

73614-1

CASE NO. ~~73514-1-17~~

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

DAVID A. KOHLES, INC., P.S

. Plaintiff/Appellant

v.

MICHAEL COOK (now deceased) Individually; DONNA COOK,
Individually; and the marital Community composed of MICHAEL COOK
AND DONNA COOK; AND IN REM AGAINST ANY ALL
PAYMENTS RECEIVED BY MICHAEL COOK AND DONNA COOK
FROM THE DEPARTMENT OF LABOR AND INDUSTRIES ON
ACCOUNT OF WORKERS' COMPENSATION BENEFITS

Defendants/Appellees

ON APPEAL FROM THE SUPERIOR COURT FOR SNOHOMISH
COUNTY
(Honorable Ellen J. Fair)

BRIEF OF RESPONDANT DONNA J. COOK, PRO SE

2015 OCT 26 AM 11:42

STATE OF WASHINGTON
COURT OF APPEALS
DIVISION I
[Handwritten signature]

TABLE OF CONTENTS

1.	TABLE OF CONTENTS	2
2.	INTRODUCTION	3
3.	ASSIGNMENT OF ERROR	5
4.	STATEMENT OF CASE	5
5.	ARGUMENT	15
6.	CONCLUSSION	21

INTRODUCTION

David Kohles continues to open his briefs by making the statement that he was “retained by Donna Cook’s now deceased husband, Michael Cook, to pursue his Workers Compensation claims against Snohomish County.”

I, Donna Cook, widow of Michael Cook, continue to stress that Mr. Kohles statement is **an outright lie**. When Michael retained Mr. Kohles, he had already established both claims and was receiving payments.

Michael Cook retained Mr. Kohles for the sole purpose of representing him in dealings with Snohomish County’s private insurance company, Eberle Vivian. Michael’s back surgery had been scheduled, cancelled and then rescheduled before he finally had the surgery. It was very stressful and fellow Snohomish County employees strongly urged Michael to get representation.

Mr. Kohles claims “Pursuant to RCW 60.40.010(1)(d), an attorney’s lien automatically arose by operation of law when Kohles began pursuing Michael Cook’s claims against Snohomish County.” **Again, I reiterate, Mr. Kohles had nothing to do with “pursuing” these claims.**

We did cancel the Power of Attorney Michael had given to Mr. Kohles, and ask that all correspondence be sent directly to Michael, but only after

Mr. Kohles office had quit communicating with us and no one would talk to us as long as we were represented by counsel.

We also filed for bankruptcy, but only after Michael was diagnosed with esophageal cancer. This was the third cancer for us in just over four years and we were overwhelmed.

I am aware that Mr. Kohles filed an adversary case in our bankruptcy. We were counting on our bankruptcy attorney to handle that case because Michael had been in the hospital for seven weeks when the hearing took place. I really don't know exactly what happened or if our attorney was even there. I have never seen the briefs filed or decision. I was preoccupied with Michael fighting for every breath. If we had been available to attend the hearing, perhaps things would have turned out different.

Snohomish County Superior Court ruled that I owe Mr. Kohles 15% of Michael's pension based on the fee agreement he signed. She also denied prejudgment interest based on the fact that the fee agreement she was holding me to, does not provide for interest. That seemed fair if it meant it was over and I didn't have to stress over endless court proceedings. If we are going back to court, I will fight for my pension.

ASSIGNMENTS OF ERROR

The only error the trial court made was in ruling that Mr. Kohles was owed 15% of my pension based on the fee agreement that Michael signed. We should take a closer look at the fee agreement before a final ruling.

STATEMENT OF THE CASE

Mr. Kohles begins his “Statement of the Case” by once again claiming he was retained by my now deceased husband, Michael Cook to “pursue workers’ compensation benefits for injuries he suffered as an employee of Snohomish County.

Once again, I must repeat that Mr. Kohles had nothing whatsoever to do with pursuing or obtaining workers’ compensation benefits for Michael. Please see copies of check registers. (Exhibit A)

Michael had already established both claims and was receiving checks when he retained Mr. Kohles to represent him with Snohomish County’s private insurance company, Eberle Vivian.

Claim No. W881589, for an injury to his shoulder on 6/10/2003, paid his time loss for surgery on his shoulder in November 2003. He was paid for 24 days of missed work. He returned to work in December 2003

Claim No. SA26712, for an injury to his back on 9/14/2004 paid his time loss for surgery on his back on December 9, 2004 and his recovery from that surgery.

By the time he retained Mr. Kohles on January 10, 2005, he had already received three “time loss” payments for the new claim and because his shoulder was re-injured in his fall, that claim was reopened also. Mr. Kohles had nothing to do with “pursuing” these claims.

Paragraph 2.a. of Mr. Kohles fee agreement allows him to take 30% of all “time loss.” If Mr. Kohles had “pursued” and obtained Michael’s Workers’ Compensation, Mr. Kohles would have been taking his 30%.

Michael was 59 years old and in perfect health except for his injured back and shoulder when he retained Mr. Kohles. Michael thought he was retaining Mr. Kohles for a brief period of time until he was able to go back to work. Had he known that he was going to have two more shoulder surgeries and another back surgery and never get back to work, he would have had Mr. Kohles cross out paragraph 2.b. since it should not have applied to his case any more than 2.a. did. His pension was a result of his injuries and time with Snohomish County, not anything Mr. Kohles did representing him with dealings with the insurance company.

During the next 5 ½ years, Mr. Kohles wrote letters when we had problems with the insurance company. In 2008 Snohomish County took Michael off their health insurance, which made an adjustment in his base wage, and also his L & I payments. Eberle Vivian made an error calculating his increase and it continued for quite some time. When they discovered it, they adjusted his payments down, and also took 25% of each payment to pay back the overage. This huge deduction was a hardship for us because by then, I was no longer working in order to care for Michael. (He had suffered hypoxia in 2007, while in CCU recovering from his second back surgery resulting in serious cognitive problems.) Mr. Kohles wrote letters asking that they take less per paycheck. Nothing changed, but at least he tried. He also wrote letters trying to clarify Michael's rate since it was divided in two claims. Again, nothing changed.

In August 2010 Michael's disability social security changed to regular social security when Michael turned 65. This allowed the insurance company to take an offset for his social security payments from his Workers Compensation payments. This made a \$1500 per month deduction in our income. We didn't know what to do. It looked like I needed to return to work, but was afraid to leave Michael. Mr. Kohles suggested asking for home health care for Michael to free me up to go to

work. Our hope was that if it were approved, they would pay me to care for Michael because it would be less expensive than a nurse.

Over the next year the request for home care was denied and Mr. Kohles appealed. The appeal was denied and he appealed again. On about the third appeal, we actually were getting scheduled to go to court. Michael had a deposition on Dec. 6, 2011. He was asked specific questions about what he was capable of doing in April, June and July 2011. Mr. Kohles had told him to stress his physical problems, because they would not give us home care for his cognitive and memory issues.

Michael exaggerated his physical problems, thinking that is what Mr. Kohles wanted. It turned out that the insurance company was taking surveillance photos in April, June and July 2011. He said he didn't drive during those times when, in fact, he did drive twice, but both times with someone else. He had not driven alone for over a year because of nerve damage in his right leg and foot. No doctor had ever told him he couldn't drive. He felt it wasn't safe, but if he had problems the two times on the surveillance, there was someone there to take over driving.

Had I, with no cognitive or memory problems, been asked specific questions about what I was doing 5, 6 and 8 months earlier, I would have done much worse than Michael did.

Mr. Kohles attitude toward us changed significantly. He talked down to both of us, but especially to Michael. Michael was extremely intelligent and his intelligence was not diminished by his cognitive problems, just his reasoning.

In February 2011, Mr. Kohles suggested that we drop the appeal for home care and settle with the County. When we said "NO" he tried to intimidate us with threats that the County could go after Michael for Fraud and take away his past and future workers' compensation payments if we did not settle.

I wrote a two-page email (exhibit B) explaining exactly why we felt it was more important than ever that we proceed to trial. Even if home care were unlikely at this point, it would give us the opportunity to prove there was NO FRAUD in Michael's claims.

Nothing in the surveillance tapes contradicted the activities he told his psychologist and attending physician when he visited them. I obtained copies of all the reports that both doctors prepared with each visit for the entire year of 2011 along with reports from Michael's physical therapist. I knew if we had those reports, the dozens of x-rays, MRIs, CT scans, two Independent Psychological Examinations, several Independent Medical Examinations in addition to four surgeons performing five extensive

surgeries on his shoulder and back, no logical mind would think Michael had gone to these extremes to fraud the County.

As of April 13 we were still set to have hearings on April 24, 2012 and May 4, 2012. We spoke to Mr. Kohles that day and he reassured us that we would be going to court.

On April 17 Mr. Kohles agreed to a settlement with Snohomish County and cancelled the hearings. We found out about it when we received a “Notice of Cancellation” from the Washington State Board of Industrial Appeals.

Michael was seeing a psychologist, Dr. Eileen Bernat, every other Thursday. He had been since shortly after his second back surgery in March 2007 because of extreme depression as he became aware that his physical limitations were never going to get much better. We had received the “Notice of Cancellations” for the hearings the day before one of his visits and Michael was full of anger, frustration and disappointment over the cancellation of the hearings and let Dr. Bernat know about it. She was appalled that Mr. Kohles would settle, not only without his client’s agreement, but also against his client’s wishes. She said that if “it wasn’t illegal, it was certainly unethical.”

I had a telephone conversation with Mr. Kohles just after that session and told him what Dr. Bernat said. He was much more concerned about whether Dr. Bernat would mention that conversation in the reports she sent to Dr. Amos and Eberle Vivian. He also asked me if I was threatening to make a formal complaint against his license. I now regret that I didn't.

We didn't know what we could do. The hearings were cancelled and we didn't think they would reschedule them because we didn't agree to the cancellation. Michael had given Mr. Kohles his "Power of Attorney" so we thought he could make decisions for Michael even if Michael was adamantly against those decisions.

Michael was awarded \$37,000. for dropping the Appeal for home care. Mr. Kohles kept 30% of that award, plus he reimbursed himself for expenses. He took \$11,732.11 and gave Michael a check for \$25,267.89.

Mr. Kohles now says we could have turned down the money if we were unhappy with his decisions. He is probably correct, but we didn't know that then. By the time we were aware of it, the settlement was finished. We accepted the money because we didn't know we had options.

Our relationship with Mr. Kohles and his office became even more strained. I still needed to rely on Mr. Kohles secretary to deal with the

insurance company when they would stop approving Michael's medications while they "reviewed" his need for them or we needed approval to see a new doctor.

I started relying on Lisa Scalf, Snohomish County Risk Management for help. Although she, like everyone else, could not send us any information or give us any information "because we were represented by counsel" she would call the insurance company and tell them to approve Michael's medications or deal with the company that provided transportation for Michael that occasionally forgot to pick him up and bring him home.

We were receiving no written correspondence, very little assistance by telephone and really didn't know where anything with our case stood. One day when we called Mr. Kohles secretary to find out why we were getting bills from Virginia Mason for dr. visits that were supposed to be covered by L&I and she told me that she was too busy to help me, but that "David said that you can call Perle at Eberle Vivian. Just tell her that David said she can talk to you about those bills." I called Perle and asked about the bills and if there was any correspondence we should have received about the settlement. She said she was not allowed to talk to me "because we were represented by counsel."

We had not really been “represented by counsel” for nearly a year, since the tensions following the settlement. We sent letters to L&I, Snohomish County, Eberle Vivian and David Kohles telling them that the Power of Attorney Michael had given Mr. Kohles was rescinded and please send all correspondence directly to Michael. We felt it was the only way to get information that was being denied to us. We felt Mr. Kohles had “quit” representing us long before we terminated him.

The only communication we were having with Mr. Kohles office was notification of a check for Michael waiting for us to pick up in his office. We could see no logical reason for Michael’s time-loss checks to go to Mr. Kohles. The time-loss checks really had nothing to do with Mr. Kohles. He did not take any portion of them, because he had nothing to do with getting Michael his workers’ compensation claims.

The timing of our bankruptcy was coincidental. We had a creditor that forced our timing for the bankruptcy. I was still in treatment for my breast cancer and Michael had just been diagnosed with esophageal cancer, so we had mountain of medical expenses ahead of us that would be incurred after our bankruptcy.

I finally saw the actual terms of the settlement between Mr. Kohles and Tom Hall, Snohomish County attorney, when I saw Exhibit C in the

Declaration of David A. Kohles in support of motion for summary judgment filed February 2, 2015. It was a series of emails between Mr. Kohles and Mr. Hall dated from April 12 through April 17, 2012. We, the clients, were not privy to those negotiations, and we were being told how the County was seriously threatening charges of fraud if Michael did not drop the Appeal. I can find no mention of fraud charges in any of Mr. Hall emails.

By cancelling the Appeal (against Michaels explicit wishes) and coming to a settlement with the County, Mr. Kohles was able to give the illusion of “saving” Michael’s pension when it doesn’t appear it was ever a part of the settlement.

Had Michael been allowed his day in court, he and I would have cleared his name, and pension. I still have all of the evidence we were prepared to present as proof Michael was indeed disabled. For all we know we might have even been awarded the home care.

The “Second Injury Relief” was important to the County Attorney because it would relieve the County of paying Michael’s pension. It would instead be paid by the Department of Labor and Industries.

Tom Hall, County Attorney, outlined the County’s side of the negotiations in an email to Mr. Kohles dated April 13, 2012 as follows:

“Side bar money is 37K. This will be paid in a one-time, lump sum payment. They insist that the current appeal be dismissed, but I see no obstacle since I think the agreement is clear. They want the issue of home health care assistance resolved and that, along with the expeditious move towards second injury fund pension, is why they are willing to pay 37K”

The only mention of Michael’s pension is the difference of it being paid by the County without second injury relief, or paid by DLI with second injury relief. There is no mention of not paying it at all because Michael was defrauding the County.

ARGUMENT

Mr. Kohles lists the arguments before the Court as: (1) whether Appellant may foreclose his attorney’s lien under RCW 60.40; (2) whether Appellant is entitled to prejudgment interest; and (3) whether the trial court improperly considered my financial situation as relevant. I seek review on one more issue: (4) whether my pension should be at issue at considering the reasons Mr. Kohles states he is entitled to them are lies.

(1). Mr. Kohles himself, in the 3rd paragraph of his Introduction, justifies getting his attorney’s lien based on “pursuant to RCW 60.40.010(1)(d), an attorney’s lien automatically arose by operation of law

when Kohles began pursuing Michael Cook's claims against Snohomish County."

Again, Mr. Kohles was never retained to pursue Michael's claims against Snohomish County. He represented Michael in attempting to resolve issues with the private insurance company. He did attempt to obtain home care for Michael. He entered into a settlement with Snohomish County against Michael's wishes. If Michael had not been so ill at the time of the adversary hearing in our bankruptcy, and had I been able to attend, there may have never been an attorney's lien to foreclose on.

To the best of my knowledge, Mr. Kohles idea of foreclosing on the lien is to have the Court order me to sign my pension over to him. According to his February 2, 2015 Motion for Summary Judgment, Exhibit K, his (Proposed) Order Granting Plaintiff's Motion For Summary Judgment) he would be authorized to deduct \$1500.00 from each payment and the remainder shall be remitted to Mrs. Cook by plaintiff's office.

If the Court orders me to make payments to Mr. Kohles, I will make the payments. I would never defy a court order. Forcing me to sign over my pension is degrading and totally unnecessary and unfair. It would cause a delay in my receiving my pension, which would cause a hardship

on me. The last day I can make my mortgage payment without a late charge is the 15th of the month and that is the day my pension is deposited in my account.

I am also confused about what gives him the right to take half of my pension.

(2) Prejudgment Interest should not be allowed.

The Honorable Judge Ellen J. Fair, Snohomish County Superior Court, concluded that I owed the pension, based on the fee agreement signed by my husband. That agreement was signed over 10 years ago, when he was in excellent health except for his work related injuries, never imagining that I would be fighting for the pension he earned.

She also ruled that Mr. Kohles is not entitled to prejudgment interest based on the same fee agreement. There was no provision for interest in the fee agreement. If I am to be held to the terms of the fee agreement, Mr. Kohles should likewise be held to them.

Mr. Kohles is charging me interest as if on the day Michael went to pension; he received a lump sum of \$238,225.00, the pension reserve, and had the use of the \$35,738.25 he believes is his share. The pension is being paid monthly. I do not have the \$35,738.25 he wants interest on.

(3) My financial situation should be relevant.

To force me to sign over my pension and have Mr. Kohles keep \$1500.00 would destroy me. My largest expense is my mortgage, which is about \$2800. I am working to get out of my house, but there are things I have to do to get the house ready to sell that cost money and I am trying to sell things to make the money I need to finish projects Michael started and other maintenance items that happen as your home ages. We bought the house when we were both working and could afford it. When Michael was hurt and couldn't work and I eventually had to quit my job to care for him, the mortgage was way underwater due to the economy. We also had three cancers between 2009 and 2014 so we had neither the physical strength to move out of this house or the money to do it. My mortgage is now at a point where I hopefully won't take a loss on my home, but I have to finish several projects to make it more desirable and I have to downsize a lot. This home is over 3300 square feet and is full. I have a condo I am interested in, but it is 1300 square feet so I have to get rid of 2000 square feet of belongings, not counting the garage and shed. I am working on it every day, but I want to sell as much as possible to make the money to do the things that need to be done to the house and hopefully help pay for my move if I don't make enough from the house to do that. It is also much more difficult than you might imagine to sell or give away Michael's

belongings. My grief is still as strong and painful as the day he passed away. You really have to experience the loss of a beloved spouse to understand the pain. Constantly having to relive everything when I prepare these briefs brings a degree of stress that is unimaginable. That is why I was willing to live with the decision of the trial court. I just wanted it to be finished and not have to stress over it every day. If, however, I have to keep reliving it, I will fight for my pension.

In the last paragraph of Mr. Kohles Argument, he says; “Because the court considered Donna Cook’s financial circumstances relevant to the application of the attorney’s lien statute, Appellant was forced to delve into those collateral issues and to demonstrate that repaying the amounts owed to Kohles was well within Donna Cook’s means (which it happened to be.)”

I would like to know what he found out that I am unaware of that makes paying Mr. Kohles \$1500 per month is within my means. He told me to stop making payments on my house, that it would probably take eight months or more for me to get evicted. I could use the money I would not be paying on my mortgage to move. I think that might be the solution he feels is within my means. I would like to keep a good enough credit score that when I leave here, I am able to buy a small house or condo. If I

walk away from my mortgage, I doubt I could find anyone willing to sell or rent to me.

(4) Finally I am seeking review on whether Mr. Kohles has any right to my pension.

His first Paragraph under most headings in this brief and in every previous brief is that Michael retained him to pursue his workers' compensation claims against Snohomish County.

This is an outright lie and is in statements that he swore "under penalty of perjury" were correct to the best of his knowledge.

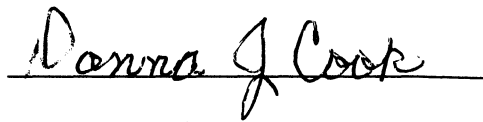
I have check register copies to prove Michael had pursued and won his own claims, and Mr. Kohles would most assuredly have taken anything he could out of Michael's time-loss payments if he had any right to do so.

The other lie is that the County was threatening to go after Michael for fraud, which could mean losing his time-loss and pension. Nothing that the County addressed in their negotiations for settlement indicated any threats of fraud. Mr. Kohles told us that in hopes we would agree to the settlement. When we didn't, he settled any way against Michaels express instructions.

CONCLUSION

Based on the arguments above, Appellee requests that the decisions of the Superior Court of Snohomish County be upheld and the Court allow Review of Mr. Kohles claims that he did anything to obtain Michael's pension.

DATED October 23, 2015

A handwritten signature in cursive script that reads "Donna J. Cook". The signature is written over a solid horizontal line.

Donna J. Cook

EXHIBIT A

Check Register

Chk No	Date	Status	Type	Pay To	Claim No	Claimant	DOL	Dis From	Dis To	#	Pay Code	Withdrawal	Deposits
25301	07/27/06	Issued	Claimant	Michael J. Cook	W881589	Cook, Michael J.	06/10/03	07/15/06	07/28/06	14	C02-TTD	732.34	0.00
25233	07/13/06	Issued	Claimant	Michael J. Cook	W881589	Cook, Michael J.	06/10/03	07/01/06	07/14/06	14	C02-TTD	732.34	0.00
25162	06/29/06	Issued	Claimant	Michael J. Cook	W881589	Cook, Michael J.	06/10/03	06/17/06	06/30/06	14	C02-TTD	690.06	0.00
25042	06/15/06	Issued	Claimant	Michael J. Cook	W881589	Cook, Michael J.	06/10/03	06/03/06	06/16/06	14	C02-TTD	690.06	0.00
24952	06/01/06	Issued	Claimant	Michael J. Cook	W881589	Cook, Michael J.	06/10/03	05/20/06	06/02/06	14	C02-TTD	690.06	0.00
4581856	07/03/06	Cleared	Claimant	Michael Cook	W881589	Cook, Michael J.	06/10/03	11/07/06	11/30/06	24	C02-TTD	2,948.94	0.00
0	00/00/00	Pending	Claimant	Michael J. Cook	W881589	Cook, Michael J.	06/10/03	07/05/10	07/18/10	14	C02-TTD	916.30	0.00
Totals										1558		95,849.85	1,478.33
Net Total													94,371.52

Pg 6 Acct # 0022 134167

Check Register

chk No	Date	Status	Type	Pay To	Claim No	Claimant	DOL	Dis From	Dis To	#	Pay Code	Withdrawal	Deposits
2415	08/11/05	Issued	Claimant	Michael J. Cook	SA26712	Cook, Michael J.	09/14/04	07/30/05	08/12/05	14	C02-TTD	1,350.58	0.00
2281	07/28/05	Issued	Claimant	Michael J. Cook	SA26712	Cook, Michael J.	09/14/04	07/16/05	07/29/05	14	C02-TTD	1,350.58	0.00
2012	07/14/05	Issued	Claimant	Michael J. Cook	SA26712	Cook, Michael J.	09/14/04	07/02/05	07/15/05	14	C02-TTD	1,350.58	0.00
1961	06/30/05	Issued	Claimant	Michael J. Cook	SA26712	Cook, Michael J.	09/14/04	07/01/05	07/01/05	1	C02-TTD	96.47	0.00
1962	06/30/05	Issued	Claimant	Michael J. Cook	SA26712	Cook, Michael J.	09/14/04	06/18/05	06/30/05	13	C02-TTD	1,246.31	0.00
1870	06/16/05	Issued	Claimant	Michael J. Cook	SA26712	Cook, Michael J.	09/14/04	06/04/05	06/17/05	14	C02-TTD	1,342.18	0.00
1820	06/02/05	Issued	Claimant	Michael J. Cook	SA26712	Cook, Michael J.	09/14/04	05/21/05	06/03/05	14	C02-TTD	1,342.18	0.00
1769	05/19/05	Issued	Claimant	Michael J. Cook	SA26712	Cook, Michael J.	09/14/04	05/07/05	05/20/05	14	C02-TTD	1,342.18	0.00
1713	05/05/05	Issued	Claimant	Michael J. Cook	SA26712	Cook, Michael J.	09/14/04	04/23/05	05/06/05	14	C02-TTD	1,342.18	0.00
1367	04/21/05	Issued	Claimant	Michael J. Cook	SA26712	Cook, Michael J.	09/14/04	04/09/05	04/22/05	14	C02-TTD	1,342.18	0.00
223	04/07/05	Issued	Claimant	Michael J. Cook	SA26712	Cook, Michael J.	09/14/04	03/26/05	04/08/05	14	C02-TTD	1,342.18	0.00
1965	03/24/05	Issued	Claimant	Michael J. Cook	SA26712	Cook, Michael J.	09/14/04	03/12/05	03/25/05	14	C02-TTD	1,342.18	0.00
1794	03/10/05	Issued	Claimant	Michael J. Cook	SA26712	Cook, Michael J.	09/14/04	02/26/05	03/11/05	14	C02-TTD	1,342.18	0.00
1583	02/24/05	Issued	Claimant	Michael J. Cook	SA26712	Cook, Michael J.	09/14/04	02/12/05	02/25/05	14	C02-TTD	1,342.18	0.00
296	02/10/05	Issued	Claimant	Michael J. Cook	SA26712	Cook, Michael J.	09/14/04	00/00/00	00/00/00	0	C02-TTD	376.15	0.00
297	02/10/05	Issued	Claimant	Michael J. Cook	SA26712	Cook, Michael J.	09/14/04	01/29/05	02/11/05	14	C02-TTD	1,342.18	0.00
117	01/27/05	Issued	Claimant	Michael J. Cook	SA26712	Cook, Michael J.	09/14/04	01/15/05	01/28/05	14	C02-TTD	1,238.86	0.00
017	01/12/05	Issued	Claimant	Michael J. Cook	SA26712	Cook, Michael J.	09/14/04	01/05/05	01/18/05	14	C02-TTD	1,342.18	0.00
20159	12/23/04	Cleared	Claimant	Michael J. Cook	SA26712	Cook, Michael J.	09/14/04	12/16/04	12/23/04	16	C02-TTD	2,016.00	0.00
02075	12/16/04	Cleared	Claimant	Michael J. Cook	SA26712	Cook, Michael J.	09/14/04	12/09/04	12/16/04	7	C02-TTD	610.50	0.00
	00/00/00	Pending	Claimant	Michael J. Cook	SA26712	Cook, Michael J.	09/14/04	07/05/10	07/18/10	14	C02-TTD	943.88	0.00
Totals										2061		148,725.35	1,620.15
Net Total													147,105.20

Printed on 7/21/10 at 11:56:00

g 12 Acct # 0022134167

EXHIBIT B

Donna Cook

From: "Donna Cook" <donna@cedarglenbees.com>
To: "David Kohles" <DavidKohles@kohleslegal.com>
Cc: "Deb Amos" <DrDeb@fidalgosports.com>
Sent: Thursday, February 23, 2012 3:58 PM
Subject: Monday's Meeting about Appeal

David,

As you could probably tell, both Michael and I were very upset after meeting with you on Monday.

It was bad enough to hear you say that we will probably not win the appeal, but then you told us that the County is or was considering charging Michael with FRAUD!!!

You said that if we are willing to drop the appeal and work with them to get the State to pay for most of Michael's pension, then they won't charge Michael.

We feel that by accepting any offer from them would send the message that we are afraid that they could win if they charged him with fraud.

Mike has dozens of MRI's, CT scans, X-rays and other tests to prove he was and still is injured. Four separate surgeons have performed five operations on his shoulder and back. He has had two psych evaluations and I think about three physical examinations ordered by the County's insurance company. We have never heard a single hint that anyone was questioning Mike's honesty until now.

Tuesday morning I called Dr. Amos, Dr. Bernat and Olympic Physical Therapy to get copies of the reports from office visits for 2011. Mike always told Dr. Amos and Dr. Bernat everything he did, how he was feeling, what he was thinking.....everything. He never once exaggerated. They are his doctors and he trusts them to help him heal.

Those reports have notes by the doctors that Mike told them he is working with his bees, that he tries to get out for a while everyday, that some days he does more than he should and ends up in bed for a day to two to recover, that the brace he got for his right foot and leg helps him walk around the yard and driveway without his cane. (He still uses the cane all the time when he is away from home, especially in public when he is exposed to people that could bump him or cause him to lose his balance.)

All of Dr. Amos' reports are sent to you and to Perle. All of Dr. Bernat's reports are sent to Dr. Amos and Perle. I have seen copies of both doctors reports in the documents I went through at your office provided by Perle. If Perle reads those reports, she knows exactly what Mike was doing at any time.

His physical therapy went from January 26 to April 29, 2011. We faxed a copy of the reports to Dr. Amos and I will be happy to bring copies to you. They probably were sent to Perle since the visits were paid by insurance, but I don't know that for sure.

His therapist said:

- Patient has shown improvement in all areas over course of therapy.
- Able to reach at or above shoulder height
- Able to carry 5 - 10 lbs at waist level
- Able to perform light gardening tasks, pruning

Pretty much everything Mike was doing in the videos were things his therapist said he could do as of May 4, 2011. He kept up with his Home Exercise Program for a several months until the exercises started getting painful. He is due for another cortisone shot, which always helps for a couple months.

To me it seems so much more important that Mike was telling his doctors exactly what he was doing in late April, late June and early July and those statements be compared to the surveillance videos, than what Mike (who is documented to have serious cognitive and memory problems) told an attorney in December about what he remembers happened in April, June and July.

The attorney for the County had just watched the videos and knew exactly what Mike had done on those dates and asked questions that a person with a good memory and sound reasoning abilities would have difficulty answering. I honestly couldn't tell you anything I did on April 22 or how I was feeling. When you don't work at a regular job the days all run together. You don't have points of reference like you do when you have a regular schedule.

You also have to remember that Mike's cognitive problems are a real factor in everything he does, whether it counts for his ability to get home care or not, it affects our lives constantly. When you told him to stress his physical problems, he probably exaggerated them - not intentionally, but because he thought that was what you wanted. Most of the time, Mike does not realize that he can't do things he has always done. If I didn't stop him he would do a lot more. He still thinks he can build a barn and fence in a couple of acres and raise alpacas. We have moss on our roof and he thinks he is capable of taking care of it himself. (it is a really steep roof and I wouldn't let him do it if he was 20 years younger and hadn't been injured.) To the best of my knowledge, no doctor has ever told Mike what he can and can not do. He does what he can until the pain is too great to continue. Usually he does more than he should, and pays for it. He pretty much decided that he shouldn't drive a car because of the nerve damage in his leg, shoulder pain and narcotics he takes. I am sure a lot of people drive cars while using narcotics. I won't let him drive alone because if he had physical problems, no one would be there to take over and I don't trust him not to do something like buy a car or herd of alpacas. I do not believe Mike has driven alone since Nov. 2010 when he bought that car.

Mike started seeing Dr Bernat in June 2007. Dr. Amos thought it would help his depression. He had just had the surgery that caused the hypoxia and he had been officially "laid off" by the County. That was really depressing for him. He always thought he was going to get well enough to go back to work. If he was committing "fraud" and didn't want to go back to work, why would he be the one asking when he could go back to work and the County be the one saying they were no longer keeping his position available for him.

Even bringing up Fraud after all that Mike has been through these past 7+ years (especially the last five, since the hypoxia) is such an insult that we really want to continue with the appeal, if you are willing.

I called the insurance company. Mike has 8 medications that are paid by Workers Comp. 2 would be Tier 2 medication at \$7.00 per month. The other 6 are Tier 3 at \$45.00 pr month. His medications alone would add another \$284.00 to our expenses. As you can see, Physical Therapy really helps and he will probably need more. Dr. Bernat has been such an important part of Mike's mental well being. I don't want to think how he would be if he hadn't had her to talk to since that last back surgery. I don't think Mike is ready to go to Pension if it means losing the support of Dr. Amos, Dr. Bernat, Dr. Codsi and if recommended, physical therapy.

The only reason we ever started this request for home care was for financial reasons. I need to get a job to help pay our bills, but need someone to care for Mike, or we hoped I might get paid to care for Mike. Either way, we need more income, not more expenses. \$284.00 for medications, \$40 co-pay per visit for Dr. Bernat, \$40 co-pay per visit for Dr. Codsi, ? for tests and cortisone, etc. I don't know how we will do it.

I know you are seeing Dr. Amos tomorrow and I hope both of you get a chance to read this before you view the surveillance videos together.

Thanks for all you do for us. We really do appreciate it.
Donna