place (inside, outside, building name, room, vehicle, etc.) Wright Field, outside of Ernest T. Bass's meth lab				
Witnesses (names, addresses, work telephone numbers) Andy Taylor, (608) 628-5625				
Describe in detail what you were doing when the injury / illness occurred. How exactly did it happen? Rushing to arrest suspect, I fell. My back twisted as I fell, and I felt pain in my back and left leg. My pistol accidentally discharged, and I shot Ernest T. Bass.				
Date the injury / illness reported to my supervisor (Month, Day, Year) 9/5/17				
Part of body injured (Check ALL that apply, and circle appropriate position) (Thumb = Finger 1, Great toe = Toe 1)				
<input checked="" type="checkbox"/> Abdomen	<input checked="" type="checkbox"/> Back U M L	<input type="checkbox"/> Finger R L 1 2 3 4 5	<input type="checkbox"/> Head	<input type="checkbox"/> Mouth
<input type="checkbox"/> Ankle R L	<input type="checkbox"/> Eye R L	<input type="checkbox"/> Foot R L	<input type="checkbox"/> Knee R L	<input type="checkbox"/> Neck
<input checked="" type="checkbox"/> Arm R L	<input type="checkbox"/> Elbow R L	<input type="checkbox"/> Hand R L	<input type="checkbox"/> Leg R L	<input type="checkbox"/> Nose
<input checked="" type="checkbox"/> Other (Please specify)	Upset by incident For Hand and Arm injuries circle your dominant arm: Right Left			
Have you ever been treated for a similar injury or condition? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	If Yes Date(s) of Treatment Off and on	Name of Practitioner, Hospital or Clinic Which Provided Prior Treatment for Similar Injury: Dr. Peterson and Dr. Bennett		

Please read carefully. I certify that the above statements are true and accurate and I understand that a false worker's compensation claim is a violation of Wisconsin criminal code, which may result in a fine, imprisonment, or termination from employment. Further I understand that the signature below authorizes medical, mental health and chiropractic providers to release all medical, mental health and chiropractic records to County of Mayberry, or its designated representatives, at 10 Main Street, Mayberry, WI 53773-2639.

Employee Signature Barney Fife Date 9/6/17

FOR AGENCY USE ONLY	PRIMARY ORGANIZATION CODE 1-2 85-0		FUND NUMBER	%	
	SECONDARY ORGANIZATION CODE 1-2 85-0		FUND NUMBER	%	
LOSS DESCRIPTION CODES	CAUSE / OCCURRENCE	OBJECT	RESULT	LOCATION	OCCUPATION
OSHA CODES	Incident was OSHA "recordable"? <input type="checkbox"/> Yes <input type="checkbox"/> No				
Name of Authorized Representative				Date	

*Your Social Security Number must be provided and will be used for positive identification in the processing of any claims.

EMPLOYEE'S WORK
INJURY AND ILLNESS REPORT

PLEASE TYPE OR PRINT

FOR AGENCY USE ONLY	
Claim Number	
Claim Examiner / Representative	

INSTRUCTIONS:

1. Complete within 24 hours of the injury.
2. Sign and date the completed report
3. Submit to your supervisor to complete the WKC-12 form.
4. Direct any questions to your immediate supervisor.

Employee Name (as it appears on payroll)		Time of Injury AM PM	Date of Injury
Work Telephone () () ()	Home Telephone () () ()	Social Security Number *	
Was Medical Treatment Required? <input type="checkbox"/> Yes <input type="checkbox"/> No	First aid only <input type="checkbox"/> Yes <input type="checkbox"/> No	Name and Address of Treating Practitioner/Facility	
Time Lost From Work <input type="checkbox"/> Yes <input type="checkbox"/> No	Last day worked (MM / DD/ YY)		
Exact location of where accident took place (inside, outside, building name, room, vehicle, etc.)			
Witnesses (names, addresses, work telephone numbers)			
Describe in <u>detail</u> what you were doing when the injury /illness occurred. How exactly did it happen?			
Date the injury / illness reported to my supervisor (Month, Day, Year)			

Part of body injured (Check ALL that apply, and circle appropriate position) (Thumb = Finger 1, Great toe = Toe 1)																				
Abdomen	Back	U	M	L	Finger	R	L	1	2	3	4	5	Head	Mouth	Shoulder	R	L			
Ankle	R	L	Eye	R	L	Foot	R	L	Knee	R	L	Neck	Toe	R	L	1	2	3	4	5
Arm	R	L	Elbow	R	L	Hand	R	L	Leg	R	L	Nose	Wrist	R	L					
Other (Please specify)										For Hand and Arm injuries circle your dominant arm : Right Left										

Have you ever been treated for a similar injury or condition? <input type="checkbox"/> Yes <input type="checkbox"/> No	If Yes Date(s) of Treatment	Name of Practitioner, Hospital or Clinic Which Provided Prior Treatment for Similar Injury:
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Please read carefully. I certify that the above statements are true and accurate and I understand that a false worker's compensation claim is a violation of Wisconsin criminal code, which may result in a fine, imprisonment, or termination from employment. Further I understand that the signature below authorizes medical, mental health and chiropractic providers to release all medical, mental health and chiropractic records to County of Mayberry, or its designated representatives, at 10 Main Street, Mayberry, WI 53773-2639.

Employee Signature _____ **Date** _____

FOR AGENCY USE ONLY		PRIMARY ORGANIZATION CODE			FUND NUMBER	%
		1-2-85-0				
LOSS DESCRIPTION CODES		CAUSE / OCCURRENCE	OBJECT	RESULT	LOCATION	OCCUPATION
OSHA CODES	Incident was OSHA "recordable"? <input type="checkbox"/> Yes <input type="checkbox"/> No			Date		
Name of Authorized Representative				Date		

*Your Social Security Number must be provided and will be used for positive identification in the processing of any claims.



County of Mayberry

10 Main Street
Mayberry, Wisconsin 53773-2639
(608) 628-5600

"Stop for the vittles, stay for the fishing!"

September 2, 2017

Barney Fife
Mendelbright Park Apartments
411 Elm Street
Mayberry, WI 53773-3649

Re: Employment Suspension

Dear Mr. Fife:

You are hereby notified that effective immediately, your employment as a Deputy Sheriff with the County of Mayberry is suspended indefinitely. Per Sheriff's Department policy, you are required to take three days of paid administrative leave before you will be considered for reinstatement because you were involved in an injurious shooting occurrence on September 1, 2017. The shooting occurrence will be investigated by the State. In addition, before you will be considered for a return to work as a Deputy Sheriff, you will have to be cleared to do so by a qualified mental health professional.

I regret to inform you that the County also is considering discipline up to and including termination for your possible insubordination and gross negligence in the events leading up to and including the shooting.

You will be contacted by officials from the State for the taking of a statement relative to your version of the events of the evening of September 1, 2017. You are expected to cooperate fully in the State's investigation.

Very truly yours,

COUNTY OF MAYBERRY

Clara Edwards
Human Resources Administrator
CE:rsa

Cc: Sheriff Taylor



County of Mayberry

10 Main Street
Mayberry, Wisconsin 53773-2639
(608) 628-5600

“Stop for the vittles, stay for the fishing!”

September 15, 2017

Barney Fife
Mendelbright Park Apartments
411 Elm Street
Mayberry, WI 53773-3649

Re: Employment Termination

Dear Mr. Fife:

You are hereby notified that effective immediately, your employment as a Deputy Sheriff with the County of Mayberry is terminated for cause. The County has determined that you were guilty of insubordination and gross incompetence in the shooting occurrence on September 1, 2017 that resulted in injury to a suspect who was to have been taken into custody without violence. You were clearly instructed not to load your weapon prior to approaching the suspect by Sheriff Taylor, but took it upon yourself to disregard your orders, loaded your weapon, and then negligently handled your weapon in such a way as to cause it to discharge and injure the suspect. Your prior history of similar weapons-related insubordination and negligence leaves the County with no choice but to terminate you.

Please turn in your badge and any other County property in your possession to Sheriff Taylor at the Courthouse immediately.

Very truly yours,

COUNTY OF MAYBERRY

Clara Edwards
Human Resources Administrator
CE:rsa

Cc: Sheriff Taylor

RECORDED STATEMENT TRANSCRIPT
ANDREW JACKSON TAYLOR

Employee: Barney Fife
Employer: County Of Mayberry
Insurer: Blue Devil Municipalities Mutual Insurance Company (BDMMIC)
Date of Injury: September 1, 2017
Date of Statement: September 6, 2017

This is Peggy McMillan, Claims Adjuster for BDMMIC, speaking on the telephone with Sheriff Andrew Jackson Taylor regarding the worker's compensation claim of Barney Fife against Mayberry County. Today is Wednesday, September 6, 2017 and it is 9:00 a.m.

Q: Sheriff Taylor, do you understand that this interview is being recorded?

A: Yes I do.

Q: And do you understand that it may be used as evidence in a court of law?

A: Yes I do.

Q: Please state your name and spell your last name for the record.

A: Andrew Jackson Taylor, T-A-Y-L-O-R.

Q: Where are you employed?

A: I am employed by the County of Mayberry. I have been for 32 years.

Q: In what capacity are you employed there?

A: County Sheriff.

Q: Are you acquainted with Barney Fife?

A: Yes.

Q: How do you know Mr. Fife?

A: Most recently, Barney has been working under my supervision as a Mayberry County Deputy Sheriff. He was a classmate of mine in high school, and also happens to be my cousin.

Q: No anti-nepotism rules in Mayberry County, huh?

A: You'll find in your rural locations like Mayberry that everybody is related to everybody else, one way or the other. There just ain't that much to choose from here, socially speaking.

- Q: When was Mr. Fife hired by Mayberry County as a Deputy Sheriff?
- A: I believe I hired Barney in January of 1985, just after I was elected Sheriff for the first time in November of 1984. He's been working as a deputy for me ever since.
- Q: What was it in his background which you felt to make him a suitable candidate for work in law enforcement?
- A: He had a high school diploma, and had been a hall monitor at Mayberry Union High. He had served in the military. I think he had taken or was taking police science classes at Mayberry Technical College, and I know he ended up with an Associate Degree. He was a church-going, upstanding citizen of Mayberry, and I thought he would make a good deputy.
- Q: How would you describe Mr. Fife as an employee?
- A: Barney was a very diligent deputy, who never missed a day of work if he could help it. He was a very detail-oriented, by-the-book kind of officer. He was sometimes a little too "by-the-book" for folks around here, and that occasionally caused us some trouble.
- Q: Can you give me an example?
- A: There was a time when I left him in charge when I had to go out of town, and when I got back to Mayberry, he had locked up just about everybody in town, including the Mayor and my Aunt Bea. The charges were things like littering and jaywalking. Kind of rubbed people the wrong way. I still hear about it from time to time from my Aunt Bea.
- Q: What about his personality?
- A: Well, Barney has a heart of gold, and he loves his job. He has always been a little high-strung and nervous, dating back to his high school years. He is sensitive to a fault. He has a lot of allergies, and has complained for a long time about his back and his "pinched nerve."
- Q: I was informed by Ms. Edwards from the HR Department that Mr. Fife has had some problems handling his service revolver in the past. What can you tell me about that?
- A: Barney is really an excellent shot with his revolver, and easily qualifies with it on the range every year. When he intends to shoot his pistol, there really aren't any problems. It's when he doesn't intend to shoot his gun that we run into problems.
- Q: What do you mean?
- A: There was this one time a number of years ago when he decided he would practice spinning his gun with his finger in the trigger guard before holstering it, after watching Paladin do it on "Have Gun Will Travel." He ended up with his finger caught in the gun, and I had to help him out of it.
- Q: Huh.
- A: A bigger problem has been the many times he has accidentally discharged his pistol, frequently

while “showing off.” He has shot holes in the ceiling, the floor, and his holster, among other things.

Q: Has he been disciplined on any of these occasions?

A: He has been suspended without pay on two or three occasions. Finally, I told him he has to carry his weapon unloaded, gets one bullet for it only, and has to keep that in his pocket unless he is faced with an emergency.

Q: So if he fires a warning shot, doesn't that put him out of ammunition?

A: He's been firing a “warning shot” almost every time he takes the gun out of the holster, and there is only so much damage the Courthouse can take. We feel we're maybe better off when he's out of ammunition.

Q: So what happened on September 1, 2017, when he claims to have been injured?

A: We drove out to arrest Ernest T. Bass at a Winnebago he had parked out by Wright Field, and one thing lead to another, and Barney ended up tripping and falling, and accidentally shooting Ernest T. Bass in the leg.

Q: What do you mean by, “one thing lead to another”?

A: One thing was that Barney was supposed to drive up silently on the back side of the RV, and then make sure that Ernest T. Bass didn't sneak out the back way when I approached the RV with the arrest warrant. Instead of that, Barney accidentally activated his lights and siren instead of his radio, so that Ernest T. Bass came out of the RV before I was in position.

Q: And?

A: And then Barney was worried that Ernest T. Bass would run away because he was alerted by the lights and siren, so he jumped out of his squad car, pulled his pistol, ran toward the RV, tripped, and accidentally shot Ernest T. Bass with his bullet.

Q: And?

A: And even before we left the Courthouse, I told Barney to keep his bullet in his pocket. Instead, he loaded his gun before he drove in to the airport, because he is afraid of Ernest T. Bass, I think, and then shot Ernest T. Bass when his gun accidentally discharged.

Q: So he disobeyed a direct order?

A: Yes, he did. Sometimes, he beats everything...

Q: Has Mr. Fife been disciplined?

A: Every officer who is involved in a shooting goes on a mandatory three-day leave with pay, more for the officer's own good than anything else. He's on three-day paid leave at the present time. I told him that he is looking at discipline, however, for insubordination in disobeying my instructions, and for the fact that he shot an unarmed suspect.

Q: What do you mean, "...for his own good"?

A: We are all trained in the use of deadly force, and in the use of firearms, but when we actually shoot someone, justifiably or not, it is upsetting. We are trained to be law enforcement officers, but we are still human beings. The three day paid leave gives us time to adjust following a shooting.

Q: What sort of discipline is Mr. Fife facing?

A: He will likely be suspended without pay until we get things sorted out. This is not his first offense as far as loading the gun against orders is concerned, and he had another incident in which he was spotted by Clara Edwards "smooching" with a random blonde floozy in the back of the squad car. This gives her the ammunition she needs (no pun intended) to fire him. I am going to have a hard time saving his job for him.

Q: Did you see Mr. Fife appear to get hurt when he tripped and fell on September 1, 2017?

A: No. I saw him get up and brush himself off, but after that I was so busy attending to Ernest T. Bass that I didn't have time to observe him. I asked him later if he was OK or needed medical attention, and he said that he didn't. He was shaken up, I thought, but I felt he was capable of driving home, so I let him go. I took his gun from him, and let him know before he left that he was in trouble.

Q: When were you informed by Mr. Fife that he was injured?

A: He called me yesterday and said he hurt his back, and that he might need psychological care. He said he wanted to make a worker's compensation claim. He said he had gone to Mayberry Memorial Hospital and Dr. Peterson.

Q: What was your reaction?

A: I guess I found it a little questionable that the shooting occurrence happened on a Friday, but it took him until the Tuesday after the intervening Labor Day Weekend to report the injury. He knows he is supposed to report injuries immediately. He's also been complaining about his back, and seeing Dr. Bennett for adjustments, for years.

Q: Dr. Bennett is a chiropractor?

A: Yes he is.

Q: That is all I have for the moment. Is there anything else you would like to add at this time?

A: I don't know what Barney is going to do without his job as a deputy – it's really meant everything to him. I don't think I can save him after this screw-up – Clara Edwards even wants him prosecuted criminally. The County is going to be sued. And Barney heard that Briscoe Darling has taken out a \$50,000 contract on his life for shooting his meth cook, and now he isn't carrying a gun, which terrifies him. It seems like the roof is falling in on a guy who may not be strong enough to withstand it...

Q: Anything else?

A: No, I guess that's it.

Q: Are the answers you have given me in this interview true, accurate and complete, to the best of your knowledge?

A: Yes.

This is Peggy McMillan for BDMMIC, concluding a telephone interview with Sheriff Andrew Jackson Taylor regarding the worker's compensation claim of Barney Fife against Mayberry County. Today is Wednesday, September 6, 2017 and it is now 9:25 a.m.

RECORDED STATEMENT TRANSCRIPT

Bernard "Barney" P. Milton Oliver Fife

Employee: Barney Fife
Employer: County of Mayberry
Insurer: Blue Devil Municipalities Mutual Insurance Company (BDMMIC)
Date of Injury: September 1, 2017
Date of Statement: September 7, 2017

This is Peggy McMillan, Claims Adjuster for BDMMIC, speaking on the telephone with Barney Fife regarding his worker's compensation claim against Mayberry County. Today is Thursday, September 7, 2017 and it is 3:00 p.m.

Q: Mr. Fife, do you understand that this interview is being recorded?

A: I'm "Deputy Fife" to you, Miss. I do understand that this is being recorded.

Q: And do you understand that it may be used as evidence in a court of law?

A: Should I have a lawyer for this interview?

Q: Well, these aren't criminal proceedings, and I'm just going to ask you some questions about your claim. It's up to you as to whether you want a lawyer present. If you do, I guess we'll have to stop now, and you'll have to go hire someone to represent you. It might hold up the processing of your claim.

A: Well, I've testified lots of times in the past, Sister, and I'm going to tell the truth, and when you tell the truth, you have nothing to fear, right?

Q: I guess that's right. So, do you understand that your statement may be used as evidence in a court of law?

A: I do, and I'm prepared to go ahead.

Q: Please state your name and spell your last name.

A: Bernard P. Milton Oliver Fife. F-I-F-E. My friends call me "Barney."

Q: You mean, like the purple dinosaur?

A: Oh, you're just full of fun today, aren't you? Why don't we go up to the old people's home and wax the steps?

Q: Sorry – I couldn't help it.

A: If you want me to continue with this statement, you're going to have to nip that stuff in the bud!

Just nip it!

Q: Right, OK. Sorry, Deputy Fife. Your date of birth?

A: May 16, 1962.

Q: And you claim entitlement to worker's compensation benefits for injuries you say you sustained in an attempt to arrest a suspect near Mayberry, Wisconsin on September 1, 2017, while working as a deputy sheriff for the County of Mayberry?

A: That is correct. I injured my back, and I am suffering from post-traumatic stress disorder, or PTSD.

Q: Have you ever had any problems in the past with your back?

A: From time to time in the past, I have had some backaches. I went to the chiropractor, and got my back cracked, and that always straightened things out for me.

Q: What was the name of the chiropractor with whom you treated?

A: See what I did there – "straightened things out for me" – he's a chiropractor...

Q: Yes, very funny. Who was the chiropractor with whom you treated?

A: I always treated with Dr. Bennett at Mayberry Chiropractic.

Q: Did you treat with any other doctors or clinics for back problems?

A: I might have mentioned my back to Dr. Peterson at the Mayberry Clinic. I think he might have ordered some x-rays or something for me at Mayberry Memorial Hospital after I slipped and fell in the shower back in high school. I haven't had any surgery or anything like that.

Q: Have you ever had any psychological problems in the past?

A: I wouldn't call them "psychological problems," but I have always been high strung, and Dr. Peterson did give me some medicine to help slow me down a little. You see, when you've got a lot of high level brain activity going on all the time like I do, the sheer volume of thoughts can tend to overwhelm you a little. I've always looked at the medicine as being like the synthetic motor oil you have to use in your high-powered Lamborghinis and Porsches – without it, the engines just burn out.

Q: Have you made any worker's compensation or personal injury claims in the past?

A: I was in a "fender bender" accident on February 1, 2016, while a passenger in my girlfriend Thelma Lou's vehicle, and I made a claim against her insurance company, and the insurance company of the other driver, for injuries I sustained in it.

Q: Did you receive any medical treatment following that injury?

A: I treated at Mayberry Memorial Hospital, and later at Mayberry Clinic and Mayberry Chiropractic.

- Q: What symptoms did you experience as a result of that injury?
- A: Mostly neck pain, with some back pain, which came and went. I would go get chiropractic adjustments as the need arose when my neck was bad.
- Q: Did you have any complaints involving your left leg or foot after the accident?
- A: Yes, but not as bad as I am having now.
- Q: Were your symptoms resolved by the treatment you received?
- A: Well, they never really went away entirely. I was told that I have some congenital problems in my spine, and that I would probably always have neck and back problems from time to time because of them.
- Q: What happened as far as your personal injury claim was concerned?
- A: We filed a lawsuit in Mayberry County Circuit Court, but I ended up settling that out of court. I think the gross settlement amounted to \$100,000, but after that blood-sucking lawyer Neil Bentley took out his fees and costs, I think I ended up with around \$60,000. The mediator said I had trouble with my claim because I wasn't wearing a seatbelt at the time of the accident, although as we all know, law enforcement officers are not required to wear seatbelts.
- Q: Despite your injuries, you returned to work as a deputy sheriff with Mayberry County?
- A: Yes. I was on restricted duty for a while, and then I went back to full duty.
- Q: Deputy Fife, can you briefly describe your educational background?
- A: I graduated from Mayberry High School in 1980. After I got out of the Army in 1983, I enrolled in the Police Science program at Mayberry Technical College. I ended up with an Associate Degree in Police Science in 1985, with some of the coursework completed after Andy hired me as a deputy in January of 1985.
- Q: Andy?
- A: Andy Taylor. He's the Sheriff in Mayberry County, has been for years. He's also my cousin, and my best friend.
- Q: Did you participate in combat while enlisted in the military?
- A: I was trained in the use of a rifle in basic training, but I served out my hitch running a PX library at a base on Staten Island. I did not participate in combat on the front lines like Andy did, but I felt that I contributed to the war effort by helping to educate our troops. J. Edgar Hoover did the same when he served, and he was a great American patriot.

Q: Yes, Deputy Fife, thank you for your service. Were you trained in the use of firearms in the Police Science program at Mayberry Technical College?

A: Yes. We were trained in the use of firearms, and in the use of deadly force. After I was hired by Mayberry County, I had to qualify each year on the pistol range by achieving a sufficient score in marksmanship. I qualified with my Colt .38 every year, beginning in 1985. I am a crack shot, if I do say so myself!

Q: Prior to September 1, 2017, had you ever discharged your firearm in the course of your employment with Mayberry County?

A: Never intentionally.

Q: Accidentally?

A: (Pause)...My pistol has gone off accidentally a few times while I was working. It has a hair trigger, so that I can squeeze off a quick shot if I ever have to “pull” against some gunman. That caused some problems for me, however, in handling the weapon.

Q: Were you disciplined after you accidentally discharged your weapon on these prior occasions?

A: (Pause)...Andy suspended me with and without pay a couple of times. Finally, he...made me carry an unloaded weapon. He gave me one bullet, and told me I had to carry it in my pocket until I was faced with an emergency in which I might have to shoot someone on purpose.

Q: Did you have your bullet in your pocket on September 1, 2017, prior to the shooting occurrence?

A: (Pause)...When I left the Courthouse that evening, the gun was unloaded, and the bullet was in my pocket. Andy...reminded me to keep it that way. He was sure that the suspect, Ernest T. Bass, would not resist arrest, and he didn't want any shooting, intentional or otherwise. When I got to the scene, and smelled the meth cooking in the Winnebago, I got nervous, and loaded my gun anyway.

Q: Against orders?

A: (Pause)...Yes. See, in the past, Andy made me dress up in a wedding gown and veil, so that Ernest T. Bass – the suspect – would mistake me for Charlene Darling, and kidnap me instead of her, which is what he did. Ernest T. Bass is a nut, and he chucks rocks all the time, and I just felt that I needed the gun loaded to protect myself.

Q: Were you disciplined for failing to follow orders after the September 1, 2017 occurrence?

A: Well, there is an automatic three day suspension with pay which occurs following any shooting, so that the incident can be investigated, and the officer can “unwind.” Andy told me that my suspension is being extended, and that I might face discipline up to and including termination for insubordination.

Q: Deputy Fife, please describe in your own words what happened in the shooting occurrence on September 1, 2017, in which you claim to have been injured.

A: We had discovered earlier in the day that two “local yokels,” Otis Campbell and Ernest T. Bass, were cooking meth for the Darling Clan in multiple locations in the greater Mayberry area. Campbell was arrested at the old Rimshaw House, where one of the labs was located, and questioned at the Courthouse as to the whereabouts of Bass, after Bass escaped arrest. Eventually, after some shrewd questioning by yours truly, he spilled his guts and told us that Bass was living and cooking meth in an old Winnebago parked out by the airport off of Willow Avenue. Andy and I decided we would drive out to the site to arrest Bass after dark, because if he saw us coming, he would likely run away.

Q: What happened next?

A: We met at the Courthouse, after Andy got a search warrant from Judge Cranston. We left at about 7:30 p.m. for the airport. We knew that twilight was at about 8:00 p.m., and figured that the falling darkness would help hide our approach to the Winnebago. I drove to the west entrance of the area, off of Willow Avenue, and Andy drove to the east entrance, off of River Road. The plan was for me to cover the back side of the Winnebago, while Andy approached from the front and knocked on the door. We were supposed to make a silent approach, so as not to “spook” Ernest T. Bass.

Q: Why wasn't there more backup?

A: We've been dealing with Ernest T. Bass and all his nutty behavior for years. Andy was confident that we could handle him ourselves. Besides, we thought that if we waited until we got help from the State, Ernest might take off.

Q: So then what happened?

A: Like I said, when I got to the west entrance, I loaded my gun.

Q: Did you then approach the Winnebago?

A: I radioed Andy that I was going in. I pulled in to a place where I felt that I could see the back side of the Winnebago, without being seen by Ernest T. Bass. I reached for the radio to report to Andy that I was in position, but I accidentally activated the siren and flashing lights instead.

Q: What happened next?

A: I figured that Bass must have heard and seen the siren and lights, and that he would make a run for it. I didn't think Andy could get to the scene in time to stop him. I jumped out of the squad car, and ran in the direction of the door on the front side of the Winnebago.

Q: Then what happened?

A: I saw the door swing open, and Ernest T. Bass stepped out on the stairs. He was wearing boots, boxer shorts, a tee shirt and a gas mask, because he had been cooking meth. I pointed my gun in his general direction, and yelled "Hold it right there, Ernest T. Bass!" Then I tripped over something and fell. I must have reflexively squeezed the trigger when I was falling, because the gun went off. I twisted when I fell, and felt a jolt of pain in my back and left leg as I hit the ground. I looked up, and saw Ernest T. Bass laying on the ground, with Andy running to him from his vehicle. I could see blood flowing from Bass's thigh, and then realized that I had accidentally shot him.

Q: What did you do next?

A: I was in shock. I watched Andy caring for Bass. I knew I was in a lot of trouble. Andy yelled that I should call an ambulance, which I did. Andy stayed with Bass, putting pressure on the wound to stop the bleeding until the ambulance came. Then he took my gun, and told me I was suspended, and told me I would likely face discipline for disobeying his orders and for shooting Ernest T. Bass. He told me I'd have to be cleared psychologically before I could return to duty. Then he sent me home.

Q: Did you tell him you were hurt? Did you ask for medical attention yourself?

A: To be honest, I don't remember what I said. I didn't see a doctor until the next day.

Q: Did you go right home after the shooting occurrence?

A: For some reason, I drove out the east entrance, rather than returning the way I came. I ended up on River Road. That led me to Pea Picker's, the gentlemen's club where my friend Juanita works. I felt an overwhelming need for a drink and some companionship, because I was so upset by the shooting. I ended up having too many drinks, and I don't remember much of anything that happened to me after that. Somehow, I ended up at home in Mrs. Mendelbright's rooming house that night.

Q: What was your physical condition prior to arriving home?

A: I assume I was feeling pain in my back and my left leg, but in all honesty, I don't remember. I really got wasted, because I was so upset about what happened.

Q: You said you went to the doctor the next day – how did that come about?

A: I slept late, and woke up groggy and hung over. I ate something, and walked over to Floyd's Barber Shop to get a haircut before my date with Thelma Lou. As I was walking, I felt increasing pain in my back, and numbness and tingling down my left leg. I got my haircut, and then walked over to Thelma Lou's. By the time I arrived there, I could hardly walk. Thelma Lou drove me over to the ER at Mayberry Memorial Hospital.

Q: What were your symptoms at that time?

A: I was having lower back pain and spasm, and numbness and tingling running down my left leg to my foot. The pain was burning, like a hot poker.

Q: What did they do for you at the ER?

A: They examined me, and x-rayed my lower back. They gave me Vicodin, Flexeril and ibuprofen, and told me to rest and ice my back for the next several days. They told me that I should follow up with my primary care physician if I had further difficulties after the Labor Day weekend.

Q: Did they tell you what was wrong with you?

A: They told me I had a back strain or sprain injury, with a possible herniated disk.

Q: What happened next?

A: I rested, iced my back and took medicine as directed over the weekend. Then I went to see Dr. Peterson on Tuesday.

Q: What was your condition at that time?

A: About the same as it had been in the Emergency Room on Saturday, only worse. I had pain and spasms in my lower back, and numbness and tingling in back of my left leg to my foot. I couldn't stand up completely, or walk even 50 feet without doubling over with pain.

Q: What happened at your appointment with Dr. Peterson?

A: Well, I told him how I got hurt. I told him about the visit to the hospital on Saturday. He examined me, and told me he thought I had a possible disk herniation. He ordered an MRI scan. He prescribed Vicodin and Flexeril, and told me to remain off of work until he re-examined me. He also noticed how upset I was, psychologically speaking, and he told me that if things did not get better soon, that I would have to see a psychologist, Dr. Hartley.

Q: What psychological symptoms were you having at that time?

A: I was very depressed, because I thought I was going to lose my job. I still think I am going to lose my job. I am anxious, and I cannot stop thinking about the shooting occurrence. I have bad dreams, and can't sleep, and have flashbacks when I am awake. I cannot even think about going back to work or wearing a sidearm again.

Q: Have you made an appointment to see Dr. Hartley?

A: Not yet.

Q: You said early on that you are suffering from PTSD – who diagnosed that?

A: Well, I looked up my symptoms on “SoYouThinkYouAreNuts.com,” and that is what the app said is wrong with me. I also attended a presentation put on by a lawyer who represents protective service union members a while back, and my symptoms match the PTSD symptoms he described in his presentation exactly.

Q: Any other psychological concerns?

A: I heard that after he visited Ernest T. Bass in Mayberry Memorial Hospital after the shooting, Briscoe Darling, the head of the Darling Clan, put out a \$50,000 contract on my life for shooting his meth chef. Andy is looking into it, but I'm really worried.

Q: Do you have any medical or psychological appointments pending?

A: I am scheduled for an MRI scan tomorrow. I go back to Dr. Peterson after that is done. I do not have any psychological appointments yet. I am taking the medication prescribed for me by Dr. Peterson, which includes Xanax for my anxiety.

Q: When did you report your injuries to your employer?

A: I called Andy on Tuesday, after I saw Dr. Peterson, and told him that I wanted to make a worker's compensation claim. But he was there on the evening of September 1, 2017, and saw what happened himself, so...

Q: When do you expect to be able to return to work?

A: I don't know when Dr. Peterson will let me return to work. In all honesty, I don't think it will matter – I don't think Andy can save my job for me this time.

Q: How would you describe your condition presently?

A: Really bad. My back is bad, but the pain, numbness and tingling in my left leg is worse. I don't

want to have surgery, but I feel so bad right now that I am willing to go through with it if it will stop my symptoms.

Q: Is there anything else you would like to add at this time?

A: I want to say that I am very sorry to have shot Ernest T. Bass. If I could, I would go back in time and follow Andy's orders, and keep the bullet in my pocket, but things don't work that way. I feel that after all these years of loyal service to Mayberry County, I should be given a chance to make up for my mistake.

Q: Anything else?

A: No. That's it.

This is Peggy McMillan for Blue Devil Municipalities Mutual Insurance Company, concluding a telephone interview with Deputy Barney Fife regarding his worker's compensation claim against the County of Mayberry. Today is Thursday, September 7, 2017 and it is now 4:00 p.m.

EMPLOYER'S FIRST REPORT OF INJURY OR DISEASE

Fatal Injuries: Employers subject to ch.102, Wis. Stats., must report injuries resulting in death to the Department and to their insurance carrier, if insured, within one day after the death of the employee
Non-Fatal Injuries: If the injury or occupational illness results in disability beyond the three-day waiting period, the employer, if insured, must notify its insurance carrier within 7 days after the injury or beginning of disability. Medical-only claims are to be reported to the insurance carrier only, not the Department.
Electronic Reporting Requirement: All work-related injuries and illnesses resulting in compensable lost time, with the exception of fatalities, must be reported electronically to the Department via EDI or Internet by the insurance carrier or self-insured employer within 14 days of the date of injury or beginning of disability. Employer may fax claims for fatal injuries to (608) 267-0394.

**Department of Workforce Development
 Worker's Compensation Division**
 201 E. Washington Ave., Rm. C100
 P.O. Box 7901
 Madison, WI 53707
 Imaging Server Fax: (608) 260-2503
 Telephone: (608) 266-1340
 http://www.dwd.wisconsin.gov/wc
 e-mail: DWDDWC@dwd.wisconsin.gov

*Provision of your Social Security Number (SSN) is voluntary. Failure to provide it may result in an information processing delay. Personal information you provide may be used for secondary purposes [Privacy Law, s. 15.04 (1)(m), Wisconsin Statutes].
 (Please read the instructions on page 2 for completing this form)

EMPLOYEE	Employee Name (First, Middle, Last) Bernard "Barney" P. Milton Oliver Fife		Social Security Number* 366 - 56 - 6887		Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F		Employee Home Telephone No. (608) 582 - 6482		
	Employee Street Address Mendelbright Park Apartments 411 Elm Street			City Mayberry		State WI		Zip Code 53773-3643	
	Occupation Deputy Sheriff								
EMPLOYER	Birthdate 05/16/1962		Date of Hire 01/07/1985		County and State Where Accident or Exposure Occurred? Mayberry				
	Employer Name County of Mayberry			WI Unemployment Ins. Acct No.		Self-Insured? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Nature of Business (Specific Product) Municipality	
	Employer Mailing Address Courthouse, 10 Main Street			City Mayberry		State WI		Zip Code 53773-2639	
	Employer FEIN 62 - 923779							Name of Worker's Compensation Insurance Co. or Self-Insured Employer Blue Devil Municipalities Mutual Insurance Company	
	Insurer FEIN 53 - 653664							Name and Address of Third Party Administrator (TPA) Used by the Insurance Company or Self-Insured Employer	
	TPA FEIN								
WAGE INFORMATION	Wage at Time of Injury \$ 19.24		Specify per hr., wk., mo., yr., etc. Per: Hour		In Addition to Wages, Check Box(es) if Employee Received: <input type="checkbox"/> Meals <input type="checkbox"/> Room <input type="checkbox"/> Tips		No. of Meals/wk. No. of Days/wk. Avg. Weekly Amt. \$		
	Is Worker Paid for Overtime? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If Yes, After How Many Hours of Work Per Week? 40								
	For the 52 Week Period Prior to the Week the Injury Occurred, Report Below the Number of Weeks Worked in the Same Kind of Work, and the Total Wages, Salary, Commission and Bonus or Premium Earned for Such Weeks.								
	No. of Weeks: 50		Gross Amount Excluding Tips: \$ 53531.00			If Piece-Work, No. of Hrs. Excluding Overtime:			
			Start Time		Hours Per Day		Hours Per Week		Days Per Week
	Employee's Usual Work Schedule When Injured:		8: 00 <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM		8		40		5
	Employer's Usual Full-Time Schedule for This Type of Work at Time of Employee's Injury:				8		40		5
	Part-Time Employment Information:		Are there Other Part-Time Workers Doing the Same Work With the Same Schedule? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, how many?			Number of Full-Time Employees Doing The Same Type Of Work:			
	Injury Date 09/01/2017		Time of Injury : AM 8: 00 PM		Last Day Worked 09/01/2017		Date Employer Notified 09/05/2017		<input type="checkbox"/> Date Returned to Work <input type="checkbox"/> Estimated Date of Return
	Did Injury Cause Death? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Date of Death		Was This a Lost Time or Other Compensable Injury? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Did Injury Occur Because of: <input type="checkbox"/> Substance Abuse <input type="checkbox"/> Failure to Use Safety Devices <input checked="" type="checkbox"/> Failure to Obey Rules		
Was Employee Treated in an Emergency Room? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Was Employee Hospitalized Overnight as an In-Patient? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No									
Name and Address of Treating Practitioner and Hospital: Mayberry Memorial Hospital and Dr. Peterson									
Case Number from the OSHA Log:									
Injury Description - Describe Activities of Employee When Injury or Illness Occurred and What Tools, Machinery, Objects, Chemicals, Etc. Were Involved. Employee tripped and accidentally discharged firearm while attempting to apprehend suspect, wounding suspect.									
What Happened to Cause This Injury or Illness? (Describe How The Injury Occurred) Employee claims he injured his back when he tripped, and became upset when he shot and wounded suspect.									
What Was The Injury or Illness? (State the Part of Body Affected and How It Was Affected) Back/psychological injuries are reported.									
Report Prepared By Andrew Jackson Taylor		Work Phone Number (608) 628 - 5625		Position Sheriff		Date Signed 09/05/2017			

Claim should be investigated and denied - prior back injury and always had a screw loose! Clara Edwards, HR Department

EMPLOYER AND INSURANCE CARRIER INSTRUCTIONS

The employer must complete all relevant sections on this form and submit it to the employer's worker's compensation insurance carrier or third party claim administrator within seven (7) days after the date of a work-related injury which causes permanent or temporary disability resulting in compensation for lost time. The employer's insurance carrier or the third-party claim's administrator may request that this form also be used to immediately report any injury requiring medical treatment, even though it does not involve lost work time.

For any work injury resulting in a **fatality**, the employer must also submit this form directly to the Department of Workforce Development **within 24 hours of the fatality**.

An employer exempt from the duty to insure under s. 102.28, Wis. Stats., and an insurance carrier administering claims for an insured employer are required to submit this form to the Department of Workforce Development within 14 days of the date of work injury.

MANDATORY INFORMATION

In order to accurately administer claims, each of the following sections of this form must be completed. The First Report of Injury will be returned to the sender if the mandatory information is not provided.

Employee Section: Provide all requested information to identify the injured employee. If an employee has multiple dates of employment, the "Date of Hire" is the date the employee was hired for the job on which he or she was injured.

Employer Section: Provide all requested information to identify the injured worker's employer at the time of injury. Provide the name and Federal Employer Identification Number (FEIN) for the insurance carrier or self-insured employer responsible for the worker's compensation expenses for this injury. Also identify the third party claim administrator, if one is used for this claim.

Wage Information Section: Provide the information requested regarding the injured employee's wage and hours worked for the job being performed at the time of injury.

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**Department of Workforce Development
 Worker's Compensation Division**
 201 E. Washington Ave., Rm. C100
 P.O. Box 7901
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 Imaging Server Fax: (608) 260-2503
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 http://www.dwd.wisconsin.gov/wc
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	For the 52 Week Period Prior to the Week the Injury Occurred, Report Below the Number of Weeks Worked in the Same Kind of Work, and the Total Wages, Salary, Commission and Bonus or Premium Earned for Such Weeks.								
	No. of Weeks: 50		Gross Amount Excluding Tips: \$ 53531.00			If Piece-Work, No. of Hrs. Excluding Overtime:			
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Report Prepared By Andrew Jackson Taylor			Work Phone Number (608) 628 - 5625			Position Sheriff		Date Signed 09/05/2017	

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BALEY ORTHOPAEDICS, S.C.

**8025 Excelsior Drive
Mayberry, Wisconsin 53773
262-829-5800**

Patient: Bernard P. Milton Oliver Fife
DOB: May 16, 1962

Dates: March 14, 2016 – November 12, 2018

I, Laverne DeFazio, records custodian at Mayberry Orthopedic Associates, hereby certify that the documents annexed hereto, and consisting of 7 pages, constitute an accurate and legible duplicate of the medical records in our possession regarding the above-named patient, as requested, and for which authorization was granted.

Date February 19, 2019

Custodian Laverne DeFazio



BALEY ORTHOPAEDICS, S.C.

**8025 Excelsior Drive
Mayberry, Wisconsin 53773
262-829-5800**

Patient: Bernard P. Milton Oliver Fife
DOB: May 16, 1962
Date: March 14, 2016

The patient was referred to me by Dr. Peterson, his primary care physician at the Mayberry Clinic, for evaluation of back and left lower extremity complaints. He failed to show up for or call and cancel his appointment. No further appointments will be given.

Lou Bailey, M.D.
Orthopedic Surgeon

Cc: Thomas Peterson, M.D., Mayberry Clinic



BALEY ORTHOPAEDICS, S.C.

**8025 Excelsior Drive
Mayberry, Wisconsin 53773
262-829-5800**

November 12, 2018

To Whom It May Concern:

Please accept this as a supplement to my previous report of June 11, 2018.

I re-examined the patient, Bernard "Barney" P. Milton Oliver Fife, on November 12, 2018, one year after his surgery. X-rays were performed and revealed a solid fusion mass at L5-S1. The patient continued to complain of numbness and tingling in his left leg and foot, and of pain in his lower back. He continued to take Oxycontin prescribed for him by Dr. Peterson for his pain complaints. It is my opinion that the patient has reached a healing plateau and has 15% of permanent, total disability for functional loss. I do not believe that the patient will ever be able to return to police work. The patient is restricted permanently from lifting over 25# frequently, with limitations on bending, pushing, pulling, and frequent changes in position required. He is advised to undertake a multi-disciplinary pain management program, including psychological treatment, to deal with his subjective pain complaints. He should be weaned from narcotic pain medication.

Because the spinal fusion at Level L5-S1 will likely cause additional stress at the next disk level (L4-5), it is possible that the patient will require a future laminectomy, discectomy, and fusion at that level as well.

I have reviewed a report from Marcus Welby, M.D., dated October 31, 2017, indicating that "assuming that the September 1, 2017 occurrence took place as alleged," the patient sustained at most a temporary lower back strain or sprain, superimposed over his pre-existing degenerative and congenital back condition, which should have resolved without residuals and without surgery by October 15, 2017 with no permanency. He indicated that the proposed fusion procedure was occasioned by the pre-existing degenerative and congenital back condition, and not the residuals of the September 1, 2017 occurrence. He opined that the surgery did not constitute reasonable or necessary medical care, regardless of causation, and indicated that given his prior medical and psychological history, the patient's prognosis following surgery would be poor. All I can say is, in my view, Dr. Welby is full of it.

MAYBERRY ORTHOPEDIC ASSOCIATES

Lou Bailey



BALEY ORTHOPAEDICS, S.C.

**8025 Excelsior Drive
Mayberry, Wisconsin 53773
262-829-5800**

Patient: Bernard "Barney" P. Milton Oliver Fife
DOB: May 16, 1962
Date: September 19, 2017

S: The patient is referred to me by Dr. Peterson, his primary care physician at the Mayberry Clinic. He has a long prior history of back and left lower extremity complaints. Apparently, he injured his back in a soap-related slip and fall in 1977 and again in a motor vehicle accident in 2016. He had been scheduled to see me for back and left lower extremity complaints in March of 2016, but failed to show up for the appointment. Recently, he had been doing better as far as his back and leg complaints were concerned, until he twisted and fell during a shooting incident on September 1, 2017. He indicates that since September 1, 2017, he has experienced unrelenting pain in his lower back with pain, numbness, and tingling radiating down his left leg to the level of his toes. The patient treated with Dr. Peterson, who told him he might have a disk herniation, ordered an MRI scan, and prescribed Vicodin and Flexeril for his pain. He has not returned to work since the September 1, 2017 occurrence.

O: On examination, the patient has very limited forward bending. He has absent reflexes at the left ankle and diminished reflexes at the left knee. He has some weakness on ankle flexion. His straight leg raise testing is positive on the left. On palpation, he has muscle spasm in his lower back.

An MRI scan was performed at Mayberry MRI on September 8, 2017. I do not have the films themselves, but I do have the radiologist's report. The MRI scan reportedly showed Grade I spondylolisthesis of L5 on S1, *spina bifida occulta* at L5-S1, and a central and left-sided disk herniation at the same level, which was felt to obliterate the nerve root on the left, and cause significant spinal stenosis. The radiologist felt that the results were consistent with the subjective complaints voiced by the patient.

A: Symptomatic central and left-sided disk herniation at L5-S1 which is likely responsible for the patient's radiculopathy.

P: The patient might very well be a candidate for a laminectomy, diskectomy, and spinal fusion procedure at Level L5-S1. However, I am reluctant to perform surgery without first attempting more conservative care, consisting of a series of three epidural steroid injections and physical therapy. I have referred his to Mayberry Memorial Hospital for physical therapy and epidural steroid injections.

Dr. Backus will remain the only health care provider to prescribe narcotic pain medication for the patient. This office will not prescribe Oxycontin or Vicodin for his pain complaints.

Lou Bailey, M.D.
Orthopedic Surgeon

Cc: Thomas Peterson, M.D., Mayberry Clinic



BALEY ORTHOPAEDICS, S.C.

**8025 Excelsior Drive
Mayberry, Wisconsin 53773
262-829-5800**

June 11, 2018

To Blue Devil Municipalities Mutual Insurance Company.:

My patient, Bernard “Barney” P. Milton Oliver Fife, September 1, 2017 injured his back in an officer-related shooting at work on September 1, 2017. He has asked me to send you this report in support of his claim for worker’s compensation benefits against County of Mayberry and Blue Devil Municipalities Mutual Insurance Company.

I am told that the patient does have a history of some back problems pre-dating the work injury on September 1, 2017. He injured his lower back when he slipped and fell on a bar of soap in the shower in the boys’ locker room in high school in 1977. He treated in the emergency room at Mayberry Memorial Hospital and later with a chiropractor (Mayberry Chiropractic). I am informed that he received chiropractic adjustments off and on since 1997 and his return from the military in 1983, and that he has complained about back and left lower extremity symptoms periodically since. The patient tells me that he was not experiencing any acute symptoms in his back or left lower extremity immediately before the September 1, 2017 injury at work.

The patient also treated for headaches and complaints in his neck and back following a motor vehicle accident on February 1, 2016, by report. I understand that he treated in the emergency room at the hospital and later with his chiropractor and with Dr. Peterson at the Mayberry Clinic. I have seen results from an MRI scan performed at Mayberry MRI and Radiation Oncology Center on March 1, 2016, revealing the patient to have Grade I spondylolisthesis of L5 on S1, *spina bifida occulta* at L5-S1, and a central and left-sided disk bulge at the same level, impacting the thecal sac but not resulting in spinal stenosis. I am aware that Dr. Peterson referred the patient to Dr. Bailey on March 7, 2016, and that the patient failed to show up for his scheduled appointment on March 14, 2016 (the patient explains that although he was having some complaints at the time, he did not feel that his back and left leg symptoms were so severe that he should consider undertaking surgery for them). The patient was treated with chiropractic adjustments and

medication for back complaints following the motor vehicle accident, I am told. Clearly, the patient had a documented congenital and degenerative back condition prior to September 1, 2017. He tells me that his back and left leg symptoms became much worse after the September 1, 2017 occurrence, such that he resumed treatment for them, and ultimately not only considered but actually has undertaken back surgery.

On September 1, 2017, the patient was working as a deputy sheriff for the City of Mayberry. He was on a call to arrest a suspect in a Winnebago sneakily, but he accidentally activated his squad car's emergency lights and sirens, alerting anyone within at least a quarter mile of his presence. Aware of his mistake and the fact that the suspect could run away and escape, the patient jumped out of the squad car, drew his gun, and ran towards the Winnebago. The suspect emerged, and the patient yelled for him to freeze. The patient tried to come to a stop, but he apparently tripped, pulled the trigger, and fell to the ground. He reports experiencing an immediate onset of pain in his back, with numbness and tingling running down his left leg to his foot. The patient was sent home to clear his head after the incident.

The patient awoke the next morning in extreme pain. He indicates that he was experiencing back spasms and numbness and tingling down the back of his left leg to his toes. He took some Ibuprofen and was driven to the emergency room at Mayberry Memorial Hospital. He complained of lower back and left lower extremity symptoms. He admitted that he had previous lower back injuries and treatment, but he indicated that he had recently been better. X-rays were taken of his lower back, which revealed Grade I spondylolisthesis of L5 on S1 and *spina bifida occulta* at L5-S1, with diminished disk space and osteophytes at Level L5-S1. He was prescribed Flexeril and Ibuprofen, and it was suggested that he rest and ice his back over Labor Day weekend.

The patient saw Dr. Peterson at the Mayberry Clinic on an urgent basis on Tuesday, September 5, 2017, with continuing complaints of pain and spasms in his lower back, and numbness and tingling in back of his left leg to the level of his foot. He indicated that he had injured his back on September 1, 2017 when he twisted and fell during a work-related shooting occurrence outside of Mayberry. He indicated that he had been treated at Mayberry Memorial Hospital, where he had been prescribed Vicodin, Flexeril, and ibuprofen, and that he was out of Vicodin. He indicated that he was unable to stand up completely, or walk even 50 feet without doubling over with pain. He was reportedly "sobbing" while describing his symptoms. On examination, Dr. Peterson noted Barney to have absent reflexes at the Achilles on the left, positive straight leg raise testing on the left, and muscle spasm in his lower back. Dr. Peterson felt that Barney had objective evidence of a possible disk herniation on the left at Level L5-S1 on examination, and ordered an MRI scan. He noted that Barney's anxiety condition was exacerbated by the shooting occurrence of September 1, 2017 and by the discipline he expected to be imposed because of it, and renewed Barney's Xanax prescription.

The MRI scan was performed at Mayberry MRI on September 8, 2017. The MRI scan showed Grade I spondylolisthesis of L5 on S1, *spina bifida occulta* at L5-S1, and a central and left-sided disk herniation at the same level, which was felt to obliterate the nerve root on the left, and cause significant spinal stenosis. The radiologist felt that the results were consistent with the subjective complaints voiced by the patient. On September 12, 2017, after reviewing the MRI scan report, and re-examining the patient, Dr. Peterson referred him to me for an orthopedic consultation.

The patient was first seen by me on September 19, 2017. He acknowledged a prior history of back and left lower extremity complaints, but he said that he had recently been doing better, as far as his back and leg complaints were concerned, until he fell in the September 1, 2017 shooting occurrence. I examined the patient and reviewed the MRI scan performed on September 8, 2017, and told him that she might be a candidate for a spinal fusion procedure at Level L5-S1. I expressed my reluctance to perform surgery on the patient without first attempting more conservative care, consisting of a series of three epidural steroid injections and physical therapy. I also cautioned Fife that I would not perform surgery on him unless he quit smoking (smoking is known to inhibit the formation of a bony fusion mass following surgery). I prescribed physical therapy and the series of epidural steroid injections, and enrolled the patient in a smoking cessation program at the Mayberry Clinic. I also insisted that Dr. Peterson remain the only health care provider to prescribe narcotic pain medication for the patient, as I was aware that there had been some problems with substance abuse in his past and declined to give him narcotics for his pain complaints.

The patient did follow through with physical therapy at Mayberry Memorial Hospital between September 19 and October 24, 2017, without resolution of his symptoms. The prescribed series of epidural steroid injections was administered at Mayberry Memorial Hospital with only temporary relief reported. On November 7, 2017, after a pre-operative evaluation by Dr. Peterson, I performed a bilateral laminectomy, discectomy, and fusion procedure at Level L5-S1 at Mayberry Memorial Hospital. The patient was discharged from Mayberry Memorial Hospital on November 11, 2017, with Vicodin for pain and instructions to follow up with me in due course.

Subjectively speaking, the patient has not experienced a good result from his November 7, 2017 fusion procedure. X-rays taken December 28, 2017, however, show his fusion mass to be solidifying. In response to complaints of numbness and tingling in his left lower extremity following surgery, I referred the patient to Mayberry Neurology for an EMG and nerve conduction study, which was performed on January 20, 2018 and was reportedly negative. I generally allow a year from the date of surgery before I determine the ultimate outcome of a fusion procedure, but, objectively speaking, I believe the patient has obtained a good result. I believe that some of the patient's reported complaints may have a secondary gain component: he has a prior history of drug-seeking behavior, and there is pending litigation over his worker's compensation claim. I suggest that the patient should undertake a pain management program, including psychological treatment, to deal with his subjective pain complaints, and that he should be weaned from narcotic pain medication.

I feel that the patient will remain within the healing period following his surgery until November 2018, but he can presently return to sedentary work as a deputy sheriff. For medical and other reasons, I do not believe he should EVER return to police work. I anticipate that the patient will suffer ten (15%) percent of permanent, total disability for functional loss, and will be restricted permanently from lifting over 25# frequently, with limitations on bending, pushing, pulling, and frequent changes in position required. Based upon the history given to me by the patient, I feel that that the shooting incident on September 1, 2017 aggravated, accelerated, and precipitated the patient's pre-existing, degenerative back suffered beyond ordinary progression, and that the surgery performed on November 7, 2017 was at least partially attributable to it.

I have reviewed the records review report from Marcus Welby, M.D., an orthopedic surgeon, which was obtained by the insurance carrier, dated October 31, 2018. Dr. Welby says that the patient sustained at most a temporary lower back strain or sprain on September 1, 2017, superimposed over his pre-existing degenerative and congenital back condition, which should have resolved without residuals and without surgery by October 15, 2017, with no permanency. Dr. Welby fails to explain the central and left-sided L5-S1 disk herniation which is seen in the September 8, 2017 MRI scan, but NOT in the March 1, 2016 MRI scan. Dr. Welby did not perform surgery on the patient, as did I. With all due respect to Dr. Welby, I do not believe he is in as good a position as am I to comment upon consequences of the September 1, 2017 occurrence.

Please call if you have any questions.

Thank you.

MAYBERRY ORTHOPEDIC ASSOCIATES, S.C.

Lou Bailey, M.D.
Orthopedic Surgeon



BENNETT CHIROPRACTIC, LLC

51 Medical Plaza

Mayberry, Wisconsin 53773

(262) 829-2300

Bernard P. Milton Oliver Fife

DOB: 5/16/62

Dates: August 28, 2017 – September 2, 2017

I, Jan Wiley, records custodian at Bennett Chiropractic, hereby certify that the documents annexed hereto, and consisting of 2 pages, constitute an accurate and legible duplicate of the medical records in our possession regarding the above-named patient, as requested, and for which authorization was granted.

Date March 23, 2019

Custodian Jan Wiley



BENNETT CHIROPRACTIC, LLC

**51 Medical Plaza
Mayberry, Wisconsin 53773
(262) 829-2300**

Bernard P. Milton Oliver Fife
DOB: 5/16/62

DATE: 8/28/17

S: The patient presents himself for treatment of complaints arising from a motor vehicle accident on February 1, 2016. He was a passenger in a motor vehicle which was struck from behind by another vehicle. He was not wearing a seatbelt. He was diagnosed with injuries to his neck and back, and he received chiropractic treatment from me shortly after the incident.

O: Passive range of motion of the cervical and lumbar spine decreased slightly, with pain.

A: Acute subluxations of the C5-6 and L5-S1 levels.

P: Treatment today consisted of adjustments to the neck and back. The patient will return on an as needed basis.

Doyle Bennett, D.C.

DATE: 8/31/17

S: The patient reports some improvement of his complaints following his last session; but the symptoms have gradually returned through today's date.

O: Passive range of motion continues to be slightly decreased.

A: Acute subluxations of the C5-6 and L5-S1 levels.

P: Treatment today consisted of adjustments to the neck and back. The patient will return on an as needed basis.

Doyle Bennett, D.C.



BENNETT CHIROPRACTIC, LLC

51 Medical Plaza

Mayberry, Wisconsin 53773

(262) 829-2300

"Let us take a crack at YOUR back complaints!"

September 1, 2016

Attorney Neil Bentley
BENTLEY, LAMBORGHINI AND PORSCHE, LLC
666 East Main Street
Mayberry, WI 53773

Dear Attorney Bentley:

This report concerns your client and my patient, Bernard P. Milton Oliver Fife, who was injured in a motor vehicle accident in Mayberry on February 1, 2016.

I began treating the patient in 1977, when, while using the gym locker room at Mayberry High School, he injured her lower back when he slipped on a bar of soap and fell. I saw him after he initially treated in the emergency room at Mayberry Memorial Hospital, where he was diagnosed as having sustained a strain/sprain type injury. X-rays showed the patient to have a spondylolysis condition at L5-S1, with *spina bifida occulta*, but no fracture. The patient was treated conservatively at the hospital and released. He began treating with me thereafter and, periodically, received adjustments for intermittent neck and back subluxations. After initially treating him daily for a couple weeks for acute symptoms, I reduced the frequency of his treatments, treating him monthly thereafter on a maintenance basis for intermittent low grade cephalgia, cervicgia, and lumbalgia. He was not restricted as to his ADLs between 1977 and 2016.

On February 1, 2016 the patient was involved in a motor vehicle accident in Mayberry. He was a passenger in a motor vehicle which was struck from behind by another at the intersection of Forrest and Lewis Streets. He was not wearing a seatbelt. The vehicle which struck the one in which the patient was a passenger was traveling at 25 miles per hour, and the vehicle in which the patient was a passenger was stopped when the collision occurred. There was a significant impact, in which the patient experienced a flexion/extension injury to his spine. He was taken by ambulance to the Emergency Room at Mayberry Memorial Hospital, where he treated for complaints of headaches and pain in his neck and back. He was diagnosed with an injury to his neck and back, given a soft collar, prescribed Flexeril and Vicodin, and was released.

The patient consulted with me the next day, February 2, 2016. He reported ongoing cephalgia, cervicalgia, and lumbalgia. He had complaints of numbness and tingling in his left leg. I began treating him with adjustments of her neck and back daily for several weeks following the motor vehicle accident. I diagnosed him with vertebral subluxations at Levels C5-6 and L5-S1, which were seen on x-rays. I authorized the patient to remain off of work entirely for four weeks following the motor vehicle accident, and I then released him to return to work with restrictions which I liberalized gradually over the next six weeks, at which time all restrictions were lifted. I reduced the frequency of treatments over time, but when I saw him today for his final evaluation, he was not without symptoms; he reported cephalgia, cervicalgia, and lumbalgia, with radiation down the back of his left thigh to the level of his knee.

The patient has treated with Thomas Peterson, M.D., at the Mayberry Clinic during the time in which I have been treating him since the motor vehicle accident. I do not have records from Dr. Peterson, but I understand that he has been attempting to manage the patient's pain with medication and physical therapy. I believe that the patient was seen at Mayberry MRI and Radiation Oncology Center for an MRI scan of his lower back on March 1, 2016, and, although I have not seen the film myself, I understand that it showed Grade I spondylolisthesis of L5 on S1, *spina bifida occulta* at L5-S1, and a central and left-sided disk bulge at the same level, which was felt to impact the thecal sac but not to result in spinal stenosis. I understand that the patient was referred to Lou Bailey, M.D., at Bailey Orthopaedics, S.C., for a consultation regarding a possible spinal fusion procedure, but he has chosen to treat with chiropractic care by me rather than surgery to date. My suggestion is that you consult with Drs. Peterson and Bailey to obtain further information about their diagnoses and treatment recommendations.

I believe that the patient sustained permanent injuries to his neck and back in the February 1, 2016 motor vehicle accident in Mayberry. He has received treatment on 45 occasions since his first visit to me on February 2, 2016 and has incurred expenses totaling \$6,750 in the process. I feel that he will need chiropractic care for the rest of his life for her chronic C5-6 and L5-S1 vertebral subluxations, on at least a bi-weekly basis, which at current rates will cost him approximately \$4,000 per year.

Please do not hesitate to call if you have any further questions.

Yours in Chiropractic Health,

BENNETT CHIROPRACTIC, LLC

Doyle Bennett, D.C., C.C.S.P.

P.S. We're looking forward to seeing you again this year at the Lions Club "Muskyfest" out on Landers Lake on October 1. That Charlton Heston impression you always do just kills me! "Soylent Green is people...it's PEOPLE!" Ha-ha-ha.



BENNETT CHIROPRACTIC, LLC

**51 Medical Plaza
Mayberry, Wisconsin 53773
(262) 829-2300**

Bernard P. Milton Oliver Fife
DOB: 05/16/62

DATE: 9/2/17

S: The patient reports ongoing pain in his neck and low back, with slight improvement since his last visit.

O: Passive range of motion improved since last visit.

A: Acute subluxations of the C₅-6 and L₅-S₁ levels.

P: Treatment today consisted of adjustments to the neck and back. The patient will return on an as needed basis.

Doyle Bennett, D.C.



Excruciating Pain Management Clinic
1724 University Avenue
Mayberry, Wisconsin 53773
(262) 555-7246

"Sick and Health, Poor and Wealthy, Come Direct to Me!"

Patient: Bernard "Barney" P. Milton Oliver Fife

DOB: May 16, 1962

Referring Doctor: Lou Bailey, M.D.

Date: June 25, 2018

S: Mr. Fife presents to the clinic today to explore the potential that a multi-disciplinary pain management program might be of assistance to his. Apparently, he injured his back in a slip and fall in 1977 and again in a motor vehicle accident in 2016. Then on September 1, 2017, he twisted and fell during a police-related shooting incident. He experienced unrelenting pain in his lower back with pain, numbness, and tingling radiating down his left leg to the level of his toes. On November 7, 2017, Dr. Bailey performed a bilateral laminectomy, discectomy, and posterior fusion procedure at Level L5-S1 at Mayberry Memorial Hospital. Mr. Bailey has not experienced a good result from his November 7, 2017 fusion procedure. He continues to complain of numbness and tingling in his left lower extremity and pain in his low back. He is currently taking Oxycontin.

O: Patient exhibits antalgic gait pattern, with moderate lumbar lordosis. Lumbar range of motion is quite limited in all directions by pain. Provocative tests reproduce the patient's lower extremity pain.

A: Status post bilateral laminectomy, discectomy, and posterior fusion procedure at Level L5-S1; chronic low back pain with radiation to left lower extremity.

P: I believe the patient would benefit greatly from a multi-disciplinary pain management program. Treatment options for Mr. Fife include facet joint injection, intradiscal electrothermal therapy (IDET), intrathecal pump implant, lumbar sympathetic nerve block, and radiofrequency nerve ablation. The patient will think it over these options and return once a decision is made.

Hugo Hackenbush, M.D.

MAYBERRY CLINIC
1100 Hospital Drive
Mayberry, Wisconsin 53773
(262) 555 – 3032



Patient: Bernard P. Milton Oliver Fife
DOB: May 16, 1962

Dates: September 1, 1977 – October 17, 2016

I, Jack Haley, records custodian at Mayberry Clinic, hereby certify that the documents annexed hereto, and consisting of 3 pages, constitute an accurate and legible duplicate of the medical records in our possession regarding the above-named patient, as requested, and for which authorization was granted.

Date April 2, 2019

Custodian Jack Haley

MAYBERRY CLINIC
1100 Hospital Drive
Mayberry, Wisconsin 53773
(262) 555 – 3032



March 7, 2016

To: Lou Bailey, M.D.
Bailey Orthopaedics, S.C.
101 Medical Plaza
Mayberry, Wisconsin 53773

Re: Bernard P. Milton Oliver Fife
DOB: May 16, 1962

Dear Dr. Bailey:

I am referring my patient, Bernard P. Milton Oliver Fife, to you for a consultation regarding a possible spinal fusion procedure.

Mr. Fife was involved in a motor vehicle accident on February 1, 2016 in which he was an unrestrained passenger in a vehicle driven by his girlfriend, Thelma Lou, which was struck from behind by a vehicle driven by Gerald Whitfield at the intersection of Forest and Lewis Streets in Mayberry. The patient treated in the emergency room at Mayberry Memorial Hospital. He was diagnosed with a flexion/extension injury to his neck and back, was given a soft collar, prescribed Flexeril and Vicodin, and was released with instructions to follow up with me if he had further difficulties with his neck or back.

He presented to my office on February 7, 2016. I diagnosed headaches and a neck and back strain, and prescribed Vicodin for pain and Flexeril as a muscle relaxant.

I saw him again on February 14, 2016. Due to ongoing symptoms, I prescribed two weeks of physical therapy at Mayberry Memorial Hospital and renewed his Vicodin and Flexeril prescriptions.

The patient presented to the initial physical therapy evaluation on February 15, 2016 at Mayberry Memorial Hospital. He has not returned to physical therapy and has expressed his intention to treat with his chiropractor instead.

When I saw him again on February 28, 2016, Mr. Fife indicated he was doing no better. He complained of numbness and tingling down the back of his left leg to the level of his toes, in addition to neck and back pain. I switched his Vicodin to Oxycontin, a longer-acting narcotic, and referred him to Mayberry MRI and Radiation Oncology Center for an MRI scan of his lower back.

The MRI scan was performed on March 1, 2016. The scan reportedly showed Grade I spondylolisthesis of L5 on S1, *spina bifida occulta* at L5-S1, and a central and left-sided disk bulge at the same level, which was felt to impact the thecal sac but not to result in stenosis. He returned

to my office on March 7, 2016 to review the MRI. At that time, he reported continuing complaints of numbness and tingling in his left lower extremity to the level of his toes. I reviewed the MRI scan report and feel the patient needs to see an orthopedic surgeon to consider surgical correction of his low back condition.

Thank you for agreeing the meet with Mr. Fife. If you wish to discuss this matter with me in more detail, please contact me.

MAYFIELD CLINIC

Thomas Peterson, M.D.

MAYBERRY CLINIC
1100 Hospital Drive
Mayberry, Wisconsin 53773
(262) 555 – 3032



Visit date: October 17, 2016

Patient: Bernard P. Milton Oliver Fife
DOB: May 16, 1962

The patient returns for follow-up of injuries sustained in a motor vehicle accident on February 1, 2016. I have been treating the patient for this condition since February 7, 2016. He continues to complain of pain, including headaches, neck complaints, back pain, left lower extremity pain, and abdominal complaints. He has been taking Oxycontin for back and left lower extremity complaints.

It has come to my attention that the patient has been seeking care for his complaints not only with me, but at Mayberry Memorial Hospital. On a number of occasions, the patient has called to report lost or stolen prescriptions. He has also sought treatment with increasing frequency in urgent care with demands for "something for his pain." While he does demonstrate objective findings on MRI, I believe the patient is exhibiting drug-seeking behavior. At today's visit, I confronted him about this behavior. He has now signed a narcotics contract in which he agrees to obtain prescriptions from me only, and to use narcotics only as prescribed or be discharged from my care.

The patient will continue his Oxycontin under contract and follow up with me in one month.

Thomas Peterson, M.D.



MAYBERRY MEMORIAL HOSPITAL
123 Emergency Drive
Mayberry, Wisconsin 53773
(62) 555-3032

CERTIFICATION OF MEDICAL RECORDS

Patient: Patient: Bernard P. Milton Oliver Fife

Dates: May 16, 1962 – March 30, 2019

I, Dorothy Gale, records custodian at Mayberry Memorial Hospital, hereby certify that the documents annexed hereto, and consisting of 8 pages, constitute an accurate and legible duplicate of the medical records in our possession regarding the above-named patient, as requested, and for which authorization was granted.

Date: March 30, 2019

Custodian: Dorothy Gale



MAYBERRY MEMORIAL HOSPITAL

**123 Emergency Drive
Mayberry, Wisconsin 53773
(62) 555-3032**

RADIOLOGY REPORT

Patient: Bernard P. Milton Oliver Fife
DOB: May 16, 1962
Date: December 2, 1977
PCP: Thomas Peterson, M.D., Mayberry Clinic

History: Slip on soap and fall in locker room at school. Lower back injury.

Comparison X-rays: None.

X-rays: Lumbar spine x-rays reveal spondylolysis condition at L5-S1 with *spina bifida occulta*. No fractures are seen. Lumbar spine is otherwise normal.

Wilhelm Roentgen, M.D.
Radiologist



MAYBERRY MEMORIAL HOSPITAL

**123 Emergency Drive
Mayberry, Wisconsin 53773
(62) 555-3032**

RADIOLOGY REPORT

Patient: Bernard P. Milton Oliver Fife
DOB: May 16, 1962
Date: February 1, 2016
PCP: Thomas Peterson, M.D., Mayberry Clinic

History: Motor vehicle accident. Neck and lower back injury.

Comparison X-rays: December 2, 1977.

X-rays: Cervical spine x-rays reveal some reversal of the normal cervical lordosis, possibly indicative of muscular spasm. No fracture is seen. Disk spaces are well-preserved.

Lumbar spine x-rays reveal spondylolysis condition at L5-S1 with *spina bifida occulta*. No fractures are seen. Mild degenerative disk disease is seen at L5-S1, which was not seen in the prior study.

Wilhelm Roentgen, M.D.
Radiologist



MAYBERRY MEMORIAL HOSPITAL

**123 Emergency Drive
Mayberry, Wisconsin 53773
(62) 555-3032**

DISCHARGE SUMMARY

Patient: Bernard P. Milton Oliver Fife
DOB: May 16, 1962
Date of Admission: November 7, 2017
Date of Discharge: November 11, 2017
PCP: Thomas Peterson, M.D., Mayberry Clinic
Surgeon: Lou Bailey, M.D., Mayberry Orthopedic Associates

The patient injured his back when he tripped and fell during a police-related incident on September 1, 2017. The patient was admitted on November 7, 2017 to undertake surgery. On November 7, 2017, after a pre-operative evaluation by Dr. Peterson, a bilateral laminectomy, discectomy, and fusion procedure was performed without complication at Level L5-S1. Post-surgical history has been uneventful.

The patient is discharged, with a prescription of Vicodin for pain, and instructions to follow up with me in clinic in due course. He may not return to work until further notice.

Lou Bailey, M.D.
Orthopedic Surgeon



MAYBERRY MEMORIAL HOSPITAL

**123 Emergency Drive
Mayberry, Wisconsin 53773
(62) 555-3032**

PRE-OPERATIVE EXAMINATION and HISTORY & PHYSICAL

Patient: Bernard P. Milton Oliver Fife
DOB: May 16, 1962
Date: November 7, 2017
Surgeon: Lou Bailey, M.D.

Reason for Admission: The patient is admitted and scheduled to undertake a bilateral laminectomy, discectomy, and fusion procedure at Level L5-S1 by Dr. Bailey at Mayberry Memorial Hospital.

History: The patient injured his back when he tripped and fell during a police-related incident while working as a deputy sheriff for the County of Mayberry on September 1, 2017. His worker's compensation claim has been denied.

In the evening of Friday, September 1, 2017, the patient was working as a deputy sheriff when he and the sheriff were attempting to arrest a wanted individual. The patient accidentally turned on his emergency lights and siren, alerting the suspect inside the premises. The suspect came outside, and the patient ran towards him with his gun drawn. The patient tripped and twisted his back when he fell to the ground. He also apparently accidentally discharged his gun when he fell. He reports an immediate onset of pain in his back, with numbness and tingling running

He treated the following day at Mayberry Memorial Hospital. X-rays were taken of his lower back, which revealed Grade I spondylolisthesis of L5 on S1 and *spina bifida occulta* at L5-S, with diminished disk space and osteophytes at Level L5-S1. The ER physician prescribed Vicodin, Flexeril and Ibuprofen, and suggested that he rest and ice her back for the next several days for what he diagnosed as a possible strain or sprain injury.

He came under my care on Wednesday, September 6, 2017 on an emergency basis with continuing complaints of pain and spasms in his lower back, and numbness and tingling in the back of his left leg to the level of his foot. At that time, he had run out of the Vicodin prescribed to him by the emergency department at Mayberry Memorial Hospital. He was unable to stand up completely, or walk even 50 feet without doubling over with pain. He was sobbing while describing his symptoms.

On examination I noted the patient had absent reflexes at the Achilles on the left, positive straight leg raising on the left, and muscle spasm in his lower back. I felt that the patient had objective evidence of a possible

disk herniation on the left at Level L5-S1, and ordered an MRI scan. I prescribed Vicodin and Flexeril, and authorized the patient to remain off of work until re-examined.

An MRI scan was performed at Mayberry MRI on September 8, 2017. The MRI scan reportedly showed Grade I spondylolisthesis of L5 on S1, *spina bifida occulta* at L5-S1, and a central and left-sided disk herniation at the same level, which was felt to obliterate the nerve root on the left, and cause significant spinal stenosis. The radiologist who read the scan felt that the results were consistent with the subjective complaints voiced by the patient. On September 12, 2017, after reviewing the MRI scan report, and re-examining the patient, I referred him to Lou Bailey, M.D., at Mayberry Orthopedic Associates for a consultation regarding a surgery. I renewed the Vicodin prescription and authorized the patient to remain off of work until further notice.

The patient was seen by Dr. Bailey on September 19, 2017. Dr. Bailey examined the patient, reviewed the MRI scan performed on September 9, 2017, and indicated to him that he might very well be a candidate for a spinal fusion procedure at Level L5-S1. Dr. Bailey indicated that he was reluctant to perform surgery on the patient without first attempting more conservative care, consisting of a series of three epidural steroid injections and physical therapy. Dr. Bailey also cautioned the patient that he would not perform surgery on him unless he quit smoking. The patient was prescribed physical therapy and epidural steroid injections and was enrolled in a smoking cessation program. Dr. Bailey insisted that I was to remain the only health care provider to prescribe narcotic pain medication for the patient and declined to give him Oxycontin or Vicodin for his pain complaints.

The patient did follow through with physical therapy at Mayberry Memorial Hospital between September 19 and October 24, 2017, without resolution of his symptoms. The prescribed series of epidural steroid injections were administered at Mayberry Memorial Hospital with only temporary relief reported. The patient is now scheduled for surgery by Dr. Bailey today, consisting of a bilateral laminectomy, discectomy, and fusion procedure at Level L5-S1.

Examination:

Airway: The patient's airway is patent.

Breathing: The patient has bilateral breath sounds.

Circulation: The patient has normal heart tones and 2+ pulses in the radial, femoral and dorsalis pedis distribution.

Vital Signs: Normal.

General: He appears his stated age and in mild distress.

HEENT: Normal.

Neck: Supple without JVD. Midline trachea and no step-off.

Chest: Clear to auscultation bilaterally without wheeze. Chest wall is stable to AP and lateral compression. Chest x-rays are negative.

Heart: Regular rate and rhythm, without murmur.

Abdomen: Soft, non-tender and non-distended.

Pelvis: Stable to AP and lateral compression.

Back: Tenderness at L5-S1.

Rectal: Normal tone without blood.

Extremities: No obvious deformity in any of the four extremities. Impaired reflexes in left lower extremity, consistent with disk herniation at L5-S1. Some weakness on ankle flexion. Patient reports numbness and tingling in left lower extremity.

Genitourinary: Normal.

Laboratory Examination: Unremarkable.

Overall Impression: Patient is an appropriate candidate for the proposed surgery.

Thomas Peterson, M.D.



MAYBERRY MEMORIAL HOSPITAL

**123 Emergency Drive
Mayberry, Wisconsin 53773
(62) 555-3032**

RADIOLOGY REPORT

Patient: Bernard P. Milton Oliver Fife
DOB: May 16, 1962
Date: December 28, 2017

History: Trip and fall with subsequent L5-S1 fusion procedure.

X-rays: Lumbar spine x-rays reveal *spina bifida occulta*. The fusion mass is solidifying.

Ivan Pavlovich Pulyui, M.D.
Radiologist



MAYBERRY MEMORIAL HOSPITAL

123 Emergency Drive
Mayberry, Wisconsin 53773
(62) 555-3032

EMERGENCY ROOM REPORT

Patient: Bernard "Barney" P. Milton Oliver Fife
DOB: May 16, 1962
Date: September 1, 2017
PCP: Unknown

History: The patient indicates that he injured his lower back when he twisted and fell while engaging in an officer-related shooting while working as a deputy sheriff for the City of Mayberry. After the incident, he went home and went to sleep. Upon awakening today, he was unable to ambulate well without aide, so he had someone bring him here today. He currently complains of a sharp pain down the back of the leg into the foot. He describes this pain as shooting, burning, and electric. He also complains of feelings of numbness and tingling in the posterior leg and foot, described as a "pins and needles" sensation. The patient also provided the nurse with a copy of his list of the 25 substances to which he believed himself to be allergic.

Past History: He admits she had previous lower back injuries and treatment, but he indicates he had recently been better.

Medications: Ibuprofen, Lexapro.

Examination: The patient demonstrates muscle weakness of the big toe extensors, ankle extensors, and ankle flexors, presenting as an inability to extend the ankle while walking, resulting in a foot drop. He has diminished Achilles tendon reflex on neurological examination.

X-rays: Lower back x-rays reveal Grade I spondylolisthesis of L5 on S1 and *spina bifida occulta* at L5-S1, with diminished disk space and osteophytes at Level L5-S1.

Assessment: Back strain or sprain, with possible herniated L5-S1 disk and radiculopathy.

Recommended Treatment: He is given prescriptions for Vicodin, Flexeril, and Ibuprofen. It is suggested that he rest for Labor Day weekend before presenting to his primary care physician.



**MAYBERRY MRI AND RADIATION ONCOLOGY CENTER
13 MEDICAL PLAZA
MAYBERRY, WISCONSIN 53773
(620) 555-2223**

“GET THAT HEALTHY GLOW!”

Patient: Bernard P. Milton Oliver Fife
DOB: May 16, 1962

Dates: March 1, 2016 – September 8, 2017

I, Bert Lahr, records custodian at Mayberry MRI and Radiation Oncology Center, hereby certify that the documents annexed hereto, and consisting of 2 pages, constitute an accurate and legible duplicate of the medical records in our possession regarding the above-named patient, as requested, and for which authorization was granted.

Date: April 26, 2019

Custodian: Bert Lahr



MAYBERRY MRI
1234 EMERGENCY DRIVE
MAYBERRY, WISCONSIN 53773
(262) 555-3031

“GET THAT HEALTHY GLOW!”

LUMBAR MRI REPORT

Patient: Bernard P. Milton Oliver Fife
DOB: May 16, 1962
Date: September 8, 2017
Ordering Physician: Thomas Peterson, M.D., Mayberry Clinic

History: Twist and fall. Lower back and left lower extremity complaints.

Findings: Grade I spondylolisthesis of L5 on S1, *spina bifida occulta* at L5-S1, and a central and left-sided disk herniation at the same level, which is felt to obliterate the nerve root on the left, and cause significant spinal stenosis. Results appear to be consistent with the patient’s left lower extremity complaints.

Felix Bloch, M.D.
Radiologist



MAYBERRY MRI
1234 EMERGENCY DRIVE
MAYBERRY, WISCONSIN 53773
(262) 555-3031

“GET THAT HEALTHY GLOW!”

MRI REPORT

Patient: Bernard P. Milton Oliver Fife
DOB: May 16, 1962
Date: March 1, 2016
Ordering Physician: Thomas Peterson, M.D., Mayberry Clinic

History: Motor vehicle accident. Neck and lower back injury. Now primarily lower back and left lower extremity complaints

Findings: Grade I spondylolisthesis of L5 on S1, *spina bifida occulta* at L5-S1, and a central and left-sided disk bulge at the same level, which is felt to impact the thecal sac but not to result in spinal stenosis. Some degenerative disk disease is seen throughout the lumbar spine.

Raymond Damadian, M.D.
Radiologist



MAYBERRY NEUROLOGY
1767 University Avenue
Mayberry, Wisconsin 53773

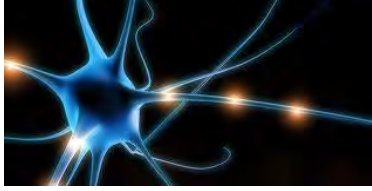
Patient: Bernard P. Milton Oliver Fife
DOB: May 16, 1962

Dates: January 20, 2018

I, Larry Moss, records custodian at Mayberry MRI and Radiation Oncology Center, hereby certify that the documents annexed hereto, and consisting of 1 page, constitute an accurate and legible duplicate of the medical records in our possession regarding the above-named patient, as requested, and for which authorization was granted.

Date: January 6, 2019

Custodian: Larry Moss



MAYBERRY NEUROLOGY
1767 University Avenue
Mayberry, Wisconsin 53773

Bilateral Lower Extremity EMG and Nerve Conduction Study

Patient: Bernard P. Milton Oliver Fife

DOB: May 16, 1962

Date of Study: January 20, 2018

Indication for Study: Lingering complaints of numbness and tingling in his left lower extremity following bilateral laminectomy, discectomy, and posterior fusion procedure at Level L5-S1.

Referring Physician: Lou Bailey, M.D.

Findings: The following muscles are examined in the lower extremities: extensor digitorum brevis, anterior tibial and peronei, quadriceps, gastrocnemius muscles, biceps femoris, semitendinous, and lumbosacral paraspinal muscles. In all of the muscles studied, the insertional activity was normal. There was no abnormal activity at rest. The motor units were of normal size and duration. The recruitment pattern was full.

Impression: Normal bilateral lower extremity EMG.

Francesco Redi, M.D.

Neurologist

25 Things to Which I Am Allergic

Bernard P. Milton Oliver Fife

August 24, 2016

Aunt Bea's Pickles

Bees, yellow jackets, wasps (don't like the looks of boxelder bugs, either)

Campbell's Spaghetti O's

Chapstick (Carmex is OK)

Clara Edwards

Clowns

Crunchy peanut butter (creamy OK)

Dandelions

Deviled eggs (OK if made with Miracle Whip instead of mayonnaise)

Dinty Moore Beef Stew

Dust bunnies (under bed)

Ernest T. Bass

Fuzzy caterpillars

Goats, donkeys and llamas

Liver (beef and chicken)

Little Debbie Cake Rolls

Navel lint

Opossums and woodchucks (raccoons OK)

Peeps (Easter candy)

Salt water taffy (yellow ones)

Salamanders

Sports teams from Illinois (includes Bears, Cubs and Illinois State bowling)

Stinkbug bites

Thong underwear (don't ask!)

Werewolves (probably)

Marcus Welby, M.D.

Orthopaedic Surgeon

Patient: Bernard P. Milton Oliver Fife

Insured: County of Mayberry

Insurer: Blue Devil Municipalities Insurance Company

Date of Birth: May 16, 1962

Date of Injury: September 1, 2017

Date of Report: December 10, 2018

Independent Medical Examination

It is intended that this report be considered with my previous records review report of October 31, 2017, in which I indicated that assuming that the September 1, 2017 occurrence giving rise to this claim took place as alleged, the patient sustained at most a temporary lower back strain or sprain, superimposed over his pre-existing degenerative and congenital back condition (namely Grade I spondylolisthesis of L5 on S1 and spina bifida occulta at L5-S1 with associated degenerative disk disease), which should have resolved without residuals by October 15, 2017, with no permanency. I indicated that the (then) proposed discectomy, laminectomy, and fusion procedure was occasioned by the pre-existing degenerative and congenital back condition, and not the residuals of the September 1, 2017 occurrence. I indicated that the proposed surgery did not constitute reasonable or necessary medical care, regardless of causation, and that given his prior medical and psychological history, the patient's prognosis following surgery would be poor. None of the additional information obtained in the independent medical examination I performed December 10, 2018 is such that it causes me to change the opinions I rendered in my October 31, 2017 records review report; in fact, that additional information reinforces those opinions.

I personally reviewed records and films provided by the referral source in addition to examining the patient on December 10, 2018 in Mayberry, Wisconsin. Included were records and films from Mayberry Memorial Hospital, Dr. Peterson, Dr. Bailey, Excruciating Pain Management, Mayberry Neurology, and Mayberry Mental Health Institute. Pertinent records and films are mentioned in my narrative report below. The patient was examined in the presence of a matron.

Additional History

The patient undertook physical therapy at Mayberry Memorial Hospital between September 19 and October 24, 2017, without reported resolution of his subjective symptoms. The patient undertook a series of three epidural steroid injections at Mayberry Memorial Hospital, with only temporary relief reported after each injection. On November 7, 2017, after a pre-operative evaluation by Dr. Peterson, Dr. Bailey performed a bilateral laminectomy, discectomy, and posterior fusion procedure at Level L5-S1 at Mayberry Memorial Hospital. The

patient was discharged from Mayberry Memorial Hospital on November 11, 2017, with Vicodin for pain, and instructions to follow up with Dr. Bailey in due course.

Predictably, the patient has not experienced a good subjective result from his November 7, 2017 fusion procedure, although it appears that Dr. Bailey performed a technically excellent surgery. X-rays taken December 28, 2017 showed his fusion mass to be solidifying. When the patient had lingering complaints of numbness and tingling in his left lower extremity following surgery, Dr. Bailey referred him to Mayberry Neurology for an EMG and nerve conduction study, which was performed on January 20, 2018 with reportedly normal results. Dr. Bailey indicated on June 11, 2018 that it would take a year from the date of surgery to determine its ultimate outcome, but that objectively speaking, the patient appeared to have obtained a good result. Dr. Bailey suggested that the patient should undertake a multi-disciplinary pain management program, including psychological treatment, to deal with his subjective pain complaints, and that he should be weaned from narcotic pain medication. (Some of Dr. Bailey's notes seem to suggest that "secondary gain" considerations, particularly including a desire for narcotic pain medication, may be the underlying explanation for the patient's subjective pain complaints.) Dr. Bailey indicated that the patient was still within the healing period, but could return to sedentary work; he prohibited the patient from returning to law enforcement work. Based upon the history given to him by the patient, Dr. Bailey opined that the shooting occurrence of September 1, 2017 aggravated, accelerated, and precipitated the patient's pre-existing, degenerative back condition beyond ordinary progression, and that the surgery performed on November 7, 2017 was at least partially attributable to it.

On June 25, 2018, the patient consulted at the Excruciating Pain Management Clinic with Dr. Hackenbush on referral from Dr. Bailey, to explore the potential that a multi-disciplinary pain management program might be of assistance to him. Dr. Hackenbush mentioned a long list of potential treatment options to the patient as potentially being of assistance to him, including, facet joint injection, intradiscal electrothermal therapy (IDET), intrathecal pump implant, lumbar sympathetic nerve block, and radiofrequency nerve ablation. In the end, the patient concluded that he was better off continuing with the pain medication Dr. Peterson was willing to prescribe than he was "letting some quack turn him into a pin cushion" at Excruciating Pain Management, and he never returned.

On November 12, 2018, approximately one year after the surgery, Dr. Bailey re-examined the patient. X-rays were performed which reportedly revealed a solid fusion mass at L5-S1, despite the fact that the patient continued to smoke. The patient continued to complain of numbness and tingling in his left leg and foot, and of pain in his lower back. The patient continued to take Oxycontin prescribed for his by Dr. Peterson for his pain complaints. Dr. Bailey indicated that the patient had reached a healing plateau, and assessed him as having 15% of permanent, total disability for functional loss. He indicated that the patient could never return to law enforcement work, with permanent restrictions against lifting over 25# frequently, and further limitations on bending, pushing, or pulling more than occasionally, with frequent changes in position required. He indicated that the patient's pain complaints, and the use of pain medication to treat them, would make it difficult for him to concentrate. Dr. Bailey again suggested that the patient should undertake a multi-disciplinary pain management program, including psychological treatment, to deal with his subjective pain complaints, and that he should

be weaned from narcotic pain medication. He indicated that because the fusion at L5-S1 would likely cause additional stress at the next adjacent disk level (L4-5), it was possible that the patient would require a future laminectomy, discectomy, and fusion at that level as well.

I note that on December 14, 2017, the patient began treating with Dr. Robert Hartley, a psychologist at Mayberry Mental Health Institute, for depression, Post Traumatic Stress Disorder, and for assistance in withdrawal from narcotic pain medication, on referral from Dr. Bailey. His psychological treatment is ongoing, and he continues to take Lexapro for his depression condition. According to the records, in recent treatment sessions, he struggles with shaking himself from memories of the shooting, and he feels he was reliving the occurrence in nightmares while sleeping and flashbacks while awake. He also said that even the thought of picking up his service revolver made him physically nauseous, and he feels that the shooting occurrence made any thought of returning to employment in law enforcement laughable. Dr. Hartley indicates that he feels that the September 1, 2017 occurrence and the resulting physical injuries and medical treatment have aggravated, accelerated, and precipitated the patient's pre-existing conditions and narcotic medication abuse problems, such that he has been unable to work from a psychological perspective since September 1, 2017. Dr. Hartley stops short of saying that the patient will never work again because of his psychological difficulties, but he expresses pessimism as to a complete psychological recovery as well. My examination of the patient is limited to his orthopedic condition, and I will leave it to a mental health professional to address his psychological difficulties, if any.

Current Physical Examination – December 10, 2018

The patient is currently 24 years old. He is able to walk into the examination room with a slight limp, favoring the left leg. As he walks, he occasionally gives a short cry followed by a moan and indicates that this is due to muscle spasms in his back. In the standing position, he has a normal thoracic kyphosis, and a lumbar lordosis that seems somewhat more than would be expected. There is no scoliosis. Forward bending is done slowly to 45 degrees, and with a jerky motion which is accompanied by facial grimaces and short cries which he indicates are due to pain and spasm in his back. He returns to the upright position with no apparent difficulty. Extension is limited to 15 degrees and elicits complaints of pain. Side to side bending is very limited and is accompanied by cries of pain. He is able to stand on one leg, both right and left, with good balance and no apparent pain. Axial compression elicits complaints of pain in the lumbar area which does not seem to radiate down either leg. Standing on both feet shows no apparent tilting of the pelvis, and does not elicit complaints of pain or spasm.

In the supine position, he indicates the presence of back pain in the lumbar area, but no complaints of spasm. Flexion of the right hip with the knee flexed elicits complaints of back pain. Straight leg raising on the right elicits complaints of back pain, but there is no limitation of straight leg raising. On the left, flexion of the hip with the knee flexed elicits complaints of pain and spasm in the low back. Straight leg raising is painful at 45 degrees, and elicits a request to bend the knee. Manual motor testing of the hip flexors shows greater strength on the right than the left, and with left testing elicits complaints of back pain and spasm. Motor testing of the hip abductors and adductors also elicits complaints on the left but not the right, but the motor power appears to be equal bilaterally. Manual motor testing of the knee extensors shows the right to be

stronger than the left, and left testing elicits complaints of left leg pain. Manual motor testing of the knee flexors is equal and elicits no complaints of pain either in the legs or back. Manual motor testing of the foot extensors shows the right to be stronger than the left, but elicits no complaints of pain. Great toe extensors are equally strong comparing right to left, and elicit no complaints of pain. Foot and toe plantar flexors are of equal strength comparing right to left, but this testing elicits complaints of pain on the left. Peripheral pulses are strong and equal at the dorsalis pedis artery and posterior tibial artery. Sensory testing is normal on the right, but on the left leg, there is decreased sensation in a stocking glove pattern from the mid-calf to the toes anteriorly and posteriorly. Deep tendon reflexes are normal on the right, absent at the knee and ankle on the left.

Walking out of the examining room showed a limp on the left, but no short step or quick step. When the patient was observed out of the office window as he walked to his car in the parking lot, no limp was noted.

Answers to Interrogatories

The following conclusions are drawn to a reasonable degree of medical probability, and are based upon the above review of records, radiologic studies, and a current physical examination.

1. Please summarize the relevant history.

Answer: Please see my October 31, 2017 records review report and narrative above.

2. Please describe the patient's condition, including your diagnosis, noting any pre-existing and/or related medical conditions.

Answer: Please see my October 31, 2017 records review report and narrative above. The patient suffers from a pre-existing congenital and degenerative back condition, including Grade I spondylolisthesis of L5 on S1 and spina bifida occulta at L5-S1, with associated degenerative disk disease. Assuming that the September 1, 2017 occurrence giving rise to this claim took place as alleged, the patient sustained at most a temporary lower back strain or sprain in it. He is now post bilateral laminectomy, discectomy, and posterior fusion procedure at Level L5-S1. The records reveal evidence of narcotic pain medication use and abuse, and his examination findings were consistent to some extent with malingering.

3. Is the patient's condition causally related to employment? This question asks:

a. Is the occurrence or incident complained of a mere manifestation or appearance of symptoms of a definitely pre-existing, deteriorating condition?; or

b. Did traumatic work exposure directly cause the condition?; or

c. Did work exposure temporarily aggravate a pre-existing condition?; or

d. Did work exposure aggravate, accelerate and precipitate (i.e., permanently aggravate) a pre-existing condition beyond its ordinary progression?; or

e. Was an appreciable period of workplace exposure the sole cause of the patient's condition, or at least a material contributory causative factor in the condition's onset or progression?

Answer: It remains my opinion that in the occurrence of September 1, 2017, assuming it took place as alleged, the patient sustained at most a temporary lower back strain or sprain, superimposed over his pre-existing degenerative and congenital back condition (namely Grade I spondylolisthesis of L5 on S1 and spina bifida occulta at L5-S1 with associated degenerative disk disease), which should have resolved without residuals and without permanency by October 15, 2017. The discectomy, laminectomy, and fusion procedure performed by Dr. Bailey on November 7, 2017 was occasioned by the patient's pre-existing degenerative and congenital back condition, and not the residuals of the September 1, 2017 occurrence. I do not believe that an appreciable period of workplace exposure has been a material contributory causative factor in the onset or progression of the patient's degenerative and congenital back condition.

4. Regardless of causation, has treatment been reasonable and necessary? Is any further treatment reasonable and necessary, to cure and alleviate the effects of the patient's back condition, or to prevent it from deterioration?

Answer: I remain of the opinion that regardless of causation, the treatment undertaken by the patient through October 24, 2017, when he finished physical therapy, was reasonable and medically necessary. I do not believe that the injections or the surgery undertaken by the patient November 7, 2017 were reasonable or medically necessary, regardless of causation; this is evidenced in part by the predictably poor subjective result experienced by the patient, despite the technically excellent surgery performed by Dr. Bailey and the good objective results, documented in the radiographic evidence post-dating surgery. I do not believe the continuing prescription of narcotic pain medication to be medically necessary; in fact, I believe it to be contraindicated and detrimental to the patient's overall health. I believe that the patient requires no additional care for his back condition, regardless of causation.

5. Has the patient reached an endpoint of the healing period? The healing period is the temporary period, during which the patient is submitting to treatment, is convalescing, still suffering from the condition, and unable to work because of it. The healing period may continue until the patient is restored so far as the permanent character of his condition will permit. If an endpoint has been reached, at what time was it reached? If not, when can it be anticipated?

Answer: Assuming that September 1, 2017 occurrence giving rise to this claim took place as alleged, it is my opinion that the patient may have sustained a temporary strain/sprain injury attributable to it that should have resolved (reached an endpoint of the healing period) without permanency not later than October 15, 2017. He went on to undertake surgery on November 7, 2017 which was not attributable to the September 1, 2017 occurrence. Regardless of causation, the patient reached an endpoint in his healing period following surgery not later than November 7, 2018, or one year post surgery.

6. Is the patient capable of working? Regardless of causation, are any work restrictions appropriate? If so, kindly describe such work restrictions. Are the restrictions temporary or permanent? If temporary, please specify the expected duration of such restrictions.

Answer: Regardless of causation, the patient is capable of medium work, with a 50# lifting restriction. He requires no other restrictions. These restrictions are permanent. There is no physical reason why he cannot resume law enforcement work with some accommodations for lifting. There is no physical reason why he cannot attend work on a full-time basis.

7. Without regard to cause, does the patient suffer any permanent disability? Has any permanent disability resulted from injury or work exposure? If so, kindly express your assessment of permanent disability in terms of a percentage of whole body loss or permanent, total disability.

Answer: It is my opinion that regardless of causation, the patient has 10% of permanent, total disability (disability to the body as a whole) attributed to a one-level spinal fusion with an objectively good result per Wisconsin Administrative Code Rule DWD §80.32(11). He has no disability attributed to his subjective pain complaints. He has no permanency attributable to the September 1, 2017 occurrence.

The information contained within this document was prepared by and is the work product of the undersigned and is based on the information provided.

Marcus Welby, M.D.

Marcus Welby, M.D.
Orthopaedic Surgeon
MW::rsa

Chimera Corporation
777 Fletcher Road, Suite 1234
Mayberry, Wisconsin 53999
1.800.NOT.HURT

Marcus Welby, M.D.

Orthopaedic Surgeon

Patient: Bernard P. Milton Oliver Fife
Insured: County of Mayberry
Insurer: Blue Devil Municipalities Insurance Company
Date of Birth: May 16, 1962
Date of Injury: September 1, 2017
Date of Report: October 31, 2017

Record Review

I have been asked to prepare a preliminary report regarding Bernard P. Milton Oliver Fife's low back condition and the nature and extent of the injury sustained on September 1, 2017. Fife, born May 16, 1962, claims a low back injury arising out of an officer-shooting incident on September 1, 2017. He initially treated in the Emergency Room at Mayberry Memorial Hospital where he complained of lower back and left lower extremity symptoms. The Emergency Room physician prescribed Vicodin, Flexeril, and ibuprofen and suggested that the patient should rest and ice his back for the next several days for what he diagnosed as a strain or sprain injury. He subsequently followed up with Dr. Peterson, who referred him to Dr. Bailey. Most recently, Dr. Bailey has recommended a bilateral laminectomy, discectomy, and posterior fusion procedure at level L5-S1.

I personally reviewed records and films from Mayberry Memorial Hospital, Bennett Chiropractic, Mayberry Clinic (Dr. Peterson), Mayberry MRI and Radiation Oncology Center, and Mayberry Orthopaedics.

After careful review of all of the records provided to me, it is my conclusion that, assuming that the September 1, 2017 occurrence giving rise to this claim took place as alleged, the patient sustained at most a temporary lower back strain or sprain, superimposed over his pre-existing degenerative and congenital back condition (namely Grade I spondylolisthesis of L5 on S1 and spina bifida occulta at L5-S1 with associated degenerative disk disease), which should have resolved without residuals by October 15, 2017, with no permanency. The proposed discectomy, laminectomy, and fusion procedure is occasioned by the pre-existing degenerative and congenital back condition, and not the residuals of the September 1, 2017 occurrence. The proposed surgery does not constitute reasonable or necessary medical care, regardless of causation, and given his prior medical and psychological history, the patient's prognosis following surgery would be poor.

If I can be of further assistance, please do not hesitate to contact me.

The information contained within this document was prepared by and is the work product of the undersigned and is based on the information provided.

Marcus Welby, M.D.

Marcus Welby, M.D.
Orthopaedic Surgeon
MW::rsa

Chimera Corporation
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Mayfield, Wisconsin 53999
1.800.NOT.HURT



ROBERT HARTLEY, PH.D.

Licensed Psychologist * Mayberry Mental Health Institute

February 8, 2018

RE: Bernard P. Milton Oliver Fife

To whom it may concern:

My patient, Bernard P. Milton Oliver Fife, has authorized me to write this letter regarding his mental state. I have seen him in outpatient psychotherapy since December 14, 2017 in the clinic at Mayberry Mental Health Institute. He was referred to me by his orthopedic surgeon, Lou Bailey, MD, who had seen him following an injury he sustained on September 1, 2017, when he was involved in an accidental on-the-job shooting, during which time he also fell and injured himself. Mr. Fife twisted his back and exacerbated a preexisting back injury. Dr. Bailey referred him to me for treatment of anxiety symptoms, depressive symptoms, potential Post Traumatic Stress Disorder, and for assistance in withdrawal from narcotic pain medication, which he had been taking for some time for his back problems.

Since December 2017, I have seen Mr. Fife roughly once every two weeks in psychotherapy. He said that he could not shake himself from memories of the shooting, and he felt he was reliving the occurrence in nightmares while sleeping and flashbacks while awake. Mr. Fife said that he worried constantly about the loss of his job, and he

was always looking over his shoulder to see if the Darlings were finally going to get him back for shooting Ernest T. Bass. Mr. Fife said that even the thought of picking up his service revolver made him physically nauseous, and he could not watch police dramas on television without thinking about and reliving the shooting occurrence. He said that he could not concentrate on even the simplest tasks, and he felt that the shooting occurrence made any thought of returning to employment in law enforcement laughable. Mr. Fife said that he knew he was overusing and abusing narcotic pain medication, and that he should not be drinking and using narcotics as he was, but he said he no longer cared enough to stop.

Any law enforcement officer required to carry a gun must be prepared to use it, and a shooting occurrence in and of itself does not constitute extraordinary stress for a law enforcement officer. However, at the time of the shooting in question, Ernest T. Bass was not a threat to Mr. Fife or others, and Mr. Fife had no cause to shoot Ernest T. Bass. The shooting occurrence had not been deemed to have been justified by investigating authorities. Mr. Fife had lost his job and a civil lawsuit as a consequence of injuring Ernest T. Bass in the shooting, and he had been the subject of death threats by the Darlings following the shooting. I feel these additional factors made the shooting occurrence and its aftermath extraordinarily stressful for Mr. Fife.

During my sessions with Mr. Fife, our treatment plan has been based on his diagnoses of anxiety, Post Traumatic Stress Disorder, depressive disorder, and of a longstanding history of polysubstance abuse. I have seen some improvement in Mr. Fife's functional capacity, but he remains unable to do any work in the law enforcement or security fields. For the foreseeable future, it is likely that he will likely need to work in a simple, low-stress job. He is likely to continue to need significant psychological support, as well as continued antidepressant medication, for at least the next several years.

In summary, I believe, to a reasonable degree of psychological certainty, that Bernard P. Milton Oliver Fife's preexisting major depressive disorder and polysubstance abuse have been significantly worsened by his injury sustained in the on-the-job shooting

on September 1, 2017, and I also believe, again to a reasonable degree of psychological certainty, that the incident resulted in Post Traumatic Stress Disorder. I hope this information is useful.

Sincerely,

Robert Hartley

Robert Hartley, Ph.D.

Staff Psychologist

Mayberry Mental Health Institute

Mayberry Mental Health Institute
Robert Hartley, Ph.D., Licensed Psychologist

September 25, 2018

Dear Mr. Kingree:

At your request, I am authoring this letter to clarify my opinions on Mr. Fife's mental health conditions, the cause of his conditions, restrictions they cause for him in work, and permanency.

First, I believe he has had an anxiety disorder and experienced chronic pain for most of his life.

Second, it is my opinion that Mr. Fife's depression improved with treatment changing from severe to moderate. Unfortunately, his chronic pain worsened after the September 1, 2017 work accident, which never improved during my treatment with him. We did discuss his use of painkillers and muscle relaxants following the September 1, 2017 work accident, and I believe that he is not addicted to them. Instead, I believe he needs these medications to cope with his chronic pain as the other treatment alternatives have either not worked or are too scary for him to do without any guarantee that they will work.

Third, I believe the September 1, 2017 work accident caused his current emotional problems, including the recent diagnoses of depressive disorder and Post Traumatic Stress Disorder.

Fourth, Mr. Fife has a need for significant restrictions resulting from his mental health conditions. The shooting occurrence has resulted in an inability to concentrate on even the simplest tasks, and the thought of returning to employment in law enforcement is laughable to him. I do not believe that he is capable of working in any law enforcement or security fields due to his compromised cognitive functioning resulting from the combination of his anxiety, depression, Post Traumatic Stress Disorder, use of needed narcotics to control pain, and chronic pain. Mr. Fife will require taking an antidepressant, painkiller and mental health counseling for the foreseeable future.

Specific restrictions from a psychological perspective include him needing to take frequent breaks from assigned tasks/job duties (i.e., 5-minute break every 60 minutes) to help him regroup cognitively. His compromised cognitive functioning when stressed by flashbacks, pain, painkillers, or time deadlines would require accommodation to allow him more time on tasks than what the competitive marketplace would allow. I refer you to my earlier issued Mental Impairment Questionnaire regarding limitations in the workplace. I believe he will miss 3 or more days per month due to his depression. He can work in simple, low-stress jobs that allow him to work at his own pace, or at minimum at a pace that is slower than pressured professional jobs.

Fifth, as indicated in my previous letter, any law enforcement officer required to carry a gun must be prepared to use it, and a shooting occurrence in and of itself does not constitute extraordinary stress for a law enforcement officer. However, at the time of the shooting in question, the suspect was not a threat to Mr. Fife or others, and Mr. Fife had no cause to shoot the suspect. Investigating authorities deemed that the shooting occurrence was not justified, because of which Mr. Fife lost his job and a civil lawsuit. Mr. Fife had been the subject of death threats by the Darlings following the shooting. As such, these additional factors made the shooting occurrence and its aftermath extraordinarily stressful.

Finally, I believe Mr. Fife has a 20% permanent partial disability to the body as a whole for his psychological conditions. I believe that the September 1, 2017 work incident permanently aggravated his pre-existing conditions related to pain and anxiety and resulted in depression and Post Traumatic Stress Disorder.

Very truly yours,

Bob Hartley, Ph.D.
Licensed Psychologist

February 22, 2019

Ron Aplin, J.D.
Aplin & Ringsmuth, LLC
P.O. Box 348
Deerfield, WI 53531

Re: Employee: Bernard "Bernie" Fife
Employer: County of Mayberry
Insurer: Blue Devil Municipalities Mutual Insurance Company
(BDMMIC)
D/Injury: 09/01/2017
WC Claim: 2017-00001

Dear Mr. Aplin:

Enclosed please find my independent psychological evaluation report of Mr. Fife. Following your review of my report, please feel free to contact me if you have any further questions concerning my opinions in this matter.

Thank you for the opportunity to participate in this interesting case.

Sincerely,

Frasier Crane, Ph.D., FABFE, DABPS
Fellow, American Board of Forensic Examiners
Diplomate, American Board of Psychological Specialties
Licensed Psychologist

Enclosure

PSYCHOLOGICAL REPORT

Confidential and Privileged Information For Use in a Wisconsin Worker's Compensation Claim

Prepared for: Ron Aplin, J.D.
Aplin & Ringsmuth, LLC
P.O. Box 348
Deerfield, WI 53531

Re: Employee: Bernard "Bernie" Fife
Employer: County of Mayberry
Insurer: Blue Devil Municipalities Mutual Insurance
Company (BDMMIC)
D/Injury: 09/01/2017
WC Claim: 2017-00001

PURPOSE OF EVALUATION

Attorney Ron Aplin, representing the respondent, County of Mayberry and their insurance carrier Blue Devil Municipalities Mutual Insurance Company (BDMMIC), has requested that an independent psychological evaluation be conducted on Mr. Bernard Fife, applicant in this claim.

Historically, Mr. Fife began working as a sheriff's deputy for the County of Mayberry in 1983. The shooting incident occurred on September 1, 2017, when Mr. Fife was attempting to arrest suspects alleged to be operating a methamphetamine laboratory. As Mr. Fife approached one of the suspects, he tried to come to a quick stop, tripped, and accidentally pulled the trigger of the gun, causing it to discharge in the general direction of his suspect, striking him. After the suspect had been transported via EMS for medical treatment, Mr. Fife drove his squad car back to the Mayberry County Courthouse.

Since his injury date, Mr. Fife has sought medical treatment with Dr. Bailey, M.D., an orthopedic surgeon, for his back pain. During the course of his medical treatment with Dr. Bailey, Mr. Fife reports that his pre-existing anxiety and depressive symptoms have been exacerbated, along with the onset of Posttraumatic Stress Disorder symptoms. Dr. Peterson referred him to Robert Hartley, Ph.D., a psychologist, for mental health treatment.

As a result of Mr. Fife's claim, Attorney Aplin has asked specific questions to be addressed in this evaluation.

INFORMATION SOURCES FOR EVALUATIONS

- Review of records/documents:
 - Mayberry Memorial Hospital

- Mayberry Chiropractic
 - Mayberry Clinic
 - Bailey Orthopaedics, S.C.
 - Mayberry MRI
 - Mayberry Neurology
 - Excruciating Pain Management Clinic;
 - Employer's First Report of Injury or Disease (WKC-12)
 - Independent Record Review report authored by Marcus Welby, M.D. dated October 31, 2017;
 - Independent Medical Examination report authored by Marcus Welby, M.D. dated December 10, 2018;
 - Blackwater Orthopedic Associates/Stanley Killiwani, M.D.;
 - Mayberry Mental Health Institute/Robert Hartley, Ph.D. (dates of service beginning December 14);
- Clinical Interview with applicant, Mr. Bernard Fife, conducted on February 9, 2019; and
 - Psychological testing of Mr. Fife conducted on February 9, 2019:
 - Minnesota Multiphasic Personality Inventory®-2 (MMPI®-2)

RESULTS OF EVALUATION

Review of Records/Documents

Healthcare Records:

Pre-Injury Records:

In 1977, Mr. Fife slipped on a bar of soap in the shower in the boys' locker room at Mayberry Union High School and injured his lower back. He treated at the emergency room at Mayberry Memorial Hospital for what was initially diagnosed as a strain/sprain injury. X-rays taken at the hospital showed Mr. Fife had a spondylolysis condition at L5-S1, with spina bifida occulta, but no fracture. Mr. Fife was treated conservatively and released. He periodically undertook chiropractic adjustments for intermittent back and left lower extremity complaints at Mayberry Chiropractic thereafter, both as a high school student, and after he returned from the military in 1983.

Records from Mayberry Memorial Hospital from February 1, 2016 reveal that Mr. Fife treated in the Emergency Room for complaints of headaches and pain in his neck and back following a motor vehicle accident in which he was involved that afternoon. Mr. Fife was diagnosed with a flexion/extension ("whiplash") injury to his neck and back, and was given a soft collar, prescribed Flexeril and Vicodin, and released, with instructions to follow up with his primary care physician at Mayberry Clinic if he had further difficulties with his neck or back.

Following the motor vehicle accident, Mr. Fife's chiropractor, Dr. Doyle Bennett, helped him treat his spinal complaints with a home traction unit purchased online from Subluxation.com.

Mr. Fife reported ongoing neck and back complaints to Dr. Bennett, with whom he treated daily for several weeks following the motor vehicle accident. Dr. Bennett diagnosed him with vertebral subluxations at Levels C5-6 and L5-S1, which he said were manifested on x-rays, and which he treated with adjustments. He also diagnosed Mr. Fife with cephalgia, cervicalgia, and lumbalgia. Dr. Bennett indicated on September 1, 2016 that Mr. Fife had sustained permanent injuries to his neck and back in the February 1, 2016 motor vehicle accident, and that he would need chiropractic care for the rest of his life to treat them.

Mr. Fife also treated medically at the Mayberry Clinic with Dr. Peterson, his primary care physician, following the motor vehicle accident, beginning February 7, 2016. He was diagnosed with headaches and a neck and back strain, and prescribed Vicodin for pain and Flexeril as a muscle relaxant. At his next appointment on February 14, 2016, Mr. Fife was prescribed two weeks of physical therapy at Mayberry Memorial Hospital, and his Vicodin and Flexeril prescriptions were renewed. Mr. Fife filled his prescriptions, but failed to follow through with the prescribed course of physical therapy after the first scheduled appointment at Mayberry Memorial Hospital on February 15, 2016, expressing his intention to treat with his chiropractor instead. When seen by Dr. Peterson again on February 28, 2016, Mr. Fife indicated that he was no better, and that he was experiencing numbness and tingling down his left leg to the level of his toes, in addition to neck and back pain. Dr. Peterson switched Mr. Fife from Vicodin to OxyContin, a longer-acting narcotic.

Subsequently, Mr. Fife undertook the prescribed MRI scan on March 1, 2016. The scan reportedly showed Grade I spondylolisthesis of L5 on S1, spina bifida occulta at L5-S1, and a central and left-sided disk bulge at the same level. When Mr. Fife reported continuing complaints of numbness and tingling in his left lower extremity to the level of his toes on March 7, 2016, and having reviewed the MRI scan report, Dr. Peterson referred his patient to Lou Bailey, M.D., an orthopedic surgeon at Bailey Orthopaedics, S.C. for a consultation regarding a possible spinal fusion procedure. An appointment was made for Mr. Fife with Dr. Bailey on March 14, 2016, but his records reveal that Mr. Fife failed to show up for the appointment. [FC NOTE: Mr. Fife appears to be selectively attending healthcare appointments that he sees/deems appropriate versus following the guidance of his healthcare providers.]

Mr. Fife retained attorney, Neil Bentley, to represent him in a personal injury claim against Thelma Lou, Gerald Whitfield, and their respective liability insurance carriers, stemming from the February 1, 2016 motor vehicle accident. The personal injury claim settled at a court-mandated mediation session on April 13, 2017 for \$100,000.

Mr. Fife noted he continued receiving chiropractic care for neck and back complaints intermittently after settling his personal injury claim. Dr. Bennett adjusted his neck and back for "subluxations" on three occasions the week of August 28, 2017, including one session on August 31, 2017, the day before Mr. Fife now claims to have been injured.

Mr. Fife reported taking Xanax for his anxiety complaints, prescribed by Dr. Peterson, at the time of the September 1, 2017 occurrence.

Post-Injury Records:

The day following the September 1, 2017 shooting occurrence, Thelma Lou, Mr. Fife's girlfriend transported him to the Emergency Room at Mayberry Memorial Hospital.

Mr. Fife was seen in the Emergency Room at Mayberry Memorial Hospital, where he complained of lower back and left lower extremity symptoms. He said that his current medications included Xanax and ibuprofen. Mr. Fife handed the nurse who took his history a copy of his list of the 25 substances to which he believed himself to be allergic. Mr. Fife indicated to the nurse and doctor who took histories from him that thought he might have injured his lower back the previous evening in a work-related shooting occurrence. He admitted that he had previous lower back injuries and treatment, but indicated that he had recently "been better." Mr. Fife complained of feelings of numbness and tingling in the posterior leg and foot, which he described as a "pins and needles" sensation. He was felt to have a diminished Achilles tendon reflex on neurological examination. X-rays were taken of his lower back, which reportedly revealed the previously seen Grade I spondylolisthesis of L5 on S1 and spina bifida occulta at L5-S1, with diminished disk space and osteophytes at that level. The Emergency Room physician prescribed Vicodin, Flexeril and ibuprofen, and suggested that Mr. Fife should rest and ice his back for the next several days for what he diagnosed as a strain or sprain injury, with a possible herniated L5-S1 disk and radiculopathy. It was suggested to Mr. Fife that he follow up with his primary care physician.

Subsequently, Mr. Fife met with Dr. Peterson at the Mayberry Clinic on an urgent basis on Tuesday morning, September 5, 2017, with continuing complaints of pain and spasms in his lower back, and numbness and tingling in the side of his left leg to the level of his foot. Records from Mayberry Clinic indicate that he was "sobbing" while describing his symptoms and that he had difficulty telling Dr. Peterson about the shooting occurrence. Dr. Peterson noted that Mr. Fife said that he "was convinced that he screwed up this time to the point that even Andy will have to fire him." On examination, Dr. Peterson felt that Mr. Fife had objective evidence of a possible disk herniation on the left at Level L5-S1 on examination, and ordered an MRI scan. He prescribed Vicodin and Flexeril, and authorized Mr. Fife to remain off of work until re-examined. He noted that Mr. Fife's anxiety condition was exacerbated by the shooting occurrence of September 1, 2017 and by the discipline he expected to be imposed because of it, and renewed Mr. Fife's Xanax prescription. He suggested that if things did not improve for Mr. Fife soon, psychologically speaking, he would likely have to consult with a mental health professional; he suggested Dr. Bob Hartley, a local psychologist.

Andy Taylor, Sheriff for the County of Mayberry, authored an injury report on a Mayberry County "First Report of Injury" form, along with a WKC-12 "Employer's First Report of Injury or Disease," and sent the documents to Clara Edwards in the

Human Resources Department to be forwarded to the worker's compensation insurance carrier, Blue Devil Municipalities Mutual Insurance Company. Clara, who took a dim view of "all things Barney," penciled a note at the top of the WKC-12 form suggesting that the "Claim should be investigated and denied - prior back injury, and always had a screw loose."

An MRI scan was performed at Mayberry MRI on September 8, 2017. The MRI scan reportedly showed Grade I spondylolisthesis of L5 on S1, spina bifida occulta at L5-S1, and a central and left-sided disk herniation at the same level, which was felt to obliterate the nerve root on the left and cause significant spinal stenosis. The radiologist who read the scan felt that the results were consistent with the subjective complaints voiced by Mr. Fife. On September 12, 2017, after reviewing the MRI scan report, and re-examining his patient, Dr. Peterson referred Mr. Fife to Dr. Bailey at Bailey Orthopaedics, S.C. for a consultation regarding a surgery. Dr. Peterson renewed the Vicodin prescription, and authorized Mr. Fife to remain off of work until further notice.

Mr. Fife was seen by Dr. Bailey on September 19, 2017. He acknowledged a prior history of back and left lower extremity complaints, but added that until the September 1, 2017 shooting occurrence, he had been doing better, as far as his back and leg complaints were concerned. He did not tell Dr. Bailey about his ongoing recent chiropractic care. Mr. Fife was prescribed physical therapy and epidural steroid injections. Dr. Bailey insisted that Dr. Peterson remain the only health care provider to prescribe narcotic pain medication for Mr. Fife, and declined to give him OxyContin or Vicodin for his pain complaints.

Mr. Fife followed through with physical therapy at Mayberry Memorial Hospital between September 19 and October 24, 2017, without resolution of his symptoms. The prescribed series of epidural steroid injections were administered by an anesthesiologist at Mayberry Memorial Hospital, Dr. Martha Hollister, with only temporary relief reported after each injection. On November 7, 2017, after a pre-operative evaluation by Dr. Peterson, Dr. Bailey performed a bilateral laminectomy, discectomy and posterior fusion procedure at Level L5-S1 at Mayberry Memorial Hospital. Mr. Fife was discharged from Mayberry Memorial Hospital on November 10, 2017, with Vicodin for pain, and instructions to follow up with Dr. Bailey in due course.

Dr. Bailey indicated on June 11, 2018 that it would take a year from the date of surgery to determine the ultimate outcome, but that objectively speaking, Mr. Fife appeared to have obtained a good result. Dr. Bailey suggested that Mr. Fife should undertake a multi-disciplinary pain management program, including psychological treatment, to deal with his subjective pain complaints, and that he should be weaned from narcotic pain medication. (Some of Dr. Bailey's notes seem to suggest that "secondary gain" considerations, particularly including a desire for narcotic pain medication and recovering worker's compensation and duty disability benefits, may be the underlying explanation for Mr. Fife's lingering subjective pain complaints.) Dr. Bailey indicated that Mr. Fife was still within the healing period, but could return to sedentary work; he prohibited Mr. Fife from returning to work as a deputy sheriff. Based upon the history given to him by Mr.

Fife, Dr. Bailey opined that the shooting occurrence of September 1, 2017 aggravated, accelerated and precipitated Mr. Fife's pre-existing, degenerative back condition beyond ordinary progression, and that the surgery performed on November 7, 2017 was at least partially attributable to it.

On November 12, 2018, one year after the surgery, Dr. Bailey re-examined Mr. Fife. X-rays were performed which reportedly revealed a solid fusion mass at L5-S1. Mr. Fife continued to complain of numbness and tingling in his left leg and foot, and of pain in his lower back. Mr. Fife continued to take OxyContin prescribed for him by Dr. Peterson for his pain complaints. Dr. Bailey indicated that Mr. Fife had reached a healing plateau, and assessed him as having 15% of permanent, total disability for functional loss. Dr. Bailey again suggested that Mr. Fife should undertake a multi-disciplinary pain management program, including psychological treatment, to deal with his subjective pain complaints, and that he should be weaned from narcotic pain medication.

On June 25, 2018, Mr. Fife consulted at the Excruciating Pain Management Clinic with Dr. Hackenbush on referral from Dr. Bailey, to explore the potential that a multi-disciplinary pain management program might be of assistance to him. Dr. Hackenbush mentioned a long list of potential treatment options to Mr. Fife as potentially being of assistance to him, including facet joint injection, intradiscal electrothermal therapy (IDET), intrathecal pump implant, lumbar sympathetic nerve block, and radiofrequency nerve ablation, all of which Mr. Fife reported as appearing "seemed terrifying and disturbing." Per Mr. Fife's self-report, he never returned to the Excruciating Pain Management Clinic.

Blue Devil Municipalities Mutual Insurance Company commissioned a records review by Marcus Welby, M.D., an orthopedic surgeon. On October 31, 2017, Dr. Welby issued a report indicating that assuming that the September 1, 2017 occurrence took place as alleged, Mr. Fife sustained at most a temporary lower back strain or sprain, superimposed over his pre-existing degenerative and congenital back condition, which should have resolved without residuals and without surgery by October 16, 2017, with no permanency. He indicated that the proposed discectomy, laminectomy and fusion procedure was occasioned by the pre-existing degenerative and congenital back condition, and not the residuals of the September 1, 2017 occurrence. He opined that the surgery did not constitute reasonable or necessary medical care, regardless of causation, and indicated that given his prior medical and psychological history, Mr. Fife's prognosis following surgery would be poor. Dr. Welby's report was provided to both Mr. Fife and Dr. Bailey prior to the November 7, 2017 surgery, but surgery took place as scheduled anyway.

On December 10, 2018, Dr. Welby examined Mr. Fife at the request of Blue Devil Municipalities Mutual Insurance Company. He reiterated his opinions on the causation issue. Regardless of causation, he indicated that Mr. Fife had reached an endpoint in healing following surgery on November 12, 2018. He indicated that while (predictably, he said) Mr. Fife subjectively felt that he had obtained a less than good result from surgery, he had (objectively) obtained an excellent result, and experienced 10% of permanent, total disability for functional loss

regardless of causation. Additionally, Dr. Welby specifically indicated that further use of narcotic pain medication was not medically reasonable, and was in fact detrimental to Mr. Fife in his recovery from surgery.

CLINICAL INTERVIEW

Mr. Fife was evaluated on February 9, 2019 in Mayberry, Wisconsin. He drove herself to the appointment and was the sole source of information during the interview.

Mr. Fife appeared open and frank in his interactions with this psychologist. He appeared to be fully cooperative with the evaluation process. His attitude was pleasant, though his mood was depressed and anxious and affect was flat.

Mr. Fife's physical description is that of a Caucasian adult male who reported his height to be 5'-11" and weight to be approximately 175 pounds. He is 57 years old and his appearance is consistent with his stated age. Throughout the evaluation, Mr. Fife exhibited consistent pain behaviors. He did not exhibit any overdramatic pain behaviors. In fact, his pain behavior seemed typical of someone who was experience pain in his back with being careful in his movements when getting in and out of a chair or walking. He wore appropriate and clean clothing. He was well groomed and hygiene was excellent.

Mr. Fife did not evidence signs of mental confusion, but appeared at times to exhibit slow mentation when expressing his thoughts. He is able to organize his thoughts and verbalizing them in logical coherent fashion. His intellectual abilities were within in the average range. His concentration/attention span appeared to be within normal limits for the entire 3-hour evaluation. At no time did he appear to be easily distracted.

Mr. Fife currently lives alone at Mrs. Mendelbright's boarding house. He indicated that he recently ended a longer-term relationship with Thelma Lou and begun dating one need to, worked as a dancer at Pea Picker's, a local gentleman's establishment. He was open in his admission of "needing to have a distraction" in his life given all of the changes that had been happening since he lost his job with the County of Mayberry.

Mr. Fife indicates that he graduated from Mayberry Union High School in June 1980 and subsequently attended Mayberry Technical College, graduating with an Associate's degree in police science. He denied any history of learning disabilities, special classes or behavioral problems while in school.

He readily admits to a significant history of narcotic medication misuse, which had been coupled with increased levels of use since the September 1, 2017 shooting occurrence. He initially denied any past abuse history of opioids, but later in this interview admitted he has been taking opioids since her original back injury in 1977 which occurred when he slipped on a bar of soap in the shower in the boys locker room at Mayberry Union High School.

He reports he served in the United States Army beginning in 1980, primarily serving stateside running a PX library at a base on Staten island for the duration of his military service. He reports being honorably discharged from the Army in 1983.

Mr. Fife describes his family of origin history as chaotic and permissive. He stated that he never felt loved by his parents, as they often were busy spending time with their friends, which left him with the desire to secure their attention. Per his report, he often enjoyed the company of his cousin and best friend, Andy Taylor, whom he described as "tall, athletic and very popular." In contrast, Mr. Fife notes he was "not popular with the girls, nor his male classmates for that matter." He denied being abused physically, sexually and/or emotionally, but felt his parents were neglectful.

Mr. Fife is currently not working as he was never allowed to return to work following his mandatory three-day administrative leave following the September 1, 2017 shooting. He indicated that he was terminated for negligent handling of his service revolver and insubordination (loading his weapon contrary to Andy's orders).

Mr. Fife denies any legal history. However, he reports his awareness that Clara Edwards, the Human Resources Administrator for Mayberry County, pressed the district attorney to charge Mr. Fife with a crime in relation to the shooting (injury by reckless use of a firearm).

Mr. Fife reported that since the work incident on September 1, 2017, he experienced an increase in his low back pain. He asserts that the pain he currently experiences is "different" than before, though he does not deny having low back pain before the injury date. Currently, he rates his low back pain at a severe level with a rating of "8 or 9" on a 10-point maximum scale of pain distress/discomfort. To help control his pain symptoms, Mr. Fife has taken several opioids in the past and is now taking various narcotics. He denies abusing opioids, but expressed a desire to stop drinking alcohol alongside them, which he states he is aware is "pretty much unwise."

His mental health history of symptoms started before his work injury date in 2017. He admits to long-standing struggles with anxiety "throughout much of his life" and notes being prescribed Xanax and Ativan beginning at an early age to treat his symptoms. In addition, he reports a desire throughout his lifetime to have others see him as confident in that he suspects others around him may see his false bravado as an attempt to hide his insecurities and low self-esteem. He shares his awareness of a tendency to overreact to be nine situations, often taking minor infractions and blowing the motor proportion, as an attempt to "show everyone who is in charge." Despite his history of anxiety, he does not report any history of outpatient counseling prior to the September 1, 2017 shooting occurrence. As noted above, he did report taking anti-anxiety medications in the past prescribed by his primary care physician (Dr. Thomas Peterson).

He reports having multiple reasons for why he feels increasingly anxious and depressed since the September 1, 2017 shooting occurrence. He identified low back pain, as well as the losses of his law-enforcement career, and loneliness without Thelma Lou.

Regarding her current levels of anxiety and depression, he rates them both as "8 or 9" on a 0-10 scale (0=no anxiety/depression; 10=major anxiety/depression with suicidal intent/plan). He denied any history of active suicidal ideations/intent, but admitted to having passive suicidal ideations. He opines during the current evaluation that his anxiety depression started long before his injury date in 2017, but increased after hurting his back and losing his job as a result of the work incident.

PSYCHOLOGICAL TESTING

Minnesota Multiphasic Personality Inventory-2 (MMPI-2) T-Score Table																
Administration	Validity Scales						Clinical Scales									
	CS	L	F	K	VRIN	TRIN	1-Hs	2-D	3-Hy	4-Pd	5-Mf	6-Pa	7-Pt	8-Sc	9-Ma	0-Si
February 9, 2019	0	57	70	54	58	55	76	80	78	70	55	65	49	57	56	49
CS=Cannot Say; L=Lie; F=(In)frequency; K=Defensiveness; VRIN=Variable Response Indicator; TRIN=True Response Indicator; Hs=Hypochondriasis; D=Depression; Hy=Hysteria; Pd=Psychopathic Deviate; Mf=Masculine/Feminine; Pa=Paranoia; Pt=Psychasthenia; Sc=Schizophrenia; Ma=Mania; Si=Social Introversion																
	Supplementary Scales						Content Scales									
	MAC_R	APS	AAS	PK	Do	Re	HEA	BIZ	ANG	ASP	LSE	SOD	FAM	WRK	TRT	
	83	80	57	62	45	38	75	48	73	60	87	40	90	65	80	
MAC-R=MacAndrew; APS=Addiction Potential; AAS=Addiction Admission; PK=Posttraumatic Stress; Do=Dominance; Re=Social Responsibility						HEA=Health Concerns; BIZ=Bizarre Mentation; ANG=Anger; ASP=Antisocial Practices; LSE=Low Self Esteem; SOD=Social Discomfort; FAM=Family Problems; WRK=Work Interference; TRT=Negative Treatment Indicator										

The MMPI-2® was administered for the purpose of assessing Mr. Fife’s current psychological symptoms and personality adjustment. The test contains a number of Clinical Scales, which assess a wide range of symptoms and adjustment problems.

In reviewing his current Validity Scales, Mr. Fife appears to be moderately exaggerating his report of symptom distress as a likely "cry for help". This is not unusual considering the circumstances of his claim and suggests he is attempting to emphasize how serious his symptoms are at the present time. This profile is probably valid, though his level of symptom distress is somewhat higher due to his response bias. Despite his efforts to over report his symptom distress, he is not considered to be malingering. [FC NOTE: This would require a much higher T-Score on the F Scale (i.e., T≥90).]

Further analysis of her Clinical, Supplementary and Content Scales reveals an interesting pattern of symptoms and/or difficulties being reported on this occasion.

For instance, he endorsed a high number of items on five (5) of the 10 original Clinical Scales. Those scales in descending order of elevation were Scale 2-Depression, Scale 3-Hysteria, Scale 1-Hypochondriasis, Scale 4-Psychopathic Deviate, and Scale 6-Paranoia. The three (3) highest elevated clinical scales (2-3-1) is indicative of a chronic neurotic clinical picture involving depression, anxiety and somatic preoccupation. Persons with this profile have often learned to tolerate great unhappiness and have poor motivation for help and respond poorly to treatment. They frequently operate at a low-level of efficiency for long periods of time.

Other Supplementary and Content Scales reinforce this interpretation (i.e., HEA, LSE and TRT).

Analysis of his Content Scales reveal a pattern of symptoms (i.e., anger, low self-esteem, and family problems) that are consistent with his report to Dr. Hartley and myself.

Of clinical interest is his marginal score on the WRK Scale, which measures his level of symptomatic distress interfering with his work. Although he is reporting some difficulties with work on the MMPI-2®, he is not endorsing the number of items consistent with his subjective report given to Dr. Hartley or me.

CONCLUSIONS/DISCUSSION

The following opinions are made to a reasonable degree of psychological probability. These opinions are formulated through an integration of information obtained from multiple sources.

1. Please summarize the relevant psychological history and share your opinions.

Mr. Fife has a longstanding history of anxiety, depression, and lower back pain and narcotic prescription misuse/abuse dating back to his high school years.

It is my belief that all of Mr. Fife's psychological conditions originated before the work injury date of September 1, 2017. Therefore, it is my current opinion that all of his mental conditions represent preexisting conditions.

It is my opinion that Mr. Fife experienced temporary aggravations of his pre-existing anxiety and depression conditions following the September 1, 2017 shooting occurrence, which resolved with no permanency (i.e., to their preinjury baseline) by a March 7, 2018. [FC NOTE: Mr. Fife reported

his "25-point list of allergens," which suggested Mr. Fife was "pretty crazy" even before he accidentally shot Ernest T Bass.] Furthermore, it is my professional opinion that there was no unusual stress associated with the shooting occurrence, as Mr. Fife had been trained in the use of lethal force and that responding to threats by suspects and others are considered to be an expected part of police work.

Regardless of causation, I believe that the psychological treatment Mr. Fife received at Mayberry Mental Health Institute with Dr. Hartley was reasonable and appropriate. Furthermore, it is my professional opinion that Mr. Fife would benefit from ongoing counseling as well as anti-anxiety and antidepressant medications, yet this treatment would be directed towards his pre-existing mental health issues and not the residuals of the shooting occurrence. [FC NOTE: In my professional opinion, I have questions about Mr. Fife's ever was a suitable candidate for police work even prior to the shooting occurrence.] Finally, it is my opinion that Mr. Fife has many financial and other reasons to hold himself out as psychologically disabled. [FC NOTE: Sadly, it is my opinion, although not professionally stated, that any baboon with Internet access can figure out what to say to get diagnosed with PTSD these days.] Given Mr. Fife's scores on the validity scales on the MMPI-2, it is my impression that malingering might be a more accurate diagnosis than PTSD in Mr. Fife's case.

As noted above, it is my professional opinion that Mr. Fife did not suffer any permanent psychological disability with respect to her September 1, 2017 work injury. In my opinion, he does have a 3% PPD rating for his preexisting mental health conditions collectively. This PPD rating is to the body as a whole and represents his baseline, pre-injury level of psychological functioning. The work incident did not result in his having any permanent disability.

Please do not hesitate to contact me if you have further questions regarding my opinions in this matter.

Respectfully submitted,

Frasier Crane, PhD, FABFE, DABPS
Fellow, American Board of Forensic Examiners
Diplomate, American Board of Psychological Specialties
Licensed Psychologist

May 2, 2019

(Sent via email only)

Attorney Henry Beckman Gilbert
Gilbert & Sullivan, LLC
[hgilbert@no\\$.com](mailto:hgilbert@no$.com)

Re: Bernard Fife v. County of Mayberry

**LOSS OF EARNING CAPACITY EVALUATION
Mel Johnson, MS, CRC, LPC**

REASON FOR REFERRAL

Mr. Bernard Fife, age 56, was referred for an independent vocational evaluation to assess loss of earning capacity. Before beginning the clinical interview with Mr. Fife, we reviewed the contents of a professional disclosure form that explained my role as a vocational expert. Mr. Fife expressed his understanding of my role.

Information contained in this report is based upon a clinical interview with Mr. Fife conducted telephonically on January 1, 2019, and a review of medical records, employment records, the WKC-12 from September 5, 2017, Mr. Fife's recorded statement from September 7, 2017, the loss of earning capacity evaluation of John Meltzer, MS, CRC (vocational expert extraordinaire), an assessment of past relevant work and general labor market research.

This evaluation is performed utilizing the Vocational and Rehabilitation Assessment Model (VRAM), developed by Robinson and Pomeranz (2011), an empirically-derived structural model of vocational and rehabilitation assessment in a forensic setting. The model is divided into three distinct operational modules: records review and rehabilitation interview; labor market research and inquiry; and rehabilitation analysis and opinion formulation. This model serves as the foundation for the opinions offered in this report. I have also considered factors outlined under DWD 80.34 of the Wisconsin Administrative Code.

MEDICAL RECORD REVIEW

Prior to meeting with Mr. Fife, I reviewed medical records from the emergency department of Mayberry Memorial Hospital and Drs. Bennett, Peterson, Bailey, Hackenbush, Welby, Hartley and Crane were reviewed.

Medical records document treatment received by Mr. Fife that predated the September 1, 2017 work injury. In 1977, Mr. Fife was diagnosed with a spina bifida condition at L5-S1. In February 2016, he was treated in the emergency department with complaints of headaches and pain in his neck and back following a motor vehicle accident. Dr. Bennett indicated on September 1, 2016

123 Seminole Ct., Suite 206 • Madison, WI 53711
www.VocExpertServices.com

that Mr. Fife had sustained permanent injuries to his neck and back and would need chiropractic care for the rest of his life.

In March 2016, Dr. Peterson referred Mr. Fife to Dr. Bailey for an orthopedic consultation to discuss surgery. Mr. Fife failed to show for the appointment.

Mr. Fife presented to the emergency department of Mayberry Memorial Hospital on September 2, 2017 complaining of lower back and left lower extremity symptoms as a result of a work-related shooting incident the day before. He was advised to follow up with his PCP after Labor Day weekend.

Mr. Fife was seen by Dr. Peterson on September 5, 2017 on an urgent basis complaining of pain and spasms in his low back and numbness and tingling in his left leg to the foot. Dr. Peterson felt that there was a possible disc herniation at L5-S1 on the left. He also noted that Mr. Fife's anxiety condition was exacerbated by the shooting occurrence and he should consult a mental health professional.

On September 19, 2017, Dr. Bailey prescribed physical therapy and epidural steroid injections for Mr. Fife.

On October 31, 2017, Dr. Welby issued a medical record review indicating that the work incident at most resulted in a temporary low back strain or sprain superimposed on his pre-existing degenerative and congenital back condition. This resolved without residuals and without surgery by October 16, 2017, with no permanency. The proposed surgery will address the pre-existing condition and is not due to the residuals of the work injury.

On November 7, 2017, Dr. Bailey performed a bilateral laminectomy, discectomy and posterior fusion at L5-S1.

On December 14, 2017, Mr. Fife began treating with Dr. Hartley, a psychologist. Dr. Hartley eventually diagnosed Mr. Fife with an aggravation of his chronic anxiety condition and being subjected to PTSD and depression due to the shooting occurrence. Mr. Fife is unable to return to work in law enforcement or security. He will need to take a 5-minute break every 60 minutes to help him regroup cognitively. He has compromised cognitive functioning that will require an accommodation to allow him more time on tasks than what the competitive marketplace would allow. He will miss work 3 or more days per month due to his depression. He can work in a simple, low-stress job that allows him to work at his own pace. He has a 20% permanent partial disability for his psychological condition.

On June 11, 2018, Dr. Bailey recommended that Mr. Fife participate in a multi-disciplinary pain management program that includes psychological treatment and weaning from narcotic pain medication. While still within the healing period, Mr. Fife may return to sedentary work, but is prohibited from returning to work as a deputy sheriff. Dr. Bailey opined that the work incident aggravated a pre-existing degenerative back condition beyond ordinary progression.

On November 12, 2018, Dr. Bailey declared Mr. Fife at end of healing with a 15% permanent partial disability rating. Mr. Fife may never return to police work. He has a permanent restriction against lifting over 25 pounds, and occasional bending, pushing or pulling with frequent changes in position. The use of pain medication would make it difficult for him to concentrate.

On December 10, 2018, Dr. Welby issued an independent medical evaluation report. His opinions on causation were unchanged. Regardless of causation, Mr. Fife has reached a healing plateau for the surgery on November 12, 2018. He has a 10% permanent partial disability rating. He is capable of medium work, lifting 50 pounds occasionally. He has no other restrictions. He could resume police work "with some accommodations for lifting." Narcotic pain medication was not medically reasonable and was detrimental in his recovery from surgery.

According to the February 22, 2019 independent psychological evaluation of Dr. Crane, the work injury resulted in a temporary aggravation of Mr. Fife's pre-existing anxiety and depression. This resolved without permanency by March 7, 2018.

SOCIAL/ECONOMIC BACKGROUND

Mr. Fife was born May 16, 1962. He was raised in Mayberry, Wisconsin. Mr. Fife was residing in an apartment in Mayberry at the time of injury.

Mr. Fife is single and has never been married. He has no children.

Mr. Fife has a valid, regular driver's license, without restriction.

Mr. Fife is pursuing a duty disability claim. He is thinking about pursuing a claim for SSDI benefits, but first wanted to see how his workers compensation and duty disability claim turned out. He reports having difficulty meeting his financial obligations at this time.

A typical day now finds Mr. Fife watching reruns of Andy from Mayberry. He also told me that he does "binge" watching of the show Gomer Pyle, USMC. He does not have the funds to go out socially and visit the lovely and talented Juanita at Pea Picker's.

EDUCATION

Mr. Fife is a 1980 graduate of Mayberry Union High School.

Mr. Fife enrolled in the police science program at Mayberry Technical College upon his discharge from the military in 1983. He earned his associate degree in police science in 1985. He has had some continuing education/coursework in law enforcement, including use of firearms, and the use of deadly force.

WORK HISTORY

In 1980, Mr. Fife enlisted in the United States Army. He received basic training including the use of a firearm. He served stateside running a PX library on Staten Island. He was discharged in 1983. He has no service-connected disability.

Mr. Fife was hired as a deputy sheriff with the County of Mayberry on January 7, 1985. He served in that capacity up until the date of injury in September 2017. He was earning \$19.24 per hour at the time of injury.

According to employment records, Mr. Fife was placed on a 3-day administrative leave of absence following the September 1, 2017 accidental shooting, for failing to follow orders. He was subsequently terminated by HR for negligent handling of his service revolver and insubordination.

Mr. Fife has worked nowhere else in any other capacity since the incident of September 1, 2017.

EARNINGS HISTORY

According to the WKC-12, Mr. Fife was earning \$19.24 per hour at injury. In the 50 weeks preceding his injury, he grossed \$53,531.

If we multiply \$19.24 per hour by 40 hours and 52 weeks, annual earnings would be around \$40,000.

REEMPLOYMENT EFFORT

Following his termination, Mr. Fife told me that he attempted to look for work in Mayberry. His unsuccessful efforts at work search led him to conclude that it would be difficult for him to find an employer in Mayberry willing to hire him. Mr. Fife did not have any of his work search documentation available for the clinical interview, so he was unable to identify dates, places of employment and specific job titles for which he applied.

Mr. Fife told me that he applied for DVR services in July 2018. He explained that when Dr. Bailey issued his final report and permanent restrictions in November 2018, the DVR counselor recommended that Mr. Fife pursue a claim for SSDI benefits, believing that he was not employable. DVR closed his case at this time.

Since DVR closed his case, Mr. Fife has not undertaken any other independent effort at return to work. He is pursuing a claim for SSDI benefits at this time.

ASSESSMENT OF PAST RELEVANT WORK

Based upon his work history over the past 15 years, Mr. Fife has engaged in the following job. This occupational information is obtained from the *Dictionary of Occupational Titles (DOT)*, published by the Department of Labor. I have also cross-walked the *DOT* job title to the

corresponding SOC code, which is found within O*NET. The US Department of Labor developed the O*NET to replace the *DOT*, for purposes of career exploration.

Job Title	DOT Code	SOC Code	Strength	SVP Level*
Deputy Sheriff	377.263-010	33-3051	Medium	5

**SVP refers to specific vocational preparation. This is the amount of time needed to learn the techniques, acquire the information and develop the facility for average performance in a specific job-worker situation. Unskilled jobs have a SVP of 1-2 and take up to 30 days to learn; semi-skilled jobs have a SVP of 3-4 and take up to 6 months to learn; skilled jobs have a SVP of 5-7 and 6 months-4 years to learn; and highly skilled jobs have a SVP of 8-9 and can take over 4 years to learn.*

Mr. Fife's past relevant work as a deputy sheriff would be considered medium in strength and skilled in nature, according to the *DOT*.

LOSS OF EARNING CAPACITY

Barney Fife will soon be 57 years of age. While this means that he has another 8-10 years left before reaching normal retirement age, his age will increasingly become a vocational liability. Issues pertaining to his age and work in a protective occupation will be discussed below, along with its vocational implications.

Mr. Fife graduated from high school. He earned an associate degree in police science in 1985. He has some continuing education related to law enforcement.

Mr. Fife has been with one employer for his entire adult working life. He had been employed as a deputy sheriff with the County of Mayberry from 1985 until his termination in 2017. Mr. Fife was making \$19.24 per hour at the time of injury. He grossed around \$53,500 in the last full year leading up to injury.

Mr. Fife was 55 years of age at the time of injury. This is significant as it relates to establishing his pre-injury, or in this case, is post-law enforcement earning capacity. According to information at the Wisconsin Department of Employees Trust Fund website, the minimum retirement age (MRA) for individuals in protective service occupations is age 50. The normal retirement age (NRA) is age 54. At normal retirement age, there is no age reduction factor that would be applied to someone's retirement formula benefit. Individuals in protective service occupations (such as fire fighters, prison security guards and law enforcement professionals) typically retire at normal retirement age. The question then becomes what is Mr. Fife's post-law enforcement earning capacity? In my opinion, this is best represented by what a private security guard could make in the general labor market. According to May 2018 wage and employment data published by DWD for Wisconsin, there are 10,650 security guards in the state, and they have median annual wages of \$27,160. This represents Mr. Fife's post-law enforcement earning capacity, without limitations, as he had achieved normal retirement age for his protective service occupation.

Mr. Fife is claiming physical and psychological injuries as a result of the September 1, 2017 incident. The combination of physical and psychological restrictions outlined by Drs. Hartley and Bailey would cause me to believe that Mr. Fife is permanently and totally disabled.

Dr. Welby opined that Mr. Fife has no permanent disability or permanent work restrictions due to the work injury. As such, Mr. Fife would have no loss of earning capacity.

Regardless of causation, Dr. Welby limits lifting to 50 pounds maximum. Medium work restrictions would allow Mr. Fife to work as a private security guard in the general labor market. He would be able to achieve median earnings for the occupation. So, when considering the restrictions outlined by Dr. Welby without regard to causation, I would conclude that Mr. Fife has a no loss of earning capacity given his ability to work as a private security guard following his retirement from law enforcement.

Dr. Crane concludes that Mr. Fife has no permanent psychological conditions or restrictions as a result of the work incident, as such, Mr. Fife has no long-term loss of earning capacity from a psychological perspective.

Mr. Fife said that he attempted to look for work in Mayberry, post-injury. His attempts did not result in an offer of employment. He did not have any documentation of his work search available for the evaluation, despite being requested to do so in my cover letter. He applied for DVR services, but his DVR counselor suggested that he pursue a claim for SSDI benefits, and they closed out this case. He has not appeared to make what I would consider a reasonable or diligent effort at return to work.

Thank you for referring Barney Fife to my attention for evaluation. All opinions are to a reasonable degree of vocational probability.

Sincerely,

VOCATIONAL EXPERT SERVICES, Inc.

Mel Johnson

Mel Johnson, MS, CRC, LPC
Vocational Expert

Vocational Expert Report

s. 102.17(1)(d)

Note: This report is for use with permanent disability caused by non scheduled injuries only. It is not to be used for scheduled injuries as described in sections 102.52 to 102.55 of the statutes which include injuries to eyes, ears, and limbs.

Personal information you provide may be used for secondary purposes [Privacy Law, s. 15.04(1)(m)].

WC Claim Number	Employee Name BERNARD FIFE	Employee Birth Date
Employee Social Security Number	Employer Name COUNTY OF MAYBERRY	
Date of Accident or First Illness	Highest Level of Formal Education Completed	Vocational Education or Training Completed

Previous Employment

Employer Name	Mailing Address (number, street, city, state, zip code)		
Job Duties	Date Hired	Date Job Terminated	

Employer Name	Mailing Address (number, street, city, state, zip code)		
Job Duties	Date Hired	Date Job Terminated	

List special skills affecting employee's employability

SEE ATTACHED REPORT

List employee's preexisting physical or mental limitations

Nature of Injury	If surgery, give type
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Resulting physical or mental limitations based on medical or chiropractic opinion

Weekly wage at time of injury: \$	Present wage for comparable work with same employer: \$
-----------------------------------	---

Types of employment now available given age, education, work history, and physical and mental limitations of employee

Pay rates for types of employment listed in previous question for the general locality

If presently employed, identify the following:

Employer:

Pay Rate: \$

SEE ATTACHED REPORT

Nature of Work Performed:

Date Started:

Percent of loss of earning capacity to a reasonable probability due to the injury described under **Nature of Injury**. Give a single number percentage or a percentage range, and use the following guidelines to assist with the calculation:

_____ %

A person may be classified as permanently partially disabled when by reason of his or her physical or mental condition he or she has limitations in the performance of his or her work activities. The percentage of such partial disability shall be to the degree that such disability relates to permanent total disability. The expert's opinion should include evaluation of how the disability affects this individual, having in mind his or her education, work history, training, and whether he or she can be retrained or vocationally rehabilitated.

A person may be classified as permanently totally disabled when by reason of his or her physical or mental condition he or she can perform no services other than those which are so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist.

Factors other than those identified above that were considered in analysis (if applicable):

Qualification of Expert (may attach curriculum vitae):

Education: list degree(s), field of study(ies), and date(s)

Work History:

Expert Signature <i>Mel Johnson</i>	Expert Name (print or type) Mel Johnson, MS, C.R.C., L.P.C.
Expert Mailing Address (number, street, city, state, zip code) 123 Seminole Ct., Suite 206 Madison, WI 53711	Expert Telephone Number (608) 123-4567

CURRICULUM VITAE

Mel Johnson, MS, CRC, LPC

Vocational Expert Services, Inc.
123 Seminole Ct., Suite 206
Madison, WI 53711
mjohnson@VocExpertServices.com

EDUCATION

December, 1981 University of Wisconsin-Milwaukee, Milwaukee, Wisconsin;
Master of Science Degree: Educational Rehabilitation Counseling

December, 1975 University of Wisconsin-Eau Claire, Eau Claire, Wisconsin;
Bachelor of Science Degree: Special Education

EMPLOYMENT HISTORY

January, 1999 - Vocational Expert
Present Vocational Expert Services, Inc.
Madison, WI

Conduct independent vocational evaluations to assess earning capacity. Provide expert testimony services. Provide vocational rehabilitation services to persons with disabilities to include vocational assessment, vocational testing, transferable skills analysis, job seeking skills training, labor market surveys, and job development and placement on worker's compensation and long-term disability cases. Coordinate services with other agencies.

1982 – 2005 Vocational Expert
U.S. Department of Health and Human Services, Social Security Administration, Office of Hearings & Appeals (BPA holder 1982-2005)

January, 1998 - Vocational Rehabilitation Counselor/Co-Manager of Wisconsin
December, 1998 Novaeon, Inc.
Madison, WI

November, 1990 - Rehabilitation Services Manager
December, 1997 Chiron/AMS (NHR Wisconsin)
Madison, WI

January, 1982 - Vocational Rehabilitation Counselor/Supervisor
November, 1990 Crawford Health & Rehabilitation Services
Madison, WI

September, 1979 - Special Education Teacher
June, 1982 Glendale-River Hills School District

COMMITTEE/PROFESSIONAL INVOLVEMENT

- 1984 -1985: Association for Retarded Citizens in Dane County; Vocational Education Committee Board Member.
- 2000 - 2015: IARP-Wisconsin Chapter; President-elect (2000); President (2001); Past-president (2002); Treasurer (2011-2015).
- 2000 - 2013: International Association of Rehabilitation Professionals (IARP – formerly known as NARPPS); co-chair of the forensic section (2000-2001); past co-chair of the forensic section (2001-2002); chair elect of forensic section (2002-2003); chair of forensic section (2003-2004); past chair of forensic section (2004-2005); Board of Directors, forensic section representative, (2004-2006); Board of Directors, secretary/treasurer, (2006-2009); Board of Directors, treasurer (2017 – present); and Standard Compliance Review Board (SCRB) – Rehabilitation Counselor (2010-2013).
- 2011 - 2017: Council on Rehabilitation Education (CORE); appointed by IARP as Commissioner to the Graduate Commission on Standards and Accreditation. The Commission evaluates graduate-level rehabilitation counseling programs for their compliance with CORE standards.

PUBLICATIONS

The Verdict, *When Only An Expert Will Do*, Vol. 8:2, Summer 1985

The Rehabilitation Professional, *A Call to Update the DOT: Findings of the IARP Occupational Database Committee*, Volume 17, Number 2, 2009, pages 63-83.

The Rehabilitation Professional, “*Forensic Vocational Interviews: An Exploration of Best Practices*,” Volume 23, Number 2, 2015, pages 101-110.

PROFESSIONAL ORGANZATIONS

Wisconsin Chapter – International Association of Rehabilitation Professionals (WI-IARP)
International Association of Rehabilitation Professionals (IARP)

PROFESSIONAL CREDENTIALS

Certified Rehabilitation Counselor (CRC) – Commission on Rehabilitation Counselor Certification, (#2401)

Licensed Professional Counselor – Wisconsin Department of Safety and Professional Services, (#1151-125)

Private Vocational Rehabilitation Counselor – Wisconsin Department of Workforce Development, Worker’s Compensation Division, (#163)

May 1, 2019

(Sent via email only)

Attorney Neil Bentley

Bentley, Lamborghini and Porsche, LLC

nbentley@seemyrolex.com

Re: Bernard (Barney) Fife v. County of Mayberry

**LOSS OF EARNING CAPACITY EVALUATION
John M. Meltzer, MS, CRC, CDMS, LPC**

REASON FOR REFERRAL

Mr. Barney Fife, age 56, (soon to be 57), was referred for an independent vocational evaluation to assess loss of earning capacity. Before beginning the clinical interview with Mr. Fife, we reviewed the contents of a professional disclosure form that explained my role as a vocational expert. Mr. Fife expressed his understanding of my role.

Information contained in this report is based upon a clinical interview with Mr. Fife in my office in Madison on December 31, 2018, and a review of medical records, employment records, the WKC-12 from September 5, 2017, Mr. Fife's recorded statement from September 7, 2017, an assessment of past relevant work and general labor market research.

This evaluation is performed utilizing the Vocational and Rehabilitation Assessment Model (VRAM), developed by Robinson and Pomeranz (2011), an empirically-derived structural model of vocational and rehabilitation assessment in a forensic setting. The model is divided into three distinct operational modules: records review and rehabilitation interview; labor market research and inquiry; and rehabilitation analysis and opinion formulation. This model serves as the foundation for the opinions offered in this report. I have also considered factors outlined under DWD 80.34 of the Wisconsin Administrative Code.

MEDICAL RECORD REVIEW

Prior to meeting with Mr. Fife, I reviewed medical records from the emergency department of Mayberry Memorial Hospital and Drs. Bennett, Peterson, Bailey, Hackenbush, Welby, Hartley and Crane were reviewed.

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that Mr. Fife had sustained permanent injuries to his neck and back and would need chiropractic care for the rest of his life.

In March 2016, Dr. Peterson referred Mr. Fife to Dr. Bailey for an orthopedic consultation to discuss surgery. Mr. Fife failed to show for the appointment.

Mr. Fife presented to the emergency department of Mayberry Memorial Hospital on September 2, 2017 complaining of lower back and left lower extremity symptoms as a result of a work-related shooting incident the day before. He was advised to follow up with his PCP after Labor Day weekend.

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SOCIAL/ECONOMIC BACKGROUND

Mr. Fife was born May 16, 1962. He was raised in Mayberry, Wisconsin. Mr. Fife was residing in an apartment in Mayberry at the time of injury.

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EDUCATION

Mr. Fife is a 1980 graduate of Mayberry Union High School.

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WORK HISTORY

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According to employment records, Mr. Fife was placed on a 3-day administrative leave of absence following the September 1, 2017 accidental shooting, for failing to follow orders. He was subsequently terminated by HR for negligent handling of his service revolver and insubordination.

Mr. Fife has worked nowhere else in any other capacity since the incident of September 1, 2017.

EARNINGS HISTORY

According to the WKC-12, Mr. Fife was earning \$19.24 per hour at injury. In the 50 weeks preceding his injury, he grossed \$53,531.

If we multiply \$19.24 per hour by 40 hours and 52 weeks, annual earnings would be around \$40,000. This means that Mr. Fife had about \$13,500 of overtime earnings in the year leading up to injury. Assuming he was paid time and a half for overtime, this means that he was putting in about 9 hours of overtime per week. Mr. Fife was a true public servant.

REEMPLOYMENT EFFORT

Because of his termination from the county, Mr. Fife was never given an opportunity to return to work for his employer of injury, even if he could have from a medical perspective.

Following his termination, Mr. Fife attempted to look for work in Mayberry. His unsuccessful efforts at work search led him to conclude that it would be difficult for him to find an employer in Mayberry willing to hire him.

Mr. Fife told me that he applied for DVR services in July 2018. Once Dr. Bailey issued his final report and permanent restrictions in November 2018, the DVR counselor recommended that Mr. Fife pursue a claim for SSDI benefits, believing that he was not employable. DVR closed his case at this time. Services never really had a chance to play out.

ASSESSMENT OF PAST RELEVANT WORK

Based upon his work history over the past 15 years, Mr. Fife has engaged in the following job. This occupational information is obtained from the *Dictionary of Occupational Titles (DOT)*, published by the Department of Labor. I have also cross-walked the *DOT* job title to the

corresponding SOC code, which is found within O*NET. The US Department of Labor developed the O*NET to replace the *DOT*, for purposes of career exploration.

Job Title	DOT Code	SOC Code	Strength	SVP Level*
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**SVP refers to specific vocational preparation. This is the amount of time needed to learn the techniques, acquire the information and develop the facility for average performance in a specific job-worker situation. Unskilled jobs have a SVP of 1-2 and take up to 30 days to learn; semi-skilled jobs have a SVP of 3-4 and take up to 6 months to learn; skilled jobs have a SVP of 5-7 and 6 months-4 years to learn; and highly skilled jobs have a SVP of 8-9 and can take over 4 years to learn.*

Mr. Fife's past relevant work as a deputy sheriff would be considered medium in strength and skilled in nature, according to the *DOT*.

LOSS OF EARNING CAPACITY

Barney Fife is soon to be 57 years of age. While this means that he has another 8-10 years left before reaching normal retirement age, his age will increasingly become a vocational liability.

Mr. Fife graduated from high school. He earned an associate degree in police science in 1985. He has some continuing education related to law enforcement.

Mr. Fife has been with one employer for his entire adult working life. He had been employed as a deputy sheriff with the County of Mayberry from 1985 until his termination in 2017. While he was making \$19.24 per hour at the time of injury, earnings records suggests that he worked substantial over time. In his last full year of employment prior to injury, he had grossed \$53,531. His annual earnings represents his pre-injury earning capacity as a deputy sheriff with the County of Mayberry, in my opinion.

Mr. Fife is claiming physical and psychological injuries as a result of the September 1, 2017 incident. From a psychological perspective, Dr. Hartley concludes that Mr. Fife is unable to return to work in law enforcement or security. He will need a 5-minute break every 60 minutes. He will need extra time on tasks because of his compromised cognitive functioning. He will miss work 3 or more days per month due to his depression. He needs a low-stress job that allows him to work at his own pace. From a physical perspective, Dr. Bailey outlined permanent restrictions indicating that Mr. Fife has a 25-pound lifting restriction and further limitations on bending, pushing and pulling. He needs to change positions frequently. Use of pain medication will make it difficult for him to concentrate. The combination of restrictions for the psychological and physical conditions would lead me to conclude that a reasonably stable labor market would not exist for Mr. Fife due a 25-pound lifting restriction, nonexertional limitations, positional limitations, the need for a break of 5 minutes every 60 minutes, extra time needed on tasks for cognitive functioning, and an expected absence from work of 3 or more days per month. The physical restrictions alone would preclude Mr. Fife from returning to work in law enforcement. The combination of physical and psychological restrictions exceed normal employer tolerances such that I would find Mr. Fife to be permanently and totally disabled under the lot doctrine.

Dr. Welby opined that Mr. Fife has no permanent disability or permanent work restrictions due to the work injury. This would lead me to conclude that he has no long-term loss of earning capacity from a physical perspective.

Regardless of causation, Dr. Welby limits lifting to 50 pounds maximum. While Dr. Welby opines that Mr. Fife could return to police work “with some accommodations for lifting,” law enforcement is not the type of occupation that is amenable to accommodating someone who is faced with life-and-death situations. It is my opinion that a lifting limitation is not a reasonable accommodation when it comes to carrying out the duties associated the job duties of a law enforcement officer. This would lead me to conclude that Mr. Fife would be unable to return to work in law enforcement. Mr. Fife has not shown that he has the aptitude or ability to take on a supervisory position in a law enforcement agency. When considering the restrictions of Dr. Welby regardless of causation, it is my opinion that Mr. Fife could work as a security guard for a private security firm. According to May 2018 wage data published by DWD for the state of Wisconsin, median annual earnings are \$27,160. Under this scenario, I would conclude that Mr. Fife has a 45-55% loss of earning capacity.

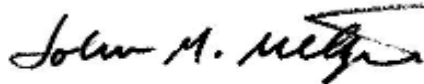
Dr. Crane concludes that Mr. Fife has no permanent psychological conditions or restrictions as a result of the work incident, which is the subject of this report. As such, I would conclude that Mr. Fife has no long-term loss of earning capacity from a psychological perspective.

Mr. Fife attempted to look for work in Mayberry, post-injury. His attempts did not result in an offer of employment. He applied for DVR services, but his DVR counselor suggested that he pursue a claim for SSDI benefits, and they closed out this case.

Thank you for referring Barney Fife to my attention for evaluation. All opinions are to a reasonable degree of vocational probability.

Sincerely,

RTW VOCATIONAL SERVICES, Inc.



John M. Meltzer, MS, CRC, CDMS, LPC
Vocational Rehabilitation Counselor

References

Robinson, R., & Pomeranz, J. (2011). Vocational and rehabilitation assessment model (VRAM): Introduction of an empirically derived model of forensic vocational and rehabilitation assessment. *The Rehabilitation Professional*, 19(4), 91-104.

Wisconsin Occupational Employment and Wage Estimates. (2018). Wisconsin Department of Workforce Development, Bureau of Workforce Information and Technology.

Vocational Expert Report

s. 102.17(1)(d)

Note: This report is for use with permanent disability caused by non scheduled injuries only. It is not to be used for scheduled injuries as described in sections 102.52 to 102.55 of the statutes which include injuries to eyes, ears, and limbs.

Personal information you provide may be used for secondary purposes [Privacy Law, s. 15.04(1)(m)].

WC Claim Number	Employee Name BERNARD "BARNEY" FIFE	Employee Birth Date
Employee Social Security Number	Employer Name COUNTY OF MAYBERRY	
Date of Accident or First Illness	Highest Level of Formal Education Completed	Vocational Education or Training Completed

Previous Employment

Employer Name	Mailing Address (number, street, city, state, zip code)		
Job Duties	Date Hired	Date Job Terminated	

Employer Name	Mailing Address (number, street, city, state, zip code)		
Job Duties	Date Hired	Date Job Terminated	

List special skills affecting employee's employability

SEE ATTACHED REPORT

List employee's preexisting physical or mental limitations

Nature of Injury	If surgery, give type
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Resulting physical or mental limitations based on medical or chiropractic opinion

Weekly wage at time of injury: \$	Present wage for comparable work with same employer: \$
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Types of employment now available given age, education, work history, and physical and mental limitations of employee

Pay rates for types of employment listed in previous question for the general locality

If presently employed, identify the following:

Employer:

Pay Rate: \$

SEE ATTACHED REPORT

Nature of Work Performed:

Date Started:

Percent of loss of earning capacity to a reasonable probability due to the injury described under **Nature of Injury**. Give a single number percentage or a percentage range, and use the following guidelines to assist with the calculation:

_____ %

A person may be classified as permanently partially disabled when by reason of his or her physical or mental condition he or she has limitations in the performance of his or her work activities. The percentage of such partial disability shall be to the degree that such disability relates to permanent total disability. The expert's opinion should include evaluation of how the disability affects this individual, having in mind his or her education, work history, training, and whether he or she can be retrained or vocationally rehabilitated.


A person may be classified as permanently totally disabled when by reason of his or her physical or mental condition he or she can perform no services other than those which are so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist.

Factors other than those identified above that were considered in analysis (if applicable):

Qualification of Expert (may attach curriculum vitae):

Education: list degree(s), field of study(ies), and date(s)

Work History:

Expert Signature 	Expert Name (print or type) JOHN M. MELTZER, MS, C.R.C., C.D.M.S., L.P.C.
Expert Mailing Address (number, street, city, state, zip code) RTW Vocational Services, Inc. 2923 Marketplace Drive, Suite 206, Fitchburg, WI 53719	Expert Telephone Number (608) 270-0603

ABBREVIATED CURRICULUM VITAE

John M. Meltzer, MS, CRC, CDMS, LPC

RTW Vocational Services, Inc.
2923 Marketplace Drive, Suite 206
Fitchburg, WI 53719
jmeltzer@expertvoc.com

EDUCATION

December, 1981 University of Wisconsin-Milwaukee, Milwaukee, Wisconsin;
Master of Science Degree: Educational Rehabilitation Counseling

December, 1975 University of Wisconsin-Eau Claire, Eau Claire, Wisconsin;
Bachelor of Science Degree: Special Education

EMPLOYMENT HISTORY

January, 1999 - Vocational Rehabilitation Counselor/Owner
Present RTW Vocational Services, Inc.
Madison, WI

Conduct independent vocational evaluations to assess earning capacity. Provide expert testimony services. Provide vocational rehabilitation services to persons with disabilities to include vocational assessment, vocational testing, transferable skills analysis, job seeking skills training, labor market surveys, and job development and placement on worker's compensation and long-term disability cases. Coordinate services with other agencies.

1982 – 2005 Vocational Expert
U.S. Department of Health and Human Services, Social Security Administration, Office of Hearings & Appeals (BPA holder 1982-2005)

January, 1998 - Vocational Rehabilitation Counselor/Co-Manager of Wisconsin
December, 1998 Novaeon, Inc.
Madison, WI

November, 1990 - Rehabilitation Services Manager
December, 1997 Chiron/AMS (NHR Wisconsin)
Madison, WI

January, 1982 - Vocational Rehabilitation Counselor/Supervisor
November, 1990 Crawford Health & Rehabilitation Services
Madison, WI

September, 1979 - Special Education Teacher
June, 1982 Glendale-River Hills School District

COMMITTEE/PROFESSIONAL INVOLVEMENT

- 1984 -1985: Association for Retarded Citizens in Dane County; Vocational Education Committee Board Member.
- 2000 - 2015: IARP-Wisconsin Chapter; President-elect (2000); President (2001); Past-president (2002); Treasurer (2011-2015).
- 2000 - 2013: International Association of Rehabilitation Professionals (IARP – formerly known as NARPPS); co-chair of the forensic section (2000-2001); past co-chair of the forensic section (2001-2002); chair elect of forensic section (2002-2003); chair of forensic section (2003-2004); past chair of forensic section (2004-2005); Board of Directors, forensic section representative, (2004-2006); Board of Directors, secretary/treasurer, (2006-2009); Board of Directors, treasurer (2017 – present); and Standard Compliance Review Board (SCRB) – Rehabilitation Counselor (2010-2013).
- 2011 - 2017: Council on Rehabilitation Education (CORE); appointed by IARP as Commissioner to the Graduate Commission on Standards and Accreditation. The Commission evaluates graduate-level rehabilitation counseling programs for their compliance with CORE standards.

PUBLICATIONS

The Verdict, *When Only An Expert Will Do*, Vol. 8:2, Summer 1985

The Rehabilitation Professional, *A Call to Update the DOT: Findings of the IARP Occupational Database Committee*, Volume 17, Number 2, 2009, pages 63-83.

The Rehabilitation Professional, “*Forensic Vocational Interviews: An Exploration of Best Practices*,” Volume 23, Number 2, 2015, pages 101-110.

PROFESSIONAL ORGANZATIONS

Wisconsin Chapter – International Association of Rehabilitation Professionals (WI-IARP)
International Association of Rehabilitation Professionals (IARP)

PROFESSIONAL CREDENTIALS

Certified Rehabilitation Counselor (CRC) – Commission on Rehabilitation Counselor Certification, (#2401)

Certified Disability Management Specialist (CDMS) – Commission on Rehabilitation Counselor Certification, (#2401)

Licensed Professional Counselor – Wisconsin Department of Safety and Professional Services, (#1151-125)

Private Vocational Rehabilitation Counselor – Wisconsin Department of Workforce Development, Worker’s Compensation Division, (#163)

Special Education Teacher – Mental Retardation – Wisconsin Department of Public Instruction, (lifetime license-inactive/invalid)