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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No.: 2021-001463

Anthony Wise Appellant,

-v-

Kenneth E. Leap, Newberry Hospital, LLC d/b/a
Newberry County Memorial Hospital, and West
Fraser, Inc., Defendants,

Of Whom, West Fraser, Inc. is Respondent.

**RECORD ON APPEAL
VOLUME 1 OF 2**

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Newberry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP3600103

Anthony Wise
PLAINTIFF(S)

West Fraser Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendant West Fraser Inc.'s Motion for Summary Judgment is GRANTED. Counsel for Defendant to prepare proposed Order.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/27/2021 .

Anne Laurie Mcclurkin for West Fraser Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Newberry Common Pleas

Case Caption: Anthony Wise VS Keith E Leap , defendant, et al

Case Number: 2019CP3600103

Type: Order/Electronic Form 4

So Ordered

G.D. Morgan Jr.

Electronically signed on 2021-08-27 14:56:26 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	FOR THE EIGHTH JUDICIAL CIRCUIT
	)	
ANTHONY WISE,	)	
	)	Civil Action No. 2019-CP-36-00103
Plaintiff,	)	
	)	
v.	)	
	)	ORDER
KENNETH E. LEAP, NEWBERRY	)	
HOSPITAL, LLC D/B/A NEWBERRY	)	
COUNTY MEMORIAL HOSPITAL and	)	
WEST FRASER, INC.,	)	
	)	
	)	
Defendants.	)	

This matter came before the Court on Defendant West Fraser, Inc.’s (“West Fraser”) Motion for Summary Judgment and Supporting Brief (the “Motion”) seeking the entry of summary judgment on Plaintiff’s defamation claim. The Motion was heard on August 11, 2021. After hearing oral argument and reviewing the initial and supplemental submissions of the parties, for the reasons explained more fully herein, the Court finds that West Fraser’s Motion should be granted.

ALLEGATIONS OF THE COMPLAINT

This defamation case arises from what appeared to be a workplace accident injuring the Plaintiff that occurred on November 7, 2017 at West Fraser’s mill in Newberry County, South Carolina. Plaintiff alleges that while lifting the hood of a forklift, he felt something pull and experienced pain running from his groin to his stomach. Following this incident, West Fraser’s safety director responsible for managing workplace injuries and overseeing workers’ compensation claims, Keith Nelson (“Nelson”), took Plaintiff to the emergency room at Newberry County Memorial Hospital (“NCMH”). Plaintiff alleges that following an examination by NCMH

physician Dr. Keith Leap (“Dr. Leap”), Dr. Leap made the statements: “Looks like someone has been changing sexual partners. Looks like an STD.” Plaintiff alleges that Dr. Leap’s alleged statements falsely accused him of having a sexually transmitted disease (“STD”) and of adultery since Plaintiff is married. Plaintiff alleges that Nelson, while acting within the scope of his employment duties for West Fraser, repeated Dr. Leap’s alleged false statements to other employees at the mill and the alleged false statements spread throughout the mill. Plaintiff alleges that West Fraser is liable for Nelson’s alleged defamatory statements which Plaintiff alleges caused him to suffer reputational and emotional injuries.

UNDISPUTED FACTS

Following the forklift incident, Nelson drove Plaintiff to NCMH where Plaintiff was admitted and examined by Dr. Leap. Plaintiff was treated for an infection, received a prescription antibiotic and was released later that day.¹

After Plaintiff was discharged from NCMH Nelson returned to the mill, but Plaintiff did not return for several days. When Nelson arrived at the mill after returning from the hospital, Plaintiff’s coworker, George Wilson (“Wilson”), saw Nelson walking in the parking lot. Wilson had learned from other co-workers who were aware of the forklift accident that Nelson had taken Plaintiff to the hospital. Wilson asked Nelson how Plaintiff was doing to which Nelson replied, “[h]e’s doing fine. He has an infection so he got a prescription...” (Def.’s Ex. 2, Dep. of Keith

¹ Plaintiff testified in his deposition that he was diagnosed with an infection and prescribed an antibiotic. (Def.’s Ex. 1, Dep. of Plf. at pp. 145, 192). Plaintiff further testified that the day after he was discharged from NCMH, he followed up with his primary care physician and she confirmed he had an infection – specifically, a prostate infection. (Def.’s Ex. 1, Dep. of Plf. at pp. 156-57). The November 7, 2017 medical records produced by NCMH and the records produced by Plaintiff’s primary care provider corroborate that Plaintiff was diagnosed with an infection and prescribed an antibiotic. (See Def.’s Ex. 7, NCMH ED records stamped 009-10 and Def.’s Ex. 8, Lexington Family Practice Irmo records stamped 161, 177-78).

Nelson at p. 22; Def's Ex. 4, Dep. of George Wilson at p. 6). Wilson testified that no one was in close proximity to overhear Nelson's statements. Nelson's and Wilson's recollection of the conversation, as described in their sworn deposition testimony, is identical in all material respects.

Nelson testified that his reply to Wilson was not intended to communicate that Plaintiff had an STD or anything sexually related and that he believed he was simply answering the question of a concerned co-worker. More importantly, Wilson testified he did not interpret Nelson's statements as suggesting Plaintiff had an STD or communicating anything of a sexual nature. Wilson further testified he never told anyone that Plaintiff had an STD, had no reason to believe Plaintiff had an STD, and that the only person at the mill he heard discussing the alleged accusation that Plaintiff had an STD was the Plaintiff. (Def's Ex. 4, Dep. of George Wilson at pp. 7, 8, 10-11).

Plaintiff acknowledged in his deposition he has no personal knowledge of any statements Nelson made to Wilson or anyone else during the time period he was absent from the mill. Plaintiff further admitted that he could offer no testimony that he or any of his co-workers personally heard Nelson state that Plaintiff had an STD or had been changing sexual partners, (Def's Ex. 1, Dep. of Plf. at p. 140 ("I can't sit here and say that they [co-workers] heard it directly from him [Nelson], but it went through the plant like a wildfire.")) Nevertheless, Plaintiff contends that Nelson's statement to Wilson that Plaintiff had an infection and/or had an infection and had received a prescription would reasonably be understood as suggesting that Plaintiff had a *sexual* infection. When asked in his deposition why Plaintiff believed Nelson's statement insinuated Plaintiff had an STD, Plaintiff testified, "[w]hen you a black man, that's all people think that you supposed to do. You got to be some kind of little whore or something like that" and "when mens

[sic] talk like that, that's what they talking about, sex. They ain't talking about no just plain infection.” (Def’s Ex. 1, Dep. of Plf. at pp. 164, 175).

SUMMARY JUDGMENT STANDARD

“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). In determining whether a genuine factual issue exists, the evidence and all factual inferences drawn from it must be viewed in a light most favorable to the non-moving party. *Id.* When a motion for summary judgment is made and supported by such facts as would be admissible in evidence at trial, the non-moving party may not rest upon the mere allegations of his pleadings but must identify specific facts establishing a genuine issue for trial. S.C. R. Civ. P. 56(e). As the South Carolina Supreme Court has explained:

[T]he plain language of Rule 56(c) mandates the entry of summary judgment ... against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be ‘no genuine issue as to any material fact,’ since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is entitled to judgment as a matter of law because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

Baughman v. Am. Tel. and Tel. Co., 306 S.C. 101, 116, 410 S.E.2d 537, 545-46 (1991) (*quoting Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)).

The Court recognizes the scintilla of evidence rule and thoroughly analyzed the issues under that standard. “[A] scintilla of evidence is material evidence which, taken as true, would tend to establish the issue in the mind of a *reasonable* juror.” *Crosby v. Seaboard Air Line Ry.*, 81 S.C. 24, 31, 61 S.E.2d 1064, 1067 (1908) (emphasis added). Importantly, the evidence put forward by the party opposing summary judgment must be probative. When a scintilla of evidence is

susceptible to only one reasonable inference, no issue of fact arises and the Court can decide as a matter of law. *National Bank v. Barrett of Honea Path*, 174 S.E.2d 581 (1934). “[A]ny evidence, even a scintilla, that is useful to withstand a summary judgment motion must meet the prerequisite of being probative. *Bass vs. Gopal Inc.*, 384 S.C. 238, 246 n.6, 680 S.E.2d 917, 921 n.6 (Ct. App. 2009), *aff’d* 395 S.C. 129, 716 S.E.2d 910 (2011). The circuit court “is not required to single out some one morsel of evidence and attach to it great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine.” *Main v. Corley*, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984). “Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a *genuine* issue of fact remaining for trial.” *Sims v. Amisub of S..C, Inc.*, 408 S.C. 202, 208, 758 S.E.2d 187, 190-91 (Ct. App. 2014), *aff’d* 414 S.C. 109, 777 S.E.2d 379 (2015) (emphasis added) (quoting *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004)).

DEFAMATION – CONTROLLING LAW

To prove defamation under South Carolina law, a plaintiff must establish the following elements:

- (1) A false and defamatory statement was made;
- (2) The unprivileged publication was made to a third party;
- (3) The publisher was at fault; and
- (4) Either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.

Fountain v. First Reliance Bank, 398 S.C. 434, 441, 730 S.E.2d 305, 309 (2012)

Defamation is classified as either actionable *per se* or not actionable *per se* (i.e., defamation *per quod*.) *Id.* at 442, 730 S.E.2d at 309. Where, as here, the alleged defamation involves slander,

the statements are actionable *per se* if they charge the plaintiff with any of the following five acts and/or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession. *Id.* The classification of a statement as actionable *per se* is significant because in such instance the defendant “ ‘is presumed to have acted with common law malice and the plaintiff is presumed to have suffered general damages.’ ” *Id.* (quoting *Erickson v. Jones Street Publishers, LLC*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006)). On the other hand, if the statement is not actionable *per se*, “ ‘the plaintiff must plead and prove both common law malice and special damages.’ ” *Id.* (quoting *Erickson*, 368 S.C. at 465, 629 S.E.2d at 664). In other words, where a statement is actionable *per se*, the plaintiff is not required to establish elements (3) or (4) to prove defamation. *See id.*

Whether the statement is actionable *per se* is a question of law for the court to resolve. *Id.*; *see also Erickson*, 368 S.C. at 465, 629 S.E. 2d at 664. In deciding this question, “[t]he trial court has the duty to determine whether words are reasonably capable of having the defamatory meaning attributed to them by the plaintiff.” 20 S.C. JUR. *LIBEL AND SLANDER* § 19 (May 2021) (citing *Appliance Buyers Credit Corp. v. Baxley*, 241 S.C. 64, 68-69, 127 S.E.2d 8, 9 (1962)). In making this determination, words must be given their plain and popular or ordinary meaning. *Id.* Further, and as the South Carolina Supreme Court has explained, “[t]he court will not hunt for a forced and strained construction to put on ordinary words, but will construe them fairly, according to their natural and reasonable import and the plain and popular sense in which the average reader naturally understands them.” 20 S.C. JUR. *LIBEL AND SLANDER* § 19 (internal quotation omitted); *Hospital Care Corp. v. Commercial Cas. Ins. Co.*, 194 S.C. 370, 379, 9 S.E.2d 796, 800 (1940).

While statements that are not defamatory on their face may become actionable considering the context in which they were made or other insinuation or innuendo, the statement's defamatory meaning must be apparent based on a reasonable construction. *Fountain*, 398 S.C. at 442, 730 S.E.2d at 310. A construction based on "purely conjectural interpretations" is not reasonable and is insufficient to avoid summary judgment. *Id.*

Regardless of whether a statement is actionable *per se* or *per quod*, truth is an absolute defense to any defamation claim. *Id.* When the alleged defamatory statements are made by a private figure in a matter of private concern, it is the defendant's burden of "proving the substantial truth of each of the alleged defamatory statements." *Kunst v. Loree*, 424 S.C. 24, 41, 817 S.E.2d 295, 303 (2018). If the defendant presents evidence establishing the truth of the statements and there is no conflicting evidence to challenge the truth of the statements, summary judgment is appropriate. *Fountain*, 398 S.C. at 442, 730 S.E.2d at 310 (even if statements were actionable *per se*, they could not be deemed defamatory because they were unquestionably true; affirming summary judgment).

LEGAL ANALYSIS

I. West Fraser Has Established the Substantial Truth of Nelson's Statements.

West Fraser has submitted undisputed testimony from the only two individuals with personal knowledge of the statements Nelson made to Wilson: Nelson and Wilson. The record evidence establishes that Nelson told Wilson Plaintiff had an infection and/or had an infection and received a prescription. Both statements are undisputedly true. (*Supra*, at p. 2 n.1).

While Plaintiff urges that there is a factual issue concerning the veracity of the testimony concerning what Nelson stated to Wilson, (Hearing Tr. at p. 17), Plaintiff has not identified any actual evidence that rebuts or contradicts Nelson's or Wilson's testimony. As such, Plaintiff has

not met his burden to overcome West Fraser's properly supported Motion. *See Moody v. McClellan*, 295 S.C. 157, 163-64, 367 S.E.2d 449, 452-53 (where defendant's summary judgment motion was supported by supervisor's sworn testimony denying he made alleged defamatory statements, plaintiff could not rely on speculation or hearsay testimony about what others allegedly told him supervisor said to defeat summary judgment); Rule 56E, SCRCP.

There is insufficient evidence to support that Nelson's statements to Wilson, on their face, charged Plaintiff with having an STD or changing sexual partners (i.e., adultery). The statements Nelson actually made to Wilson, as supported by the uncontested record evidence, were true. Therefore, West Fraser has established a complete defense to Plaintiff's defamation claim based on the literal meaning of Nelson's statements.

II. Nelson's Statements Cannot Reasonably Be Construed as Defamatory by Innuendo.

During oral argument, Plaintiff conceded there was no direct evidence that Nelson made the defamatory statements alleged in the Complaint but argued the defamatory nature of Nelson's statements could be inferred from circumstantial evidence. (Hearing Tr. at pp. 18-19) The circumstantial evidence Plaintiff relies on consists primarily of evidence that a rumor that Plaintiff had an STD started at the mill. From this Plaintiff surmises that no one other than Nelson could have started the rumor. According to Plaintiff, since Nelson and Plaintiff were the only West Fraser employees at the hospital and Plaintiff did not return to the mill for several days, Nelson is the only possible source of how the rumor that Plaintiff had an STD started. (Hearing Tr. at pp. 12-13)

In response, West Fraser asserted that Plaintiff's argument is both legally and factually deficient. First, Plaintiff's argument still fails to properly rebut Nelson's sworn testimony.

Further, it disregards the considerable record evidence. West Fraser's Motion identified testimony by multiple West Fraser employees attesting that the Plaintiff himself repeated Dr. Leap's alleged statements around the mill and that the only person they heard talking about the alleged STD accusation was the Plaintiff. (Def.'s Ex. 4, Dep. of George Wilson at pp. 7, 8, 10-11; Def's Ex. 9, Dep. of Dolan J. Russell at pp. 7-8). Likewise, several of the co-workers Plaintiff's Counsel identified during oral argument as providing testimony that they heard a rumor that Plaintiff had an STD also testified they heard this from the Plaintiff and/or heard Plaintiff telling others about it. (See Dep. of Ralph Maybin, at pp. 8-9 (testifying he heard the statement from Plaintiff and also heard Plaintiff tell others); Dep. of Joseph Praylow at p. 7 (testifying "I know Hopp [Plaintiff] had told me himself me about it.")).² West Fraser's Motion also identified evidence that mill employees saw Plaintiff immediately after the incident occurred before he went to the hospital and Plaintiff was visibly experiencing pain in his groin area. At least one co-worker testified this led to joking that Plaintiff was not really injured and had "probably been with, you know ... [some woman]." (Def.'s Ex. 3, Dep. of Anthony Cannon Dep. at p. 3).

Based on the evidence of record, Nelson's statements were not the only possible source of the rumors. See, e.g., *Williams v. Lancaster Cty. School Dist.*, 369 S.C. 293, 304, 631 S.E.2d 286, 292 (Ct. App. 2006) (plaintiffs could not defeat summary judgment where there was no direct evidence that principal told anyone plaintiff was an adulterer and plaintiffs' indirect evidence suggesting principal was only possible source of adultery rumor disregarded that other school

² At the conclusion of the summary judgment hearing and at Plaintiff's request, the complete transcripts of the depositions referenced during oral argument, including several of the co-worker depositions, were offered into the record and subsequently filed with the Court. There are references in some of the transcripts to "Hopp" and/or "Hop," which is the Plaintiff's nickname.

employees were in the area after married male teacher was found in bathroom with female secretary).

Next, Plaintiff points to a letter of reprimand that West Fraser plant manager, D.J. Russell (“Russell”), issued to Nelson for disclosing Plaintiff’s medical information to an hourly employee (i.e., Wilson). (Hearing Tr. at p. 19). Russell issued the letter as a warning to Nelson following Russell’s investigation of complaints Plaintiff made to Russell and other members of West Fraser management. Although Plaintiff characterizes the letter as an admission by West Fraser that Nelson’s statements to Wilson were slanderous, the plain wording of the letter states that “disclosing medical information about an employee can be considered *by the employee* as slanderous,” not that West Fraser considered Nelson’s statement to be slanderous. (Plf.’s Ex. 4, Hearing Tr. at p. 20) (emphasis added). Russell, the person who authored the letter, testified unequivocally the letter was intended to address Nelson’s statement to Wilson disclosing that Plaintiff had an infection, “strictly that and nothing else.” (Def’s Ex. 9, Dep. of Dolan J. Russell, at pp. 15-16). At best, the letter of reprimand establishes West Fraser considered Nelson’s statements to be inappropriate and contrary to company procedure. It does not support that Nelson’s statements to Wilson implied a defamatory meaning. *See Fountain*, 398 S.C. at 443, 730 S.E.2d at 310 (banker’s testimony that statements were inappropriate and not something a banker should say “falls far short of establishing an implied defamatory meaning.”)

The only other evidence offered as purported support that Nelson’s statements were defamatory by inference is the Plaintiff’s testimony concerning stereotypes and assumptions men make about other men and/or black men who have been diagnosed with any type of infection. Plaintiff’s testimony is more conjecture and insufficient, based on a reasonable construction, to show Nelson’s statements were defamatory by innuendo.

The Court finds that the only competent evidence of the statements Nelson made to Wilson establishes that Nelson told Wilson Plaintiff had an infection and/or had an infection and received a prescription. These statements are true based on their literal meaning, and there is no evidence to establish the statements reasonably would be construed as defamatory. Indeed, the person who actually heard Nelson's statements, Wilson, testified he did not interpret the statements as implying Plaintiff had an STD or anything defamatory.

III. Nelson's Statements to Plant Manager Russell Are Qualifiedly Privileged.

As an alternative basis for his defamation claim, during oral argument Plaintiff pointed to Nelson's testimony purportedly establishing that Nelson "told Mr. Russell that the doctor had said that he [Plaintiff] had an infection of a sexually transmitted disease." (Hearing Tr. at pp. 22-23). Plaintiff asserts that Nelson's alleged statement to Russell was in itself defamatory.

As an initial matter, Plaintiff's counsel's account of what Nelson told Russell is a true statement since Plaintiff alleges Dr. Leap did make this statement. However, a review of Nelson's deposition testimony plainly shows that what Nelson actually told Russell is that the Plaintiff was "very upset" that Dr. Leap asked Plaintiff about changing sexual partners.³ (Def.'s Ex. 2, Dep. of Keith Nelson at p. 22). More specifically, Nelson testified that after returning from NCMH he went to Russell's office to discuss Plaintiff's apparent on-the-job injury. (Def.'s Ex. 2, Dep. of Keith Nelson at pp. 22, 25). Nelson testified this conversation was held "behind closed doors" in the privacy of Russell's office. (Def.'s Ex. 2, Dep. of Keith Nelson at p. 22). Nelson informed Russell that Plaintiff had been diagnosed with an infection and that Nelson did not believe Plaintiff had been injured in an on-the-job accident that would be covered by worker's compensation.

³ West Fraser asserts that this also is a true statement since Plaintiff was upset by Dr. Leap's alleged comment.

(Def.'s Ex. 2, Dep. of Keith Nelson at pp. 22, 25-26). Nelson testified he also told Russell Plaintiff was upset about the question Dr. Leap asked him because Russell was the plant manager, but that this information stayed between Nelson and Russell. (Def's. Ex. 2, Dep. of Nelson at p. 22).

West Fraser asserts at the outset that there is no evidence nor even allegation that Nelson's conversation with Russell was overheard by other employees in the mill or repeated to anyone else at the mill, and the private conversation between Nelson and Russell has never been Plaintiff's theory of the publication that started the alleged rumor that Plaintiff had an STD.

Additionally, West Fraser contends Nelson's statements to Russell are qualifiedly privileged. At oral argument West Fraser asserted that Nelson's statements to Russell were made during a private conversation between two members of West Fraser management talking about a personnel issue – i.e., that Plaintiff was upset about remarks allegedly made by the doctor the company took him to for treatment following an apparent work-related accident. (Hearing Tr. at pp. 26-27).⁴ Agents of a company have a common interest in discussing employee concerns that could lead to complaints or claims against the company. The appropriateness of Nelson telling Russell that Plaintiff was very upset about Dr. Leap's alleged comment is evidenced by the fact that it preceded Plaintiff's direct complaint to Russell asserting that Dr. Leap was a "quack," made

⁴ West Fraser emphasized Plaintiff also complained about Dr. Leap's comment to other members of West Fraser management and the record includes testimony and written statements by the managers documenting Plaintiff's complaints. (Hearing Tr. at p. 27). *See* Dep. of Keith Nelson at pp. 48-49 (reading written statement by West Fraser superintendent Quinton Wilson documenting Plaintiff's complaint about the doctor West Fraser took him to because the doctor made comments about Plaintiff changing sexual partners in front of Plaintiff's wife and that Plaintiff never wanted to be taken to NCMH again). *See also* Dep. of Dolan J. Russell at pp. 25-26 (testifying Plaintiff complained about Dr. Leap's comments to Russell); Exhibit 1 to Dep. of Dolan J. Russell Dep. (documenting meeting to discuss Plaintiff's complaints following forklift incident).

inappropriate comments about Plaintiff changing sexual partners, and that Plaintiff never wanted to be taken to NCMH again. (See Dep. of D.J. Russell at pp. 25-26. *Supra*, at p. 11 n.4).

Under South Carolina law, statements that are subject to a qualified privilege, even if defamatory, are not actionable unless the privilege is rebutted. *Fountain*, 398 S.C. at 444, 730 S.E.2d at 310. Communications between agents of the same corporation made in the course of normal business are generally regarded as subject to a qualified privilege. *Conwell v. Spur Co. of Western South Carolina*, 240 S.C. 170, 179, 125 S.E.2d 270, 275 (1962). See also *Bell v. Evening Post Pub. Co.*, 318 S.C. 558, 560, 459 S.E.2d 315, 317 (Ct. App. 1995) (citing *Prentiss v. Nationwide Mut. Ins. Co.*, 256 S.C. 141, 147, 181 S.E.2d 325, 327 (1971)). The elements of a qualified privilege include:

[G]ood faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, and publication in a proper manner and to proper parties only. The privilege arises from the necessity of full and unrestricted communication concerning a matter in which the parties have an interest or duty, and is not restricted within any narrow limits.

Bell, 318 S.C. at 560-61, 459 S.E.2d at 317 (quoting *Prentiss*, 256 S.C. at 147, 181 S.E.2d at 327).

Whether an occasion gives rise to a qualified privilege is a question of law for the court to decide. *Fountain*, 398 S.C. at 444, 730 S.E.2d at 310; *Wright v. Sparrow*, 298 S.C. 469, 474, 381 S.E.2d 503, 506-07 (Ct. App. 1989). Where an occasion giving rise to a qualified privilege exists, the burden shifts to the plaintiff to show the privilege was abused. *Wright*, 298 S.C. at 474, 381 S.E.2d at 506-07. Further, a statement that is qualifiedly privileged requires the plaintiff to prove the publisher was motivated by actual malice. *Id.*

The Court agrees that Nelson's report to Russell is the type of communication South Carolina courts have held give rise to a qualified privilege. It is clear from Nelson's deposition testimony that his statements to Russell were made pursuant to his duties as safety director and in

the interest of reporting an employee concern raised during Nelson's response to an apparent on-the-job accident. *See Bell*, 318 S.C. at 317, 459 S.E.2d at 560-61 (trial court did not err in finding statements made during employer's investigation of potential harassment claim were protected by qualified privilege); *Wright*, 298 S.C. at 474, 381 S.E.2d at 506-07 (employer's statements made about employee's job performance in meeting to discuss employee's termination were qualifiedly privileged).

Plaintiff pointed to no evidence that would tend to show that Nelson's statements to Russell were motivated by actual malice or that the qualified privilege was abused. Instead, Plaintiff argued that the question of whether the privilege has been abused is an issue for the jury. [Hearing Tr. at p. 28]. While that would be accurate if Plaintiff had presented evidence to show an improper manner of publication, actual malice, or to otherwise rebut the qualified privilege, the South Carolina Supreme Court has clearly held "in the absence of a controversy as to the facts ... it is for the court to say in a given instance whether or not the privilege has been abused or exceeded." *Fountain*, 398 S.C. at 444, 730 S.E.2d at 310 (quoting *Woodward v. S.C. Farm Bureau Ins. Co.*, 277 S.C. 29, 32-33, 282 S.E.2d 599, 601 (1981)). *See also Wright*, 298 S.C. at 474, 381 S.E.2d at 506-07 (affirming summary judgment on issue of qualified privilege absent evidence of actual malice to rebut privilege); *Bell*, 318 S.C. at 560-61, 459 S.E.2d at 317 (affirming directed verdict because there was no issue for jury where qualified privilege was established and plaintiff failed to present evidence to rebut it).⁵

⁵ Plaintiff cites *Murray v. Holnam, Inc.*, 344 S.C. 129, 542 S.E.2d 743 (Ct. App. 2001) as supporting Plaintiff's contention that whether the qualified privilege was abused is necessarily a jury question. Based on the authorities cited above, that is not the case where there is a lack of evidence to indicate the privilege was exceeded. *Murray* is factually distinguishable because in that case there was evidence to support the alleged defamatory statements were made to improper parties for an improper purpose. In *Murray*, the plaintiff presented testimony by two of his former co-workers establishing that following accusations that plaintiff had stolen company

If Plaintiff's defamation theory against West Fraser is reliant on the Nelson-Russell communication, it was incumbent on Plaintiff to identify some evidence to rebut the qualified privilege. Plaintiff failed to do so. Therefore, even assuming Plaintiff could establish a defamatory statement based on Nelson's statement to Russell, summary judgment still is warranted because Plaintiff has not presented evidence to support the qualified privilege was abused.

PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE COMPLAINT

During oral argument, Plaintiff raised the possibility of amending the Complaint to assert an additional claim for breach of an alleged duty of confidentiality based on Nelson's disclosure of Plaintiff's medical information to Wilson. (Hearing Tr. at p. 17). This claim was not pled as of the date of the summary judgment hearing, and in fact, as of that date, Plaintiff had not even filed his motion seeking permission to plead the claim. Six (6) days after the summary judgment hearing, Plaintiff filed his motion to amend along with a proposed Amended Complaint.

Rule 6(d) of the South Carolina Rules of Civil Procedure requires that a motion be filed ten (10) days before a hearing on that motion. Although the merits of Plaintiff's motion to amend were not properly before the Court on the date of the summary judgment hearing, after Plaintiff filed his motion to amend the Court allowed the parties to submit supplemental briefing to address whether Plaintiff's proposed amendment had any impact on West Fraser's Motion. Plaintiff's

property, the shift supervisor held a meeting that was attended by at least six of the plaintiff's co-workers to announce the plaintiff had been terminated for misappropriating company property. *Murray*, 344 S.C. at 136, 542 S.E.2d at 746. The supervisor did not deny holding the meeting but testified he stated the plaintiff had been suspended for misusing company property pending investigation. *Id.* There was no apparent or articulated reason for the supervisor to disclose plaintiff's alleged misconduct to the other employees on plaintiff's shift, and as such, there were factual issues concerning whether the supervisor's statements were made in good faith and only to the proper parties. *Murray*, 344 S.C. at 136, 542 S.E.2d at 746. In contrast, here, there is no evidence from which a jury could reasonably conclude that Russell, the manager of the entire facility, was not properly informed of Plaintiff's complaint or that Nelson told this information to anyone other than Russell.

proposed amended claim is premised on the same factual allegations as his defamation claim (i.e., that Nelson published false statements accusing Plaintiff of having an STD and/or adultery). For the reasons discussed above, these allegations lack evidentiary support.

Further, the proposed amended claim attempts to assert a cause of action for breach of the alleged duty of confidentiality, a claim that has never been recognized in South Carolina against an employer. This is apparent from the authorities both parties cited in their supplemental briefing. Accordingly, Plaintiff's amendment would be futile.

In addition to the futility of Plaintiff's proposed amendment, the timing makes it unfairly prejudicial. This case has been pending since March 7, 2019. Plaintiff offered no justification for waiting until just 27 days before the September 13, 2021 trial date to file a motion seeking to add a new claim based on an entirely different theory of liability. Plaintiff's assertion that the proposed amendment is based on existing evidence and this somehow eliminates the prejudice to West Fraser is unsupported. Allowing Plaintiff to inject a new theory of liability at the eleventh hour after the case has been pending for approximately 2 ½ years is precisely the type of late notice and timing that is considered unfairly prejudicial. *Holland ex. Rel. Knox v. Morbark, Inc.*, 407 S.C. 227, 235, 754 S.E.2d 714, 719 (Ct. App. 2014); *Collins Entm't, Inc. v. White*, 363 S.C. 546, 562, 611 S.E.2d 262, 270 (Ct. App. 2005)

For all of the foregoing reasons, the Court finds Plaintiff's motion to amend the Complaint has no impact on the Court's summary judgment analysis or the appropriate outcome of West Fraser's Motion.

WHEREFORE, for the reasons stated herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that West Fraser's Motion for Summary Judgment is **GRANTED**.

Entered this the ____ day of _____, 2021.

G.D. Morgan, Jr.
Presiding Judge



Newberry Common Pleas

Case Caption: Anthony Wise VS Keith E Leap , defendant, et al

Case Number: 2019CP3600103

Type: Order/Summary Judgment

So Ordered

G.D. Morgan Jr.

Electronically signed on 2021-10-08 17:57:25 page 18 of 18

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Newberry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP3600103

Anthony Wise
PLAINTIFF(S)

West Fraser Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

The Court has thoroughly reviewed the Plaintiff's Motion for Reconsideration and Memorandum in Support of Motion for Reconsideration, as well as all previously filed submissions and arguments of counsel. Based on that review, the Plaintiff's Motion for Reconsideration is denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/23/2021 .

Anne Laurie Mcclurkin for West Fraser Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Newberry Common Pleas

Case Caption: Anthony Wise VS Keith E Leap , defendant, et al

Case Number: 2019CP3600103

Type: Order/Electronic Form 4

So Ordered

G.D. Morgan Jr.

Electronically signed on 2021-11-23 13:28:59 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	CIVIL ACTION NO.: 2019-CP-36-____
	)	
ANTHONY WISE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<u>SUMMONS</u>
	)	<i>(Jury Trial Demanded)</i>
	)	
KEITH E. LEAP, NEWBERRY	)	
HOSPITAL, LLC D/B/A NEWBERRY	)	
COUNTY MEMORIAL HOSPITAL AND	)	
WEST FRASER, INC.,	)	
	)	

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., at 101 Mulberry Street East, Post Office Box 457, Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: /s/ John E. Parker
John E. Parker
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
Email: jparker@pmped.com

ATTORNEY FOR PLAINTIFF

March 7, 2019
Hampton, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	CIVIL ACTION NO.: 2019-CP-36-_____
	)	
ANTHONY WISE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<u>COMPLAINT</u>
	)	<i>(Jury Trial Demanded)</i>
	)	
KEITH E. LEAP, NEWBERRY	)	
HOSPITAL, LLC D/B/A NEWBERRY	)	
COUNTY MEMORIAL HOSPITAL AND	)	
WEST FRASER, INC.,	)	
Defendants.	)	

The Plaintiff alleges:

1. The Defendant Newberry Hospital, LLC is a limited liability corporation and operates Newberry County Memorial Hospital ("NCMH") in Newberry, South Carolina. Newberry Hospital, LLC is subject to the jurisdiction of the court by means of doing business in Newberry County. The Defendant Keith Leap is a resident of South Carolina and was an agent and/or employee of Newberry Hospital, LLC, acting within the scope of his agency and/or employment at all times mentioned herein.
2. The Defendant, West Fraser, Inc., is a corporation which does business in Newberry County and operates the mill where Plaintiff worked.
3. Venue of this case is proper in Newberry County pursuant to §15-7-30, South Carolina Code (1976 as amended) because the cause of action occurred in Newberry County, South Carolina.
4. Plaintiff Anthony Wise was employed at West Fraser, Inc. in Newberry, South Carolina. On November 7, 2017, Mr. Wise was working at the mill when he discovered that the hood of his forklift was damaged. While lifting the hood, Mr. Wise suddenly experienced pain running from his groin to his stomach. He was subsequently taken to the emergency room at NCMH by the safety director of West Fraser.

5. Defendant Keith Leap, an agent and/or employee at NCMH, was a physician and examined Mr. Wise for his injuries. After examining Mr. Wise, Dr. Leap informed Mr. Wise, Mr. Wise's wife, and the West Fraser safety director that it did not look like a hernia. Dr. Leap then said "Looks like somebody's been changing sexual partners. Looks like an STD." These statements falsely accused Mr. Wise of having contracted a sexually transmitted disease. Since Mr. Wise did not have a sexually transmitted disease, Dr. Leap defamed the plaintiff by falsely stating he had a sexually transmitted disease and by falsely accusing him of adultery since Mrs. Wise did not have a sexually transmitted disease.

6. Upon returning to work, the safety director of West Fraser, Inc., while acting within his employment, published to other workers at the mill Dr. Leap's false and defamatory statements. The false and defamatory statements quickly spread throughout the mill damaging the plaintiff's reputation.

7. The Defendants' false and defamatory statements damaged Mr. Wise's reputation and caused him to suffer mental anguish by falsely accusing him of adultery and of having a sexually transmitted disease.

8. The Plaintiff is entitled to actual and punitive damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

~SIGNATURE PAGE TO FOLLOW~

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: /s/ John E. Parker

John E. Parker
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
Email: jparker@pmped.com

ATTORNEY FOR PLAINTIFF

March 7, 2019
Hampton, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	Civil Action No.: 2019-CP-36-00103
	)	
ANTHONY WISE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
KENNETH E. LEAP, NEWBERRY	)	
HOSPITAL, LLC D/B/A NEWBERRY	)	
COUNTY MEMORIAL HOSPITAL, and	)	
WEST FRASER, INC.	)	
	)	
Defendants.	)	

**DEFENDANT'S ANSWER
WITH AFFIRMATIVE DEFENSES**

Defendant, West Fraser, Inc. (the "Defendant") hereby files its Answer with Affirmative Defenses to Plaintiff's Complaint, and states as follows:

1. Without Knowledge.
2. Admitted.
3. Admitted for venue purposes only. Denied that Plaintiff has a cause of action against Defendant and Denied that Defendant violated any laws.
4. Admitted that Defendant employed Plaintiff on or about November 7, 2017. Admitted that after Plaintiff arrived at Defendant's workplace, Plaintiff experienced an alleged medical situation and Plaintiff went to the medical facility identified as co-defendant, NCMH, for medical evaluation and/or medical treatment. Admitted that Defendant's safety director went to the medical facility, NCMH. Except as Admitted, Defendant answers Denied due to lack of knowledge and/or Denied at this time.

5. Admitted Plaintiff and Defendant's safety director were present at the medical facility, NCMH. Admitted that Defendant's safety manager was made aware of information arising from Plaintiff seeking medical evaluation or medical treatment at NCMH. Except as Admitted, Defendant answers Denied due to lack of knowledge and/or Denied at this time.

6. Denied.

7. Denied as to allegations pertaining to Defendant, and Defendant is only answering on behalf of Defendant in this Answer.

8. Denied as to allegations pertaining to Defendant, and Defendant is only answering on behalf of Defendant in this Answer.

Prayer for Relief

Defendant denies any violation of the law, and further denies that Plaintiff is entitled to the relief requested against the Defendant.

Affirmative Defenses

1. Plaintiff has failed to state a claim upon which relief may be granted.
2. Defendant's statement(s), if any, were not false and/or were truthful.
3. Defendant's statements, if any, were not defamatory and/or lack a defamatory meaning.
4. Defendant's statements, if any, were privileged and/or made with a qualified privilege.
5. Defendant's statements, if any, were made in good-faith.
6. Defendant did not abuse any privilege or qualified privilege.
7. Defendant's statements, if any, were not made with malice.

8. Defendant's statements, if any, were a matter of opinion and such statements are not actionable as defamation.

9. Defendant's employee(s) did not make false and/or defamatory statements within the scope of employment.

10. Defendant is not at fault for any alleged defamatory statements.

11. Defendant is not liable for false or defamatory statements that it did not publish.

12. Defendant is not liable for Plaintiff's reporting or publication of alleged false information or defamatory statements.

13. Defendant is not liable for any false or defamatory statements made or published by a third-party and/or any individual who is not employed by Defendant.

14. Plaintiff's claims or alleged damages are barred as to the extent applicable by the doctrines of estoppel, waiver, laches, unclean hands, or any other statutory, common-law, or equitable affirmative defense arising from the acts or omissions of Plaintiff.

15. Plaintiff's claims are barred by the applicable statute of limitations or time requirements for filing a lawsuit.

16. Plaintiff did not suffer any damages.

17. Defendant's statements, if any, were not slanderous per se.

18. Plaintiff did not suffer any special harm.

19. Defendant's statements were not published to a third-party.

20. Plaintiff did not suffer any damages attributable to any acts or omissions of Defendant.

21. Plaintiff's reputation was not damaged by Defendant.

22. Without admitting that Plaintiff suffered any damages, Plaintiff is barred from recovering damages that he failed to mitigate and/or caused or that a third-party caused.

23. Without admitting that Plaintiff suffered any damages, Plaintiff cannot satisfy his burden of proof regarding alleged damages, including recovering of punitive damages.

24. Defendant is not the proximate cause of any alleged injury or damages.

25. Defendant reserves the right to raise additional affirmative defenses based upon additional evidence that may be discovered during the pendency of this case.

WHEREFORE, Defendant files its Answer, requests attorneys' fees and costs, and any other relief the Court deems just and proper based on its defense of this case.

s/Christopher B. Major
Christopher B. Major, SC Bar No. 72872
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**COUNSEL FOR DEFENDANT,
WEST FRASER, INC.**

Greenville, SC
June 3, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	)	Civil Action No. 2019-CP-36-00103
ANTHONY WISE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Defendant West Fraser Inc.'s
	)	Motion for Summary Judgment
KENNETH E. LEAP, NEWBERRY	)	and Supporting Brief
HOSPITAL, LLC D/B/A NEWBERRY	)	
COUNTY MEMORIAL HOSPITAL and	)	
WEST FRASER, INC.,	)	
	)	
Defendants.	)	

Defendant West Fraser, Inc. ("West Fraser"), pursuant to Rule 56 of the *South Carolina Rules of Civil Procedure*, respectfully moves the Court for the entry of summary judgment on Plaintiff Anthony Wise's ("Plaintiff") sole claim for defamation. For the reasons set forth below and established by the record evidence submitted herewith as Exhibits 1-9, the alleged statements at issue are true. Plaintiff has no evidence to dispute this. Summary judgment, therefore, is appropriate.

I. INTRODUCTION

This defamation case arises from what appeared to be a workplace accident injuring the Plaintiff that occurred on November 7, 2017 at West Fraser's mill in Newberry County. Following the accident, West Fraser's Safety Director responsible for overseeing workers' compensation benefits, Keith Nelson ("Nelson"), took Plaintiff to the emergency room. Plaintiff was diagnosed with an infection, prescribed an antibiotic and pain medication, and released the same day although Plaintiff did not return to work until approximately one week later. Several of Plaintiff's co-workers saw Plaintiff hunched over in pain after the accident and/or learned about the accident

from other co-workers. When Nelson returned to the mill, one of Plaintiff's co-workers who had just learned of the accident, George Wilson ("Wilson"), asked Nelson if Plaintiff was okay to which Nelson replied, "[h]e's doing fine. He has an infection so he got a prescription..." (See, *infra* at §II, ¶ 32).

Plaintiff alleges in his lawsuit that Nelson's statements were either overheard by or repeated to other co-workers and caused several of his co-workers to believe Plaintiff had a sexually transmitted disease and/or had committed adultery. When asked why Plaintiff believed anyone would reasonably interpret the statement "he has an infection" as suggesting he has a sexual infection or was an adulterer, Plaintiff testified, "[w]hen you a black man, that's all people think that you supposed to do. You got to be some kind of little whore or something like that." He further explained, "when mens [sic] talk like that, that's what they talking about, sex. They ain't talking about no just plain infection." (See, *infra*, at § II, ¶ 45). Accordingly, Plaintiff alleges that Nelson's statements were defamatory *per se* and that West Fraser is liable under a theory of *respondeat superior*.

Plaintiff's defamation claim fails and should be summarily dismissed. First, aside from rank hearsay, the only evidence of what Nelson actually said or reasonably insinuated is that Plaintiff had an infection and received a prescription. These statements are undeniably true. Truth is an absolute defense and summary judgment is proper for this reason alone.

Moreover, even if Plaintiff could present evidence to contradict the truth of Nelson's statements, which he cannot, his claim still fails. The only evidence Plaintiff offers to establish Nelson's statements are defamatory *per se* is Plaintiff's wild conjecture based on offensive stereotypes about black men. No *reasonable* construction of Nelson's statements in the context they were made supports Plaintiff's interpretation. As such, Plaintiff may not presume and must

prove the elements of common law malice (i.e., ill will, intent to injury, or wanton disregard) and special, as opposed to general, damages (i.e., tangible monetary injury). Plaintiff has no evidence of either. These deficiencies are fatal to Plaintiff's claim and summary judgment is warranted.

II. STATEMENT OF UNDISPUTED FACTS

1. In approximately March 2015, West Fraser hired Plaintiff to work as a forklift operator at its mill in Newberry, South Carolina. (Plf. Dep. at p. 37, attached hereto as "**Exhibit 1**"). Plaintiff worked in this position through the date of the incident, November 7, 2017, and currently is still employed by West Fraser.

Plaintiff's Workplace Injury

2. On November 7, 2017, Plaintiff was assigned to work in the shipping department.¹ (Ex. 1 at p. 98).

3. Plaintiff arrived at work shortly before his shift was scheduled to begin at 6:00 A.M. (Ex. 1 at p. 99-100).

4. Plaintiff got to the mill at or around the same time as other shipping department employees scheduled to work the day shift, which begins at 6:00 A.M. (Ex. 1 at p. 100). As Plaintiff and other day shift employees were preparing to begin their shift, the night shift employees were finishing. (Ex. 1 at p. 99).

5. Shortly after clocking in, Plaintiff began his pre-work inspection of the forklift he would be operating. Plaintiff testified that as he attempted to raise the hood, he "felt something give . . . [and] could feel everything swelling up." (Ex 1 at p. 101). Plaintiff also testified that his testicles were swollen and he was "hurting something terrible." (Ex. 1 at p. 101-02).

¹ Plaintiff normally worked in the dry kiln department but was temporarily assigned to assist in the shipping department on the date of the incident. (Ex. 1 at p. 43).

6. A nearby co-worker saw the incident and asked Plaintiff if he was okay, to which Plaintiff replied, “No, man, something gave.” (Ex. 1 at p 101).

7. Plaintiff immediately informed his supervisor Chuck Price about his injury and stated that he needed to see a doctor. (Ex. 1 at p. 101-02).

8. Chuck Price reported Plaintiff’s injury to Superintendent Steve Johnson. (Ex. 1 at p. 101). Steve Johnson and a senior Superintendent, Quinton Wilson, came to the office where Plaintiff was waiting. (Ex. 1 at p. 101-02). They provided Plaintiff with an ice pack for his testicles while they tried to reach West Fraser’s Safety Director, Nelson. (Ex. 1 at p. 102).

9. On the date of the incident, Nelson had been employed as West Fraser’s Environmental Health and Safety Director (“Safety Director”) for more than twenty (20) years. (Nelson Dep., at p. 10, attached hereto as “**Exhibit 2**”).

10. As Safety Director, Nelson is responsible for overseeing all on-the-job injuries, including ensuring employees receive necessary medical care; reporting injuries or diagnoses that are compensable under West Fraser’s workers’ compensation plan to management; and reporting recordable incidents to the Occupational Safety and Health Administration (“OSHA”). (Ex. 2 at p. 15).

11. Plaintiff testified that Nelson arrived at the mill between approximately 6:30-7:00 A.M. (Ex. 1 at p. 110). Plaintiff testified that Nelson initially wanted him to wait until 8:30 A.M. when West Fraser’s occupational health (i.e., workers’ comp) doctor’s office opened, but Plaintiff told Nelson he could not wait that long. (Ex. 1 at pp. 110-11).

12. Nelson agreed that Plaintiff needed to go to the emergency room and drove him to Newberry County Memorial Hospital. (Ex. 1 at p. 111).

13. As he and Nelson left the mill, Plaintiff was able to walk but was hunched over in pain, wobbling and holding his groin area. (Ex. 1 at p. 104-05).

14. Other than the four individuals mentioned above (the nearby co-worker, Supervisor Price, and Superintendents Johnson and Wilson), Plaintiff testified that he could not recall any other employees he saw or spoke with as he was waiting to be taken to the hospital. (Ex. 1 at p. 108-09).

15. However, at least one night shift employee testified that he and another employee saw Plaintiff while he was waiting for Nelson to arrive. (Anthony Cannon Dep. at pp. 9-10, attached hereto as “**Exhibit 3**”). Anthony Cannon (“Cannon”) testified that as he and Robert Johnson were ending their shift, they saw Plaintiff holding his groin and in obvious pain. (Ex. 3 at pp. 9-10). Cannon also testified that as they approached the Plaintiff, Robert Johnson joked that, “Ain’t nothing wrong with you, he’s probably been with, you know ... [some woman].” (Ex. 3 at p. 10).

Plaintiff and Nelson Arrive at Newberry County Memorial Hospital

16. On the way to the hospital, Plaintiff called his wife, Pauline Wise (“Mrs. Wise”) and asked her to meet him at the hospital. (Ex. 1 at p. 112). Mrs. Wise was not there when Plaintiff and Nelson arrived but got to the hospital a little later. (Ex. 1 at p. 112).

17. When they arrived at the hospital, Plaintiff and Nelson walked in together. Plaintiff signed in and was taken to an exam room. (Ex. 1 at p. 113).

18. Nelson remained at the hospital but did not accompany Plaintiff to the exam room. (Ex. 1 at p. 114). Plaintiff testified that Nelson “floated around,” walking inside and outside the

hospital, periodically coming back and “peeping in” the doorway of the exam room.² (Ex. 1 at pp. 114-15).

19. While Plaintiff was waiting to be seen by a doctor, Mrs. Wise arrived at the hospital. (Ex. 1 at p. 121).

20. Shortly after Mrs. Wise arrived, Dr. Kenneth Leap entered the exam room and informed the Plaintiff that “we’re going to take you back there and check you out.” (Ex. 1 at pp. 125-26). An X-ray technician then transported Plaintiff to the X-ray room for an ultrasound. (Ex. 1 at pp. 127-28).

21. When the technician returned Plaintiff to the exam room, he transferred Plaintiff onto the bed to wait for Dr. Leap. (Ex. 1 at p. 128).

22. Plaintiff testified that could not recall everyone who was present in the exam room when Dr. Leap returned but said it “was a bunch of people.” (Ex. 1 at p. 130). The individuals he recalled being present included Mrs. Wise, Nelson, Dr. Leap, and a nurse. (Ex. 1 at p. 131-32).

23. According to Plaintiff, when Dr. Leap returned to the exam room, he made the following two statements: “I don’t see anything to cause me to believe that you have a hernia,” and “[l]ooks like somebody’s been changing sexual partners.” (Ex. 1 at p. 131).

24. Plaintiff does not recall Dr. Leap saying anything else before he left the exam room. (Ex. 1 at p. 133). Plaintiff testified that Nelson left the exam room at the same time as Dr. Leap and that he could see Nelson speaking with Dr. Leap but could not hear what they discussed. (Ex. 1 at p. 150).

² Plaintiff could not recall whether the exam room doorway had a door or curtain closure. (Ex. 1 at p.123-24).

25. Nelson testified that he talked with Dr. Leap after he completed his examination of the Plaintiff to discuss his diagnosis. (Ex. 2 at p. 15). Nelson explained that he needed the information to determine whether Plaintiff had sustained an on-the-job injury for workers' comp and OSHA reporting purposes.³ (Ex. 2 at p. 15).

26. Nelson testified that Dr. Leap relayed to him that Plaintiff had an infection and that he wrote Plaintiff a prescription which Dr. Leap provided to Nelson. (Ex. 2 at p. 15; Ex. 1 at p. 147). Nelson further testified that Dr. Leap did not describe the nature of the infection and did not disclose anything further about Plaintiff's condition.⁴ (Ex. 2 at p. 16).

27. While Nelson was speaking with Dr. Leap about his diagnosis, Plaintiff and Mrs. Wise were alone in the exam room. (Ex. 1 at p. 147). Plaintiff testified that he and his wife were upset by the comment Dr. Leap allegedly made about changing sexual partners and that Mrs. Wise was in shock. (Ex. 1 at p. 147-48). Plaintiff testified that he and Mrs. Wise said to each other, "[l]et's get the hell out of here." (Ex. 1 at pp. 147-48).

28. The next time Plaintiff spoke to Nelson was in the hospital parking lot outside of the emergency room exit when he and Mrs. Wise were leaving. (Ex. 1 at p. 151). Plaintiff testified that he was waiting outside the exit while Mrs. Wise went to get her vehicle and that they were

³ Plaintiff signed a release authorizing Newberry County Memorial Hospital, including Dr. Leap, to release information concerning his diagnosis for purposes of workers' comp benefits. To be clear, though, the laws protecting the disclosure of health-related information (i.e., the HIPAA privacy rule) do not apply to employers who obtain or disclose information related to a workplace injury. 45 C.F.R § 164.512(b)(1)(V). In this context, a provider may release health related information to the patient's employer or workers' comp insurer even without patient consent. *See id.*

⁴ Nelson testified that he never heard Dr. Leap make the alleged comment about changing sexual partners and denied that he was in the exam room when Dr. Leap returned to speak with the Plaintiff. While Nelson's and Plaintiff's recollections differ, this factual dispute is immaterial and has no bearing on the issues presently before the Court.

going to follow Nelson to the pharmacy to get his prescription filled. (Ex. 1 at p. 150-51). Nelson testified that he occasionally assists with this when a prescription is covered by workers' comp. (Ex. 2 at pp. 18-19).

29. According to Plaintiff, as he was waiting outside the emergency room exit, he was still trying to get over the initial shock of the alleged comment Dr. Leap made about changing sexual partners. (Ex. 1 at p. 151-52). Plaintiff testified that Nelson approached him as he was waiting for Mrs. Wise and asked him if maybe Mrs. Wise had an infection. (Ex. 1 at p. 152). Plaintiff responded to Nelson, "[y]ou out of your mother-fucking mind?" (Ex. 1 at p. 153). Plaintiff testified that at this point Nelson was trying to get away from him because he knew Plaintiff was "about to lose all my composure."⁵ (Ex. 1 at p. 153).

30. Plaintiff testified that following this exchange, he, Mrs. Wise, and Nelson drove in two vehicles to CVS pharmacy to fill Plaintiff's prescriptions and that Mrs. Wise then drove him home. (Ex. 1 at p. 154). Plaintiff did not return to work that day or for the next several days. (Ex. 1 at p. 154).

Nelson Returns to the Mill

31. After leaving Plaintiff and Mrs. Wise, Nelson returned to the mill. (Ex. 2 at p. 21). After he parked his vehicle and was walking toward the office, one of Plaintiff's co-workers in the shipping department, Wilson, greeted Nelson. (Ex. 2 at pp. 21-22).

32. Both Nelson and Wilson were asked in their depositions to describe exactly what was said during their encounter when Nelson returned to the mill. Nelson testified as follows:

⁵ Nelson denies asking Plaintiff if his wife may have had an infection but does agree that the Plaintiff was very upset and "pretty ticked off" when he saw Plaintiff outside the hospital. Nelson also testified that Plaintiff was complaining about the comment Dr. Leap allegedly made. (Ex. 2 at p. 17). Again, though, this factual dispute is immaterial.

So, George [Wilson] asked me, he said ‘How’s Hop [referring to Plaintiff’s nickname]?’ And I said, ‘He’s doing fine. He has an infection so he got a prescription, or he’s doing fine, he got a prescription because he has an infection.’ And then that was the end of the conversation with George.

(Ex. 2 at p. 22).

Wilson’s recollection of the conversation was identical to Nelson’s in all material respects:

... I seen Keith [Nelson] and I asked, Keith, what happened to Anthony [Plaintiff]? I said, how was he doing? The only thing he said was that Anthony – the doctor said he [Plaintiff] had an infection. And that’s all he said. And then when he mentioned that and I stepped back in the shipping department and the guys asked me how is Anthony. I said, well, I just seen Keith and Keith said he has an infection. And I mentioned that and then I went on and went to do whatever I need[ed] to do.

(George Wilson Dep. at p. 6, attached hereto as “**Exhibit 4**”).

33. Wilson testified that prior to seeing Nelson, he had learned from other shipping department employees that Plaintiff had been injured that morning and that Nelson had taken him to the hospital. (Ex. 4 at pp. 5-6). Wilson stated the reason he asked Nelson about Plaintiff’s condition was because he was genuinely concerned if Plaintiff was okay. (Ex. 4 at p. 9). Wilson further testified that no one overheard their conversation or was in the area where he and Nelson were talking. (Ex. 4 at p. 11).

34. Nelson testified that he understood Wilson’s reason for asking to be just as Wilson described, a sincere concern about the wellbeing of a co-worker he believed to have been injured on the job. (Ex. 2 at pp. 21-22). Nelson explained that the shipping department is a small department with about ten (10) employees. (Ex. 2 at pp. 21-22). He testified it is not uncommon for employees to inquire about an employee after a workplace accident occurs and testified that “I mean, it’s just human nature.” (Ex. 2 at pp. 22).

35. Both Nelson and Wilson testified unequivocally that Nelson never used the term STD or any other word that could imply a sexually-related infection. (Ex. 2 at p. 26; Ex. 4 at p. 7). It is also undisputed that Nelson did not tell Wilson about Dr. Leap’s alleged comment about

changing sexual partners. (Ex. 2 at p. 26). Again, Nelson testified his only knowledge of the comment allegedly made by Dr. Leap was as a result of Plaintiff's being upset and complaining to him in the hospital parking lot. (*See, supra*, at p. 6, n. 5).

36. Nelson testified he believed his comments to Wilson that Plaintiff had an infection and received a prescription were true and that it never crossed his mind that anyone would interpret that to mean Plaintiff had an STD or could infer anything derogatory about Plaintiff. (Ex. 2 at p. 67). Likewise, Wilson testified he did not interpret the statement as suggestion of anything sexually related or to imply anything beyond the fact that Plaintiff was not injured in an accident and just had some type of infection. In fact, Wilson testified repeatedly that the only person he ever heard mention that Plaintiff had an STD was the Plaintiff. (Ex. 4 at pp. 7, 8, 11). Wilson further testified that Plaintiff talked about having an STD, or rather not having an STD, so often that it became tiresome, and Wilson began avoiding Plaintiff because that was all he talked about. (Ex. 4 at pp. 10-11).

37. Nelson testified that when he commented to Wilson that Plaintiff had an infection, he did not consider himself to be revealing sensitive medical information and was in no way trying to insinuate Plaintiff had an STD or other innuendo. (Ex. 2 at pp. 68-69). Nelson further testified that he did not intend to cause Plaintiff any harm or suggest anything disparaging about Plaintiff and that if he thought there was even a possibility that his statements would lead anyone to believe Plaintiff had contracted an STD, he would have never had any discussion about the November 7, 2017 incident with anyone other than the Plant Manager, D.J. Russell ("Russell"). (Ex. 2 at pp. 67-68).

38. After speaking to Wilson, Nelson went to Russell's office to inform him of Dr. Leap's diagnosis and discussed whether the incident would result in Plaintiff filing a workers'

comp claim. (Ex. 2 at pp. 25). Nelson explained in his deposition that “you can’t have like an incident happen and then have an infection like an hour and a half later . . . So, from a workers’ comp perspective, I was relieved he [Plaintiff] had an infection because, you know, I didn’t have to go through no reporting to OSHA,” testifying he believed Plaintiff may have had a pre-existing condition that caused the forklift incident. (Ex. 2 at p. 25).

39. Nelson further testified that his conversation with Russell was a private conversation that took place in Russell’s office and the matters discussed therein were kept strictly between Nelson as Safety Director and Russell as Plant Manager. (Ex. 2 at pp. 22, 25-26).

40. Also according to Nelson, the only other West Fraser employee whom he told Plaintiff had an infection was Plaintiff’s supervisor, Mike Shealy (“Shealy”). (Ex. 2 at pp. 73-74). Nelson relayed this information to Shealy because Shealy was responsible for keeping Plaintiff’s attendance and time records. (Ex. 2 at p. 73). Further, Shealy testified that Nelson only told him that Plaintiff had an infection and would be out for a few days. (Shealy Dep. at pp. 5-6, attached hereto as “**Exhibit 5**”).

Plaintiff’s Allegations of Defamation

41. Plaintiff testified that when he returned to work approximately one week after the incident, several co-workers teased him about having an STD. (Ex. 1 at p. 140).

42. On March 7, 2019, Plaintiff filed a Complaint against Newberry County Memorial Hospital, Dr. Leap, and West Fraser alleging defamation.⁶ Plaintiff’s Complaint alleges that Nelson repeated the comment allegedly made by Dr. Leap about changing sexual partners to other mill employees. (Compl. at ¶ 6). Plaintiff asserts that West Fraser is liable for Nelson’s alleged

⁶ Dr. Leap was dismissed as a defendant, and the only remaining defendants are the hospital and West Fraser.

statements under a *respondeat superior* theory, i.e., because Nelson made the alleged statements while acting within the scope of his employment. (Compl. at ¶ 6; Ex. 1 at p. 245). Plaintiff contends the alleged comment made by Dr. Leap, and Nelson's allegedly repeating same, falsely implied he committed adultery and contracted an STD, causing him to suffer mental anguish and injuring his reputation. (Compl. at ¶¶ 6-7).

43. At the outset, Plaintiff has no personal knowledge of anything Nelson said about Plaintiff after Nelson returned to the mill. (Ex. 1 at p. 137, 140). Plaintiff's knowledge is based solely on hearsay from co-workers. (Ex. 1 at 137, 140). This is undisputed.

44. Moreover, even Plaintiff's second-hand knowledge based on conversations he alleges his co-workers overheard and relayed back to him do not support his contentions that anyone personally heard Nelson state that Plaintiff had an STD or had been changing sexual partners, testifying that "I can't sit here and say that they [co-workers] heard it directly from him [Nelson], but it went through the plant like a wild fire." (Ex. 1 at p. 140). To the contrary, Plaintiff testified that some of his co-workers told him they heard he had an infection and had been prescribed an antibiotic. (Ex. 1 at p. 137, 163-64, 173-75, 192). Plaintiff's account of what he heard Nelson relayed to Wilson (although based on inadmissible hearsay) is consistent with the testimonies of both Nelson and Wilson, the only two individuals with personal knowledge of what was stated by Nelson to Wilson. (*See, supra*, at ¶ 32).

45. Nevertheless, Plaintiff maintains that Nelson's statement that Plaintiff "has an infection" is the same as stating Plaintiff "has an STD." (Ex. 1 at p. 174-75, 192). Furthermore, according to Plaintiff, because he is a black man, anyone who heard that he had an infection would naturally assume it was a sexually transmitted infection. Plaintiff testified, "**...[w]hen you a black man, that's all people think that you supposed to do. You got to be some kind of little**

whore or something like that.” (Ex. 1 at p. 164) (emphasis added). Plaintiff further opined in his testimony that when a man says infection he means STD because “**when mens [sic] talk like that, that’s what they talking about, sex. They ain’t talking about no just plain infection.**” (Ex. 1 at p. 175) (emphasis added).

46. With regard to his alleged injuries, Plaintiff agrees he has not suffered any monetary loss as a result of the alleged defamatory statements. (Plf’s Resp. to West Fraser’s Interrog. at pp. 9-10, # 17 (attached hereto as “**Exhibit 6**”). However, Plaintiff seeks to be compensated for alleged injury to his reputation, privacy and mental anguish he allegedly suffered as a result of the rumors. (Ex. 7 at p. 9, #16)

47. Plaintiff was unable to explain how the rumors harmed his reputation or identify anyone in the community whose opinion of him changed as a result of the alleged rumors. Plaintiff testified that it was impossible to know what people were really thinking. (Ex. 1 at pp. 256-58). Despite Plaintiff’s uncertainty, none of the nine (9) co-workers he identified in his discovery responses as having heard the alleged rumors have testified that their opinions of the Plaintiff changed or that they believed Plaintiff had an STD. (*See, e.g.*, Ex. 4 at p. 7; Ex. 5 at pp. 6-8).

Nelson’s Statements Were True

48. Plaintiff’s Complaint, his written discovery responses, and his deposition testimony consistently establish that his defamation theory is based on comments Nelson made to Wilson which Wilson then repeated, starting the alleged STD rumor.

49. Plaintiff has not and cannot produce a single witness or other form of admissible evidence to establish Nelson told Wilson that Plaintiff had an STD or that Nelson said anything other than that the Plaintiff had an infection and was prescribed an antibiotic.

50. Plaintiff agrees he had an infection and that was his understanding when he was discharged from the hospital on November 7, 2017. (Ex. 1 at pp. 145-46). Moreover, Plaintiff testified that after leaving the hospital, he saw his primary care physician the following day and she confirmed he had a prostate infection. (Ex. 1 at pp. 156-57). Likewise, when Plaintiff was examined by West Fraser's occupational health physician several weeks later, he concurred Plaintiff had a prostate infection.⁷ (Ex. 1 at pp. 160-61).

51. Plaintiff also agrees he received a prescription for an antibiotic to treat the infection. (Ex. 1 at p. 192).

52. Plaintiff's November 7, 2017 medical records produced by the Newberry County Memorial Hospital as well as the records produced by Lexington Family Practice Irmo memorializing Plaintiff's follow-up visit with his primary care physician corroborate that Plaintiff was diagnosed with an infection and prescribed an antibiotic.⁸ (See records stamped NCMH ED 009-10 and Lexington Family Practice Irmo 161, 177-78, attached hereto respectively as "**Exhibit 7**" and "**Exhibit 8**").

III. SUMMARY JUDGMENT STANDARD

⁷ The occupational health doctor also determined Plaintiff had pulled a muscle in his groin while working on the forklift.

⁸ The hospital's records reflect that Dr. Leap determined Plaintiff had Epididymitis (inflammation or infection of the epididymis) and prescribed him Doxycycline (antibiotic) as treatment. (Ex. 7 at bates NCMH ED 9-10). The records produced by Plaintiff's primary care physician, Dr. Hutson of Lexington Family Practice, show that when Plaintiff was seen by Dr. Hutson the day after he was treated by Dr. Leap (November 8, 2017), Dr. Hutson concurred Plaintiff had Epididymitis and prescribed Plaintiff a different antibiotic, Ciprofloxacin, as treatment. She also ordered additional testing. When Plaintiff returned to see Dr. Hutson two days later, her records state that "**Patient presents with - infection follow up**" and instructed to continue taking the antibiotic "**to bring down the infection.**" (Ex. 8 at bates Lexington 177-178) (emphasis added). Dr. Hutson reviewed the results of her testing with Plaintiff and diagnosed him with a combination of infections: Prostatitis (prostate infection), Epididymitis (infection of the epididymis), and Cellulitis (skin infection). (Ex. 8 at bates 178)

The South Carolina Supreme Court has explained the well-settled standard applicable to a motion for summary judgment:

[T]he plain language of Rule 56(c) mandates the entry of summary judgment ... against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is entitled to judgment as a matter of law; because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

Baughman v. Am. Tel. and Tel. Co., 306 S.C. 101, 116, 410 S.E.2d 537, 545-46 (1991) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)).

IV. DEFAMATION – CONTROLLING LAW

To prove defamation under South Carolina law, a plaintiff must establish the following elements:

- (1) a false and defamatory statement was made;
- (2) the unprivileged publication was made to a third party;
- (3) the publisher was at fault; and
- (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.

Fountain v. First Reliance Bank, 398 S.C. 434, 441, 730 S.E.2d 305, 309 (S.C. 2012)

Defamation is classified as either actionable *per se* or not actionable *per se* (i.e., defamation *per quod*.) *Id.* at 442, 730 S.E.2d at 309. Where, as here, the alleged defamation involves slander (as opposed to libel), the statements are actionable *per se* if they charge the plaintiff with any of the following five acts and/or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business

or profession. *Id.* The classification of a statement as actionable *per se* is significant because in such instance the defendant “ ‘is presumed to have acted with common law malice and the plaintiff is presumed to have suffered general damages.’ ” *Id.* (quoting *Erickson v. Jones Street Publishers, LLC*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006)). On the other hand, if the statement is not actionable *per se*, “the plaintiff must plead and prove both common law malice and special damages.” *Id.* (quoting *Erickson*, 368 S.C. at 465, 629 S.E.2d at 664). In other words, where a statement is actionable *per se*, the plaintiff is not required to establish elements (3) or (4) to prove defamation. *See id.*

Whether the statement is actionable *per se* is a question of law for the court to resolve. *Id.*; *see also Erickson*, 368 S.C. at 465, 629 S.E. 2d at 664. In deciding this question, “[t]he trial court has the duty to determine whether words are reasonably capable of having the defamatory meaning attributed to them by the plaintiff.” 20 S.C. JUR. *LIBEL AND SLANDER* § 19 (May 2021) (citing *Appliance Buyers Credit Corp. v. Baxley*, 241 S.C. 64, 68-69, 127 S.E.2d 8, 9 (S.C. 1962)). In making this determination, words must be given their plain and popular or ordinary meaning. *Id.* Further, and as the South Carolina Supreme Court has explained, “[t]he court will not hunt for a forced and strained construction to put on ordinary words, but will construe them fairly, according to their natural and reasonable import and the plain and popular sense in which the average reader naturally understands them.” 20 S.C. JUR. *LIBEL AND SLANDER* § 19 (internal quotation omitted); *Hospital Care Corp. v. Commercial Cas. Ins. Co.*, 194 S.C. 370, 379, 9 S.E.2d 796, 800 (1940).

While statements that are not defamatory on their face may become actionable considering the context in which they were made or other insinuation or innuendo, the statement’s defamatory meaning must be apparent based on a reasonable construction. *Fountain*, 398 S.C. at 442, 730

S.E.2d at 310. A construction based on “purely conjectural interpretations” is not reasonable and is insufficient to avoid summary judgment. *Id.*

Regardless of whether a statement is actionable *per se* or *per quod*, truth is an absolute defense to any defamation claim. *Id.* When the alleged defamatory statements are made by a private figure in a matter of private concern, it is the defendant’s burden of “proving the substantial truth of each of the alleged defamatory statements.” *Kunst v. Loree*, 424 S.C. 24, 41, 817 S.E.2d 295, 303 (2018). If the defendant presents evidence establishing the truth of the statements and there is no conflicting evidence to challenge the truth of the statements, summary judgment is appropriate. *Fountain*, 398 S.C. at 442, 730 S.E.2d at 310 (even if statements were actionable *per se*, they could not be deemed defamatory because they were unquestionably true; affirming summary judgment for defendant).

V. LEGAL ANALYSIS AND ARGUMENT

A. West Fraser Has Established the Truth of Nelson’s Statements.

The only individuals with personal knowledge of Nelson’s statements testified that Nelson stated Plaintiff had an infection and received a prescription or antibiotic. Plaintiff acknowledged in his deposition that he was not at the mill and aside from hearsay (none of which was corroborated by any of the nine co-workers Plaintiff deposed), he has no personal knowledge of the exact words Nelson used.⁹ (Ex. 1 at p. 137, 140). As such, Plaintiff has no evidence to challenge and cannot reasonably dispute that the statements at issue are: (i) Plaintiff has an infection, and (ii) Plaintiff received a prescription and/or antibiotic.

⁹ Co-worker statements claiming to have heard defamatory statements is not a publication by the employer and cannot be the basis of a defamation claim. *Todd v. Fed. Express Corp.*, 2012 WL 4006595, * 20 (D.S.C. July 16, 2012) (recommending summary judgment for employer on defamation claim) (*Todd v. Fed. Express Corp.*, 2012 WL 4006466 (D.S.C. Sept. 12, 2012 (adopting magistrate’s recommendation and granting summary judgment on defamation claim)).

These statements are unquestionably true. Plaintiff admitted as much in his deposition. (*See, supra*, at § II, ¶¶ 50-51 (testifying he understood he had an infection and agreeing he was prescribed an antibiotic). Moreover, the medical records produced by Newberry County Memorial Hospital and Lexington Family Practice where Plaintiff was seen by his primary care physician clearly establish that two physicians concurred that Plaintiff was suffering from testicular swelling caused by an infection and treated with prescription antibiotics. (*See, supra*, at p. 14 n.8). Plaintiff has no evidence to rebut the substantial truth of Nelson's statements. Statements that are true cannot be defamatory as a matter of law, and summary judgment is proper for this reason alone. *Fountain*, 398 S.C. at 443-44, 740 S.E.2d at 310 (trial court properly granted summary judgment where plaintiff presented no evidence to contradict truth).

B. Additionally, Plaintiff's Defamation Claim Fails Because Nelson's Statements Cannot Reasonably Be Construed as Defamatory *Per Se*.

It is Plaintiff's burden to prove Nelson's statements are both defamatory (tending to impeach his reputation) and actionable (injuring Plaintiff). *Fountain*, 398 S.C. at 441, 730 S.E.2d at 309. Plaintiff alleges that Nelson's statements are defamatory because they accused Plaintiff of having a loathsome disease (i.e., an STD) and/or of committing adultery. (Compl. at 6). Plaintiff's distorted interpretation of Nelson's statements is based solely on Plaintiff's assumption that when men hear that a black man has an infection, it is understood the infection is an STD. In addition to being pure speculation, Plaintiff's interpretation is based on highly offensive stereotypes that a black man is commonly perceived to be "some kind of little whore" and inferring STD from a "plain infection" is just "how mens [sic] think." (Ex. 1 at pp. 164, 175). To accept Plaintiff's interpretation as the "ordinary and popular" meaning would require the Court to find that the average person subscribes to Plaintiff's stereotypes and would naturally understand a statement charging a black man with an infection is the same as charging him with an STD. Plaintiff's

conjecture is precisely the type evidence the South Carolina Supreme Court has held “falls far short” of establishing a statement is defamatory *per se*. *Fountain*, 398 S.C. at 443, 730 S.E.2d at 310 (plaintiff’s testimony that bank employee’s statement that bank would not issue loan if plaintiff was involved was “inappropriate” and “not something a banker should say” was pure speculation that “falls far short of establishing an implied defamatory meaning.”; holding statements were not actionable *per se* as insinuating plaintiff was a business risk under reasonable construction standard.)

The reasonableness of Plaintiff’s interpretation is further belied by his own testimony, and the testimony of George Wilson and several other co-workers Plaintiff deposed. For starters, contrary to Plaintiff’s sweeping stereotype about how all men think of all black men, when Plaintiff was asked in his deposition whether he would infer a sexual infection if he heard a black man had an infection, he testified, “No, I don’t – I don’t like to assume things.” (Ex. 1 at p. 277). Additionally, the most compelling evidence of the “ordinary and popular meaning” of the statements is how those who heard the statement understood it. 20 S.C. JUR. LIBEL AND SLANDER § 20; *see also Smith v. Phoenix Furniture Co.*, 339 F. Supp. 969, 972 (D.S.C. 1972) (statements were not actionable *per se* when persons who heard statement assigned no defamatory meaning). The only individuals who personally heard Nelson make any statement about the Plaintiff were Wilson, Plaintiff’s supervisor, Shealy, and Plant Manager, Russell. None of these individuals understood Nelson’s statements as implying Plaintiff had an STD or anything derogatory about Plaintiff. (Ex. 4 at p. 8; Ex. 5 at pp. 5-6; *See also* D.J. Russell Dep. at pp. 7-8, attached hereto as “**Exhibit 9**”). In fact, both Wilson and Russell testified that the only person they ever heard talk about Plaintiff having an STD was the Plaintiff. (Ex. 4 at pp. 8, 11; Ex. 9 at pp. 7-8).

There is no evidence, other than Plaintiff's gross speculation to support that Nelson's statements taken in context charged Plaintiff with having an STD or committing adultery. As such, the statements are not defamatory *per se*. Therefore, to survive summary judgment, Plaintiff must present evidence to show the necessary elements of common law malice and special damages. Plaintiff has no evidence to support either element.

i. Plaintiff Cannot Establish Common Law Malice.

"Common law malice under South Carolina defamation law generally 'means that the defendant was actuated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff, or that the statements were published with such recklessness as to show a conscious indifference toward plaintiff's rights.' " *Tharp v. Media General, Inc.*, 987 F. Supp. 2d 673, 680 (D.S.C. 2013) (*quoting Jones v. Garner*, 250 S.C. 479, 488, 158 S.E.2d 909, 914 (1968)). There is no evidence that Nelson had any desire harm Plaintiff or that he made his statements with a conscious indifference toward Plaintiff's rights. To the contrary, Nelson testified that he believed he was simply answering the question of a concerned co-worker and it never occurred to him anyone would infer something sexual or derogatory from his statement. (Ex. 2 at p. 67-69). While Plaintiff offered more speculation about the appropriateness of Nelson telling Wilson that Plaintiff had an infection or had received an antibiotic, Plaintiff candidly acknowledged there was no history of animosity between Nelson and Plaintiff and they never even had a disagreement. (Ex. 1 at p. 194). In fact, Plaintiff testified Nelson considered Plaintiff to be a model employee and Plaintiff was not aware of any bad feelings Nelson had about Plaintiff. (Ex. 1 at pp. 195-96).

Plaintiff makes much ado of the fact that Russell reprimanded Nelson for disclosing Plaintiff's diagnosis to Wilson. This is completely irrelevant to the analysis of common law malice. Russell explained in his deposition that while West Fraser has no written rule or policy,

as a matter of practice, any personnel related matter involving an hourly employee should only be discussed among salaried employees (i.e., management). When Plaintiff first told Russell his co-workers were teasing him about having an STD, Russell assured Plaintiff he would investigate the issue and take corrective action. (Ex. 9 at pp. 11, 14). Russell determined it was inappropriate for Nelson (a salaried manager) to share information about Plaintiff's on-the-job injury with Wilson (an hourly employee). (Ex. 9 at pp. 15-16). That is the only reason Nelson was reprimanded. (Ex. 9 at p. 15 (testifying Nelson was reprimanded "[f]or the incident that occurred talking to the hourly employee about another hourly employee. Strictly that and nothing else.") Nelson was not determined to have acted with ill will or to have shared the information with Wilson with the intent to injure Plaintiff. He also was not determined to have spread false or derogatory information about Plaintiff. Plaintiff's reliance on Russell's decision to reprimand Nelson as evidence of common law malice is misplaced.

ii. Plaintiff Cannot Establish Special Damages

Special damages in the defamation context are tangible losses or injury to the Plaintiff's business, occupation, or profession that can be assessed monetarily and result from actual injury to the Plaintiff's reputation. *Kunst*, 424 S.C. at 46 n. 8, 817 S.E. 2d 306 n.8 (citing *Holtzscheiter v. Thompson Newspapers, Inc.*, 332 S.C. 502, 510 n.4, 506 S.E. 2d 497, 502 n.4 (1998)). They are distinct from general damages, which include mental anguish and the type reputational injuries that are incapable of definitive monetary valuation. Plaintiff's only evidence of damages are *general* damages. He has not and cannot establish any actual or quantifiable injury to his reputation. In fact, in his sworn interrogatory answers, Plaintiff admitted he had not suffered any monetary loss because of the alleged defamation. (Ex. 6 at pp. 9-10, Interrog. #17). Instead, Plaintiff seeks an unspecified amount of compensatory damages for general mental anguish and

reputational injury. Without the presumption of general damages that accompanies statements that are defamatory *per se*, Plaintiff cannot rely on only general damages and must present evidence of special damages, i.e., tangible loss. Plaintiff's failure to do so is fatal to his claim.

VI. CONCLUSION

Based on the foregoing, West Fraser respectfully submits summary judgment is due to be granted.

Respectfully submitted on this the 8th day of June 2021.

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**ATTORNEYS FOR DEFENDANT WEST FRASER,
INC.**

ANTHONY WISE,

Plaintiff,

V.

KEITH E. LEAP, et al.

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2019-CP-36-00103

DEFENDANT WEST FRASER, INC.'S
MOTION FOR SUMMARY JUDGMENT

EXHIBIT 6

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY)

CIVIL ACTION NO.: 2019-CP-36-00103

ANTHONY WISE,
Plaintiff.)**PLAINTIFF'S ANSWERS**
TO DEFENDANT WEST FRASER'S FIRST
INTERROGATORIES

v.)

KEITH E. LEAP, NEWBERRY)
HOSPITAL, LLC D/B/A NEWBERRY)
COUNTY MEMORIAL HOSPITAL AND)
WEST FRASER, INC.,)
Defendants.)

**TO: CHRISTOPHER B. MAJOR, ESQUIRE, R. SCOTT CALLEN, ESQUIRE, AND
BRYAN BOWDLER, ESQUIRE, ATTORNEYS FOR THE DEFENDANT, WEST
FRASER, INC.:**

INTERROGATORY NO. 1:

Give the names, phone numbers (home and cellular), and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

- Anthony Wise
148 Whitwood Circle
Columbia, SC 29212

No written or recorded statement is in possession of Plaintiff or Plaintiff's attorney. Mr. Wise is expected to testify to his knowledge of the events surrounding the subject incident.

- Pauline Wise
148 Whitwood Circle
Columbia, SC 29212

No written or recorded statement is in possession of Plaintiff or Plaintiff's attorney. Mrs. Wise is Plaintiff's wife and is expected to testify regarding her knowledge of the events surrounding the subject incident.

- **Keith E. Leap, MD**
590 Tamassee Knob Road
Tamassee, SC 29686

No written or recorded statement is in possession of Plaintiff or Plaintiff's attorney. Dr. Leap was Plaintiff's emergency room physician who made the comments which led to the present action.

- **Keith Nelson**
Safety Director
West Fraser, Inc.
3287 College Street
Newberry, SC 29108

No written or recorded statement is in possession of Plaintiff or Plaintiff's attorney. Mr. Nelson was the safety director at West Fraser, Inc. at the time that Plaintiff was injured and took Plaintiff to the emergency room at Newberry County Memorial Hospital, LLC. Mr. Nelson is expected to testify regarding his knowledge of the events surrounding the subject incident.

- **D.J. Russell**
Plant Manager
West Fraser, Inc.
3287 College Street
Newberry, SC 29108

No written or recorded statement is in possession of Plaintiff or Plaintiff's attorney. Mr. Russell was the Plant Manager at the time of the incident and is expected to testify regarding his knowledge of the events surrounding the subject incident.

- **Jeremy Mills**
Harry Shelton
Joseph Prayler
Raphael Maybin
Anthony Cannon
Anthony Byrd

Mike Sheilly
 Chuck Price
 George Wilson
 C.J. Dudley

West Fraser, Inc.
 3287 College Street
 Newberry, SC 29108

No written or recorded statement is in possession of Plaintiff or Plaintiff's attorney. The above individuals were co-workers of Plaintiff at West Fraser, Inc. and will testify regarding their knowledge of the events surrounding the subject incident.

- Cynthia D. Hutson
 Lexington Family Practice Irmo
 7037 St. Andrews Rd.
 Columbia, SC 29212

Plaintiff's attorney is in possession of medical records. Dr. Hutson was Plaintiff's physician and is expected to testify concerning Plaintiff's diagnosis.

INTERROGATORY NO. 2:

Please specifically identify any false defamatory statements published or made by Defendant West Fraser's employee(s). In your response, please specifically identify the alleged defamatory statements, the name of the person making such defamatory statements, the date of the statement, and explain how the statement was false at the time the statement was made.

ANSWER:

- Keith Nelson told several employees that the Plaintiff had an STD and had been changing sexual partners. He also said to Plaintiff as they were leaving the hospital that maybe Plaintiff's wife had some kind of infection suggesting that she had a sexually transmitted disease. The statement was false because the Plaintiff did not have an STD and had not been changing sexual partners.
- Harry Shelton told the Plaintiff that he heard that he had got the Clap. This was false because the Plaintiff did not have the Clap.

- Raphael Maybin asked Plaintiff if he had gotten his penicillin shot that day.
- Anthony Cannon said that Plaintiff was running whores on Two Notch Road. This was false because Plaintiff had not been unfaithful to his wife.
- Anthony Byrd said that he heard that Plaintiff got a disease. Plaintiff did not have a disease.
- Joseph Prayler said that he heard that Plaintiff had a disease which he did not have.
- Plaintiff was told that Jeremy Neil said that Plaintiff had the nasty man disease.
- Mike Sheilly said that Keith Nelson called him into his office and told him that Plaintiff had some kind of a disease.

INTERROGATORY NO. 3:

Please specifically identify any alleged false defamatory statements published or made by any person or business who was/is not employed by Defendant West Fraser, including but not limited to: KENNETH E. LEAP. In your response, please specifically identify the alleged defamatory statement, the identity of person or business making such defamatory statements, the date of the statement, and explain how the statement was false at the time the statement was made.

ANSWER:

On November 7, 2017, after being seen at the Newberry Hospital emergency room, Dr. Kenneth E. Leap, told the Plaintiff that he did not see anything that looked like a hernia. He then said "Looks like somebody been changing sexual partners, looks like an STD," in front of Plaintiff Wise's wife and Mr. Nelson, the safety director at West Fraser. Plaintiff Wise did not have a sexually transmitted disease and had not been committing adultery.

INTERROGATORY NO. 4:

In reference to your response to Interrogatory No. 2, please specifically identify how the alleged false defamatory statements by Defendant West Fraser's employee(s) has harmed or injured you.

ANSWER:

The false defamatory statements injured Plaintiff's reputation. Anyone who heard it thought that Plaintiff had a sexually transmitted disease and had been unfaithful to his wife.

INTERROGATORY NO. 5:

In reference to your responses to Interrogatory No. 3, please specifically identify how the alleged defamatory statements by KENNETH E. LEAP, or any other person or business identified by you, has harmed or injured you.

ANSWER:

Dr. Leap accused patient of changing sexual partners which is the same as accusing him of adultery in front of his wife and the safety director at West Fraser, Inc. He also said that it looked like Plaintiff had a sexually transmitted disease and since his wife did not have a sexually transmitted disease, he again was insinuating that Plaintiff had been committing adultery. Plaintiff has never had a sexually transmitted disease. Word then spread around his workplace, West Fraser, Inc., that he had a sexually transmitted disease and had been changing sexual partners, damaging his reputation.

INTERROGATORY NO. 6:

Please specifically identify any alleged defamatory statements by Defendant West Fraser's employee(s) that were made in Plaintiff's presence. In your response, please specifically identify the alleged defamatory statement, the location or area where the statement was made, and the name of the employee making or publishing the alleged defamatory statement.

ANSWER:

The following statements were made in Plaintiff's presence:

- Keith Nelson said that the Plaintiff had an STD and had been changing sexual partners.
- Harry Shelton told the Plaintiff that he heard that he had gotten the Clap.

- Raphael Maybin asked Plaintiff if he had gotten his penicillin shot that day.
- Anthony Cannon said that Plaintiff was running whores on Two Notch Road.
- Anthony Byrd told Plaintiff that he heard that Plaintiff got a disease.

INTERROGATORY NO. 7:

In reference to your responses to Interrogatory No. 6, please specifically identify any witnesses or employees who were present when the alleged defamatory statement(s) was/were made in your presence.

ANSWER:

All employees of West Fraser, Inc. who worked in the Dryer Department were witnesses to statements made about the Plaintiff.

INTERROGATORY NO. 8:

Please specifically identify any alleged defamatory statements made by Defendant's employee(s) that Plaintiff learned of, heard of, or knows about that were allegedly made by Defendant West Fraser's employee(s) outside of and/or not in the physical presence of Plaintiff. In your response, please identify the alleged defamatory statement, and any employee making or publishing the alleged defamatory statement.

ANSWER:

- Keith Nelson told several employees that the Plaintiff had an STD and had been changing sexual partners.
- Plaintiff was told that Jeremy Neil said that Plaintiff had the nasty man disease.
- Harry Shelton told Plaintiff that Chuck Price said that Plaintiff had a disease.

INTERROGATORY NO. 9:

Please identify all persons to whom Plaintiff discussed or disclosed any comments or questions made by KENNETH E. LEAP. In your response, please identify the specific comments made by you during the disclosure or discussion.

ANSWER:

Plaintiff talked to his wife and also to his family doctor, Cynthia D. Hutson.

INTERROGATORY NO. 10:

Please identify all persons with whom Plaintiff discussed or disclosed any alleged diagnosis or medical condition that KENNETH E. LEAP concluded or opined about Plaintiff. In your responses, please identify any statements made by you during the discussion or disclosure and the names of any persons who were present during the discussion or disclosure.

ANSWER:

Plaintiff talked to his wife, his family doctor (Cynthia D. Hutson), the plant manager (DJ Russell) and the human resource manager regarding Dr. Leap's diagnosis.

INTERROGATORY NO. 11

Please identify all persons with whom Plaintiff discussed or disclosed any medical treatment or medication suggested, prescribed, or provided by KENNETH E. LEAP about Plaintiff. In your responses, please identify any statements made by you during the discussion or disclosure and the names of any persons who were present during the discussion or disclosure.

ANSWER:

Plaintiff talked to his wife and also to his family doctor, Cynthia D. Hutson.

INTERROGATORY NO. 12:

Identify Defendant West Fraser's current or former employees who Plaintiff has communicated with regarding alleged defamation or defamatory acts concerning Plaintiff.

ANSWER:

**D. J. Russell
George Wilson
Mike Sheally
Chuck Price
CJ Dudley
Chuck Price**

INTERROGATORY NO. 13:

Identify any Defendant West Fraser's current or former employee who made a statement that Plaintiff had or was diagnosed with a sexually transmitted disease. In your response, please specifically identify the alleged statement and the employee making the statement.

ANSWER:

- **Harry Shelton told the Plaintiff that he heard that he had gotten the Clap.**
- **Keith Nelson told several employees that the Plaintiff had an STD.**
- **Plaintiff was told that Jeremy Neil said that Plaintiff had the nasty man disease.**
- **Anthony Cannon said that Plaintiff was running whores on Two Notch Road.**

INTERROGATORY NO. 14:

Identify Defendant West Fraser's current or former employees who made a statement (or statements to that effect) that Plaintiff had sexual relations with multiple sexual partners, or had engaged in sexual activity with a person other than his spouse, or had a sexually transmitted disease.

ANSWER:

- **Harry Shelton**
- **Keith Nelson**
- **Jeremy Neil**
- **Anthony Cannon**

INTERROGATORY NO. 15:

Identify any statements by Defendant West Fraser's current or former employees to the effect that Plaintiff had sexual relations with multiple sexual partners, or had engaged in sexual activity with a person other than his spouse, or had a sexually transmitted disease. In your response, please specifically identify the alleged statement and the employee making the statement.

ANSWER:

- **Harry Shelton told the Plaintiff that he heard that he had gotten the Clap.**
- **Keith Nelson told several employees that the Plaintiff had an STD and had been changing sexual partners.**
- **Plaintiff was told that Jeremy Neil said that Plaintiff had the nasty man disease.**
- **Anthony Cannon said that Plaintiff was running whores on Two Notch Road.**

INTERROGATORY NO. 16:

Please specifically identify any and all non-monetary forms of damages, harm, or injury that you have allegedly suffered as a result of any alleged act, omission, conduct by the following persons or businesses: KENNETH E. LEAP or NEWBERRY HOSPITAL, LLC D/B/A NEWBERRY COUNTY MEMORIAL HOSPITAL. Please be specific in your responses and provide specific examples, and do not recite legal conclusions.

ANSWER:

- **Damage to Plaintiff's privacy interests**
- **Damage to Plaintiff's reputation**
- **Mental and emotional anguish and distress**

INTERROGATORY NO. 17:

Please identify any monetary form of damages, loss of income, or financial harm that you have allegedly suffered as a result of alleged act, omission, or conduct by the following person or

business: KENNETH E. LEAP or NEWBERRY HOSPITAL, LLC D/B/A NEWBERRY COUNTY MEMORIAL HOSPITAL. Please be specific in your response and provide specific examples, and do not recite legal conclusions.

ANSWER:

Plaintiff is not claiming to have suffered any monetary form of damages or financial harm.

INTERROGATORY NO. 18:

Please identify any alleged non-monetary harm or injury or non-monetary forms of damages that you have allegedly suffered as a result of any alleged act, omission, or conduct by West Fraser. Please be specific in your responses and provide specific examples/evidence, and do not recite legal conclusions.

ANSWER:

- **Damage to Plaintiff's privacy interests**
- **Damage to Plaintiff's reputation**
- **Mental and emotional anguish and distress**

INTERROGATORY NO. 19:

Please identify any alleged monetary damages or financial harm that you have allegedly suffered as a result of alleged act, omission, or conduct by West Fraser. Please be specific in your responses and provide specific examples/evidence, and do not recite legal conclusions.

ANSWER:

Plaintiff is not claiming to have suffered any monetary form of damages or financial harm.

INTERROGATORY NO. 20:

Please identify any witness, person, or business who has specific knowledge of Plaintiff's harm, injury, or damages which was/is allegedly caused by West Fraser. Please provide the

person(s) home phone number, cell phone number, e-mail, physical address, and specifically identify the knowledge that the person or business possesses related to the Plaintiff's alleged damages, harm, or injury.

ANSWER:

- **Anthony Wise
148 Whitwood Circle
Columbia, SC 29212**
 - **Pauline Wise
148 Whitwood Circle
Columbia, SC 29212**
 - **Cynthia D. Hutson
Lexington Family Practice Irmo
7037 St. Andrews Rd.
Columbia, SC 29212**
 - **Jeremy Mills - (803) 271-2446
Harry Shelton- (803) 597-6448
D.J. Russell
Keith Nelson
Joseph Prayler
Raphael Maybin
Anthony Cannon
Anthony Byrd
Mike Sheilly
Chuck Price
George Wilson
C.J. Dudley**
- West Fraser, Inc.
3287 College Street
Newberry, SC 29108
(803) 276-4311**

INTERROGATORY NO. 21:

Please identify the name, address, phone number, for all physicians or health care providers (including mental health) who have treated or examined Plaintiff and each health care

facility where you have received any treatment or examination during the past 10 years and up to the date of trial (if any) for this lawsuit. Identify each health care provider and facility, the date of treatment or examination, and the condition or injury for which Plaintiff was examined or treated.

ANSWER:

- **Richland Memorial Hospital
7 Richland Medical Park Dr., Ste 1
Columbia, SC 29203**
- **Newberry County Memorial Hospital
PO Box 497
2669 Kinard Street
Newberry, SC 29108**
- **Cynthia D. Hutson, PA
Lexington Family Practice Irmo
7037 St. Andrews Road
Columbia, SC 29212**
- **Thomas Brian Willard, MD
222 E. Medical Lane, Ste. 101
West Columbia, SC 29169**
- **Lexington Medical Center
2720 Sunset Blvd.
West Columbia, SC 29169**
- **Eric Horst, MD
1740 Saint Julian Pl.
Columbia, SC 29204**

INTERROGATORY NO. 22:

Identify any and all emails, text messages, or phone calls involving Defendant's current or former employees related to or supporting your allegations or claims against Defendant West Fraser. Please identify the date of the communication, the nature and content of the

communication, and identify the employee or person who sent, received or participated in the communication.

ANSWER:

**Plaintiff objects to this Interrogatory at this time. Discovery is ongoing.
Plaintiff reserves the right to supplement his response at a later time.**

INTERROGATORY NO. 23:

Identify all job positions that Plaintiff has held in the past 10 years and identify the title of the job position, Plaintiff's work schedule, the dates that you held the position, the rate of pay and benefits, any promotions or transfers, your supervisors, the location where you held such job position, and whether your employment has been terminated or remains active.

ANSWER:

- **West Fraser, Inc.
3287 College Street
Newberry, SC 29108
March 2015-Present
Dryer Department**
- **Walmart Supercenter
360 Harbison Blvd
Columbia, SC
2014-March, 2015
Security**
- **Norbord
564 Woodyard Road
Kinards, SC
2004-2014**

INTERROGATORY NO. 24:

Identify any act or conduct by Defendant West Fraser that you believe evidences or proves that it acted with malice.

ANSWER:

Keith Nelson publicized to the employees at West Fraser false information which was defamatory to Plaintiff. That false information quickly spread through the plant.

INTERROGATORY NO. 25

Identify any act or conduct by Defendant West Fraser that you believe evidences or proves that its employees acted within their scope of employment when allegedly making the defamatory statements about Plaintiff

ANSWER:

The statements were made on the premises of West Fraser, Inc. during working hours.

INTERROGATORY NO. 26

Identify any act or conduct by Defendant West Fraser that you believe evidences or proves that it acted in a manner that exceeds the scope of privilege to communicate about employment matters.

ANSWER:

Plaintiff objects to this interrogatory as it is clearly designed to discover the mental impressions, trial strategy and legal theories of Plaintiff's attorneys in an effort to gain an unfair advantage in this litigation. Subject to this objection and as outlined in the Complaint filed on behalf of the Plaintiff, it is contended that upon returning to work, the safety director of West Fraser, Inc., while acting within his employment, published to other workers at the mill Dr. Leap's false and defamatory statements. The false and defamatory statements quickly spread throughout the mill damaging the plaintiff's reputation.

INTERROGATORY NO. 27

Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER:

Plaintiff's attorney is in possession of the following documents:

- **Medical records from Lexington Family Practice Irmo;**
- **Medical records from Newberry Hospital**

INTERROGATORY NO. 28

For each person known to the parties or counsel, to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts know to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER:

See Plaintiff's answer to Defendant's Interrogatory number 1.

INTERROGATORY NO. 29

List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

ANSWER:

Plaintiff has not retained the services of an expert witness at this time but specifically reserves the right to do so at a later time.

~SIGNATURE PAGE TO FOLLOW~

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

By: 
John E. Parker
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
(803) 943-2111
Email: jparker@pmped.com

ATTORNEY FOR PLAINTIFF

September 10, 2019
Hampton, South Carolina

CERTIFICATE OF SERVICE

This is to certify that I, **Tanya M. Youmans**, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., attorneys for the Plaintiffs, have this date mailed via the U.S. Postal Service, a true and correct copy of the within ***Plaintiff's Answers to Defendant's First Interrogatories*** with first class postage prepaid to:

Christopher B. Major, Esquire
Haynsworth, Sinkler & Boyd
1 North Main Street, 2nd Floor
Greenville, SC 29601-2772

R. Scott Callen (Pro Hac Admission)
The Kullman Firm
2915 Kerry Forest Pkwy, Suite 101
Tallahassee, Florida 32309

Bryan Bowdler (Pro Hac Admission)
The Kullman Firm
1100 Poydras Street, Suite 1600
New Orleans, Louisiana 70163-1600

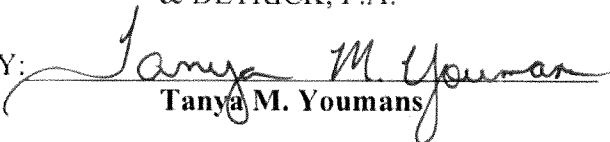
ATTORNEYS FOR WEST FRASER, INC.

Shelton W. Haile, Esquire
Zachary B. Hayden, Esquire
Richardson Plowden
P.O. Drawer 7788
Columbia, SC 29202

**ATTORNEYS FOR KEITH E. LEAP AND NEWBERRY HOSPITAL, LLC D/B/A
NEWBERRY COUNTY MEMORIAL HOSPITAL**

RE: *Anthony Wise v. Keith E. Leap, et al.*
C/A No.: 2019-CP-36-00103

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: 
Tanya M. Youmans

September 10, 2019
Hampton, South Carolina

ANTHONY WISE,

Plaintiff,

V.

KEITH E. LEAP, et al.

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2019-CP-36-00103

DEFENDANT WEST FRASER, INC.’S
MOTION FOR SUMMARY JUDGMENT

EXHIBIT 7

PATIENT REGISTRATION FORM Newberry County Memorial Hospital 2669 Kinard St. Newberry, SC 29108-0497 Telephone: (803) 276-7570								
MED REC#	M001650272	ADMIT DATE	11/07/17	TIME	0747	ACCT NO	V00000794589	
SERV/LOC	ER	ROOM & BED	ACCOM			FIN CLASS	WC	
PT STATUS	DEP ER	ADMIT SOURCE	1 PHYSICIAN REFERRAL			ADM CLERK	JMHOCKET	
*** PATIENT INFORMATION ***								
PATIENT	WISE, ANTHONY	BIRTHDATE	[REDACTED] 1955		AGE	62	SEX	M
ADDRESS	[REDACTED]	MARITAL ST	U UNKNOWN		SS#	[REDACTED]		
	COLUMBIA, SC 29212	RELIGION	UNKNOWN		RACE	AFRICAN AM		
PHONE #	[REDACTED]	MDN NAME						
OTHER #		PREFERRED LANGUAGE	EN					
EMAIL		ETHNICITY	02					
*** EMPLOYMENT INFORMATION ***								
EMPLOYER	WEST FRASER, INC		OCCUPATION					
ADDRESS	3287 COLLEGE STREET NEWBERRY, SC 29108		EMP PHONE #	(803)321-0725				
*** GUARANTOR INFORMATION ***								
GUARANTOR NAME	WISE, ANTHONY		GUAR EMPLOYER	WEST FRASER, INC				
GUAR ADDRESS	[REDACTED]		GUAR EMP PH #	(803)321-0725				
	COLUMBIA, SC 29212		RELATIONSHIP	18 SELF / SAME AS PATIENT				
GUAR PHONE NO	[REDACTED]		GUARANTOR SS#	[REDACTED]				
*** CONTACT INFORMATION ***								
NEXT OF KIN	WISE, PAULINE		PERSON TO NOTIFY	WISE, PAULINE				
NOK ADDRESS	[REDACTED]		PERSON NOTIFY ADD	[REDACTED]				
	COLUMBIA, SC 29212			COLUMBIA, SC 29212				
NOK PHONE #	[REDACTED]		PERSON NOTIFY PH#	[REDACTED]				
*** INSURANCE INFORMATION ***								
INSURANCE	POLICY #	SUBSCRIBER	AUTH/PRE CERT#					
1 MATRIX ABSENCE MANAG	6573249	WISE, ANTHONY						
PO BOX 2987, CLINTON, IA 52733								
(800)866-2301								
2 BCBS OF TENNESSE	WFF906579399	WISE, ANTHONY						
1-20 AT ALPINE ROAD, COLUMBIA, SC 29219								
(800)868-2510								
3								
AMOUNT REQUESTED:				AMOUNT COLLECTED:				
IF NONE COLLECTED, WHY?				REGISTRAR INITIALS:				
PATIENT/RP SIGNATURE: _____								
*** PHYSICIAN INFORMATION ***								
PRIMARY CARE PHYS	UNKNOWN		FAMILY PHYSICIAN	UNKNOWN				
ADMIT PHYSICIAN			OTHER PHYSICIANS					
ATTENDING/ER PHYS	LEAP, KEITH E MD							
REASON FOR VISIT: SWELLING IN GROIN AREA							CLIENT:	
LAST INPATIENT VISIT:				LAST OUTPATIENT VISIT: 05/18/17				

EXHIBIT**7**

ROA-076

NCMH ED (11/7/17) 001

Cardiovascular (ROS): Reports: no symptoms reported**Gastrointestinal:** Reports: no symptoms reported**Genitourinary:** Reports: testicular pain,
Denies: penile discharge**Musculoskeletal:** no symptoms reported**Skin:** no symptoms reported**Physical Exam****Vitals Information****Initial Vitals Reviewed:** Yes**Vital Signs****Vital Signs**

Date Time	Temp	Pulse	Resp	B/P (MAP)	Pulse Ox	O2 Delivery	O2 Flow Rate	FiO2
11/7/17 08:16	99.8	87	16	144/95 (111)	98	Room Air		

Physical Exam**General Appearance:** Present: alert, mild distress (uncomfortable)**Head:** Present: no evidence of injury**Respiratory:** Present: no respiratory distress**Abdominal Exam:** Present: non tender, no distension, soft**Extremity:** Present: normal inspection**Skin Exam:** Present: normal color, warm/dry**Mental Status:** Present: oriented x 3**Male Genital Exam:** Present: no hernia, epididymal tenderness, scrotum tenderness (R), scrotum tenderness (L), testicular tenderness (L), testicular swelling (L),

Absent: erythema, hernia mass, inguinal tenderness, testicular tenderness (R), testicular swelling (R), urethral discharge

Progress Notes**Progress Note :****Progress Note**

Test ultrasound sound bilateral hydrocoeles, left epididymitis and small bilat varicocoeles. Discharged to home on doxycycline and norco and referred to Dr. Kerner, urology.

Vital Signs**Vital Signs**

Date Time	Temp	Pulse	Resp	B/P (MAP)	Pulse Ox	O2 Delivery	O2 Flow Rate	FiO2
11/7/17 15:11		85	17	150/0 (50)	95			
11/7/17 09:56						Room Air		
11/7/17 08:16	99.8	87	16	144/95 (111)	98	Room Air		

Medications given in the ER**Orders****Orders**

Orders			
Procedure	Category	Date Time	Status
Iv Saline Lock, Insert	ED	11/7/17 08:25	Transmitted
Nothing By Mouth Diet	DIET	11/7/17	Complete

Us Testicular	US	Lunch 11/7/17 08:25	Resulted
Hydromorphone Inj (Dilaudid Inj)	PHA	11/7/17 08:30	Complete
Ondansetron Inj (Zofran Inj)	PHA	11/7/17 08:30	Complete

Departure**Time of Disposition:** 11:15**Disposition:** 01 HOME, SELF-CARE**DIAGNOSIS:****(1) Hydrocele in adult****(2) Epididymo-orchitis****Condition:** Improved**Restrictions****Activity Restrictions:** Limited Activity, Light Work Duty**Departure Forms:** Return to Work**May return to work on:** Nov 8, 2017**Comment(s):** light duty for one week**Instructions****Patient Instructions:** SIGNATURE**Referrals:**

KERNER,STEVEN DO

Prescriptions**Scripts****Hydrocodone/Apap 5/325 Mg Tab*** (NORCO 5/325 MG TAB*) 5 Mg/325 Mg Tab

1 TAB PO Q6H Y for PAIN, #20 TAB 0 Refills

Prov: LEAP,KEITH E MD

11/7/17

Doxycycline Hyclate (DOXYCYCLINE HYCLATE) 100 Mg Tab

1 TAB PO BID, #14 TAB 0 Refills

Prov: LEAP,KEITH E MD

11/7/17

LEAP,KEITH E MD

Nov 7, 2017 11:15

Signed By: <Electronically signed by KEITH E LEAP, MD> 11/09/17 1719

ANTHONY WISE,

Plaintiff,

V.

KEITH E. LEAP, et al.

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2019-CP-36-00103

DEFENDANT WEST FRASER, INC.'S
MOTION FOR SUMMARY JUDGMENT

EXHIBIT 8

Encounter Notes

Progress Notes by Hutson, Cynthia D. on 11/08/17 1308

Version 1 of 1

Author: Hutson, Cynthia D.
Filed: 11/08/17 1308
Status: SignedService: —
Encounter Date: 11/8/2017
Editor: Hutson, Cynthia D.Author Type: Physician Assistant
Creation Time: 11/08/17 1204Subjective^[CH.1]Patient is a^[CH.2] 62 y.o. male^[CH.1].^[CH.2]

Chief Complaint

Patient presents with

- Testicle Pain^[CH.1]

HPI Patient presents with testicular swelling and pain that began yesterday while at work. He was seen in Newberry ER. They did perform ultrasound and did some blood work. They gave him Doxycycline and Hydrocodone. He is still in moderate pain at this time. Patient was on his Fork lift and made a turn that instantly felt the pain in the groin region go up to his low abdominal region. It has been constant since yesterday.

Review of Systems

Constitutional: Positive for activity change.

Respiratory: Negative.

Cardiovascular: Negative.

Genitourinary: Positive for scrotal swelling and testicular pain. Negative for discharge and penile swelling.^[CH.2]

Reviewed and updated this visit by provider:

Objective^[CH.1]

Physical Exam

Constitutional: He appears well-developed.

Eyes: Pupils are equal, round, and reactive to light.

Neck: Neck supple.

Cardiovascular: Normal rate and regular rhythm.

Pulmonary/Chest: Effort normal and breath sounds normal.

Abdominal: Soft.

Genitourinary: Right testis shows swelling and tenderness. Right testis shows no mass. Left testis shows swelling and tenderness. Left testis shows no mass. No penile tenderness. No discharge found.^[CH.2]

Assessment/Plan

Diagnoses and all orders for this visit:

Testicular pain

- UA without Micro In Office; Future
- betamethasone acetate-betamethasone sodium phosphate (CELESTONE) injection 6 mg; Inject 1 mL (6 mg total) into the muscle once.
- methylPREDNISolone acetate (DEPO-MEDROL) injection 40 mg; Inject 1 mL (40 mg total) into the muscle once.
- cefTRIAxone (ROCEPHIN) injection 1 g; Inject 1 g into the muscle once.
- PSA; Future
- CBC and Differential; Future
- ciprofloxacin (CIPRO) 500 mg tablet; Take 1 tablet (500 mg total) by mouth 2 (two) times daily for 10

Encounter Notes

Progress Notes by Hutson, Cynthia D. on 11/10/17 1156

Version 1 of 1

Author: Hutson, Cynthia D.
Filed: 11/10/17 1156
Status: SignedService: —
Encounter Date: 11/10/2017
Editor: Hutson, Cynthia D.Author Type: Physician Assistant
Creation Time: 11/10/17 0908

Subjective

Patient is a 62 y.o. male.

Chief Complaint

Patient presents with

- Infection
follow up

HPI Patient is here on follow up. He is feeling some better since Tuesday. He can tell that the pain and swelling starting to go down after the medication change on Tuesday.

Review of Systems

Constitutional: Negative.

Respiratory: Negative.

Cardiovascular: Negative.

Genitourinary: Positive for scrotal swelling and testicular pain. Negative for discharge, genital sores, penile pain and penile swelling.

Neurological: Negative.

Psychiatric/Behavioral: Negative.

Reviewed and updated this visit by provider:

Objective

Physical Exam

Constitutional: He is oriented to person, place, and time. He appears well-developed.

Eyes: Pupils are equal, round, and reactive to light.

Neck: Neck supple.

Cardiovascular: Normal rate, regular rhythm and normal heart sounds.

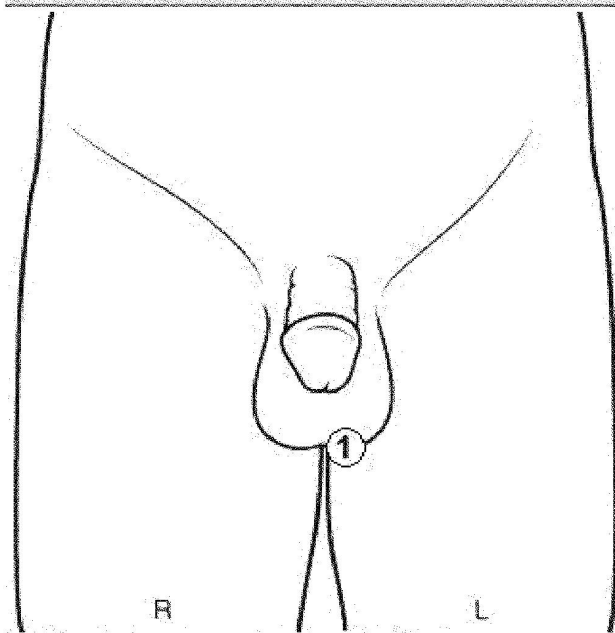
Pulmonary/Chest: Effort normal and breath sounds normal.

Genitourinary: Penis normal. Right testis shows swelling. Left testis shows swelling.

Encounter Notes (continued)

Progress Notes by Hutson, Cynthia D. on 11/10/17 1156 (continued)

Version 1 of 1



1: Swelling has decreased compared to Tuesday

Neurological: He is oriented to person, place, and time.

Skin: Skin is warm.

Psychiatric: He has a normal mood and affect.

Assessment/Plan

Diagnoses and all orders for this visit:

Acute prostatitis

- CBC In-office; Future

Epididymitis**Cellulitis**

- CBC In-office; Future

Continue the Cipro as well to bring down the the infection. He has dropped from 27 to 17 as of today.

Repeat PSA in two weeks to make sure that number is back in the normal range as well.^[CH.1]

Patient is aware with the white count being very elevated and the PSA at 18. It is combination of Epididymitis and Prostatitis. His urine culture did not grow out any bacteria.^[CH.2]

Electronically Signed by Hutson, Cynthia D. on 11/10/17 1156

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	CIVIL ACTION NO.: 2019-CP-36-00103
	)	
ANTHONY WISE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	PLAINTIFF'S MOTION
	)	TO AMEND COMPLAINT
	)	
NEWBERRY HOSPITAL, LLC D/B/A	)	
NEWBERRY COUNTY MEMORIAL	)	
HOSPITAL AND WEST FRASER, INC.,	)	
	)	
Defendants.	)	

TO: Anne Laurie McClurkin Esq. Attorney for Defendant West Fraser Inc and Shelton W. Haile, Esq,
Zachary B Hayden, Esq. Attorneys for Defendant Newberry County Memorial:

PLEASE TAKE NOTICE that the Plaintiff will move before the Court at a time and date set by the Court for and Order allowing Plaintiff to amend his Complaint. Attached is a copy of the propose Amended Complaint as Exhibit 1. Pursuant to Rule 11, SCRCP, undersigned counsel certifies that he has not consulted with counsel for Defendant as it would serve no useful purpose.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: /s/ John E. Parker
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ATTORNEYS FOR PLAINTIFF

August 17, 2021
Hampton, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	CIVIL ACTION NO.: 2019-CP-36-00103
	)	
ANTHONY WISE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<u>AMENDED SUMMONS</u>
	)	(Jury Trial Requested)
	)	
NEWBERRY HOSPITAL, LLC D/B/A	)	
NEWBERRY COUNTY MEMORIAL	)	
HOSPITAL AND WEST FRASER, INC.,	)	
	)	
Defendants.	)	

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at 101 Mulberry Street East, Post Office Box 457, Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

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-AND-

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August 17, 2021
 Hampton, South Carolina

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	CIVIL ACTION NO.: 2019-CP-36-00103
	)	
ANTHONY WISE,	)	
	)	
Plaintiff,	)	
	)	<u>AMENDED COMPLAINT</u>
v.	)	<u>(Jury Trial Demanded)</u>
	)	
NEWBERRY HOSPITAL, LLC D/B/A	)	
NEWBERRY COUNTY MEMORIAL	)	
HOSPITAL AND WEST FRASER, INC.,	)	
	)	
Defendants.	)	

The Plaintiff alleges:

FOR FIRST CAUSE OF ACTION

1. The Defendant Newberry Hospital, LLC is a limited liability corporation and operates Newberry County Memorial Hospital (“NCMH”) in Newberry, South Carolina. Newberry Hospital, LLC is subject to the jurisdiction of the court by means of doing business in Newberry County. Keith Leap, M.D., is a resident of South Carolina and was an agent and/or employee of Newberry Hospital, LLC, acting within the scope of his agency and/or employment at all times mentioned herein.

2. The Defendant, West Fraser, Inc., is a corporation which does business in Newberry County and operates the mill where Plaintiff worked.

3. Venue of this case is proper in Newberry County pursuant to §15-7-30, South Carolina Code (1976 as amended) because the cause of action occurred in Newberry County, South Carolina.

4. Plaintiff Anthony Wise was employed at West Fraser, Inc. in Newberry, South Carolina. On November 7, 2017, Mr. Wise was working at the mill when he discovered that the hood of his forklift was damaged. While lifting the hood, Mr. Wise suddenly experienced pain running from his groin to his stomach. He was subsequently taken to the emergency room at NCMH by the safety director of West Fraser.

5. Keith Leap M.D., an agent and/or employee at NCMH, was a physician and examined Mr. Wise for his injuries. After examining Mr. Wise, Dr. Leap informed Mr. Wise, Mr. Wise's wife, and the West Fraser safety director that it did not look like a hernia. Dr. Leap then said "Looks like somebody's been changing sexual partners. Looks like an STD." These statements falsely accused Mr. Wise of having contracted a sexually transmitted disease. Since Mr. Wise did not have a sexually transmitted disease, Dr. Leap defamed the plaintiff by falsely stating he had a sexually transmitted disease and by falsely accusing him of adultery since Mrs. Wise did not have a sexually transmitted disease.

6. Upon returning to work, the safety director of West Fraser, Inc., while acting within his employment, published to other workers at the mill Dr. Leap's false and defamatory statements. The false and defamatory statements quickly spread throughout the mill damaging the plaintiff's reputation.

7. The Defendants' false and defamatory statements damaged Mr. Wise's reputation and caused him to suffer mental anguish by falsely accusing him of adultery and of having a sexually transmitted disease.

8. The Plaintiff is entitled to actual and punitive damages.

FOR A SECOND CAUSE OF ACTION

9. The allegations of the First Cause of Action are incorporated herewith as if rewritten.

10. The defendants' actions breached their duty of confidentiality owed to the patient, by publishing to others the false statement concerning the plaintiff's medical condition.

11. The defendants willfully violated the duty of confidentiality and the plaintiff is entitled to actual and punitive damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

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ATTORNEYS FOR PLAINTIFF

August 17, 2021
Hampton, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	FOR THE EIGHTH JUDICIAL CIRCUIT
	)	
ANTHONY WISE,	)	
	)	Civil Action No. 2019-CP-36-00103
Plaintiff,	)	
	)	
v.	)	Defendant West Fraser Inc.’s
	)	Supplemental Brief in Support of Its
	)	Motion for Summary Judgment
KENNETH E. LEAP, NEWBERRY	)	
HOSPITAL, LLC D/B/A NEWBERRY	)	
COUNTY MEMORIAL HOSPITAL and	)	
WEST FRASER, INC.,	)	
	)	
	)	
Defendants.	)	

Defendant West Fraser, Inc. (“West Fraser”) files this Supplemental Brief to address whether Plaintiff’s Motion to Amend the Complaint filed after the summary judgment hearing has any effect on West Fraser’s pending Motion for Summary Judgment. For the reasons set forth more fully herein, the answer is no. Regardless of whether Plaintiff’s motion to amend is granted or more likely denied, West Fraser has demonstrated summary judgment is warranted on Plaintiff’s defamation claim. Nothing in Plaintiff’s proposed Amended Complaint saves Plaintiff’s defamation claim. It is an overriding rule of civil procedure that “whatever doesn’t make any difference doesn’t matter.”¹ Plaintiff’s motion to amend makes no difference to the only claim that has been pled in this case and should have no bearing on the Court’s consideration of West Fraser’s pending Motion for Summary Judgment.

¹ *First South Bank v. Rosenberg*, 418 S.C. 170, 185, 790 S. E. 2d 919, 928 (S.C. Ct. App. 2016) (internal quotations and citation omitted)

THE PROPOSED AMENDED COMPLAINT

The proposed Amended Complaint seeks to add a second cause of action against both West Fraser and Newberry County Memorial Hospital (“NCMH”) for breach of an alleged “duty of confidentiality owed to the *patient*.” (Am. Compl. at ¶ 10). According to the Amended Complaint, the breach occurred when the defendants allegedly published a “false statement concerning the plaintiff’s medical condition.” (Am. Compl. at ¶ 10). The false statement allegedly published by NCMH physician Dr. Leap and repeated by West Fraser’s former safety director Keith Nelson (“Nelson”) is the same false statement Plaintiff contends establishes defamation: “Looks like somebody’s been changing sexual partners. Looks like an STD.” (Am. Compl. at ¶¶ 5-6, 9-10).

ARGUMENT

At the outset, any suggestion or argument by the Plaintiff that the motion to amend is relevant to or should be decided before the Court rules on West Fraser’s summary judgment motion should be disregarded. The timing of Plaintiff’s motion to amend was entirely within Plaintiff’s control, and Plaintiff had ample opportunity to file the motion prior to the summary judgment hearing in time to have the motion heard and decided. West Fraser filed its summary judgment motion on June 8, 2021. On July 14, 2021, after counsel for all parties confirmed their availability, the motion was set for hearing on August 11, 2021. Plaintiff did not oppose and in fact expressly consented to the setting of West Fraser’s motion for hearing. At no time prior to or during the summary judgment hearing did Plaintiff object to the Court’s consideration of West Fraser’s motion pending the outcome of Plaintiff’s contemplated motion to amend. Plaintiff should not be allowed to take a contrary position now.

I. The Motion to Amend Does Not Impact the Pending Motion for Summary Judgment.

Plaintiff's motion is irrelevant to the Court's summary judgment analysis. None of the reasons West Fraser advanced as supporting summary judgment is based on or refuted by Plaintiff's proposed breach of confidentiality claim. While West Fraser denies that any of the legal authority Plaintiff submitted to the Court establishes a legal duty of confidentiality owed by an *employer* to an *employee* as opposed to a *physician* to a *patient*, this issue is completely irrelevant to the reasons West Fraser advanced as supporting summary judgment, which are as follows:

- (i.) There is an absence of sufficient evidence to support that Nelson made the alleged defamatory statement accusing Plaintiff of having an STD;
- (ii.) West Fraser has established the substantial truth of Nelson's actual statements (i.e., that Plaintiff had an infection and received an antibiotic); and alternatively,
- (iii.) Nelson's actual statements cannot reasonably be construed as defamatory (i.e., accusing Plaintiff of having an STD).

Whether Nelson's statements disclosed sensitive or even confidential medical information about the Plaintiff has no relevancy and need not be decided to determine whether Plaintiff's defamation claim fails for any or all of the above reasons. Indeed, if the Court finds that the only statements Nelson actually made (i.e., those supported by admissible evidence) were substantially true, this ends the defamation analysis since truth is an absolute defense. Thus, the issues concerning the scope of privilege or justification for Nelson's statements, which was the context of Plaintiff's argument at the summary judgment hearing concerning the alleged disclosure of confidential medical information, need not be considered.

Moreover, practically speaking, if summary judgment on Plaintiff's defamation claim is granted, regardless of the outcome of the motion to amend the outcome with respect to West Fraser will be the same. If the motion to amend is denied, Plaintiff cannot pursue a claim against West

Fraser. If it is granted, Plaintiff still has not stated and cannot pursue a claim against West Fraser. For the legal reasons discussed, *infra*, at pp. 4-5, Plaintiff's proposed amendment fails to state a claim recognized under South Carolina law against West Fraser notwithstanding any finding this Court makes in ruling on summary judgment.

While the motion to amend has no impact on the Court's analysis of the pending motion, if the Court determines summary judgment is appropriate, the Court's findings could impact the motion to amend. For instance, if the Court finds an absence of evidence that Nelson published false information concerning Plaintiff this also would dispose of the factual premise for Plaintiff's proposed amendment, further demonstrating the utter futility and failure of the proposed amendment. To the extent the Court's ruling does dispose of Plaintiff's motion to amend this only highlights the irrelevancy of Plaintiff's motion.²

II. The Proposed Amended Complaint Does Not Even State a Viable Claim Against West Fraser.

Plaintiff's proposed breach of confidentiality claim, filed 2 ½ years after the original Complaint, seeks to establish liability based on the same alleged "false statement" asserted in the original Complaint – i.e., that Nelson repeated Dr. Leap's alleged statement that Plaintiff had an STD to workers in the mill. West Fraser has already established this allegation is entirely lacking in evidentiary support. After extensive discovery, including more than fifteen (15) depositions,

² See *First South Bank*, 790 S.E. 2d at 924 & 928 (rejecting argument that trial court erred by not considering motion to amend prior to ruling on motion for summary judgment or by denying motion to amend after granting summary judgment; the proposed claims raised the same assertions as the claims disposed of on summary judgment and even if the court had granted the motion to amend or decided it in advance of deciding summary judgment, it would have no practical impact on the outcome of the case.); *Salvo v. Hewitt, Coleman & Assoc., Inc.*, 274 S.C. 34, 38, 260 S.E. 2d 708, 711 (1979) (where trial court's reasoning in granting summary judgment would have doomed proposed amendment adding alternative theory, outcome of motion to amend was irrelevant)

not a single one of Plaintiff's disclosed witnesses, including the Plaintiff himself, provided testimony that Nelson made the statement alleged. An equal albeit more blatant defect in Plaintiff's proposed claim against West Fraser is it is premised on an alleged duty of confidentiality that does not exist under South Carolina law.

To be clear, while South Carolina does recognize a common law tort claim for a physician's breach of confidentiality obligations owed to a patient, *see McCormick v. England*, 494 S.E.2d 431, 437 (S.C. Ct. App. 1997), this duty and related cause of action is limited to the physician-patient relationship.³ No court applying South Carolina law has interpreted *McCormick* as creating a cause of action against the *employer* for the alleged disclosure of medical information. *See Stephens v. United States*, Case No.: 0:16-149-BHH-PJG, 2018 WL 1110853, *3 (D. S.C. Jan. 30, 2018) (discussing *McCormick* and holding plaintiff's complaint alleging improper disclosure of medical information did not allege disclosure by a physician and therefore failed to state a claim "for the South Carolina tort of breach of confidentiality" and would be dismissed.) *See also Gallipeau v. Correct Care Solutions*, Case No. 3:10-2017-JFA-JRM, 2011 WL 4502043, * 3 (D.S.C. Sept. 29, 2011) ("As the Magistrate Judge points out, South Carolina courts have recognized a cause of action for breach of confidentiality, but such actions only lie against a physician ... Here, the cause of action asserted is not against a physician"; dismissing plaintiff's complaint as failing to state a claim.) In fact, the courts that have considered the scope of this claim have expressly rejected applying a duty of confidentiality outside the physician-patient

³ The *McCormick* opinion was included in Plaintiff's legal authority submitted to the Court during the summary judgment hearing as purported support for Plaintiff's argument that Nelson's statement breached a duty of confidentiality. As set forth herein, Plaintiff's argument misstates the law.

context and held that such allegations fail to state a claim under South Carolina law. *Id.* Plaintiff's purported breach of confidentiality claim against West Fraser does not state a viable claim.⁴

Plaintiff's motion to amend should and likely will be denied as futile and/or because of undue delay and unfair prejudice. For this additional reason, Plaintiff's motion has no bearing on and should have no impact on the Court's summary judgment analysis or the outcome of Plaintiff's claim against West Fraser.

CONCLUSION

Based on the foregoing, West Fraser respectfully submits Plaintiff's motion to amend has no impact on the issues the Court has been asked to decide and prays the Court will not allow Plaintiff's untimely filing to thwart West Fraser's only opportunity to pursue summary judgment on Plaintiff's defamation claim. While summary judgment may be a high standard it is not an insurmountable one, and Rule 56 exists for a reason: not every claim requires the assistance of a jury. Plaintiff's defamation claim against West Fraser does not.

Respectfully submitted on this the 25th day of August 2021.

/s/ Christopher B. Major

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⁴ Plaintiff's attempt to assert this claim against NCMH fails for other reasons, including that Plaintiff signed a release authorizing Dr. Leap to disclose Plaintiff's medical information. This is not relevant to West Fraser's summary judgment motion or the question presented by the Court and is mentioned here only to educate the Court about the likelihood that Plaintiff's amendment will be allowed.

/s/ Anne Laurie McClurkin

Anne Laurie McClurkin (appearing pro hac vice)

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**ATTORNEYS FOR DEFENDANT WEST FRASER,
INC.**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	CIVIL ACTION NO.: 2019-CP-36-00103
	)	
ANTHONY WISE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	MEMORANDUM IN SUPPORT
	)	TO PLAINTIFF'S MOTION TO
	)	AMEND COMPLAINT
NEWBERRY HOSPITAL, LLC D/B/A	)	
NEWBERRY COUNTY MEMORIAL	)	
HOSPITAL AND WEST FRASER, INC.,	)	
Defendants.	)	

The Plaintiff has moved to amend his complaint to allege an additional cause of action against the defendant, West Fraser, Inc., for breach of its duty of confidentiality owed to the plaintiff. The plaintiff originally alleged the same facts in a cause action for defamation. The proposed amended complaint contends that the actions by West Fraser as originally alleged also establishes a breach of confidentiality by West Fraser.

“A motion to amend is addressed to the sound discretion of the trial judge and the party opposing the motion bears the burden of establishing prejudice.” The prejudice that Rule 15 contemplates is a lack of notice that the new issue is to be tried and a lack of a full opportunity to introduce testimony to refute it. *Armstrong v. Collins*, 336 S.C 204, 621 S.E 2nd 368 (S.C.2010). In considering potential prejudice the court should consider whether the opposing party has an opportunity to respond to the issue now being formally raised, *Armstrong* at p. 381.

The proposed amended complaint was raised as an issue at the hearing on West Fraser’s motion for summary judgment. The issue was called to the court’s and opposing counsels’ attention at the hearing. The allegations of the cause of action for breach of confidentiality is based on Ex. no. 4 of the deposition of Dolan Russell which was introduced at the summary judgment hearing.

In Ex. no. 4, West Fraser disciplines Keith Nelson for discussing the plaintiff's medical condition and diagnosis that a physician had made about Mr. Wise with an hourly employee. Mr. Russell, mill manager states that as a result of the conversation between Mr. Nelson and the employee the information was communicated throughout the mill. Mr. Russell states that the medical information was confidential, and that the disclosure can be considered slander. (Ex. no. 4). West Fraser will not be prejudiced by the proposed amended complaint because the evidence has been in the case, and it cannot claim surprise or an inability to meet the evidence.

Our courts have recognized a tort of breach of confidentiality where the information which is disclosed is received in confidence. A confidential relationship is breached if an unauthorized disclosure is made to one person. *McCormick v. England*, 328 S.C. 627, 494 S.C 2nd 431(Ct. of App.1997). In *S.C. State Bd. of Medical Examination v. Hedgepath*, 325 S.C.166, 480 S.E 2nd 724(S.C. 1997), the court upheld a finding that a physician had committed misconduct by failing to maintain a patient's confidences. In *Brown v. Bi-Lo*, 354 S.C. 436, 581 S.E 2nd 836 (2003) the court held that employers in workers compensations cases could not breach the confidence of patients by communicating with physicians who were treating them and workers compensation carriers and they were restricted to receiving the patient's medical records.

West Fraser itself recognizes that the plaintiff's medical condition is confidential and for this reason disciplined Keith Nelson for breaching this duty of confidentiality.

Court have when faced with the issue of breach of confidentiality have embraced holding employers liable for this breach of confidentiality. See *Breach of Confidentiality, Moving Toward a Tort Remedy*. University of Pennsylvania La Review, Vol. 142: 431.

West Fraser contends that in South Carolina a cause of action for breach of confidentiality is limited to the medical profession. It cites to two unpublished U.S District Court opinions for this contention. The two prisoner cases cited are not persuasive.

The Supreme Court of Ohio in *Biddle v. Warren General Hospital*, 86 Ohio St. 3rd 395 715 N.E 2nd 518 (1999), correctly held that an independent tort exists for the unauthorized, unprivileged disclosure to a third party of nonpublic medical information learned within the physician-patient relationship and that a third party could be held liable for inducing such disclosure.

In this case West Fraser takes the position that its agent and employee can breach the confidential relationship between the plaintiff and West Fraser by disseminating false confidential medical information without consequences.

Our court has recognized that if a confidential fiduciary relationship exist which reposes confidence in another, a breach of that relationship is actionable. *Walbeck v I'On Company*, 426 S.C.494, 827 SE 2nd 348 (Ct. of App 2018).

In this case West Fraser own policies were violated as evidenced by the discipling of Mr. Nelson by West Fraser for disclosing Mr. Wise's confidential medical information.

SUMMARY JUDGEMENT

The Plaintiff raised the issue of amending his complaint to allege a cause of action for a breach of confidentiality at the hearing on the motion for summary judgement. The breach of confidentiality is an issue raised by the evidence in the case. In determining whether triable issues of fact exist as would preclude a grant of summary judgement the lower court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Connor Holding, LLC v. Cousins*, 375 S.C.81, 644 S.E 2nd 58 (S.C. 2007). In the present case the evidence

establishes a breach of confidentiality by West Fraser. Ex. no. 4 to Mr. Russell's deposition is evidence which should prohibit summary judgement from being granted.

West Fraser contends that there is not any evidence that Keith Nelson told anyone that plaintiff had an STD. This is not correct. Mr. Nelson testified that he told his boss, Mr. Russell that the plaintiff was told by the physician that he had multiple sex partners. (Nelson, depo. p.22) Although, Mr. Nelson denies telling anyone else. The publication to Mr. Russell is sufficient, to establish a defamation cause of action. In addition, Ex. No. 4 is clear evidence that Mr. Russell concluded that Mr. Nelson had breached his duty of confidentiality by disclosing medical information about Mr. Wise. Mr. Russell stated that Mr. Nelson by discussing Mr. Wise's medical condition with an employee violated West Fraser's policies.

West Fraser seems to contend that if it ignores the evidence or interprets the evidence in a light most favorable to it, it can convince the court to not look at the evidence in a light most favorable to the plaintiff as required.

When the evidence is viewed in a light most favorable to the plaintiff there is evidence that Mr. Nelson defamed Mr. Wise by telling the employees and West Fraser that Mr. Wise had an STD and that West Fraser breached its duty of confidentiality.

Rules 56 states that if a triable issues of fact exists summary judgment is not proper. Clearly there are triable issues of fact. The plaintiff raised issues of defamation and of breach of confidentiality at the hearing and for this reason the motion for summary judgment should be denied.

[SIGNATURE PAGES TO FOLLOW]

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& DETRICK, P.A.

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ATTORNEYS FOR PLAINTIFF

August 26, 2021
Hampton, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	CIVIL ACTION NO.: 2019-CP-36-00103
	)	
ANTHONY WISE,	)	
	)	
Plaintiff,	)	
	)	PLAINTIFF'S MOTION FOR
v.	)	RECONSIDERATION
	)	
NEWBERRY HOSPITAL, LLC D/B/A	)	
NEWBERRY COUNTY MEMORIAL	)	
HOSPITAL AND WEST FRASER, INC.,	)	
Defendants.	)	

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorneys for the Plaintiff move the Court pursuant to Rule 59(e), SCRCF, to reconsider its decision granting Defendant West Fraser, Inc.'s Motion for Summary Judgment. Specifically, Plaintiff believes that the formal order will contain a clear error of law, as there is at least a mere scintilla of evidence in the record creating a genuine dispute of material fact and making summary judgment inappropriate. Plaintiff expressly reserves the right to supplement and amend this Motion and to file a Memorandum in Support thereof after the Court files a formal order granting West Fraser's motion.

[SIGNATURE PAGE TO FOLLOW]

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ATTORNEYS FOR PLAINTIFF

September 2, 2021
Hampton, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY) CIVIL ACTION NO.: 2019-CP-36-00103

ANTHONY WISE,

Plaintiff,

v.

NEWBERRY HOSPITAL, LLC D/B/A)
NEWBERRY COUNTY MEMORIAL)
HOSPITAL AND WEST FRASER, INC.,)
Defendants.)

**PLAINTIFF'S MEMORANDUM IN
SUPPORT OF MOTION FOR
RECONSIDERATION**

Plaintiff respectfully submits this Memorandum in Support of his Motion for Reconsideration of the Court's October 11, 2021 Order granting summary judgment to Defendant West Fraser, Inc. Plaintiff believes the Court's Order contains several errors of law. In granting summary judgment, the Court's Order finds that there is no evidence in the record supporting Plaintiff's claim that statements made by Defendant's safety director, Keith Nelson, to a West Fraser employee, George Wilson, were defamatory and actionable per se, and that any statements made by Nelson to Defendant's plant manager, DJ Russell, were qualifiedly privileged. However, the Court's Order ignores that (1) there is sufficient evidence to reasonably support an inference that Nelson's statements to Wilson were defamatory on their face, (2) in the alternative, even if Nelson did not state to Wilson that Plaintiff had a sexually transmitted disease, there is sufficient evidence in the record upon which a jury could find that Nelson's statement was defamatory by way of innuendo and implied that Plaintiff had a sexually transmitted disease, and (3) any statements made by Nelson, Russell, or management of Defendant to unnecessary employees concerning Plaintiff's condition would not be qualifiedly privileged. For the foregoing and following reasons, Plaintiff respectfully requests that the Court reconsider its Order and deny Defendant's Motion for Summary Judgment.

RELEVANT FACTS

On November 7, 2017, Wise was working for West Fraser at its Newberry facility. After reporting to work, he began to check the fluids in a forklift he would be operating during his shift. (Ex. 1, Wise Dep. 101:1-2). When he began to pull up on the hood of the forklift, he felt something “give”. (*Id.* at 101:10-12). After indicating to a co-employee that he was experiencing pain in his groin, Wise went to a restroom and upon inspection discovered that his testicles were swollen and painful. (*Id.* at 101:19-22; 103:1-12). Wise immediately notified West Fraser management that he needed to see a doctor. (Ex. 1, Wise Dep. at 101:23-102:8). Wise was given an icepack to place on his groin area and was only able to walk in a hunched over position. (*Id.* at 102:8-105:13). During this time, according to Wise and Anthony Cannon’s deposition testimony, at least seven West Fraser employees were aware that Wise was experiencing significant pain in his groin area. (*Id.*; Ex. 2, Cannon Dep. 7:11-18). It was obvious that Wise was in pain in his groin area, and that he was very uncomfortable. (Ex. 3, Nelson Dep. 19:20-24).

Nelson took Wise to the emergency room at Newberry County Memorial Hospital (“NCMH”). (Ex. 1, Wise Dep. 111:5-18). While diagnosing Wise, the attending physician, Dr. Keith Leap, made comments that there may have been a change in sexual partners that prompted Wise’s condition. (*Id.* at 126:19-132:2). It is disputed whether this comment was made in the presence of Nelson. (*Id.* at 132:3-23). This statement was false and untrue. In his deposition, Nelson stated that the doctor later told him that Wise had an “infection” and would need a prescription. (Ex. 3, Nelson Dep. 18:6-17). Nelson has claimed that he had no idea that anyone could infer a sexual component from the fact that Wise had an infection, but this assertion is contradicted by the statement of Melody Jepson, which documents that Nelson returned to West Fraser from the hospital and informed her and others that Wise had a “long worded infection” that

possibly originated from his sexual history, and that the doctor had asked him about his sex partners in front of his wife. (*Id.* at 68:15-69:6; Ex. 4, Jepsen Statement). Nelson also asked Wise if he thought that his wife had some kind of infection as well. (Ex. 1, Wise Dep. 146:3-6).

Wise left the hospital with his wife and did not return to work until the next Monday, six days later. (*Id.* at 146:12). Nelson, on the other hand, immediately returned to West Fraser. (Ex. 3, Nelson Dep. 21:11-12). Upon returning to West Fraser, Nelson saw Wilson, an employee and coworker of Wise. (Ex. 5, Wilson Dep. 6:11-14). Apparently, by this time word had spread to other employees, like Wilson, that Wise had suffered sudden pain and discomfort in his groin that morning, with the prevailing belief being that he had likely pulled a muscle. (Ex. 6, Jeremy Neal Dep. 6:9-14; Ex. 2 Cannon Dep. 5:2-6). According to Wilson and Nelson, Wilson asked Nelson how Wise was doing, to which Nelson claims he merely replied that Wise had an “infection”, supposedly without further explanation. (Ex. 5, Wilson Dep. 6:15-17; Ex. 3, Nelson Dep. 22:9-12). Wilson, in turn, claims that he told several other employees only that Wise had an “infection”. (Ex. 5, Wilson Dep. 6:24-7:3).

As previously noted, Nelson proceeded to the front office, where he informed Jepsen and others that Wise had an infection that was possibly sexual in origin, and that the doctor had inquired about multiple sexual partners. However, in his deposition, Nelson claimed that the conversation in the front office only took place with facility manager Russell behind closed doors. (Ex. 3, Nelson Dep. 22:13-25). Nelson testified that he told Russell about the doctor’s diagnosis of an infection for which Wise was given a prescription, and he also testified that he informed Russell of the doctor’s accusation that Wise had been with multiple sexual partners. (*Id.* at 22:19-25). Curiously, Russell has denied that Nelson ever told him anything about Wise’s condition being related to multiple sexual partners or a sexually transmitted disease. (Ex. 7, DJ Russell Dep. 7:6-16, 19:20-

20:4). According to Russell, the only way a rumor concerning Wise's condition could have made its way into the West Fraser workforce before Wise returned to work was from the aforementioned conversation between Nelson and Wilson, and he did not know exactly what Nelson had told Wilson. (*Id.* at 20:21-21:11).

Unsurprisingly, in the coming days the rumor that Wise had been diagnosed with a sexually transmitted infection spread throughout West Fraser. These rumors started well before Wise returned to work after recovering from his injury. (Ex. 6, Jeremy Neal Dep. 5:23-6:2). Upon returning to work six days later, Wise was humiliated and ridiculed by numerous West Fraser employees for having a STI, despite that this was not in fact what he was suffering from. (*Id.* at 7:7-15; Ex. 8, Anthony Byrd Dep. 4:24-6:8; Ex. 9, Raphael Maybin Dep. 5:22-7:8; Ex. 10, Joseph Praylow Dep. 8:16-24; Ex. 11 Julian Shelton Dep. 6:9-21; Ex. 2 Cannon Dep. 5:9-6:22). No less than six West Fraser employees other than Wise have testified that they heard accusations in the workplace that Wise had a sexually transmitted disease. Somehow, in the days following Wise's departure from work, the discussion around West Fraser concerning Wise's condition transmuted from the belief that he had pulled a muscle into accusations that he had a sexually transmitted disease. And in that intervening period, only one person who was present at NCMH to hear the allegations of Dr. Leap had returned to West Fraser: Keith Nelson.

Wise confronted several of his coworkers in an attempt to find out how the rumor had started. (Ex. 9, Maybin Dep. 7:9-19; Ex. 6 Neal Dep. 8:21-9:4; Ex. 10 Praylow Dep. 10:4-14). Frustrated, Wise went to Russell to inform him of the rumors and mistreatment he was experiencing. (Ex. 7, Russell Dep. 10:5-11:9). Notes from the meeting document that Wise informed Russell of the conversation between Nelson and Wilson, and that Nelson had told Wilson that Wise had an STI after returning from NCMH. (Ex. 12, Russell Notes). Russell promised Wise

that he would investigate the situation and take corrective action. (Ex. 7, Russell Dep. 11:10-15). Russell called West Fraser's regional manager and corporate human resources representative and was advised to investigate the situation. (*Id.* at 11:17-12:1). Four days later, Russell had another meeting with Wise and told him that he had investigated the incident and taken appropriate action. (Ex. 12). Russell had sent a letter to Nelson, reprimanding him and informing him that he very serious concerns about his conduct. In particular, Russell was concerned that the disclosures made by Nelson to Wilson could have been considered slanderous by Wise, and that his behavior had put West Fraser at risk. (Ex. 13, Reprimand Letter).

SUMMARY JUDGMENT STANDARD

Respectfully, the Court's Order does not properly apply the summary judgment standard. Rather than construing all inferences in the light most favorable to Wise, the Order's findings inappropriately weigh the evidence and resolve all conclusions in favor of West Fraser. In essence, the Order places a premium on Nelson and Wilson's testimony, and requires Wise to produce direct evidence proving that Nelson told Wilson that Wise had a sexually transmitted disease. This is not what is required by the summary judgment standard and is a clear error of law. "Summary judgment should not be granted even when there is no dispute as to evidentiary facts **if there is dispute as to the conclusion to be drawn from those facts.**" *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000) (emphasis added).

"In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006). Once the moving party carries its initial burden, the non-moving party must come forward with specific facts showing that there is a genuine issue for trial. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410

S.E.2d 537, 545 (1991). “In order to withstand a motion for summary judgment ‘in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a **mere scintilla** of evidence.’” *Fountain v. First Reliance Bank*, 398 S.C. 434, 441, 730 S.E.2d 305, 308 (2012) (emphasis added) (quoting *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330 673 S.E.2d 801, 803 (2009)). Here, there are many reasonable inferences and conclusions that could be drawn from the facts, including an inference that Nelson told Wilson that Wise had a sexually transmitted disease, as well as the conclusion that merely telling Wilson that Wise had an infection could have been defamatory by way of innuendo under the circumstances, when viewed in the light most favorable to Wise.

ARGUMENT

A plaintiff must prove the following four elements to state a claim for defamation: (1) a false and defamatory statement was made; (2) the unprivileged communication was made to a third party; (3) the publisher was at fault; and (4) actionability irrespective of special harm or the existence of special harm caused by the publication. *Erickson v. Jones St. Publishers, L.L.C.*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006). In this case, Wise alleges that the defamatory statements concerned the “contraction of a loathsome disease” and “unchastity”, making the statements actionable per se. *Goodwin v. Kennedy*, 347 S.C. 30, 36, 552 S.E.2d 319, 322-23 (Ct. App. 2001). Thus, Wise is not required to prove the fault and special harm elements. *Erickson*, 368 S.C. at 465, 629 S.E.2d at 664.

In essence the Court’s Order finds that any statements made by Nelson to Wilson were true and were not defamatory. Additionally, the Court’s Order finds that any statements made by Nelson to Russell were protected by qualified privilege. However, the Court’s Order ignores that the evidence supports multiple other inferences and conclusions, including that: (1) despite their testimony indicating otherwise, Nelson told Wilson that Wise had a sexually transmitted disease, (2) even if

Nelson only told that Wise had an “infection”, for the purposes of summary judgment there is sufficient evidence that this could be defamatory by way of innuendo, (3) the repetition of a defamatory statement made by another is in itself defamation, and (4) any statements made by Nelson, Russell, or any other member of management to the West Fraser workforce concerning Wise’s condition would not be qualifiedly privileged.

I. There is sufficient evidence in the record to create an issue of fact, and reasonably support the inference, that Nelson told Wilson and others that Wise had a sexually transmitted disease.

The publication of a statement is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community. *Harris v. Tietex International Ltd.*, 417 S.C. 533, 540, 790 S.E.2d 411, 415. (Ct. App. 2016). The evidence in the record gives rise to a reasonable inference that Nelson told Wilson that Wise had a sexually transmitted disease, and that this publication was subsequently spread throughout West Fraser. Nelson and Wilson have denied that any references to a sexually transmitted disease were made by Nelson, and that the communication consisted only of the message that Wise had an infection. (Ex. 5, Wilson Dep. 6:15-17; Ex. 3, Nelson Dep. 22:9-12). Despite this, there is sufficient circumstantial evidence to the contrary to give rise to the inference that Nelson’s testimony is untrue, rendering summary judgment inappropriate.¹

Prior to leaving West Fraser to travel to NCMH, a handful of employees were aware that Wise was suffering from a groin injury of some nature. (Ex. 1, Wise Dep. 101:19-105:13; Ex. 2, Cannon Dep. 7:11-18). The testimony of several West Fraser employees indicates that the prevailing belief at the time was the Wise had pulled a muscle. (Ex. 6, Jeremy Neal Dep. 6:9-14; Ex. 2 Cannon Dep. 5:2-6). The only West Fraser employee to accompany Wise to NCMH was Nelson. (Ex. 1, Wise

¹ It is undisputed that Wise did not in fact have a sexually transmitted disease.

Dep. 111:5-18). Upon arriving at NCMH, Nelson learned that Wise had an infection and would need treatment. (*Id.* at 126:19-132:2; Ex. 3, Nelson Dep. 18:6-17). In the light most favorable to Wise, Nelson also learned that Dr. Leap believed that Wise had multiple sexual partners and that the infection may have been sexually transmitted. Nelson then returned to West Fraser, while Wise went home and did not return to work in the next week. (*Id.* at 68:15-69:6; Ex. 4, Jepsen Statement; Ex. 1, Wise Dep. 146:3-6).

Upon arriving back to West Fraser, Nelson claims to have only told Wilson that Wise had an infection. Nelson claims to have then entered the front office and only told Russell behind closed doors of the statements made by Dr. Leap. (Ex. 3, Nelson Dep. 22:13-25). Russell, on the other hand, denies that Nelson ever told him of a sexual component to the injury. (Ex. 7, Russell Dep. 7:6-16, 19:20-20:4). These claims are contradicted by the statement of Jepson, which provides that Nelson returned to the front office and related to Jepson and others that Wise had a “long worded infection” that possibly originated from his sexual history, and that the doctor had asked him about his sex partners in front of his wife.² In accepting Nelson and Wilson’s testimony as true, and requiring Wise to rebut their testimony with direct evidence as to its falsity, while ignoring all of the circumstantial evidence favorable to Wise, the Court’s Order improperly weighs the evidence and usurps this role from the factfinder.

² Nelson’s deposition testimony is impeached by several other facts in the record. Nelson also denies having any idea that Wise’s infection could be construed as sexual in nature when he spoke to Wilson, yet Jepson’s statement indicates that Nelson clearly believed it could have been when he spoke to her. (Ex. 3, Nelson Dep. 69:2-6). The credibility of Nelson’s testimony that he only told Wilson that Wise had an infection must be weighed by a jury, and should not be accepted by the Court as undisputed direct evidence on a motion for summary judgment. Additionally, Jepson’s statement is admissible and is not hearsay under Rule 801, SCRE, in that Jepson can testify at trial and be subject to cross-examination concerning the statement.

Before Wise could return to work, the consensus of the employees at West Fraser seems to have shifted from believing he had a pulled muscle to thinking that he had a sexually transmitted disease. This communication was repeated and spread throughout the West Fraser workforce before Wise ever returned to West Fraser. (See Ex. 1, Wise Dep. 146:12). In the immediate aftermath of these incidents, Russell noted that Wise had learned that Nelson told Wilson that Wise had an infection and STI. (Ex. 12, Russell Notes). Russell subsequently investigated and reprimanded Nelson, informing him that the statements he made about Wise could be considered slanderous by him. (Ex. 13, Reprimand Letter). While Russell's slander assertion is susceptible to many different interpretations, the Court is confined to resolving its meaning in Wise's favor. And in the light most favorable to Wise, considering that Russell made this assertion immediately following his investigation, the most reasonable inference is that he made the assertion because he had learned that Nelson communicated untrue, defamatory information to Wilson. This evidence is more than sufficient to create the inference that despite his denials, Nelson told Wilson, and possibly others outside the scope of the qualified privilege, that Wise had a STI, which was subsequently published by others throughout West Fraser. For this reason alone, West Fraser's Motion for Summary Judgment should have been denied.

The Court's Order cites *Moody v. McClellan*, 295 S.C. 157, 367 S.E.2d 449 (Ct. App. 1988), to support the proposition that a plaintiff must come forward with direct evidence rebutting a defendant's denial that he made defamatory statements, and that a plaintiff cannot rely on circumstantial evidence to overcome such a denial on a motion for summary judgment. This is not the holding of *Moody*. In *Moody*, the plaintiff contended that his supervisor made four defamatory remarks about him during his employment, which was denied by the supervisor. *Id.* at 163, 367 S.E.2d at 452. However, the plaintiff in *Moody* produced no admissible evidence probative of

whether his supervisor actually made the statement. *Id.* The only evidence produced by the plaintiff in *Moody* was the plaintiff's own testimony about other employee's prior statements. *Id.* The court's holding in *Moody* is merely a reiteration of the well-known rule that a non-moving party must come forward with admissible evidence showing there is a genuine issue for trial.

Here, there is an overwhelming amount of admissible circumstantial evidence indicating that the most likely, and only, source for the rumor was Nelson. Wise does not rely solely on his own testimony of what other people told him that Nelson said; rather, the circumstantial evidence indicates that the only possible source of the defamatory communications other than Wise was Nelson. The evidence also indicates that Wise could not have been the source. There is admissible impeachment evidence demonstrating that Nelson's testimony is not credible, and there is additional admissible evidence, when viewed in the light most favorable to Wise, indicating that Russell likely discovered immediately after the incident in the course of his investigation that Nelson's communications with Wilson were slanderous. *Moody* is inapposite, and the Order erroneously relies on the decision to support its finding that there is no factual issue concerning Nelson's communications with Wilson. This error necessitates a reversal of the Order and denial of Defendant's Motion for Summary Judgment.

II. Even if Nelson only told Wilson that Wise had an infection and needed an antibiotic, there is more than a mere scintilla of extrinsic evidence showing that the statement could be defamatory by way of innuendo.

In the alternative, even if Nelson only stated that Wise had an infection, there are facts in the record extrinsic to the statement itself indicating that it could be susceptible to a defamatory meaning. The Opinion's analysis of whether a statement that Wise had an infection and needed an antibiotic is defamatory is flawed and focuses on irrelevant facts in deciding whether the statement was defamatory by way of innuendo. The Court's Opinion finds that the statement is not susceptible to a

defamatory meaning based on the following grounds: (1) there is no direct evidence rebutting Nelson's testimony, (2) Wise discussed the STI accusations with other West Fraser employees, (3) other employees were aware that Wise had suffered a groin injury before he and Nelson went to NCMH, (4) the reprimand letter only established that Nelson's actions were contrary to company policy, and (5) Wise's testimony concerning assumptions or stereotypes of black men and sexually transmitted diseases is mere conjecture.

Most of these points have no bearing on whether a statement that Wise had an infection and needed antibiotics was defamatory by way of innuendo, and in the light most favorable to Plaintiff, some of these points are extrinsic facts indicating that the statement could have a defamatory meaning. Since it is reasonable under the circumstances for the statement that Wise had an infection to possess multiple meanings, including a defamatory meaning, a jury must decide which view they will take.

To render the defamatory statement actionable, it is not necessary that the false charge be made in a direct, open and positive manner. A mere insinuation is as actionable as a positive assertion if it is false and malicious and the meaning is plain. Statements therefore may be either defamatory on their face, or defamatory by way of innuendo. Innuendo is extrinsic evidence used to prove a statement's defamatory nature. It includes the aid of inducements, colloquialisms, and explanatory circumstances.

Fountain, 398 S.C. at 441-42, 730 S.E.2d at 309.

For example, the statement that "A had a baby" does not have a defamatory meaning obvious from the face of the statement, but it could be defamatory by way of innuendo where the extrinsic fact is that A is unmarried. *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 509, 506 S.E.2d 497, 501 (1998). Thus, our courts have found that the statements such as "there was simply no family support to encourage her to continue her education" and "I don't believe I ever called Don Capps a paranoid bastard. I called him a paranoid sonofabitch" are capable of defamatory meanings in light of the extrinsic facts. *See id.*; *Capps v. Watts*, 271 S.C. 276, 246 S.E.2d 606 (1978). It is for a court to

decide whether a communication is reasonably capable of conveying a defamatory meaning. *Holtzscheiter*, 332 S.C. at 530, 506 S.E.2d at 512 (Toal, J. concurring). However, if reasonable minds might differ as to whether the statement is capable of a defamatory construction, then the issue must be submitted to the jury. *Id.* at 531, 506 S.E.2d at 513.

There is sufficient extrinsic evidence to create a jury issue as to whether Nelson's statement that Wise had an infection and needed antibiotics was a defamatory insinuation. Before he left to go to NCMH, multiple employees, including Nelson, were aware that Wise had an injury to his groin. In fact, as noted in the Court's Opinion, one of the employees at the time remarked on whether the injury was related to Wise's sexual relationships. Upon returning, Nelson told Wilson and others that Wise had an "infection." Shortly thereafter, a rumor was being passed between employees of West Fraser that Wise had a sexually transmitted disease. In the light most favorable to Plaintiff, the letter of reprimand sent from Russell to Wise acknowledges that Nelson's statements were capable of a defamatory meaning, as it recognizes that others, including Wise, could have interpreted Nelson's comments as slanderous insinuations that Wise had a STI, given the nature and location of his injury, and the workforce's awareness of its circumstances. Within the context of the nature of Wise's injury and the extent to which other employees were aware of it, these facts could reasonably support the conclusion that Nelson's statement to Wilson had a defamatory meaning by way of innuendo. The lack of direct evidence rebutting Nelson's testimony, as well as the fact that Wise discussed the accusations with other employees, is wholly irrelevant to the issue of whether Nelson's statement had a defamatory meaning.³ On the other hand, the extrinsic facts and circumstances addressed above

³ Although the Order does not make a specific finding that the rumor at West Fraser specifically originated with Wise, it cites to passages from witness testimony creating an appearance that this is the case. To the contrary, almost every witness who acknowledged that Wise spoke to them about the rumors clarified that he did so to try to find out who was spreading them, and that the

create a reasonable conclusion that the statement of Nelson was defamatory in nature and by insinuation.

III. Even if Nelson was only repeating what he was told by Dr. Leap, the communication could still have a defamatory construction and is a separate defamatory publication.

The Court's Order finds that Nelson's statement that Wise had an infection and needed an antibiotic was undisputedly true, an accurate report of Wise's diagnosis, and not defamatory. However, as explained above, even though Wise was eventually diagnosed with prostatitis, the statement that he had an "infection" is capable of an altogether different, and defamatory, insinuation, given the circumstances under which the publications took place. And even if Nelson was only repeating what he had been told by Dr. Leap, since Dr. Leap's statements could be defamatory by way of innuendo or otherwise, then Nelson's repetition of the statement is also a separate and actionable publication.

"[O]ne who repeats or otherwise republishes defamatory matter is subject to liability as if he had originally published it." Restatement (Second) of Torts § 578 (Am. L. Inst. 1975). "This is true although the speaker accompanies the slander with a statement that it is a rumor only, or designates the name of the author or the original publisher." *Id.* cmt. c. "It would otherwise be too easy for a writer or publisher to defame freely by repeating the defamation of others and defending it as simply an accurate report of what someone else had said." *Gray v. St. Martin's Press, Inc.*, 221 F.3d 243, 250 (1st Cir. 2000). Thus, if Dr. Leap implied to Nelson that Wise suffered a sexually transmitted disease, and Leap's statements to Wise and Nelson concerning an infection were susceptible to a defamatory meaning by way of innuendo or otherwise, then the mere fact that Nelson repeated these

conversations happened as a result of the rumor having been previously repeated amongst the West Fraser workforce. (Ex. 9, Maybin Dep. 7:9-19; Ex. 6, Neal Dep. 8:21-9:4; Ex. 10, Praylow Dep. 10:4-17; Ex. 11, Shelton Dep. 6:3-25).

statements, during which the evidence indicates he likely implied to Wilson that Wise had a sexually transmitted disease, does not absolve him of liability. The Court's Opinion contains a clear error in that it assumes that (1) if Nelson only stated that Wise had an infection, then (2) he was only speaking the truth and could not have been insinuating that Wise had an STI. It should be left to a jury to determine whether Nelson's statement was merely the repetition of a factual diagnosis by Dr. Leap, or whether the statement was defamatory and insinuated that Wise had an STI.

IV. While any statements made by Nelson to Russell could have been qualifiedly privileged, any statements made by Nelson, Russell, or any other member of West Fraser management in the presence of other members of the workforce would exceed the scope of the privilege.

The Court's Order erroneously states that Plaintiff may only overcome the qualified privilege by demonstrating actual malice. (Order at 12). In finding that the communications were qualifiedly privileged, the Order ignores that (1) the privilege does not protect communications outside its scope, such as unnecessary communications to employees, (2) there is evidence in the record that the conversation between Russell and Nelson did not take place "behind closed doors", as claimed by Nelson and Russell, and (3) there is evidence in the record that communications to non-management employees occurred. Thus, Wise may also overcome the privilege by demonstrating that Nelson, Russell, or other West Fraser employees unnecessarily conveyed the defamatory message to others. Wise does not have to overcome the privilege by demonstrating actual malice.

The protection of a qualified privilege may be lost by the manner of its exercise. *Fulton v. Atlantic Coast Line R.R.*, 220 S.C. 287, 67 S.E.2d 425 (1951). In order for a communication to be privileged, the person making it must be careful not to go further than his interests require. *Id.* While communications between officers and employees of a corporation may be qualifiedly privileged, the privilege may clearly be lost by excessive publication or publication to persons not required by the

occasion involved, even if they are employees. *See Prentiss v. Nationwide Mut. Ins. Co.*, 256 S.C. 141, 148, 181 S.E.2d 325, 327 (1971); *Abofreka v. Alston Tobacco Co.*, 288 S.C. 122, 125-26, 341 S.E.2d 622, 624-25 (1986). If there are any facts in the record indicating that a publication went beyond what an occasion required, it is for the jury to determine whether the privilege has been abused or exceeded. *Murray v. Holnam, Inc.*, 344 S.C. 129, 141, 542 S.E.2d 743, 749 (Ct. App. 2001). Factual inquiries, such as whether the statement was sent only to the proper parties, are generally left in the hands of the jury to determine whether the privilege was abused. *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 485, 514 S.E.2d 126, 134 (1999).

The Order bases its finding of qualified privilege on the assumptions that Nelson only told Russell that Wise had an infection in privacy behind closed doors, that Nelson only conveyed to Russell that Wise was upset because Dr. Leap had asked Wise about changing sexual partners, and that this information stayed between Russell and Nelson. However, there is evidence in the record indicating that this is not true. The statement of Melody Jepsen indicates that the communications between Nelson and Russell were not made behind closed doors, that others were present for Nelson's report, and that Nelson said the infection was possibly a sexually transmitted disease. (Ex. 4, Jepsen Statement). Russell has denied that Nelson conveyed to him any information indicating the infection could have been an STI.

This evidence is contradictory and obviously calls into question the credibility of both Nelson and Russell concerning the occasion on which Nelson made these comments. Further, the circumstantial evidence, when resolved in Wise's favor, demonstrates that at some point before Wise returned to work, the statement that Wise had an STI was republished to nonessential, non-management employees of West Fraser. This is in direct contradiction to the Order's finding that there is no evidence of an improper manner of publication. Since there is evidence that the Nelson-Russell

communication did not occur as claimed by Nelson and Russell, that others were present for the communication, that Nelson did convey that there was a sexual component to Wise's infection, and that other West Fraser employees learned of the false assertion that Wise had an STI, it was error for the Court's Order to find that the communications between Nelson and Russell were privileged on a motion for summary judgment. Since there is a controversy as to the facts, the factfinder must determine whether the privilege was abused or exceeded.

V. The Order erroneously denies Wise's Motion to Amend based West Fraser's view of the merits of the amendment and does not contain an appropriate prejudice analysis.

As a basis for denying Wise's Motion to Amend, the Opinion inappropriately weighs the evidence and rules on the merits of Wise's proposed amendment. This is clearly not the analysis mandated by the South Carolina Rules of Civil Procedure for determining whether a proposed amendment should be granted. Rule 15(a) mandates that "leave shall be freely given when justice so requires and does not prejudice any other party." Rule 15(a), SCRPC. The rule strongly favors amendments, and courts are "encouraged to freely grant leave to amend." *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005) (citation omitted). "[U]nless there is a substantial reason to deny leave to amend, the discretion of the [court] is not broad enough to permit denial." *Forrester v. Smith & Steele Builders, Inc.*, 295 S.C. 504, 507, 369 S.E.2d 156, 158 (Ct. App. 1988) (quoting *Dussouy v. Gulf Coast Investment Corp.*, 660 F.2d 594, 598 (5th Cir. 1981)). The party opposing the motion has the burden of establishing prejudice. *Stanley v. Kirkpatrick*, 357 S.C. 169, 175, 592 S.E.2d 296, 298 (2004).

Wise's motion is timely and based on the same facts as his original Complaint. Therefore, it should come as no surprise to West Fraser that he now seeks to amend the pleadings to add a cause of action seeking damages for the disclosure of his confidential medical information by a member of

West Fraser's management. Rule 15 states that leave to amend the pleadings "shall be freely given when justice so requires and does not prejudice any other party." Rule 15(a), SCRCPP. "The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it." *Tanner v. Florence County Treasurer*, 336 S.C. 552, 559, 521 S.E.2d 153, 156 (1999). The Order finds that the motion fails based on the merits of the amended claim, and that the motion is untimely.

South Carolina courts have rejected the arguments provided by West Fraser as grounds for denying a motion to amend. *See Stanley v. Kirkpatrick*, 357 S.C. 169, 592 S.E.2d 296 (2004) (finding that the amendment of a complaint over two years after the incident and after the applicable statute of limitations had passed did not prejudice the nonmoving party where the amendment is related to the facts in the original pleadings and depositions did not have to be retaken); *Parker*, 362 S.C. at 276, 607 S.E.2d at 711 (finding the amendment of an answer on the first day of trial did not prejudice the opposing party because the amendment directly related to the content of the original pleadings).

Wise's Amended Complaint is based on the same facts that were included in his original Complaint. The Complaint includes allegations based the publication of Wise's confidential medical information, just as Wise's proposed Amended Complaint does. The Amended Complaint arises from the same group of operative facts as the original Complaint. Additionally, West Fraser will still have an opportunity to conduct further discovery to refute Plaintiff's claims if necessary. The amendment will not necessitate the retaking of any depositions that have already taken place in this action. West Fraser has adequate notice and ample opportunity remaining to gather evidence to refute the new claim.

More importantly, Wise's motion furthers the interests of justice. Wise has suffered tremendous humiliation, embarrassment, and damage to his reputation as a result of the events alleged

in his Complaint. The Order does not fully explain how West Fraser will be deprived of the opportunity to prepare a legal defense rebutting Wise's claims as a result of his amendment of the Complaint. Disapproval of the merits of a new claim does not meet the burden of establishing prejudice as defined by South Carolina courts under Rule 15. *See Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 182, 826 S.E.2d 585, 589 (2019) ("A court's decision to deny a motion to amend should not be based on the court's perception of the merits of an amended complaint."). The Plaintiff respectfully requests that the Court grant his Motion to Amend.

CONCLUSION

The Court must be careful to refrain from substituting its own opinion of the merits of a plaintiff's case for that of the jury. Plaintiff has presented evidence that, when viewed through a lens most favorable to the Plaintiff, shows that Nelson was the most likely and only person capable of initiating the rumor that Plaintiff had a sexually transmitted disease. There is also evidence in the record indicating that under the circumstances, the statement that Plaintiff had an infection is reasonably susceptible to a defamatory interpretation. Finally, there is evidence that communications regarding Plaintiff's condition were not made behind closed doors. Our summary judgment standard precludes the Court from viewing the evidence in a light that is favorable to Defendant.

Unlike in *Moody*, here there is relevant, admissible evidence tending to show that Nelson, more likely than not, made defamatory publications concerning Plaintiff. As a matter of law, it cannot be said that the only reasonable inference in this case, after considering the evidence as a whole, is that Nelson did not repeat the allegation that Plaintiff had a sexually transmitted disease outside the scope of the qualified privilege. For the foregoing reasons, the Plaintiff respectfully

requests that the Court reconsider its Order and deny Defendant's Motion for Summary Judgment.
Plaintiff requests a hearing in this matter.

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October 14, 2021
Hampton, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

ANTHONY WISE

PLAINTIFF)

vs.

KEITH E. LEAP, ET AL

DEFENDANTS)

) COURT OF COMMON PLEAS

) 2019-CP-36-00103

ORIGINAL

) TRANSCRIPT OF RECORD

August 11, 2021
Newberry, South Carolina

B E F O R E:

G.D. MORGAN, JR., Judge.

A P P E A R A N C E S:

JOHN E. PARKER, ESQ.
Attorney for the Plaintiff

ANNE LAURIE MCCLURKIN, ESQ.
STEVE MATTHEWS, ESQ.
Attorneys for the Defendants

APRIL HERRON
Official Court Reporter

1 There were no witnesses.

2 There were no exhibits.

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5 Certificate of Reporter 31

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1 THE COURT: All right, looks like we're ready
2 for the first one. Let's see what we got here. All
3 right, Wise vs. Leap, et al.

4 MR. MATTHEWS: Thank you, Your Honor. We're
5 here on a summary judgment motion by The Defendant,
6 West Fraser, Inc. in this matter. My name is Steve
7 Matthews, I'm pretending to be Chris Major for today,
8 who is unavailable.

9 THE COURT: All right. You didn't look like
10 him.

11 MR. MATTHEWS: I'm the good looking one.

12 I'm here with Anne McClurkin, with the Maynard
13 Cooper Gale Law Firm in Alabama. We'll be here
14 presenting the summary judgment motion on behalf of
15 West Fraser, Inc.

16 THE COURT: All right, I'll hear from you.

17 MS. MCCLURKIN: Judge, is it okay to remove my
18 mask?

19 THE COURT: It is, it is.

20 MS. MCCLURKIN: If I can approach, I have a
21 bench copy of our brief with exhibits attached.

22 THE COURT: Okay.

23 MS. MCCLURKIN: I think it might be helpful
24 because if you read our brief, this case is about
25 defamation. And I think it will be very important to

1 keep in mind what the statements, actually, were for
2 the basis of The Plaintiff's claim.

3 MR. PARKER: Before you proceed further, do you
4 need for counsel to stand at the podium? Does that
5 help at all?

6 THE COURT: Whatever you prefer, I'm fine with.

7 THE CLERK: The microphone on your table is also
8 on.

9 MR. PARKER: Okay, thank you.

10 MS. MCCLURKIN: I won't belabor the facts of the
11 case if you're familiar with the brief. But just in
12 short, this case arose after what appeared to be a
13 workplace injury. West Fraser safety director, who
14 is responsible for administering workers' comp and
15 recording to OSHA on-the-job injuries, took The
16 Plaintiff to the Newberry County Memorial Hospital
17 Emergency Room to be treated. While he was there, he
18 was diagnosed with an infection so he did not return
19 to the mill for approximately five to six days.

20 The Plaintiff alleges in his complaint, which is
21 in your binder, that while the emergency room, this
22 is on Page 2 of the complaint, Paragraph Five, The
23 emergency room Physician, Dr. Leap, made a comment to
24 The Plaintiff that it looks like someone has been
25 changing sexual partners. The theory of liability

1 against West Fraser, is that the safety director
2 overheard this comment and then went back to the mill
3 and repeated it. Which started a rumor that The
4 Plaintiff had a sexually transmitted disease. That
5 is The Plaintiff's version of the case. And that as
6 a safety director, West Fraser's vicariously liable
7 for his statements.

8 Now, under the law, and I included in your
9 binder a case that's cited in our brief, it's a
10 Supreme Court of South Carolina opinion, Fountain v.
11 First Reliance Bank. And it included a very
12 thorough, complete statement of law in South Carolina
13 concerning defamation. But in a case like this where
14 the alleged defamation was slander, not liable, there
15 are five categories of slander that come within the
16 classification of defamation per se. In other words,
17 it's actionable. The words on there face are so
18 defamatory, that it's presumed that The Plaintiff's
19 would sustained injury. And The Plaintiff does not
20 have to prove those two elements if it rises to that
21 level.

22 Now, according to The Plaintiff, as alleged in
23 the complaint, the safety director made those
24 statements that the doctor, emergency room doctor,
25 was accusing the plaintiff of changing sexual

1 partners. That could be construed as defamatory, per
2 se. Because it would excuse him of adultery, he's
3 married or having sexually transmitted disease. But
4 there is no evidence, not a single witness, who heard
5 the safety director make the statement that The
6 Plaintiff's been changing sexual partners. Not a
7 single witness. The Plaintiff himself testified that
8 he has no evidence, even hearsay evidence, that any
9 of his coworkers or anyone heard the safety director
10 make that statement.

11 What the safety director actually did, he came
12 back to the mill -- and remember The Plaintiff did
13 not return to the mill for several days. So he has
14 no personal knowledge of what was said.

15 THE COURT: He stayed out of work, didn't he?

16 MS. MCCLURKIN: Correct. He was gone for,
17 maybe, almost a week. When the safety director
18 returned to the mill, he saw -- when he arrived in
19 the parking lot he saw one of The Plaintiff's
20 coworkers who worked with him in the shipping
21 department. Tight-knit group with maybe eight to ten
22 people. And he asked, you know, he had -- he had
23 heard about this accident, other employees had seen
24 the accident occur, knew that The Plaintiff had left
25 injured, gone to the hospital with the safety

1 director.

2 So the coworker says, Hey, how's Anthony?

3 Well--

4 THE COURT: Was that George Wilson?

5 MS. MCCLURKIN: Yes, sir.

6 THE COURT: Wasn't that George Wilson?

7 MS. MCCLURKIN: Yes, the safety director.

8 THE COURT: All right.

9 MS. MCCLURKIN: Responds, He's fine. He got an
10 infection and he's been given a prescription.

11 The safety director testified that in his mind,
12 he's thinking, Oh, this isn't a workplace accident.

13 There are two reasons, two grounds, that we feel
14 summary judgment is appropriate in this case. Number
15 one -- and this is -- the issue here is not whether
16 the safety director should have just left it at, He's
17 fine. And not disclosed, Oh, he has an infection.
18 That's not the issue. That clearly, probably, was
19 poor judgment on his part. But this case is about
20 defamation. Whether the safety director made a false
21 and defamatory statement by The Plaintiff, accusing
22 him -- or insinuating that he had a sexually
23 transmitted disease.

24 The two reasons the summary judgment is
25 appropriate is number one, and this is probably the

1 most straightforward, the statement that The
2 Plaintiff had a infection and got a prescription is
3 absolutely true. The truth, of course, is a complete
4 defense. The Plaintiff testified that that was the
5 diagnosis, that was confirmed in the hospital's
6 records. The Plaintiff went to see his own personal
7 doctor the very next day, who concurred, The
8 Plaintiff has an infection. And also explained it
9 was an infection of the prostate. So those
10 statements are true. That's absolute defense.

11 Now, there's not going to be any evidence that
12 the safety director told George Wilson what The
13 Plaintiff thinks that the safety director overheard
14 the doctor say. There's not going to be any evidence
15 of that. Now, under the South Carolina law, a
16 statement that on it's face is not defamatory, can
17 become defamatory by insinuation or innuendo. But
18 here there's no evidence that there was any innuendo
19 by the safety director, making the statements to
20 George Wilson, to suggest that he was talking about
21 anything sexual. And the best evidence of whether --
22 and this is a question of law for The Court, is
23 whether a statement can reasonably be construed as
24 defamatory? And the best evidence of that is how the
25 person who, actually, heard the statement, understood

1 it.

2 And George Wilson, when he was deposed, he
3 testified that the only person he had ever heard
4 talking about anything sexual, was The Plaintiff
5 himself. And that was corroborated by all of -- but
6 most of the coworkers that The Plaintiff -- because
7 when The Plaintiff did come back to work he was
8 talking about this issue, he was very upset about the
9 doctor's alleged comments and he was telling many
10 people about it. But the question today is what
11 evidence is there? What evidence is there to show
12 that some insinuation, what the safety director,
13 actually meant to publish, was that The Plaintiff had
14 a sexual infection.

15 And when asked in his deposition, when I asked
16 The Plaintiff, why would you think that anyone would
17 reasonably think that by saying you have an
18 infection, that's a sexual infection?

19 And he said, That's how people think about black
20 men.

21 That is pure speculation and stereotypical but
22 it's pure conjecture speculation with the Supreme
23 Court of South Carolina. And this is in the Fountain
24 vs. First Reliance Bank case. As held, it's
25 insufficient as a matter of law to show that the

1 statement is defamatory or actionable per se.

2 And the two grounds, if you look at that -- if
3 you look at that opinion, The Court held, We'll
4 affirm summary judgment for the bank on two grounds.
5 Number one -- and the facts of that case there was a
6 plaintiff and his perspective business partner were
7 trying to get a loan from the bank there --

8 THE COURT: That's when the guy said, I wouldn't
9 give that guy a loan --

10 MS. MCCLURKIN: Yeah --

11 THE COURT: -- or I wouldn't be involved in that
12 loan?

13 MS. MCCLURKIN: Right. If the plaintiff's
14 involved, the bank's not going to give them a loan.

15 The first reason the Supreme Court granted
16 summary judgment is it was true, the bank wasn't
17 going to give them a loan. But The Court went on to
18 analyze whether the statement was reasonably capable
19 of rising to the level of slander per se because it
20 defamed the plaintiff in his profession. And The
21 Court say said no. That's a stretch. And this is
22 the analysis, it's on page -- Page 8 of the Westlaw
23 opinion. Under headnote 14.

24 The Court said that, you know, the construction
25 standard that the trial court applies in deciding

1 whether a statement is defamatory or could be capable
2 of defamatory meaning, does not include purely
3 conjectural interpretations.

4 That's all we have here. Is The Plaintiff's
5 conjecture that because he's a black man and someone
6 heard he had an infection, they would automatically
7 assume he had a sexual infection. There's not one
8 witness who has testified, and there's been 12
9 depositions taken in this case, not one testified
10 that that statement caused them to believe that The
11 Plaintiff had a sexual infection.

12 Now, I think that we're, obviously, here on a
13 summary judgment hearing. We feel like the motion is
14 well supported. And the purpose of today's hearing,
15 of course, is to pierce the pleadings, pierce the
16 arguments of counsel and determine what evidence is
17 there to support that West Fraser's safety director
18 made the statements that The Plaintiff alleges he
19 made in the complaint. In almost two years of
20 litigation, 12 depositions, I haven't seen any
21 factual evidence. So we would ask The Court, and I
22 do ask The Court, on behalf of West Fraser, to ask
23 The Plaintiff to point to the evidence. The
24 admissible evidence, that the safety director made
25 defamatory statements about The Plaintiff, in a form

1 of accusing him of having an STD.

2 THE COURT: Thank you.

3 All right, Mr. Parker.

4 MR. PARKER: I'll be happy to do that, Your
5 Honor. You know, I sat here listening to this, we,
6 obviously, have different viewpoints of this case.
7 Her thinking and The Defendant, West Fraser's
8 thinking, well, you got to have a witness to say that
9 so and so told me. But you don't have to have that.
10 All you have to do is have a inference that that is
11 what they said. And here we have more than an
12 inference.

13 What the facts of the case is, is that Mr. Wise
14 went to the hospital and he ended up having
15 prostatitis but he thought he had pulled a muscle and
16 he went to the emergency room. And the doctor in the
17 emergency room said, in the presence of Mr. Nelson,
18 the employee at West Fraser, that I think you've been
19 changing sexual partners and have a STD. Well,
20 Mr. Wise could not have told anybody at the plant
21 because he was out for seven days or whatever it was
22 and we agree to that.

23 And when he got back there, he was admittedly
24 faced with statements by his fellow employees that he
25 had the clap or had a venereal disease. And that

1 that, of course, came from the plant. Who at the
2 plant knew that other than Mr. Nelson? He was the
3 carrier of that information. He brought it back to
4 the plant. We believe he told George Wilson about
5 it, even though he denies it. Obviously, people deny
6 things all the time that aren't true.

7 And after he got back there this thing was all
8 over and people were confronting him about having a
9 STD. Of course, he asked about it. Admittedly,
10 Mr. Nelson said he did tell, and this would be a
11 publication, he did tell this to Mr. Russell, the
12 plant manager. And in essence, the admit -- pretty
13 well admit all of our allegations in Exhibit No. 4,
14 which I'm going to pass up to The Court.

15 And Exhibit No. 4 is a reprimand to Mr. Nelson
16 who told this at the plant. Clearly, by his own
17 admission, part of it he told to George Wilson and he
18 denies telling him off. But then he went on to say I
19 did tell Mr. Russell about it.

20 And the warning letter states, This week I
21 became aware of a serious breach of your
22 responsibility as an enviromental health and safety
23 supervisor. Anthony Wise, an hourly employee of the
24 mill, was recently involved in an allege on-the-job
25 accident and subsequently visited a physician as part

1 of the procedure when responding to accidents. You
2 escorted Mr. Wise to the physician. Upon return to
3 the Newberry Mill, you discussed the medical
4 condition and diagnosis that the physician made
5 regarding Mr. Wise with another hourly employee. In
6 turn, this information has been communicated
7 throughout the mill.

8 And clearly, this is an admission by West Fraser
9 that our position is correct. And because the only
10 people that could have put this in the mill was
11 Mr. Wise or Mr. Nelson. They're the only two that
12 knew it. So Mr. Wise didn't do it, he wasn't even
13 there. So it had to be Mr. Nelson.

14 And he goes on to say, I have very serious
15 concerns about your performance. Employee medical
16 information is protected. This is essential when any
17 medical information is connected or, potentially,
18 connected with our benefit plans. You have violated
19 this requirement.

20 Two, information concerning the alleged or
21 actual injury of our employee must remain
22 confidential during the investigation. And often,
23 after the conclusion of an investigation. Accidents
24 often evolve to lawsuits against the workers' comp
25 carrier in the company. You have disclosed

1 information that is part of an ongoing investigation
2 to an employee that should not be involved.

3 Three, verbally disclosing medical information
4 about an employee can be considered by the employee
5 as slanderous.

6 And clearly, this is an admission by them that
7 what was told by Mr. Nelson was that he had a
8 sexually transmitted disease. Because otherwise, it
9 wouldn't be slanderous. So that is clearly an
10 admission in this case.

11 As a representative to West Fraser, your
12 disclosure of this information has put the company at
13 risk. For discussing medical information with an
14 employee for the sake of conversation is not becoming
15 of West Fraser salary employee. It is prohibited.
16 Your judgment was extremely poor and unacceptable.
17 The casual attitude which you had about revealing
18 this information to another employee, has eroded my
19 trust in you to conduct your job and fulfill your
20 responsibilities of a satisfactory manner. This
21 cannot happen again.

22 And he, of course, was written up about it. But
23 clearly, this one letter pretty well admits the case.
24 And they can take the position that at this stage,
25 this has to be viewed in the light most favorable to

1 The Plaintiff. In viewing it, truthfully in any
2 light, clearly, is pretty well an admission that
3 Mr. Nelson did, in fact, bring that information back.
4 That he circulated it and it went all over the plant.
5 And Mr. Russell has reprimanded him about his having
6 done that. And that in itself admits the most of our
7 case without any other evidence. But we do have
8 tremendous other evidence in this case.

9 And that is that a number of employees were told
10 that, in fact, that he had had multiple sex partners
11 and had a venereal disease. Among those, Harry
12 Shelton testified that he was told by another
13 employee, two employees, that Anthony had a sexually
14 transmitted disease. Anthony Byrd was told by
15 [indiscernible] Dudley that Anthony had a sexually
16 transmitted disease. Raphael Maybin testified that
17 he had been told that Anthony had a sexually
18 transmitted disease. Joseph Prayler, Page 8, heard
19 from Anthony Cannon that Anthony had a sexually
20 transmitted disease.

21 Now, Mr. Nelson was present when he got relieved
22 at the hospital and said these things. That's on
23 Page 30 of Ms. Wise's deposition. Also in Mr. Wise's
24 deposition that he, in fact, was there. So the only
25 way that this information could have gotten back to

1 the plant before Mr. Wise did was through Mr. Nelson.
2 So that contradicts his statement that he didn't tell
3 George Wilson about it. I know we'd all like to
4 think that because something is under oath it's the
5 truth. But all of us know from years of experience
6 that being under oath doesn't necessarily mean it's
7 the truth. And here it's so overwhelming, the
8 evidence, that it's not true. That Mr. Nelson was
9 the source of this at the plant.

10 In addition to that, we did not plead but,
11 clearly, the evidence in the record shows that there
12 was a breach of a confidential relationship. And
13 under HIPPA and under, as alluded to by Mr. Russell,
14 that it is a violation of the law to disclose -- for
15 an employer to disclose an employee's medical
16 information to those who are not entitled to it. And
17 here that would be Mr. Nelson communicating that
18 information to Mr. Wilson by admission. So that is a
19 violation and a breach of the confidentiality and to
20 amend that to the complaint to allege that.

21 Now, there was, in the memo that was submitted,
22 that was stated that we didn't prove any actual
23 damages. Therefore, they're entitled to summary
24 judgment. Well, you don't have to prove actual
25 damages for certain categories of slander. Use to be

1 called slander per se and that's when you accused
2 somebody of being enshafed or either having to
3 [indiscernible] both of which these are narrow cases.
4 And I got a packet of stuff with the two cases, it's
5 Wardlaw vs. Tech, which is one of the cases that's
6 about [indiscernible] chastity. And the other one
7 about the guy was accused of having tuberculous
8 falsely. And that was held that you didn't have to
9 prove actual damages.

10 And therefore, we believe that, in fact, the
11 evidence, I mean, to me seems very clear that not
12 only we're not -- shouldn't have summary judgment
13 against us but we've got a very strong case of
14 proving all of the elements of slander and breach of
15 confidentiality. And we believe because of that, the
16 motion for summary judgment has be denied. And I'd
17 like to pass up package of information.

18 THE COURT: Sure.

19 MR. PARKER: I'll be happy to answer any
20 questions The Court may have.

21 THE COURT: Yeah, let me ask you, Mr. Parker.
22 In reading the testimony, it looked like the only
23 evidence that I saw of any statement by Mr. Nelson,
24 was that when Mr. Wilson asked him how he was doing,
25 he said, He'll be fine, he's got an infection and

1 he's going to get a prescription.

2 Is there any other evidence from anybody that
3 says Mr. Nelson said anything other than that?

4 MR. PARKER: There's no direct evidence, there's
5 a huge amount of circumstantial evidence.

6 THE COURT: When you say circumstantial
7 evidence, is that the inferences you're talking about
8 that was around the plant?

9 MR. PARKER: Correct. The only way it had to
10 get there was through Mr. Nelson.

11 THE COURT: Let me ask you this, because, I
12 believe, it was Wilson, I believe it was Robert
13 Wilson or George Wilson testified that The Plaintiff
14 himself was making some statements about that. Tell
15 me about that.

16 MR. PARKER: Well, of course, this was all over
17 the plant when he got there. He hadn't been there
18 for seven days. And when he got there, he was
19 immediately faced with, he said, people telling him
20 he had the clap and he had a venereal disease. And
21 he says he responded by saying, No, I didn't. And he
22 got very upset about it. And that's what caused this
23 investigation by Mr. Russell, whereby he wrote up
24 Mr. Nelson for remarks that could be slanderous.

25 THE COURT: Well, let me ask you about that too.

1 In the letter that you handed up, Plaintiff's Exhibit
2 4, Russell deposition. He does chive him and he does
3 reprimand him for statements that Mr. Nelson may have
4 made. But it doesn't say anything in there about the
5 slanderous statement or any slanderous statement. Or
6 any slanderous statement that Mr. Nelson may have
7 made. It looks like in the letter he's just saying
8 you discussed medical information, disclosed medical
9 information; and therefore, you shouldn't do that.
10 Which, I think, pretty much we all agree, you know,
11 inappropriate to disclose somebody's medical
12 information. That was what it seems like the letter
13 from Mr. Russell wrote to Mr. Nelson was reprimanded
14 him for that statement, was that--

15 MR. PARKER: I don't agree with that, Your
16 Honor. Because he would not have put in here that
17 the disclosure of information maybe considered
18 slanderous. Because there would be nothing
19 slanderous about having an illness.

20 THE COURT: All right.

21 What about that?

22 MS. MCCLURKIN: Your Honor, Mr. Russell was
23 asked about the letter of reprimand in his deposition
24 but it's a mischaracterization of the letter. I
25 mean, you can see it in plain language to say that it

1 was West Fraser considered the safety director's
2 comment to be slanderous. But what he's being
3 reprimanded for is The Plaintiff had made many
4 complaints by the time this letter was written,
5 claiming that he had been defamed and accusing -- and
6 it started with the safety director. And demanding
7 West Fraser to take action.

8 And what West Fraser said in its letter is that
9 it was inappropriate for you to disclose the
10 information that he had an infection. And that can
11 be considered by the employee as slanderous. That's
12 what paragraph number three says.

13 Verbally disclosing medical information about an
14 employee can be considered by the employee as
15 slanderous.

16 This was not West Fraser saying that is was
17 slanderous. And Mr. Russell testified to that very
18 clearly in his deposition in Exhibit No. 9 in the
19 binder.

20 He says starting on Page 15, What did you
21 reprimand him for?

22 For the incident that occurred talking with an
23 hourly employee. Strictly that and nothing else.

24 And then he goes on to say that the statement
25 that he was reprimanded for was saying that he had an

1 infection. Nothing else.

2 THE COURT: What about that, Mr. Parker, because
3 I read his testimony--

4 MR. PARKER: That was self serving and she makes
5 our argument that. But the way you have to look at
6 it is in the opposite way. Because it has to be
7 viewed in the light most favorable to Mr. Wise at
8 this stage of the game. She can argue that,
9 obviously. But the other side of it is it says what
10 it says. Well, you can go back and say, I didn't
11 mean to say it. But he did say it.

12 THE COURT: Let me ask you this, did
13 Mr. Russell -- I read his testimony and I didn't see
14 where Mr. Russell said that Mr. Nelson told him
15 anything about the sexually transmitted disease. All
16 he told me, when they had that meeting, after, you
17 know, he came back and he had an infection and he was
18 given a prescription.

19 MR. PARKER: Mr. Nelson testified on Page 302 of
20 his deposition that he told Mr. Russell that the
21 doctor had said that he had an infection of a
22 sexually transmitted disease.

23 THE COURT: Right. That the doctor had said
24 that?

25 MR. PARKER: That's correct. And that is

1 what -- and that was, in fact, slanderous. And it
2 was false and it was slanderous because it accused
3 them of having, number one, committing adultery on
4 his wife; and two, accused him of having a venereal
5 disease. Both of which are slanderous and slanderous
6 per se.

7 And clearly, there is evidence at this stage,
8 The Court has to look at it in the light most
9 favorable to The Plaintiff. And through all of the
10 inferences of the light most favorable to The
11 Plaintiff. And when you do that, it's clear that, in
12 fact, Mr. Nelson was the source of this information
13 at the plant, he carried it back and he told it and
14 it got all over the plant. And clearly, even though
15 he admitted only telling Mr. Russell, clearly, he had
16 to have told other people because there was nobody
17 else to tell them. And when you view it in that
18 light, then, clearly, they're not entitled to a
19 summary judgment on this. And secondly, the breach
20 of the confidentiality is clear. That's admitted.

21 THE COURT: I don't think that. That's not been
22 pled, has it?

23 MR. PARKER: It has not but we're going to amend
24 that complaint. And in this stage, we're allowed to
25 do that, to argue that. And we believe, clearly,

1 they breached their duty of confidentiality, in this
2 case, by admission. And he was reprimanded for doing
3 it.

4 THE COURT: All right, anything else?

5 Yes, ma'am.

6 MS. MCCLURKIN: Well, I don't think there's a
7 private right of action for breach of confidentiality
8 but that's not -- the case at it sits before Your
9 Honor today is about defamation per se. That's the
10 claim that we're asking you to decide. He wants to
11 try to add another claim, we'll address that then.

12 But what I ask is for The Plaintiff to show The
13 Court evidence. Not argument about who else could it
14 have been. I mean, I can address that but that's
15 just argument. There's not any evidence to support
16 what they've alleged the safety director said. And
17 this is included in the brief but this was a highly
18 visible accident. Other employees saw The Plaintiff
19 injured, holding his groin, ice packs on his groin,
20 limping off the site, headed to the hospital. That's
21 why there were questions asked of the safety director
22 when he returned.

23 In fact, before he even got to the hospital,
24 while he was waiting on the safety director to get
25 there, one of the coworkers, who was coming off the

1 night shift, saw him and made, you know, started
2 teasing him. Oh, you've been with some woman,
3 haven't you? Those comments started before he ever
4 got to the hospital. Before the doctor ever made the
5 statement.

6 Now, the testimony that he talked -- that
7 Mr. Parker talked about about coworkers testifying
8 that they heard other coworkers talking about rumors,
9 those -- that is not coworker rumors can be
10 attributed to West Fraser. And we've cited case law
11 in Page 17 in our brief that supports that.

12 Rumors by coworkers are not, cannot -- are not
13 the publication by the employer and can't support a
14 claim for defamation against the employer. That's, I
15 think, Todd vs. Federal Express. It's on Page 17 of
16 our brief.

17 Now, the only piece of evidence that he pointed
18 to -- well, two things. This letter, Exhibit 4, the
19 letter of reprimand. And again, I agree with him
20 about the standard in viewing the evidence in the
21 light most favorable to The Plaintiff. But the
22 person who wrote this letter, D.J. Russell, in the
23 plain words in the letter, are that he was
24 reprimanding the safety director because of his
25 statement, The Plaintiff had an infection. Not

1 because he blames Keith Nelson for saying something
2 that was slanderous. It's clear that he is saying,
3 you know, you have now created a situation where we
4 have an employee who's claiming that he's been
5 slandered. This is not West Fraser admitting that
6 the safety director committed slanderer as Mr. Parker
7 suggested.

8 Now, I want to address the testimony about Keith
9 Nelson telling the plant manager and what he had told
10 him. This is why I wanted you to have our exhibits
11 in front of you. Because if you would, Your Honor,
12 it's Exhibit No. 2. This is the deposition of Keith
13 Nelson on Page 22.

14 And it starts on Line 9, he's talking about when
15 George approached him and asked, How's Hop? That's
16 The Plaintiff's nickname. And he says, He's doing
17 fine, he's got an infection. And then goes on to
18 continue. And from there I went to the plant
19 manager, D.J. Russell, and talked to him behind
20 closed doors.

21 Mr. Parker asked, Who is that, what did you tell
22 him?

23 And he answers. Pretty much the same thing,
24 except I also told him, Hop, The Plaintiff, is very
25 upset because he told me -- reported to me that the

1 doctor told him or asked him about the multiple
2 sexual partner thing. But at that state it was
3 myself and the facility manager.

4 So that's the statement that Keith Nelson,
5 actually, made to the plant manager. Again, this is
6 two members of management talking about a personnel
7 issue. Common interest, it's qualified privilege.
8 The law is very clear about that. He's telling him
9 about a complaint that The Plaintiff had about the
10 doctor the company took him to and the
11 appropriateness of that.

12 There are multiple statements from managers in
13 the record, and I'm happy to show them to Your Honor
14 if you would like to review them, documenting that
15 The Plaintiff was going to various members of
16 management in HR, making that same complaint about
17 the ER doctor. So the reason that the safety
18 director went to the plant manager to warn him of
19 this, is that, you know, this was a complaint that
20 The Plaintiff had about the doctor the company took
21 him to see. There is no evidence or even allegation
22 that, based on this prior report between these two
23 members of management and Mr. Russell's office, that
24 that somehow was repeated or got out to the plant.

25 So all I have heard, in response to the motion

1 for summary judgment, other than, no disrespect to
2 Mr. Parker, but I think it is a mischaracterization
3 of the letter of reprimand. All I heard in that
4 argument, who else could it have been? We presented
5 evidence, in our motion for summary judgment, there's
6 testimony from Anthony Cannon, who said The Plaintiff
7 was being chastised by his coworkers about, you know,
8 the entry to his groin before they ever got to the
9 hospital. So there are multiple other explanations.
10 But the point of this hearing is to cause The
11 Plaintiff to show us, where is the evidence that's
12 going to support that the safety director said
13 anything to any reasonable person believed accused
14 The Plaintiff of having an STD.

15 THE COURT: All right, thank you.

16 Anything else?

17 MR. PARKER: Your Honor, again, I don't want to
18 belabor the point. But she brought up the issue of
19 qualified privilege. And qualified privilege in the
20 notebook is Murray vs. Hall, that we've passed up,
21 that says that qualified privilege is an issue for
22 the jury. There's nothing in her memo about that but
23 this is the first time now they're saying -- she's --
24 by saying that she's admitting that there was a
25 publication but it's qualified privilege. Well,

1 qualified privilege is a jury issue. Clearly, all of
2 the South Carolina cases [indiscernible] the jury
3 decides that issue. Thank you.

4 MS. MCCLURKIN: Your Honor, may I quickly
5 respond to one comment?

6 THE COURT: Sure.

7 MS. MCCLURKIN: The reason we did not address
8 qualified privilege in our brief is because that's
9 never been the theory about the publication, that the
10 statement that Keith Nelson made in private to the
11 plant manager, was the publication. What's alleged
12 in the complaint is that the safety director made
13 those comments to George Wilson. But and, you know,
14 he's right if there was evidence of breaching the
15 privilege, going beyond the scope of the privilege,
16 then that would be a jury issue. But here, there's
17 not. What -- Keith Nelson didn't say anything to the
18 plant manager other than, The Plaintiff is upset
19 about what the doctor said. That statement's true,
20 by the way. I mean, that's what we're here about. I
21 mean, there's multiple testimony about how upset he
22 is about the doctor's alleged comments.

23 THE COURT: That was Dr. Lee?

24 MS. MCCLURKIN: Yes.

25 And in the Fountain case that you already have,

1 they said it [indiscernible] that while it's normally
2 a jury question, where someone pleads qualified
3 privilege, there's got to be some evidence of that
4 for it to go to the jury. And The Supreme Court of
5 South Carolina found summary judgment on this ground
6 as well, there's got to be evidence that the
7 privilege was exceeded.

8 THE COURT: All right, thank you all. Hope
9 everyone is doing well, it's good to see y'all.

10 MR. PARKER: Thank you, Your Honor.

11 MR. MATTHEWS: Thank you, Judge.

12 THE COURT: I'll take it under advisement, I'll
13 let y'all know.

14 MR. PARKER: Thank you so much, Judge.

15 MS. MCCLURKIN: Thank you, Judge.

16 (WHEREUPON, the proceedings were concluded.)
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Newberry County, South Carolina, on the 11th day of August, 2021.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

September 2, 2021

A handwritten signature in blue ink that reads "April P. Herron". The signature is written in a cursive style and is positioned above a horizontal line.

APRIL P. HERRON, Court Reporter



Deposition of:
Anthony Wise

December 18, 2019

In the Matter of:
**Wise, Anthony Vs. Leap, Kenneth E.,
Et Al**

[A. William Roberts, Jr & Assoc.](#)

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY C/A No.: 2019-CP-36-00103

ANTHONY WISE,

Plaintiff,

v.

KENNETH E. LEAP, NEWBERRY
HOSPITAL, LLC D/B/A NEWBERRY
COUNTY MEMORIAL HOSPITAL and
WEST FRASER, INC.,
Defendants.

VIDEOTAPED

DEPOSITION OF: ANTHONY WISE
DATE: December 18, 2019
TIME: 9:44 a.m.
LOCATION: Pope Parker Jenkins, P.A.
 1508 College Street
 Newberry, South Carolina
TAKEN BY: ATTORNEYS FOR DEFENDANT
 WEST FRASER, INC.

REPORTED BY: MICHELLE BAKER LEE,
 Certified Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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21

22 (INDEX AT REAR OF TRANSCRIPT)
23
24
25

P R O C E E D I N G S

THE VIDEOGRAPHER: Good morning. We are going on the record at 9:44:30 a.m. It is Wednesday, December 18, 2019. Please note the microphones are sensitive and may pick up whispering, private conversations and cellular interference. Please turn off all cell phones or place them away from the microphones. Audio and video recording will continue to take place until all parties agree to go off the record.

This is media unit one of video-recorded deposition of Anthony Wise. It's being taken by counsel for the Defendants, Anthony Wise versus Kenneth E. Leap, et al. It's been filed in the State of South Carolina, County of Newberry in the Court of Common Pleas. Case Number is 2019-CP-36-00103. This deposition is being held at the office of Pope, Parker, Jenkins. We're at 1508 College Street in Newberry, South Carolina.

My name is Jack Marks from Veritext. I am familiar with the rules of 30(h) pertaining to video deposition. Our court reporter is Michelle Baker from the firm of Veritext as well. I am not authorized to administer an oath. I am not related to any party in this action nor am I

1 financially interested in the outcome.

2 Counsel and all present in the room, if you
3 would, please state your affiliation and
4 appearance for the records.

5 MR. PARKER: Johnny Parker here for
6 Mr. Wise.

7 MS. MCCLURKIN: Anne Laurie McClurkin here
8 for the Defendant West Fraser.

9 MR. HAILE: Shelton Haile for Newberry
10 County Memorial Hospital.

11 MR. MAJOR: Chris Major for Defendant West
12 Fraser.

13 THE VIDEOGRAPHER: In accordance with Rule
14 30(h), the witness has the right to be shown the
15 video deposition unless waived by all present.

16 If the court reporter would swear our
17 witness, please.

18 WHEREUPON,

19 ANTHONY WISE,

20 being first duly sworn, testified as follows:

21 EXAMINATION

22 BY MS. MCCLURKIN:

23 Q Mr. Wise, would you state your full name for
24 the record.

25 A Anthony Wise.

1 Q Do you have a middle name?

2 A No.

3 Q Is your full legal name Anthony Wise?

4 A Right.

5 Q Is your date of birth August 6, 1955?

6 A Yes.

7 Q And how old does that make you today?

8 A That'll make me 64 years old.

9 Q What are the last four digits of your Social
10 Security number?

11 A 8896.

12 Q 8896. All right. And we met before the
13 deposition. I introduced myself as one of the
14 attorneys that's representing West Fraser, one of the
15 Defendants in this case, right?

16 A Right.

17 Q Have you had your deposition taken before?

18 A Yes.

19 Q All right. When was that?

20 A It's back in, I think, 2013 or '14,
21 something like that.

22 Q What kind of case was that?

23 A Discrimination case, wrongful firing.

24 Q Was that a case that you filed or were you a
25 witness?

1 A A case that I filed.

2 Q So you were the plaintiff in that case?

3 A Yes.

4 Q Who was the Defendant.

5 A Norbord?

6 Q I'm sorry?

7 A Norbord.

8 THE COURT REPORTER: Can you just keep your
9 voice up for me, please.

10 THE WITNESS: Okay. I'm sorry.

11 BY MS. MCCLURKIN:

12 Q Would you spell that for the record.

13 A N-O-R-B-O-R-D.

14 Q And that's your former employer?

15 A No. It was my former employer, but I've
16 worked at another job since then.

17 Q Right, but that is -- that is one of your
18 former employers?

19 A Yes.

20 Q And you think that lawsuit was in around
21 2013?

22 A Yes.

23 Q And what was the outcome of that lawsuit?

24 A We settled out of court.

25 Q All right. Any other times that you've had

1 your deposition taken?

2 A I had one when I worked at Georgia Pacific.
3 That was back in 2003, I think.

4 Q And what kind of case was that?

5 A It's the same deal.

6 Q You filed a lawsuit for race discrimination
7 against Georgia Pacific?

8 A Yes.

9 Q Was that in connection with your
10 termination?

11 A Yes.

12 Q And what was the outcome of that lawsuit?

13 A I didn't get summary judgment, so once we
14 got there, that was the end of it.

15 Q Your claims were dismissed without you
16 receiving any kind of compensation?

17 A Right.

18 Q Any other times that you've given a
19 deposition in this case?

20 A No, not that I can recall.

21 Q Your -- well, you have some experience with
22 giving deposition testimony and your attorney may have
23 explained some of this to you, but just to refresh you
24 in case -- in case not. The format of my questioning
25 is going to be in questions that I ask you and answers

1 that you give me. And all of this is being recorded
2 on video and it's being transcribed by the court
3 reporter here. So to make her job easier, we need to
4 try not to talk over one another. So I'm going to try
5 to let you finish your answer before I ask you another
6 question, and I'm going to ask that you do the same
7 for me, okay?

8 A Okay.

9 Q All right. And if there's any questions
10 that I ask you today that you don't understand or that
11 you want me to repeat or rephrase, you just let me
12 know and I will, okay?

13 A Okay.

14 Q Otherwise, I'm going to assume that you
15 understand what I'm asking, okay?

16 A Okay.

17 Q Are you taking any medication today that
18 would affect your ability to testify truthfully?

19 A No, I didn't -- I didn't take my medication
20 this morning. I didn't get the chance to go home to
21 get it.

22 Q Are you taking any medication that would
23 affect your ability to testify or that -- excuse me,
24 that would affect your memory?

25 A No, I don't think so.

1 Q And the medication that you didn't get a
2 chance to take because you didn't get a chance to go
3 home, what is that medication?

4 A It's for my diabetes, my cancer and --
5 cancer.

6 Q Did you say cancer?

7 A Yes.

8 Q What kind of cancer do you have?

9 A I had thyroid cancer.

10 Q When was that diagnosed?

11 A Two years ago. I can't remember right -- I
12 had surgery on the 17th of February in 2000, I want to
13 say, '17 or '18, somewhere in there. I can't
14 remember.

15 Q Okay. And who is the -- sorry. Do you know
16 the name of the medication that you're referring to?

17 A Not right off, no.

18 Q All right. What are the medications that
19 you take on a daily basis?

20 A I take -- let's see. 2,000 milligram of
21 metformin -- I'm sorry. 2,000 milligram of metformin
22 and then I take my cancer medicine. I take -- I
23 supposed to be taking a blood pill but I don't take
24 it. I take another pill for my cancer. I can't
25 remember the name of it right off. It kind of runs

1 together, so I just know that when I got to take them.
2 I just forgot the name of them. I should have brought
3 my bottles. That way you could have seen for
4 yourself.

5 Q Well, that's okay. And in fairness we do
6 have quite a bit of the medical records from the
7 providers that you've seen in this case, so we may
8 have some of that information.

9 A Okay.

10 Q If there is a medication that you're
11 prescribed from your provider, would that be something
12 that you would take according to his instructions?

13 A Yes.

14 Q Is there any medication that any of your
15 doctors have prescribed that you can think of that you
16 don't take?

17 A I -- I don't know right off. I -- lately
18 I've been having a lot going on so I don't know.

19 Q Can you think of a medication that your
20 doctor's told you that you need to take that you
21 decided on your own not to take?

22 A No, I try -- I try to take what they tell me
23 to take unless I run out. Other than that, no.

24 Q Okay. And you identified a few chronic
25 conditions that you suffer from including diabetes --

1 A Yes.

2 Q -- right?

3 You also said that you've been diagnosed
4 with thyroid cancer, correct?

5 A Yes.

6 Q Are there any other chronic conditions -- in
7 other words, ongoing conditions -- that you suffer
8 from or that you're being treated for?

9 A I have thought about it. I started running
10 forklift a while back, and I started having problems
11 with my ankles, legs and my knees, and I had to go to
12 the doctor with them. They did X-rays and they found
13 out that I had something going on with them. And they
14 gave me some shots for the pain, but I only had the
15 shot for one time so far. And when I took them, it
16 swelled me up so --

17 Q This is for the chronic foot pain that
18 you've experienced; is that right?

19 A Well, knees -- my knees and ankles because
20 they're competitive motion all the time all night
21 long, you're doing your feet, ankles and mashing them
22 all night long, knees. You're constantly mashing
23 pedals, you're in and out of the forklift and I done
24 got too old for that.

25 Q Okay. So other than the chronic pain and

1 condition that just testified about in your knees and
2 your legs, is there any other chronic conditions that
3 you suffer from?

4 A Not that I can think of.

5 Q Okay. What about depression? Have you ever
6 been diagnosed with depression?

7 A Yes. That was back in, what, '70. Yeah, I
8 think that was back in the '70s.

9 Q In the '70s?

10 A Yeah.

11 Q Have you been treated for depression since
12 then?

13 A No. Let me -- let me restate that. When
14 all this happened, I got real upset about it, and my
15 doctor prescribed a pill for me to take to try to stay
16 calm because all of the ragging and all the bull crap
17 that was going on on that job.

18 Q You're saying this, you mean the subject of
19 the lawsuit?

20 A Yes.

21 Q That we're here about today, correct?

22 A Correct.

23 Q Your doctor prescribed you something for
24 anxiety?

25 A I don't know what -- she said just try to

1 keep me calm.

2 Q Prescribed you a medication to keep you
3 calm?

4 A Yeah.

5 Q And what was that medication?

6 A I can't remember.

7 Q What was the -- who was the doctor that
8 prescribed that?

9 A Dr. Hutson.

10 Q She's with Lexington Family Practice?

11 A Yes. She was. She's not now.

12 Q Do you still see Dr. Hutson?

13 A No.

14 Q What was the name of the medication?

15 A I can't remember. I don't keep up with
16 names. I just know what I got to get and I go get it.

17 Q Fair enough. And how long did you take that
18 medication?

19 A I took it for about a year, might have been
20 a little longer. When it got on me real bad, I would
21 take it. I'm not a fan of medication and drugs, and I
22 try my best just to take medication when I got to take
23 it. Other than that, I don't take it. My medicine
24 that's prescribed me to take, I take it faithfully
25 when I have it. But that -- that other medication, it

1 kept me calm. As long as I was calm, I tried to stay
2 away from it.

3 Q All right. I'm going to go over some of the
4 medications that I've seen in your medical records and
5 ask you if you recall when the last time you took the
6 medication was.

7 A Okay.

8 Q Ultram. Do you recall when the last time
9 you took that was?

10 A No, because if you tell me what it's for, I
11 might could.

12 Q Okay. You don't recognize it or know
13 offhand --

14 A Yeah, because, see, they used to tell me --
15 they'll give me the name and they'll tell me what it's
16 for, and that's more or less the way I relate to it.

17 Q Okay.

18 A What it's for and what it do.

19 Q Do -- what about Neurontin, do you recognize
20 that?

21 A Yeah, I recognize that. I don't take that
22 no more.

23 Q What condition did you take it for?

24 A Well, I was taking that. I think that was
25 back in the '70s for my nerves. I think. I can't --

1 I can't remember.

2 Q What about Cymbalta, an antidepressant?

3 A Yeah, I mainly remember that.

4 Q Do you recall the last time that you were
5 prescribed Cymbalta?

6 A No, I can't remember the last time I was
7 prescribed that. And since you're saying that, let me
8 explain something to you. I had this thing so they
9 said that I had a stroke when I was working at
10 Norbord. I had done lost my speech and I kind of was
11 limping around for a while. So a lot of things that
12 you're asking me, I probably won't recall. They might
13 show up somewhere down the line but, no.

14 Q You don't recall from memory --

15 A Yeah.

16 Q -- correct?

17 A Some of them things.

18 Q Okay.

19 A Yeah.

20 Q All right. Let me ask you about your
21 medical providers. The Lexington Family Practice
22 where Dr. Hutson practiced, you have been -- you have
23 been going there for quite sometime for medical care,
24 correct?

25 A Yes.

1 Q Is that who you consider to be your primary
2 care providers?

3 A Yes, that's where I go to when I go.

4 Q And you mean when you have a problem --

5 A Yeah.

6 Q -- or health problem, you'll go to Lexington
7 Family Care?

8 A Uh-huh.

9 Q And that is a group of different providers,
10 correct?

11 A Yes.

12 Q And you've seen different providers within
13 that -- within that practice, right?

14 A Yes.

15 Q All right. And whatever their records show
16 as far as specific medications that you were
17 prescribed or complaints or symptoms that you were
18 complaining of, you would rely on the information in
19 those records versus what you can remember here today,
20 right?

21 A Yes.

22 Q You told me that the stroke that you had was
23 when you were working for Norbord. Do you remember
24 what year that was?

25 A No.

1 Q And --

2 A I remember it was 2000 something. That's
3 all I can tell you.

4 Q And the memory problems that you suffered as
5 the result of that, did that affect your memory before
6 the stroke or does it also affect your memory for
7 things that happened afterwards?

8 A It -- things that happened before and
9 sometimes it -- it don't bother me. It's just things
10 that happened before the stroke, I don't -- I don't
11 recall. And I used to -- right now I usually just
12 don't concentrate on a lot of things. But when I do,
13 some things I recall and some things I don't. You
14 have to remember, I'm 64 years old and I got a lot
15 going on in my life. All with all this other stuff
16 going on, it didn't help the situation none
17 whatsoever.

18 Q The situation meaning your memory? Because
19 that's the question that I'm asking you about is the
20 effect on your memory.

21 A When you got certain things going on like I
22 have, some things you try to block out and you
23 continue on with your life. Because if I were to just
24 concentrate on the things that happened to me on that
25 job, I would be stone crazy.

1 Q All right. Let me -- I'm going to reask the
2 question because I don't -- I don't think you're
3 answering the question that I'm asking. Maybe I
4 didn't ask a good question. Because I'm trying to
5 determine if your memory --

6 A My mental state --

7 Q Well, if you know. If your memory is
8 affected such that you can't give accurate testimony
9 about the questions I'm asking. And it's fine to tell
10 me if you don't remember something, but just generally
11 speaking, I want to know if your -- if you feel like
12 your memory has been affected such that you're not
13 able to answer truthfully the questions that I'm
14 asking today?

15 A And I understand and that's what I'm trying
16 to do, to answer your question truthfully.

17 Q Okay. Well, let's do this: If I ask you a
18 question, will you promise to tell me if you don't
19 remember for whatever reason rather than trying to
20 guess or speculate?

21 A Yeah, I'll do that. But understand,
22 sometimes I have flashes.

23 Q Okay. What I want to make sure we
24 understand is that I don't want you to offer an answer
25 if you're not -- if you're not sure about it, if

1 you're guessing because you don't really remember,
2 okay?

3 A Okay.

4 Q Some of the questions that I'm asking you,
5 by the way, are personal and they are about your
6 medical history. That's not to embarrass you or make
7 you feel uncomfortable. It's just because of the
8 nature of the allegations that are made in this
9 lawsuit, understand?

10 A Uh-huh.

11 Q All right. Have you ever been diagnosed
12 with a sexually transmitted disease?

13 A Not that I can remember.

14 Q Do you know whether you've ever experienced
15 symptoms that were attributed to a sexually
16 transmitted disease?

17 A Not that I can remember.

18 Q Have -- is Viagra one of the medications
19 that you take regularly?

20 A No, because I can't afford it.

21 Q When is the last time that you took Viagra?

22 A Let's see. God. I had a prescription
23 filled in -- I'm not sure. I'm not sure. I ain't
24 going to -- I struggle with that because I'm not --
25 I'm sorry. I'm not sure because do you realize how

1 much Viagra costs?

2 Q Honestly, no.

3 A You're talking seven -- anywhere from 5 to
4 \$700 and I can't afford that.

5 Q Okay. Do you have a judgment as to the last
6 time you took Viagra, whether it was a year, less than
7 a year, more than a year?

8 A I think it was less than a year.

9 Q Okay. And that was to treat erectile
10 dysfunction; is that right?

11 A Right.

12 Q Is that something or a condition that you
13 still suffer from?

14 A Off and on.

15 Q Okay. Is that a condition that you're still
16 treating with, like seeing a doctor for?

17 A I see a doctor about my prostate.

18 Q But not the erectile dysfunction
19 specifically?

20 A No, not specifically, no.

21 Q And when you say you see a doctor about your
22 prostate, do you mean to check your prostate for any
23 abnormal levels and evaluate for prostate cancer?

24 A Yes.

25 Q Who's the doctor that you see for that?

1 A I can't remember his name because he's
2 moved.

3 Q All right. It's not a doctor within -- is
4 it a urologist?

5 A Yes. She's a nurse practitioner. That's
6 who they've got me with now.

7 Q Okay. But it is a urologist, a specialist?

8 A Yes.

9 (Defendants' Exhibit 1, Employment
10 Application, was marked for identification.)
11 BY MS. MCCLURKIN:

12 Q Okay. I'm going to show you what I'll mark
13 as Defendants' Exhibit 1. And for the record, this is
14 the employment application that you submitted with
15 West Fraser.

16 MS. MCCLURKIN: I've got extra copies of
17 some of my documents but not all of them. If I
18 don, I'll pass them to you.

19 MR. HAILE: Are there Bates stamps on it?

20 MS. MCCLURKIN: Yeah, it's --

21 MR. HAILE: (Inaudible.)

22 MS. MCCLURKIN: It's 129 to 133 -- I mean
23 131. And like I said, most of these I have three
24 of four copies of but for some reason I only got
25 two copies of certain ones.

1 BY MS. MCCLURKIN:

2 Q And Mr. Wise, I'm going to show you this
3 to --

4 A Okay.

5 Q -- so we can establish some dates of your
6 employment and also go through some of the information
7 that you provided on your employment application.

8 Do you recognize Defendants' Exhibit 1 --
9 let's switch because I gave you -- Defendants' Exhibit
10 1 as the -- as your employment application that you
11 submitted with West Fraser?

12 A Yes. That's my signature.

13 Q Okay. And what is the date that you
14 submitted your application?

15 A 2/2/2015.

16 Q February 2, 2015?

17 A Yes.

18 Q All right. Let me get you to turn to the
19 second page. You see in that middle section where it
20 asks a couple questions under Personal Data? And
21 Question Number 3 asks if you have ever been
22 involuntarily terminated from employment. If yes,
23 explain. And you answered: Yes, misunderstanding?

24 A Yes.

25 Q What job was that that you're referring to?

1 A That's when I was at Norbord.

2 Q All right. What were the circumstances of
3 your termination?

4 A My circumstances of my termination was that
5 I was a load operator. And I called a guy to come out
6 and check on a piece of equipment. And our policy was
7 that if somebody's coming into the loader operator
8 area, they're supposed to call you on the radio and
9 let you know that they're there. So evidently he come
10 out there and he didn't let me know he was there. And
11 I was backing up the road, and by this loader being so
12 high and he was on a little Gator, when I seen him, I
13 was on top of him. Because they got the cameras on
14 the back and I'm looking at the camera but the camera
15 never picked him up.

16 So when he seen that I didn't see him, he
17 tried to get out of the way and the wheel rubbed up
18 against the side of that piece of equipment that he
19 was on. But the policy stated that he should have
20 called me and let me know that he was there. That
21 never took place.

22 Q And so did you run over -- did you run over
23 him?

24 A No.

25 Q Okay. You ran over a piece of equipment?

1 A No. The wheel rubbed it.

2 Q Okay.

3 A That was it.

4 Q Did it -- did it damage the other piece of
5 equipment?

6 A They say it did but I didn't see it. He
7 didn't either.

8 Q And so did -- sorry. Is it Norbord?

9 A Yeah.

10 Q And did Norbord try to -- they wanted to
11 terminate you for damaging equipment?

12 A That's what they say because they say I
13 didn't -- what they said, I wasn't properly using the
14 machine. But that's what the cameras or for. You got
15 mirrors, you got cameras. That's what you use. You
16 can't look over the back because the back is too high.

17 Q So Norbord terminated your employment
18 allegedly because you mis -- you misused company
19 property or didn't operate the equipment properly,
20 right?

21 A Yeah.

22 Q That's what they said?

23 A That's what they say.

24 Q And after that you -- did you file a charge
25 with the EEOC?

1 A Yes, I did.

2 Q And you alleged that you were terminated
3 because of your race?

4 A I alleged because I was unfairly judged and
5 my race plus age discrimination.

6 Q Why did you believe that they terminated you
7 because of your race or your age?

8 A Because the same guy that was on that piece
9 of equipment, he ran over the top of a piece of
10 equipment. He's white and I'm black. He's still got
11 a job. I'm fired.

12 Q And they didn't take any disciplinary action
13 against him?

14 A No, they didn't.

15 Q Did you have an attorney that represented
16 you when you filed your EEOC charge?

17 A No, I did it myself.

18 Q And eventually did the EEOC allow you to
19 proceed with filing your claims --

20 A Yes, they did.

21 Q -- in a court of law?

22 A Yes, they did.

23 Q And did you have an attorney then?

24 A No, I did that myself, too.

25 Q And how far along in that case did -- did

1 you -- you said it settled. That's the one that
2 settled out of court, right?

3 A Right.

4 Q Did you -- and you gave a deposition?

5 A Yes.

6 Q And were you represented at that time?

7 A No.

8 Q So did you represent yourself throughout
9 that entire --

10 A The whole time of the --

11 Q -- litigation?

12 A -- litigation.

13 Q And what was the amount of your settlement?

14 A I think it was something like \$16,000.

15 Q The lawsuit that you filed --

16 A Wait a minute. Wait a minute. Wait a
17 minute. I'm sorry. I don't think it was quite that
18 much. I'm not sure. I'm sorry. I can't remember the
19 exact amount.

20 Q The lawsuit that you filed against Georgia
21 Pacific, did you have an attorney represent you in
22 that case?

23 A No, I always represented myself.

24 Q All right. Is that the only position that
25 you've been terminated from, the Norbord position?

1 A Yeah, and Georgia-Pacific.

2 Q The Georgia-Pacific instance was also a
3 termination claim?

4 A Yes.

5 Q All right. Tell me about that termination.
6 What was Georgia-Pacific's stated reason for
7 terminating you?

8 A They really didn't state no reason. I was
9 supervisor and I didn't get -- we didn't get along
10 with -- I didn't get along with people because I
11 expected them to do their job and they didn't, so
12 there we go.

13 Q How long did you work at Georgia-Pacific?

14 A Almost 30 years.

15 Q And you were terminated and you weren't
16 given any reason?

17 A No, didn't give no reason.

18 Q Who was your -- who was your supervisor at
19 Georgia-Pacific?

20 A The plant manager was Linda McCarthy
21 (phonetic).

22 Q Is -- is that the person who handled your
23 termination?

24 A I -- I don't recall who handled my
25 termination. You know, like I said, it happened a

1 long time ago and that was before I had that stroke.

2 Q All right. Do you know -- do you know who
3 was responsible for making the decision to terminate
4 your employment at Georgia-Pacific?

5 A No, I -- I don't know.

6 Q What about at Norbord, do you know who was
7 responsible for terminating your employment there?

8 A It was -- I want to say his name was Jim.

9 Q Okay. Going back to Exhibit 1, you've -- if
10 you look on Page 3, it asks you about your employment
11 history. And you list your employment at
12 Georgia-Pacific --

13 A Yes.

14 Q -- and then your employment at Norbord?

15 A Yes.

16 Q And then it lists your next employment at
17 Walmart; is that correct?

18 A Correct.

19 Q All right. And the dates of your employment
20 with Walmart, looks like it was March 4, 2014 through
21 the date of this application, which was February 2,
22 2015. Is that -- is that correct?

23 A Yeah.

24 Q Okay. When did you stop working at Walmart?

25 A That same week.

1 Q Did you -- did you quit?

2 A I gave a two weeks' notice and they told me
3 I didn't have to stay for two weeks.

4 Q What was your position? What is the APR
5 position?

6 A Asset protection.

7 Q All right. Any other -- have you had --
8 prior to coming to work at West Fraser, did you work
9 anywhere else other than Walmart, Norbord or
10 Georgia-Pacific?

11 A I worked at CW Anderson.

12 Q Say that again.

13 A CW Anderson.

14 Q When did you work there?

15 A Oh, God. In the '70s.

16 Q Okay. So that was before Georgia-Pacific?

17 A Yes.

18 Q All right. Any other employment after
19 Georgia-Pacific other than Norbord, Walmart and West
20 Fraser?

21 A No. I put down carpet with a preacher. I
22 put carpet in a house with a preacher down at
23 Charlotte Air Force Base.

24 Q Okay. Was that a -- was that a part-time or
25 full-time job?

1 A It was full-time till I started at Walmart.

2 Q All right. So that was in between Norbord
3 and Walmart?

4 A Yes.

5 Q How long did you work there?

6 A A couple months.

7 Q What was the position that you were applying
8 for at West Fraser?

9 A Well, Mike Shealy told me that he needed
10 somebody at the dry kiln. And when I was at
11 Georgia-Pacific, that's what I did. For 30 years I
12 was the top person, dry kiln, in the southeast.
13 That's what I did for a living. And they had just
14 started up some kilns and he knew that I knew a lot
15 about them, and that's what I was applying for.

16 Q Okay. And in looking at Page 3 of your
17 employment application that Defendants' Exhibit 1, you
18 list two references, and one of them is Mike Shealy,
19 right?

20 A Right.

21 Q And it indicates, at least in 2015, you had
22 known Mike Shealy for 40 years?

23 A Yes.

24 Q Did you know Mike Shealy only from working
25 together at Georgia-Pacific?

1 A No, we went to school together.

2 THE COURT REPORTER: I'm sorry. Say that
3 again.

4 THE WITNESS: We went to school together.

5 BY MS. MCCLURKIN:

6 Q You mean high school?

7 A Yes.

8 Q What high school did you graduate from?

9 A Mid Carolina.

10 Q Tell me the name of that again.

11 A Mid Carolina.

12 Q All right. Where is that?

13 A In Prosperity, South Carolina.

14 Q And is twelfth grade, is that the highest
15 grade of education that you've completed?

16 A Yes.

17 Q Mid Carolina.

18 A I did -- I did training for Georgia-Pacific
19 at different classes.

20 Q But you did work with Mike Shealy at
21 Georgia-Pacific right?

22 A Yes.

23 Q Was he your supervisor when he was there?

24 A Mike was over environmental, sawmill,
25 storeroom, maintenance. He would come over to the

1 stacker and help me with the maintenance part of it.

2 Did you get that? I'm sorry.

3 Q And what was your official title with
4 Georgia-Pacific?

5 A I started out as a stick layer. When I
6 ended up, I was supervisor.

7 Q Supervisor of what department?

8 A Stacker, dry kiln, clean-up crew.

9 Q Okay. And you said a minute ago that you
10 were the best of something in the southeast. What was
11 that?

12 A Drying lumber.

13 Q What -- is that -- is that a -- is that a
14 formal award or a recognition that you received?

15 A Well, that was just something that the
16 inspector would come around, and they would grade the
17 lumber, see how it was dried and all that, and that's
18 what he always told me.

19 Q All right. So that's -- you're not -- you
20 don't mean, though, that literally you were the very
21 best at drying lumber in the southeast, but --

22 A According to --

23 Q -- you mean --

24 A -- him, and that's what he did, yes.

25 Q According to this inspector?

1 A Yes.

2 Q Okay. And when Mr. Shealy suggested that
3 you apply for employment at West Fraser -- is that
4 what you testified to?

5 A Yes.

6 Q Okay. And was that after you had -- you
7 left Norbord or was that after you left
8 Georgia-Pacific?

9 A After I left Norbord -- no, after I left
10 Walmart.

11 Q Walmart, okay.

12 A Yes.

13 Q Okay. Did he tell you why he thought you
14 should apply for employment at West Fraser?

15 A Because he knew what I was doing and they
16 needed help.

17 Q And what position did you apply for?

18 A Well, at the time they had a forklift
19 operator job open, but he wanted me to be right up
20 under him. What I mean by that, the guy that -- in
21 their with maintenance and the whole nine yards. He
22 had -- let's see. The job that Larry Hazel (phonetic)
23 have now, he was telling me he more or less groom --
24 grooming me for that because he already knew that I
25 know what had to be done because I've been in the

1 maintenance field, in the drying field and all that,
2 and that's what that job really consist of.

3 Q All right. So Mike Shealy wanted you to be
4 working underneath him, but the position that the mill
5 had open was forklift operator?

6 A I am not sure whether it was a forklift
7 operator because since he wanted me under him, they
8 more or less made me a relief operator.

9 (Defendants' Exhibit 2, West Fraser Offer
10 Letter, was marked for identification.)

11 BY MS. MCCLURKIN:

12 Q All right. Let me show you -- let's just --
13 this is --

14 MS. MCCLURKIN: We'll mark this as
15 Defendants' Exhibit 2. This is a March 23, 2015
16 letter that's Bates stamped Defendants' 126. I'm
17 going to call this the West Fraser offer letter.

18 MR. PARKER: Can I see that first?

19 MS. MCCLURKIN: Sure.

20 MR. PARKER: All right.

21 BY MS. MCCLURKIN:

22 Q And take a minute and look at it, but I
23 think this is a March 23, 2015 letter that West Fraser
24 HR sent to you to confirm your offer of employment.
25 Do you agree with that?

1 A Yes, I think I've seen this but --

2 Q Well, is that your signature at the bottom?

3 A Yeah, that's my signature.

4 Q Okay. And the date of this is -- the date
5 that you signed it is March 23, 2015?

6 A Right.

7 Q And the position that you were offered, it
8 was to hire in was the forklift operator position?

9 A Yeah. But understand, that was to get me in
10 the door so I could do what he needed me to do.

11 Q Right. And I want to talk to you about
12 that, too. I want to talk to you about all the
13 positions that you held but I want to just make sure
14 we understand the position that you were hired into.

15 A Okay.

16 Q And then just real quick, back to Exhibit 1,
17 the employment application --

18 A Okay.

19 Q -- one other question about the references.
20 You also listed Gilbert Fields as a reference?

21 A Yes.

22 Q And he was someone that you had known for 40
23 or more years, too, correct?

24 A Yes.

25 Q And did you also go to high school with him?

1 A No.

2 Q All right. How did you know Mr. Fields?

3 A We worked together.

4 Q At Georgia-Pacific?

5 A Right.

6 Q And Mr. Fields worked at West Fraser at the
7 time, didn't he?

8 A Right.

9 Q Did you discuss coming to -- your coming to
10 work at West Fraser with Mr. Fields?

11 A Yeah, he -- we talked about it.

12 Q All right. Did he encourage you to apply
13 for employment at West Fraser?

14 A Yes and no. He said, Hey, man, it's kind of
15 rough.

16 Q Meaning what?

17 A When we was at Georgia-Pacific, we worked
18 all the time. I mean all the time, seven days a week.
19 And he was more or less telling me that that's what
20 we're getting back into. He was preparing me for
21 that.

22 Q So when you said it's kind of rough, he
23 meant they expect you to work hard?

24 A Yes. I didn't have no problem working hard.
25 He was more or less telling me that it was going to be

1 long hours again.

2 Q All right. Anything -- but did -- but he
3 encouraged you to apply for employment, right?

4 A Yes.

5 Q Did he say anything else about West Fraser?

6 A I don't recall because, like I said, a lot
7 done happened since then and I -- I don't get to talk
8 to him no more.

9 Q There's nothing else, though, that you can
10 recall Mr. Fields saying about coming to work at West
11 Fraser?

12 A No, not -- not right off, no.

13 Q And at the time or around that time, did
14 Mr. Fields hold a supervisor position with West
15 Fraser?

16 A Yes.

17 Q All right. And you were offered and you
18 accepted employment with West Fraser beginning in --
19 beginning on March 23, 2015, right?

20 A Yes.

21 Q And started out in the forklift operator
22 position, correct?

23 A Correct.

24 Q And who were your supervisors that you were
25 working with then?

1 A Mike Shealy.

2 Q Mike Shealy was one of your supervisors?

3 A Yeah, that's why I had to answer to him.

4 Q And in answering to Mr. Shealy, did he --
5 did he keep up with -- well, let me back up.

6 You were hired on as an hourly employee,
7 correct?

8 A Correct.

9 Q And paid an hourly rate, at least starting
10 out, of \$14.61 an hour?

11 A Right.

12 Q So you had to keep up with your time, you
13 know, the hours you worked so that they would know how
14 much to pay you, right?

15 A No, I didn't keep up with it. We -- he kept
16 up with it. We didn't have to keep up with it.

17 Q Okay. West Fraser had to keep up with --

18 A Yeah.

19 Q -- the number of hours that you worked in
20 order to know what to pay you, right?

21 A Yeah, correct.

22 Q And the procedure for that was that your
23 supervisor, Mr. Shealy, would report to West Fraser
24 payroll the hours that you worked each week, right?

25 A Yes.

1 Q And did that stay -- was that the same from
2 at least the time that you hired in until the incident
3 that we're here about today which is the subject of
4 your lawsuit? And I'll represent to you -- your
5 attorney's here and he can correct me if I'm wrong,
6 but that incident happened on November 7, 2017?

7 A Wait a minute.

8 MR. PARKER: What's the question?

9 BY MS. MCCLURKIN:

10 Q The question is, so from -- well, let's
11 establish this. Do we agree that -- that the incident
12 that happened, the on-the-job injury that you went to
13 Newberry Memorial to get treated for that led to the
14 events that led to this lawsuit, that happened on
15 November 7, 2017, correct?

16 A Yes, I think so.

17 Q Okay. So from the time that you hired in in
18 March 23 of 2015 until November 7, 2017, was Mike
19 Shealy the person who was responsible for reporting
20 your hours during that entire time?

21 A No.

22 Q When did that change?

23 A They were -- they were bouncing me around
24 the mill because of my skills and all that. They had
25 me training forklift drivers, they had me troubleshoot

1 at the planer mill, different things like that.

2 Q Okay. But -- and I realize that you may
3 have been assigned other duties and at some point
4 become a relief operator which requires you to go
5 wherever you're needed --

6 A No, you're wrong.

7 Q Okay. I'm sorry. Correct me, then.

8 A I was supposed to be the relief operator at
9 the dry kiln.

10 Q Uh-huh.

11 A But they wanted me to go from one department
12 to another department, back for around and around like
13 that. Now, I was the only one doing that and was the
14 less paid, and still is, relief operator.

15 Q Okay. My question -- and maybe I'm not
16 asking a good one. But my question's about who was
17 responsible for keeping up with your hours and making
18 sure you got paid when you were there working and
19 making sure, you know, when you were -- had an excused
20 absence and you were supposed to be paid that you
21 still got paid.

22 So during this time, even if you were moving
23 to other departments, was Mike Shealy still the person
24 who was responsible for reporting and keeping up with
25 your hours?

1 A No. Whatever department I was in was
2 responsible for that.

3 Q And are you sure about that?

4 A Yes.

5 Q Okay. Let's talk about the different
6 departments that you worked in.

7 A Okay.

8 Q All right. When you were hired in as the
9 forklift operator, which department did you work in?

10 A Dry kiln.

11 Q All right. What was the next department
12 that you worked in?

13 A Planer mill.

14 Q What is it?

15 A Planer mill.

16 Q Planer mill. Which -- was Mr. Shealy still
17 responsible for reporting your hours when you were --

18 A Planer mill.

19 Q -- in the planer mill?

20 A Planer mill supervisor.

21 Q All right. Who -- what's his name?

22 A At the time I think it was -- I don't know
23 whether it was Quinton -- Quinton Wilson or Eric
24 Reynolds.

25 Q All right. And is one of those gentlemen

1 who was responsible for reporting --

2 A Yeah.

3 Q -- your hours worked when you were in that
4 department?

5 A Yes.

6 Q And how do you know that?

7 A Because if I had to be off or anything, I
8 had to talk to them and they were the ones that were
9 keeping up with my hours, time and everything.

10 Q Okay. Do you know for certain, though, that
11 they were the ones who were keeping the records of
12 your time or were you just -- are you testifying about
13 that just based on the fact that you might have told
14 them if you were going to be off work?

15 A To my understanding, when I was working at
16 the planer mill, Eric would tell me about my hours,
17 what hours I had to work, when I was off and all that.
18 That came between him and Quinton.

19 When I left the planer mill, went to
20 shipping, it was -- I don't know whether it was Steve
21 Johnson or Chuck Price that was handling my time. It
22 always be charged to your department that you
23 originated in, but the person's department that you in
24 are responsible for the hours that you work.

25 Q All right. And during these times that you

1 were going to -- that you were floating from
2 department to department --

3 A Uh-huh.

4 Q -- were you still -- was your assignment
5 still in the kiln department but you were being loaned
6 out to these other departments?

7 A Yes, I suppose so.

8 Q So your permanent assignment was still in
9 the kiln but you were being temporarily, you know,
10 reassigned to these other departments?

11 A Yeah, I was being jerked around basically.
12 That's what it boiled down to.

13 Q But it was your understanding that those
14 assignments were supposed to be temporary?

15 A Honestly, I don't know. All they done
16 wanted me to do is go work here, work there, and all
17 around.

18 Q And if the managers of these various
19 departments, Chuck Price in shipping or Quinton Wilson
20 over the planer mill, if they testify that it was Mike
21 Shealy in the kiln department who remained responsible
22 for keeping up with your -- your time sheets, do you
23 have any information to dispute that?

24 A I'm just telling you what they were telling
25 me when I asked about my hours. Now, if I go in there

1 and ask you about my hours and you tell me about my
2 hours, that tells me that you're reliable for them.
3 You tell me what time I got to come to work, what time
4 I leave, you're reliable for my hours. You're the one
5 telling me.

6 Now, I was still charged out to the dry
7 kiln, but I was working in these departments working
8 their hours that they told me I had needed to work,
9 the days I had to work and all that.

10 Q Let's talk about closer to the subject
11 incident which I'm talking about, the November 7
12 on-the-job incident that led to, you know, the events
13 that led to this lawsuit, okay?

14 A Okay.

15 Q So that's, again, November 7, 2017. In the
16 months leading up that, what department were you
17 working in?

18 A I was working at shipping when this
19 happened.

20 Q You were working in shipping when this
21 incident happened --

22 A Yeah.

23 Q -- and about how long had you been in
24 shipping?

25 A I -- I don't know because I was in and out

1 of departments. I don't know how long I had been
2 there before this incident happened.

3 The one thing that I do know is that before
4 this incident happened, you had to check the equipment
5 out every day. And I had reported, wrote it up on a
6 sheet that this equipment was broken, that it needed
7 fixing. It never got fixed. And if you operate a
8 piece of equipment and something happen to it, you're
9 liable for it. That's ground for termination. You
10 had to check the oil, water, transmission fluid,
11 hydraulic fluid, hoses, the lights. We got a
12 check-off sheet that we do every day. Every time you
13 get on a piece of equipment, you had to do that, and
14 that's what I did.

15 Q Do you recall how long you were in shipping
16 before this incident occurred?

17 A Honestly, no.

18 Q Do you remember before this incident
19 occurred, the November 7, 2017 incident, applying for
20 a lead man position at the mill?

21 A I don't know whether that was before or
22 after.

23 Q Let me show you --

24 MS. MCCLURKIN: Well, we can mark this as
25 Defendants' Exhibit 3. It's a May 30, 2017 --

1 MR. PARKER: What's the number?

2 MS. MCCLURKIN: -- written request. It's
3 Defendants' 107.

4 (Defendants' Exhibit 3, May 30, 2017 Written
5 Request, was marked for identification.)

6 MS. MCCLURKIN: Do you have it or do you
7 want to take a look at it, Johnny?

8 MR. PARKER: I'm good.

9 MS. MCCLURKIN: Okay.

10 THE WITNESS: Yeah.

11 BY MS. MCCLURKIN:

12 Q All right. So this is a -- this is a
13 May 30, 2017 handwritten statement from you --

14 A Yeah, uh-huh.

15 Q -- indicating that you want to apply for the
16 lead man job?

17 A Right.

18 Q All right. Do you remember after this you
19 were interviewed by Quinton Wilson, Melody Jepson
20 (phonetic), and Gilbert Fields?

21 A Yes.

22 Q All right. Do you remember during that
23 interview they asked you several questions about why
24 you wanted the job and why you thought you were
25 qualified for the job, things of that nature?

1 A Yes.

2 Q All right. Do you remember them asking you
3 a question about what you thought the two biggest
4 challenges would be if you accepted this job?

5 A No, I can't recall.

6 Q Do you recall telling them anything about
7 feeling like it would be an obstacle or a challenge
8 for you in the job because people would wonder why you
9 were the one selected for the job?

10 A No, because I used to be a lead man at
11 Georgia-Pacific before I became a supervisor.

12 Q So you wouldn't have any reason to say that
13 people might question why Anthony Wise was selected
14 for the lead man position?

15 A No. The only thing I can think of would be
16 because me and Gilbert used to work together. Other
17 than that, no.

18 Q So --

19 A Understand -- understand, and I don't mean
20 to be rude, but I am good at what I do and I do it
21 wholeheartedly. I don't need nobody to motivate me.
22 I know what I got to do and that's what I do. That's
23 why they always come and get me and just leave. Point
24 out what needs to be done and I take care of it.

25 Q So you felt like you were qualified for the

1 lead man position, right?

2 A Yes.

3 Q And you felt like everybody else would agree
4 that you were qualified based on your -- your work
5 performance, right?

6 A No, I don't never think that because
7 everybody got their own opinion. It's no matter if
8 you're qualified or whatever, they already have
9 somebody in mind who they want to give that job to.
10 That's just the way things work at that plant. If --
11 if you the one they want, it's no matter what your
12 qualifications are, how good you are, that's who's
13 going to get that job, the one that they want. It's a
14 proven fact.

15 Q Okay. Well, you're saying that you feel
16 like jobs were awarded based on things other than the
17 best job performance, right?

18 A It's just like I said, it's based on who
19 they want to have the job.

20 Q Uh-huh. Well, at the time that you applied
21 for this leadman position, what was your impression of
22 what your superiors, in other words supervisors and
23 management, thought about -- about you or your work
24 performance?

25 A I think nothing about it because they --

1 they walk around, they see what I do. I don't be
2 hiding.

3 Q Well, did you feel like that they had a
4 positive opinion of you and your work performance?

5 A I can't -- I can't say that because --

6 Q You don't know one way or the other?

7 A I don't know -- I don't know what a person
8 thinking so I don't know.

9 Q Okay. What about your co-workers, did you
10 have an impression as to what their opinion was during
11 this time frame when you were applying for the leadman
12 position as to you or your work performance?

13 A No, because they used to call me Mike
14 Shealy's little slave. That's just how it was. I
15 would walk around and do what I had to do. If you've
16 never been in a work environment like that, you don't
17 understand it. You had to be in it to understand it.
18 Saw milling is not for everybody. You either got it
19 or you don't. And I go there and do what I had to do.

20 Q So you had it?

21 A Well, no, I had -- I had in my mind what I
22 had to do and I did my job. I don't expect nobody to
23 pay me to go there and lollygag. I expect to go do a
24 job and that's what I do, I do a job. I'm from the
25 old school. Not from the young school, the old

1 school. Old school people, when I come up through the
2 ranks, I had to earn my keep. I mean, every promotion
3 I got, I had to earn it.

4 Q All right. About how long after this, if
5 you know, were you assigned to the shipping
6 department?

7 A I --

8 Q Not sure? Okay.

9 A I don't know because I was in -- like I keep
10 telling you, I was in and out of departments evolving
11 [sic] doors.

12 Q Is Chuck Price the person that you reported
13 to or your supervisor when you were in the shipping
14 department?

15 A The last time I was working there, yes.

16 Q On the date of the incident, November 7,
17 2017, was he your supervisor?

18 A Yes.

19 Q All right. And I'm skipping around some so
20 if you don't understand my question, again, I want you
21 to tell me.

22 But going back to your prior employment, and
23 we'll start with Georgia-Pacific, did you file a
24 workers' comp claim for an on-the-job injury while you
25 were employed at Georgia-Pacific?

1 A Not that I can remember.

2 Q All right. What about at Norbord?

3 A Not that I can remember.

4 Q Did you file a workers' comp claim at
5 Walmart?

6 A No.

7 Q Is the first workers' comp claim that you
8 filed when -- was it during your employment with West
9 Fraser?

10 A I can't remember whether I filed a work comp
11 claim at West Fraser or not. I really don't.

12 Q All right. You had -- well, let me -- let
13 me ask it this way: Prior to the on-the-job incident
14 that occurred on November 7, 2017, prior to that had
15 you received an on-the-job injury while employed at
16 West Fraser?

17 A Yes.

18 Q All right. And did you -- tell me about
19 that.

20 A I tripped. They had a trip hazard down
21 there.

22 Q So you tripped and you fell at work, right?

23 A Right.

24 Q And injured what part of your body?

25 A It just broke me up a little bit. It just

1 shook me up real bad.

2 Q All right. And did you have to get -- was
3 that in May of 2017?

4 A I can't remember the date.

5 Q Okay. Whatever West Fraser's records show
6 about any on-the-job injury that you reported, you
7 would -- you would defer to those?

8 MR. PARKER: Object to the form.

9 THE WITNESS: Like I say, I can't remember
10 what date it was.

11 BY MS. MCCLURKIN:

12 Q All right. Do you remember whether it was
13 before the November 7, 2017 incident?

14 A Yes, it was before that.

15 Q And did you see the company doctor -- or the
16 doctor that the company sent you to as a result of
17 that --

18 A Yes.

19 Q -- incident?

20 A Uh-huh.

21 Q Yes?

22 All right. Did anyone from the company go
23 with you to that doctor appointment?

24 A Yes.

25 Q Who was that?

1 A Keith Nelson.

2 Q Which doctor did you -- did you go see as a
3 result of that incident?

4 A Whatever doctor they got. I can't remember
5 that guy's name.

6 Q All right. You didn't have any issue or
7 complaint with Mr. Nelson going with you to the doctor
8 as a result of that trip and fall --

9 A Yes, I did.

10 Q -- on-the-job injury?

11 A Yes, I did but I just didn't say nothing
12 because he come back and he told that, hey, the reason
13 I fell, I wasn't picking up my feet. That was spread
14 over the mill.

15 Q All right. Let me -- let me reask the
16 question because I'm not sure we're talking about the
17 same time frame.

18 When Keith Nelson took you to the doctor
19 because you had tripped and fallen at work --

20 A Uh-huh, yes.

21 Q -- did you have a problem with Mr. Nelson
22 taking you to the doctor?

23 A No, not then.

24 Q All right. You knew that was -- that was
25 company procedure, right?

1 A Right.

2 Q That if you had an on-the-job injury, a
3 member of management is going to accompany you to the
4 doctor, right?

5 A Right.

6 Q You signed something to that effect, didn't
7 you?

8 A I guess I did. I can't remember.

9 Q Let me show you what I'll mark as
10 Defendants' Exhibit 4 just so we can get clear on this
11 question.

12 A Okay.

13 MS. MCCLURKIN: This is Bates number
14 Defendants 88.

15 (Defendants' Exhibit 4, Acknowledgment Dated
16 March 23, 2015, was marked for identification.)

17 BY MS. MCCLURKIN:

18 Q What's the date of that document that's
19 Exhibit 4?

20 A 3/23/2015.

21 Q All right. And is that your signature at
22 the bottom?

23 A Yes.

24 Q All right. And this is an acknowledgment
25 and it says: I understand that for any work-related

1 injury, a member of management from the Newberry
2 Lumber Mill will accompany me to the hospital or
3 doctor's office.

4 Did I read that first sentence correctly?

5 A Yes, that's right.

6 Q Okay. And that was a document that was
7 provided to you and that you signed when you were
8 hired in, correct?

9 A Correct.

10 Q So you knew that was the company procedure,
11 that a member of management would accompany you to a
12 doctor if you had an on-the-job injury?

13 A Yes.

14 Q All right. And so based on that, you didn't
15 have any problem with Mr. Nelson going with you to the
16 doctor, right?

17 A No, not at the time.

18 Q And what happened when you got to the
19 doctor?

20 A Which time?

21 Q On this --

22 A On this, when I tripped?

23 Q No, excuse me. Excuse me. On the
24 trip-and-fall incident that happened before the
25 subject incident --

1 A Okay.

2 Q -- when you got to the doctor were you
3 examined by the doctor?

4 A Yes.

5 Q All right. Where was Mr. Nelson when you
6 were examined by the doctor?

7 A He was out smoking a cigarette.

8 Q So he was not inside --

9 A No.

10 Q -- the -- the examination room, correct?

11 A No, correct.

12 Q She's going to kill both of us if we
13 don't --

14 A I'm --

15 Q -- let each other finish and let --

16 A I'm sorry.

17 Q Yeah, it's okay. You'll -- I'm just
18 reminding you.

19 All right. And so did the doctor do -- did
20 he do any X-rays or any other -- any other testing or
21 did he just examine you?

22 A He -- as far as I can remember, he just
23 examined me. I don't remember any X-rays.

24 Q And what happened next? Were you released?

25 A He told me to roll down my socks and he felt

1 my ankles. And he seen where I had a ring around the
2 top of my leg from wearing two pair of socks. He said
3 that's the reason I tripped and fell.

4 Q Okay. And did he give you any kind of a
5 diagnosis or say that you had sustained any injuries?

6 A As I -- if I can recall, I think he gave me
7 something for pain. That's -- I can't -- I really
8 don't remember because once he told me that, my mind
9 kind of (indicating).

10 Q All right. And Mr. Nelson, he's there with
11 you at the doctor's office but he's just not inside
12 the room, right?

13 A Right.

14 Q And Mr. Nelson was the safety director at
15 the time, correct?

16 A Correct.

17 Q And his responsibility or part of his
18 responsibility as the safety director was to
19 investigate and help to handle any on-the-job injuries
20 or illnesses or incidents, right?

21 A Right.

22 Q Because safety was his ultimate
23 responsibility, right?

24 A Right.

25 Q And are you aware that Mr. Nelson had

1 obligations to report any on-the-job injuries or
2 on-the-job accidents that resulted in an injury?

3 A Report, yes. Discuss, no.

4 Q Well, there were -- and let's break that
5 down some. Because he would have had to -- if there
6 was an on-the-job accident that led to an injury or an
7 illness that resulted from an on-the-job accident,
8 Mr. Nelson would have had to participate in helping to
9 assist human resources with, you know, filing a
10 workers' comp claim, wouldn't he?

11 A There was no workers' comp claim, as far as
12 I can recall. The -- he shouldn't have never said
13 anything about what happened.

14 Q All right. Let's -- we're going to get to
15 that.

16 A No, I'm talking -- I'm talking about -- I'm
17 talking about this right here. This one right here.
18 He came back and told the reason I tripped and fell
19 was that I was dragging my feet.

20 Q Who did he tell that to?

21 A He told everyone in the plant and they would
22 come back telling me --

23 Q All right.

24 A -- and laughing at me.

25 Q All right. I'm going to remind you first

1 that you're under oath and that we agreed --

2 MR. PARKER: Wait a minute. We don't need
3 to -- that's not appropriate.

4 MS. MCCLURKIN: Well --

5 MR. PARKER: That's not a question.

6 MS. MCCLURKIN: We agreed.

7 MR. PARKER: You get to ask questions, not
8 make statements.

9 BY MS. MCCLURKIN:

10 Q Well, I'm going to remind you that we agreed
11 that you would testify about things that -- that you
12 heard and that you saw, right? And I want to make
13 sure that's what you're testifying about. You can
14 tell me if it is and you can tell me if it's not.

15 A That's what I'm telling you.

16 Q Okay. Who did you hear Mr. Nelson --

17 A No, no, no --

18 Q -- say --

19 A -- see there? See there? No, I didn't say
20 neither time that I heard him say it. I said I was
21 told that's what he did. He came back and told that.
22 Wasn't nobody there but me and him.

23 Q Okay. I'm going to break it down. You've
24 got to let me finish my question, though, okay?

25 A Okay. I'm sorry.

1 Q And then -- and then I'm going to give you
2 the opportunity to answer. And your attorney's here
3 and he's not going to let me interrupt you, okay?

4 A Okay.

5 Q If -- when you said that Mr. Nelson came
6 back from the doctor's office, and we're talking about
7 the time that you were treated because of a
8 trip-and-fall, right?

9 A Uh-huh.

10 Q And you said that he told people all over
11 the plant that the reason you fell was because of
12 something you did, right?

13 A Yes.

14 Q Who did he tell that to?

15 A I don't -- I can't tell you specific who he
16 told it to. I'm just telling you what was told to me.

17 Q So you never heard Mr. Nelson tell --

18 A No, I never --

19 Q You've got to let me finish my question.
20 You never heard Mr. Nelson tell anyone at
21 the plant that the reason that you tripped and fell
22 was because of something that you did, right?

23 A Right, correct.

24 Q You didn't hear it with your own ears?

25 A No, I didn't.

1 Q But other people told you that they heard
2 Mr. Nelson say that, right?

3 A Yes.

4 Q That's your what testimony is?

5 A Yeah, that's my testimony.

6 Q All right. Who told you that they heard
7 Mr. Nelson say these things about the trip-and-fall
8 incident?

9 A Oh, God. I can't remember who all told me
10 that because they're more or less doing it in a joking
11 mood doing, like ragging it on.

12 Q Can you identify anyone who told you that
13 Mr. Nelson was telling people that the reason that you
14 tripped and fell was because of something that you
15 did?

16 A You know, it come from the guys in the
17 department.

18 Q Can you identify one name?

19 A That's all -- that's all I can tell you, it
20 come from the guys in the department because when you
21 in a group of guys and everybody talking and laughing
22 and going on -- and, you know, I knew -- I knew that
23 wasn't nobody there but me and him. And when the
24 doctor said that it come from the rings around my
25 ankles because of my socks, what caused it so --

1 Q Well, Mr. Nelson wasn't in the exam room,
2 though.

3 A He -- okay. He wasn't in the exam room but
4 you don't -- you don't understand. You don't
5 understand the way things work in that company. They
6 go back and they discuss everything, right, wrong, it
7 don't make no difference.

8 Q What was it that these unidentified people
9 were telling you that Keith Nelson said specifically?

10 A I drag my feet, the reason I tripped. And
11 the truth of the matter, the reason I tripped, he had
12 an improper step there. You don't go in a door with a
13 step that high (indicating). That's automatic trip
14 hazard. It wasn't marked or nothing. I did safety
15 for five years up there at Norbord. Anything that can
16 cause a trip hazard is supposed to be labeled trip
17 hazard.

18 Q When Mr. Nelson -- when these unidentified
19 people told you that Mr. Nelson said that you tripped
20 because you dragged your feet, you don't relate that
21 to what the doctor said about you having rings around
22 your legs because of your socks, do you?

23 A I all worked hand in hand to me. And that's
24 why I refused to go to that doctor.

25 Q Which doctor -- which doctor is that?

1 A The company doctor.

2 Q Where was that? Do you know what office
3 that was located at?

4 A It's at --

5 Q Is that the Occupational Health Center?

6 A No. Dr. Hutchison (phonetic) -- no, no.
7 It's doctor something. God, almighty. I'm not the
8 only one that had a problem with him. I can't think
9 of his name but he's the company doctor.

10 Q All right. You said you did safety at
11 Norbord. What were your responsibilities in
12 connection with your safety role?

13 A My safety role was anytime we do shut down,
14 I had to make sure that everybody got out of that
15 plant, contractors, the whole nine yards. Were safe,
16 monitored them the whole time they was there.

17 Q Were you -- were you -- did you have any
18 responsibility if somebody sustained an on-the-job
19 injury?

20 A Yeah, that was -- that's what I was there
21 for, to prevent that.

22 Q And if someone was hurt on the job, did you
23 have responsibility similar to Mr. Nelson's
24 responsibilities at West Fraser where you would
25 accompany them to the doctor or --

1 A No, no. All I had to do was make sure that
2 it didn't happen. Any safety violation that I see, it
3 was written up, reported. I more or less monitored
4 everything in there from air quality to -- you name
5 it, that's what I did.

6 Q Did you miss any time from work as a result
7 of the trip-and-fall incident?

8 A I don't think I did.

9 Q Did you receive any other medical treatment
10 other than what the company doctor provided you on
11 that date?

12 A No.

13 THE WITNESS: Excuse me. I need to take a
14 quick break.

15 MS. MCCLURKIN: Absolutely. And I
16 should have covered that, too.

17 THE WITNESS: I've got to go to the
18 bathroom.

19 MS. MCCLURKIN: We can take -- we can take a
20 ten-minute break, although --

21 THE WITNESS: Wait a minute. You don't
22 understand. My kidneys don't hold up good. When
23 I say I got to go to go bathroom, I've got to go
24 to the bathroom.

25 MR. PARKER: Well, take off --

1 THE WITNESS: I'm sorry.

2 MR. PARKER: Take off -- take your mic off.

3 THE VIDEOGRAPHER: This completes media unit
4 one of the deposition. We're going off the
5 record at 10:59:30.

6 (A break was taken.)

7 THE VIDEOGRAPHER: We're going back on the
8 record. This is the start of media unit two. On
9 the record at 11:06:45.

10 BY MS. MCCLURKIN:

11 Q Mr. Wise, I think the question that I had
12 asked you when we took a break was do you recall
13 whether you received any other treatment, any other
14 medical treatment, as a result of that trip-and-fall
15 incident?

16 A I think Keith took me back once after that,
17 but honestly, I'm not sure.

18 Q And on -- well, you know -- you know you
19 received at least one -- one medical treatment,
20 right --

21 A Yes.

22 Q -- on the day of the incident?

23 A Uh-huh.

24 Q And on that day, West Fraser's workers' comp
25 or their insurer paid for your treatment, right?

1 A Yes.

2 Q That wasn't something that you were charged
3 for, correct?

4 A No.

5 Q And do you know whether Mr. Nelson had any
6 communications with either anyone in human resources
7 or anyone else at West Fraser or their workers' comp
8 to -- to make sure that those benefits were paid?

9 MR. PARKER: I object. Those aren't
10 benefits.

11 THE WITNESS: Uh-uh.

12 BY MS. MCCLURKIN:

13 Q All right. Well, let me -- let me rephrase
14 the question. Do you know whether after this --
15 this -- after you were treated for the trip-and-fall
16 incident whether Mr. Nelson had any communications
17 with anyone in West Fraser HR to make sure that those
18 expenses were paid?

19 A I -- I don't know.

20 Q Do you know whether Mr. Nelson had any
21 communications with anyone else at West Fraser outside
22 of HR to make sure that those expenses were paid?

23 A I can't answer that because I don't know.

24 Q If -- if he did, do you find any fault with
25 that?

1 A It all depends. You don't have to go into
2 detail.

3 Q But you would agree with me that part of his
4 duties as safety director required him to sometimes
5 discuss to some extent on-the-job injuries with other
6 people at West Fraser who needed to know?

7 A My understanding is that the doctor writes
8 it up and it should be read, it should be put in the
9 file, not discussed. End of story.

10 Q But my question is about your understanding
11 of Mr. Nelson's duties as safety director, okay?

12 A Yeah.

13 Q All right. You agree that his -- some of
14 his duties required him to discuss on-the-job injuries
15 for purposes -- with other people at West Fraser who
16 needed to know for purposes of processing workers'
17 comp claims, right?

18 A Processing. Diagnosing me, no. He don't
19 need to go into detail what's what. It's just that
20 it's in.

21 Q All right. I think I understand what you're
22 saying so I'm going to -- I'm going to see if I can
23 clear it up.

24 You agree that Mr. Nelson as safety director
25 had duties to communicate things about on-the-job

1 injuries to people at West Fraser who needed to know
2 for the purposes of handling workers' comp claims,
3 right?

4 A Just like I said, to some extent yes.

5 Q And I think you're qualifying that because
6 you're saying that he should not, in your opinion, go
7 into -- go into detail about what the diagnosis was?

8 A Yes.

9 Q All right. In the statement that you
10 testified, about hearing that the unidentified
11 co-workers talking about as a result of the
12 trip-and-fall incident --

13 A Uh-huh.

14 Q I'm talking about the statement that
15 Mr. Nelson --

16 A Okay.

17 Q -- allegedly made.

18 A Okay.

19 Q Which was that you fell because you were
20 dragging your feet, right?

21 A Yep, and according to the doctor was that
22 the ring around my ankles.

23 Q That's what -- well, the ring around your
24 ankles, that's what the doctor observed and said to
25 you during your private examination, right?

1 A Yes. And it was also told to Nelson, too.

2 Q Do you -- do you know that for a fact based
3 on your own --

4 A Yes, Nelson he told me himself. I'm sorry.

5 Q That's okay. The question was do you know
6 that based on your own personal knowledge?

7 A Yeah, Nelson told me.

8 Q Doctor -- excuse me. Mr. Nelson told you --

9 A Yeah.

10 Q -- that the doctor told him that you had
11 these rings around your ankles?

12 A Yeah.

13 Q And so what was the connection between that
14 and you dragging your feet?

15 A I don't know. I'm just telling you what was
16 told to me and what I heard.

17 Q Do you have any -- any basis to say that
18 Mr. Nelson told anyone about the doctor's observation
19 about the ring around your ankles?

20 A He told me that the doctor told him that. I
21 do remember that. I do recall that and --

22 Q Do you have any --

23 A He asked me, he said -- they call me Hop.
24 He said, Hop, what the hell is he talking about. And
25 I told him I had on two pairs of socks because when

1 you wear steel-toed boots and you're on cement all day
2 or walking on uneven ground and all that, you need
3 something to help support your feet. And two pairs of
4 socks tends to help. And when you wear two pairs of
5 socks you know, compress socks, they going to fit you
6 tight no matter whether you got on one or two and it's
7 going to leave a ring.

8 Q All right. But this conversation that
9 Mr. Nelson had with you about what is the doctor
10 talking about about the rings around your ankles --

11 A Uh-huh.

12 Q -- that was a conversation between you and
13 Mr. Nelson, right?

14 A Yeah.

15 Q You don't have any information or any basis
16 to say that Mr. Nelson told anyone else at West Fraser
17 about the statement the doctor made about the rings
18 around your ankles, right?

19 A No more than what I heard. And like I
20 say --

21 Q But what you heard, I think, what your
22 testimony has been is what you heard is that
23 Mr. Nelson was saying that the reason you fell is
24 because you dragged your feet, right?

25 A Yeah.

1 Q That's what you heard?

2 A Yep, I heard that and I heard about the ring
3 around the ankles.

4 Q You heard someone else -- someone else told
5 you that Mr. Nelson was telling people in the plant
6 that you had rings around your ankles?

7 A Wait a minute. Wait a minute. You're
8 trying to put words in my mouth. What I'm saying is
9 that it was told that the reason I fell was that I was
10 dragging my feet. It was also included in there that
11 I had rings around my ankles that the doctor said.
12 Because he told Nelson and Nelson asked me about it.
13 And I told him, I said, I ain't going back to that
14 damn quack. Excuse me French. I'm sorry.

15 Q Okay. If you can, try to focus on the
16 question I'm asking you so that we can streamline
17 this. But what did Mr. Nelson supposedly say exactly?

18 A I just told you.

19 Q He said that you had rings around your
20 ankles and you fell because you were dragging your
21 feet?

22 A Yes.

23 Q And can you identify anybody who told you
24 that?

25 MR. PARKER: Wait a minute. We've been over

1 that. He said he couldn't. We're going to be
2 here -- we're not going to finish this today.

3 MS. MCCLURKIN: But he added the statement
4 about the rings around the ankles so that -- I'm
5 asking him about that.

6 MR. PARKER: No, he had already testified
7 that he could not remember who told him that so
8 why are we -- this is all -- and on the record,
9 this is all not relevant and leading to
10 discoverable evidence, so we're going to be here
11 for two days on everything that's occurred at his
12 workplace over this period of time when pretty
13 well the facts in this case are admitted, so I
14 don't get all this.

15 BY MS. MCCLURKIN:

16 Q Okay. The statement about the rings around
17 your ankles that you heard Mr. Nelson -- or that
18 someone told you that Mr. Nelson said, that was not
19 something that you personally heard, right, neither
20 one?

21 A Let's go -- let's try it one more time. I
22 told you Nelson even told me hisself that the doctor
23 told him because he asked me about it.

24 Q That's not my question, sir.

25 A Well, what is your question?

1 Q The question is --

2 MR. PARKER: Now, wait a minute. Now you're
3 getting out of line here. You've got a right to
4 ask him questions in a calm way without
5 getting -- showing your anger. Let's stay calm.

6 MS. MCCLURKIN: I'm not --

7 MR. PARKER: Let's stay calm and --

8 MS. MCCLURKIN: We need to go off the record
9 if you're going to make statements like that.

10 MR. PARKER: Well, no, this could be on the
11 record because you need to respect the witness,
12 he needs to respect you, I need to respect you,
13 but I'm -- what I'm saying is we've been going an
14 hour and a half now and we've gotten very little
15 things that could possibly be relevant. But you
16 go ahead.

17 MS. MCCLURKIN: All right. I will go ahead
18 and --

19 BY MS. MCCLURKIN:

20 Q All right. Mr. Wise, I'm going to -- I'm
21 going to reask the question, okay?

22 The statements -- I'm not asking you about
23 what Mr. Nelson said to you, okay? I'm trying to
24 confirm, and I understand that the statements that you
25 think Mr. Nelson said about the rings around your

1 ankles and/or about the reason that you tripped.

2 Those were things that came from other people, okay,
3 right? You didn't hear Mr. Nelson make those
4 statements to anyone else, right?

5 A No, uh-uh.

6 Q And no one about either statement, whether
7 it was the rings around your ankles or the reason that
8 you tripped, you can't identify one person who told
9 you that?

10 A It's more or less like I told you. We was
11 in a group where this come -- came up in more like in
12 a joking fashion, everybody getting a good laugh off
13 of it and all of that at my expense. So I just kind
14 of shoved it under the rug and kept moving.

15 Q So the answer is no?

16 A Huh?

17 Q So the answer is no?

18 A No to what?

19 Q To my question.

20 A I just told you.

21 Q You said -- I understand that it was in a
22 group and it was in a joking fashion. I understand
23 all that. Can you identify any person in this group?

24 A Do you -- do you realize how big the group
25 be?

1 Q It's a yes or no.

2 A No, because everybody was joking about it.
3 I can't -- I can't just say not one somebody when you
4 got a group of people there.

5 Q Let me talk to you some about your family.
6 You are married, right?

7 A Right.

8 Q And your wife's name is Pauline Wise?

9 A Yes.

10 Q Does she have a middle name?

11 A Cheyenne.

12 Q How long have you and Pauline been married?

13 A We've been married, if I'm not mistaken, 14
14 years, or 15, one of them.

15 Q Did you have any prior marriages?

16 A Yes.

17 Q What was your prior wife's name?

18 A Rosanna.

19 Q What is her last name?

20 A She was a Wilson before she married me.

21 Q What was the last name?

22 A Wilson.

23 Q Wilson.

24 A Yeah.

25 Q Any other marriages?

1 A No.

2 Q And I think I recall from your discovery
3 responses that you have seven children?

4 A Huh?

5 Q Maybe I don't. How many children do you
6 have?

7 A I have four girls and a son, which is
8 deceased.

9 Q Are those children -- are any of those
10 children with Pauline or are those children with
11 Rosanna?

12 A They're with my first wife.

13 Q Do you have any children with Pauline?

14 A No.

15 Q And you and Pauline live in the same
16 household?

17 A Yes.

18 Q What is the address?

19 A 148 Wentworth circle, Columbia, South
20 Carolina.

21 Q How long have you been at that address?

22 A We've been there, I want to say, I think
23 about four years when we bought the house. Might have
24 been a little longer.

25 Q And prior to that did you also live in

1 Columbia?

2 A Yes.

3 Q Have you and Pauline lived in Columbia since
4 you were married?

5 A Yes.

6 Q So for the entire 12, 13 years?

7 A Yes.

8 Q And Columbia, what county is that?

9 A What what?

10 Q What county is that in, if you know.

11 A That's Richland County.

12 Q Okay. How long did it take you to get to
13 work at the mill in Newberry?

14 A It all depends on traffic.

15 Q Do most of your co-workers live here locally
16 in Newberry?

17 A Yes, pretty much.

18 Q Is there anyone who lives in Columbia that
19 you work with at West Fraser?

20 A No. Gilbert lives in there but he don't
21 work at West Fraser no more.

22 Q Is -- are there any other current employees
23 as West Fraser who live in the Columbia area?

24 A Not that I know of.

25 Q And I know you mentioned your son is

1 deceased.

2 A Yes.

3 Q I'm sorry to hear that. Your four
4 daughters, are they -- are they living?

5 A Yes.

6 Q And do they live in South Carolina?

7 A Two of them do.

8 Q Where do they live in South Carolina?

9 A One stay in Edgeville, the other stay in
10 Greenwood.

11 Q How far is that from Columbia?

12 A You figure anywhere from an hour or two-hour
13 drive.

14 Q How often do you see -- do you see the two
15 daughters that live in South Carolina?

16 A I seen them last -- last weekend, might have
17 been the weekend before that. They ended up burying
18 my son-in-law.

19 Q One of your daughter's --

20 A Yes.

21 Q -- husbands? I'm sorry to hear that as
22 well.

23 Do you see your daughters on a regular or
24 fairly frequent basis?

25 A Well, when I can. If I don't, we talk on

1 the phone.

2 Q Do either of your daughters -- do any of
3 your four daughters have any information that is
4 relevant to this lawsuit or the claims that you've
5 made in this lawsuit?

6 A No, uh-uh.

7 Q Your mother, I know she is also deceased now
8 and I'm sorry -- I'm sorry but -- I know that's
9 sensitive and, again, I'm not asking these questions
10 to make you feel uncomfortable. Did -- did she live
11 in Columbia?

12 A No.

13 Q When she was alive, where did she live?

14 A She lived in Prosperity.

15 Q How far is that from Newberry?

16 A To get to her house, about ten miles.

17 Q All right. What was her name?

18 A Joanne.

19 Q Last name?

20 A Wise.

21 Q All right. And after she was married to
22 your father, was she -- did she remarry at all?

23 A Yes.

24 Q But she didn't change her last name?

25 A Yes, she was a Moon (phonetic).

1 Q What was your father's name?

2 A Harry B. Wise.

3 Q And he is deceased?

4 A Yes.

5 Q All right. When did he -- when did he die?

6 A He died April 23rd. I can't remember the
7 year.

8 Q Was it prior to you coming to work at West
9 Fraser?

10 A He died before I started.

11 Q All right. Other than Pauline -- I'm sorry.
12 Do you need to take a break?

13 A No, go ahead.

14 MS. MCCLURKIN: Do you want to take a break?

15 MR. PARKER: It might be good to take a
16 break for a minute.

17 MS. MCCLURKIN: Okay.

18 MR. PARKER: Why don't you step outside.

19 MS. MCCLURKIN: Why don't we go off the
20 record.

21 THE VIDEOGRAPHER: Going off the record at
22 11:25:30.

23 (A break was taken.)

24 THE VIDEOGRAPHER: At 11:34:45 we're back on
25 the record.

1 BY MS. MCCLURKIN:

2 Q Your wife Pauline, does she -- is she
3 employed?

4 A Yes.

5 Q Does she have -- does she work full time?

6 A Yes.

7 Q Where is she employed?

8 A She works at Lowe's.

9 Q Is that the Lowe's in Columbia?

10 A Yes.

11 Q Do you know the street address?

12 A It's on Harbison is all I know.

13 Q All right. Does Pauline sometimes accompany
14 you to your doctors' appointments?

15 A Yes.

16 Q And is that something she's done pretty much
17 throughout your marriage?

18 A Yes.

19 Q Does she accompany you to all of your
20 doctors' appointments?

21 A When she can, yes.

22 Q And when she comes to your doctors'
23 appointments, does she come inside the exam room with
24 you?

25 A Yeah.

1 Q And does she sometimes talk to your doctors
2 along with you?

3 A Yeah.

4 Q And to the extent that you have -- that you
5 receive a medical diagnosis, that's information that
6 you share with your wife, right?

7 A Yes.

8 Q All right. Do you have a close circle of
9 friends and other family members?

10 A No.

11 Q Who would you consider your close circle?

12 A It's just me and her.

13 Q Mostly just you and Pauline?

14 A Yeah.

15 Q So to the extent that you have -- you don't
16 normally socialize outside of the home?

17 A No. I -- I go fishing sometimes but other
18 than that, no. We don't -- I don't -- we don't
19 believe in socializing.

20 Q All right. And is -- and why is that?

21 A We just like spending time with each other.

22 Q Okay. So it's just a preference to --

23 A Yeah.

24 Q -- to be kind of homebodies?

25 A Yeah.

1 Q And has that been the case most of your
2 entire marriage?

3 A Yeah. Yes. It's a whole different ballgame
4 now though.

5 Q What do -- what do you mean by that? I
6 mean, has it changed recently?

7 A Yes.

8 Q When did that change?

9 A It changed when all this other stuff come
10 up.

11 Q You're talking about the subject incident?

12 A Yeah, this lawsuit.

13 Q Since then have you been socializing outside
14 of the home more?

15 A If I leave home, she can't get me, then she
16 on the phone.

17 Q Okay. Well, the question was about whether
18 you have friends and family that you socialize with
19 outside the home --

20 A No, if I --

21 Q -- right?

22 A If I go out, nine times out of ten I'll be
23 by myself. I'll go to the mall, I'll get something to
24 eat, and I'll walk around. And that's about it. Like
25 I said, I'll go fishing. I got the one guy that I go

1 fishing with. I take him out on the boat sometimes.
2 And that's about the extent of it.

3 Q You're outside-the-home activities are
4 pretty much occasional fishing and going out to eat or
5 shopping?

6 A Yeah.

7 Q Other than that you and your wife mostly
8 stay home, right?

9 A Yeah.

10 Q Do you have -- do you use Facebook?

11 A I used to. Not no more.

12 Q When did you stop using Facebook?

13 A When all this stuff occurred.

14 Q "This stuff" you mean the -- the November 7,
15 2017 incident --

16 A Yes.

17 Q -- and events that followed?

18 A Uh-huh.

19 Q Yes?

20 A Yes.

21 Q Why did you stop using Facebook then?

22 A When somebody walks in the room and your
23 wife's sitting there, you and her, and you hurting and
24 you got people lurking around, and this fool comes out
25 of his mouth and says, Somebody's been changing sexual

1 partners. I'm looking at her and she looking at me.
2 But guess what, I'm the one sitting there hurting.
3 That was something put out there that was a total lie.
4 But once it's out there, you can't take it back. You
5 can't take it back. And it -- it -- you're a woman.
6 If somebody said that about your husband, what would
7 you think? It don't make no difference about the
8 test. The test showed I had nothing, not anything,
9 but yet still, that was a thought planted in her head
10 for no damn -- no reason at all.

11 Q And you're talking about the November 7,
12 2017 medical exam with Dr. Leap, right?

13 A Yeah.

14 Q Okay. I'm trying to clarify this for the
15 record so it makes sense when we come back and read
16 it. So I understand that, but what I'm asking you
17 about is I asked you about why that caused you to stop
18 using Facebook after that November 7, 2017 experience.

19 A Because I really didn't want to deal with
20 nobody because it seemed like everybody's looking at
21 you like, okay. You talk to different people that's
22 on there, well, maybe you done got something. So,
23 guess what, I just don't go on Facebook. I talk to my
24 grandson. He calls me on Messenger. My daughter
25 calls me so I can see my grandkids, but other than

1 that just to socialize with people, no, no, I don't.

2 I have people send me things but no, I don't, uh-uh.

3 Q You said that you are -- your wife tries to
4 accompany you to doctors' appointments whenever she
5 can, right?

6 A Yes.

7 Q And you're open with her about your -- your
8 medical health and any diagnosis you receive, right?

9 A Yes.

10 Q Do you share information about your medical
11 condition with others as a matter of course?

12 A I don't understand what you're saying.

13 Q Well, are you -- like you said you're open
14 with your wife about your medical diagnosis and your
15 medical health, right?

16 A Uh-huh.

17 Q Do you -- are you open with others other
18 than your wife --

19 A No, uh-uh.

20 Q -- with your medical condition?

21 A Ain't nobody's business but mine and hers.

22 Q It's not something that you talk about with
23 friends or other family members?

24 A No. If it's something about my diabetes or
25 simple stuff like that, yeah, we'll say something

1 about it because people that say something about it,
2 they got the same symptoms. But just to go out and
3 share and spread rumors, no, uh-uh.

4 Q It's not something you would just display
5 for the public to see?

6 A No, it ain't nobody's business what I got or
7 if I ain't got it or whatever.

8 Q Let me get you to take a look at --

9 MS. MCCLURKIN: I'll mark this as
10 Defendants' Exhibit 4 -- excuse me, Defendants'
11 Exhibit 5.

12 (Defendants' Exhibit 5, Facebook Page Screen
13 Shots, was marked for identification.)

14 MS. MCCLURKIN: And this has not been
15 produced.

16 BY MS. MCCLURKIN:

17 Q I'll represent to you this is screen shots
18 from your Facebook page, but you look at it and let me
19 tell you -- get you to confirm that for the record.

20 A Yeah, it's mine.

21 Q Okay.

22 MR. PARKER: We're going to solve that now.

23 MS. MCCLURKIN: Okay.

24 MR. PARKER: We're going to take a break and
25 let's go in here and talk about this just a

1 minute.

2 THE VIDEOGRAPHER: Going off the record at
3 11:42:50.

4 (A break was taken.)

5 THE VIDEOGRAPHER: At 11:48:30 we're back on
6 the record.

7 BY MS. MCCLURKIN:

8 Q All right. Mr. Wise, you recognize
9 Defendants' Exhibit 5 as posts from your Facebook
10 page, right?

11 A Say that again, now.

12 Q You recognize Exhibit 5 as a collection of
13 posts from your Facebook page, correct?

14 A Yes, uh-huh.

15 Q And you see that most of these posts are
16 after -- well, for the record, the exhibit I handed
17 you is 13 pages.

18 A Okay.

19 Q And some are -- let's see. Maybe starting
20 at Page 9 of 13. So Pages 1 through 9 of 13 -- well,
21 excuse me. Let's go -- Page 1 through 8 of 13 include
22 posts that you posted after the incident on
23 November 7, 2017, correct?

24 A Yeah, I guess so.

25 Q Okay. Let me get you to look at Page 8.

1 A Eight of 13?

2 Q Eight of 13, yes. Although, let me -- let
3 me just ask you generally. Your Facebook page, it is
4 a public page? In other words, anyone can view it,
5 right?

6 A I think. I don't know how my wife got it
7 set up.

8 Q You haven't done anything to adjust it so
9 that only your people you're friends with on Facebook
10 can see your page, have you?

11 A I don't know. My wife set this up.

12 Q Oh, your wife set it up, okay.

13 A Yeah.

14 Q Well, the posts on here, they are yours,
15 correct?

16 A I guess.

17 Q Well, you're not -- you're not testifying
18 that they're your wife's posts on your page, are you?

19 A She posts on my page, too. She go on my
20 page. She keeps up with what I do.

21 Q Okay. Well, if there's a post that I ask
22 you about that is not yours, will you tell me that?

23 A If I can.

24 Q All right. Well, look at -- look at Page 8.

25 A Okay.

1 Q Do you see the post that's dated February 5,
2 2018?

3 A February 5, 2018, uh-huh.

4 Q And it has your picture and your name next
5 to it?

6 A Uh-huh.

7 Q And the post reads: Well, I got one more
8 day before surgery. May God have mercy upon my soul.

9 A Uh-huh.

10 Q Yes?

11 A Yes.

12 Q And it looks like there were 32 comments
13 left, at least according to the post. Is that a post
14 that you wrote?

15 A Yes. Those are people that I know. They
16 was on my Facebook page before all this happened and a
17 whole lot of other stuff.

18 Q All right. But this February 5, 2018 post,
19 that's after the --

20 A Yes, ma'am.

21 Q -- subject incident, right?

22 A Yes.

23 Q And this is a post that you wrote, not your
24 wife or anyone else, right?

25 A Yes.

1 Q Which -- which surgery are you referring to?

2 A My cancer.

3 Q This is the one for your thyroid cancer?

4 A Uh-huh.

5 Q Yes?

6 A Yes.

7 Q It's hard for her to write down uh-huh or
8 uh-uh. That's why I say yes or no.

9 A I'm sorry.

10 Q All right. And then on February 7, 2018
11 there's a post. It has your picture and your name,
12 and it says: Well, people, this time I'm on my way.

13 Is that a post that you wrote?

14 A Yes. She wrote one.

15 Q I'm sorry. Is that a post that you wrote or
16 that your wife or someone else wrote?

17 A I don't know if I wrote that or she wrote it
18 because it was the day of surgery getting ready to get
19 cut on.

20 Q That's what the post is referring to?
21 Because that was going to be my question. That's what
22 the post is referring to, I'm on my way to have
23 surgery?

24 A Yes.

25 Q All right. Let me get you to look at Page

1 7. Do you see the post February 11, 2018: It's easy
2 to say you love somebody. Be living up to it complete
3 different.

4 A Yes.

5 Q Is that a post that you wrote?

6 A Yep, that's one I wrote.

7 Q All right. What did you -- what were you
8 trying to convey by that?

9 A Me and my wife, we was having some
10 disagreement.

11 Q All right. So is this post saying that
12 she's not living up to --

13 A No.

14 Q -- your love or that you're not living up to
15 your love or what is it intended to mean?

16 A This comes from that confusion, what
17 happened. And I was just, I guess, letting off steam.

18 Q And doing it via Facebook?

19 A Huh?

20 Q On Facebook?

21 A Yes because if I ain't mistaken, I was
22 talking to one of my daughters.

23 Q Who is Dale Elkin?

24 A He's a guy I used to work with that was in
25 that incident at Norbord.

1 Q At Norbord?

2 A Yeah.

3 Q Okay. He was involved in, sorry, the
4 termination claim --

5 A Yes.

6 Q -- against Norbord?

7 A Uh-huh.

8 Q When -- and I was asking you about this post
9 on February 11, 2018, and you said you were talking to
10 your daughter?

11 A I think I was. I --

12 Q What do you mean by that?

13 A Because, you know, my whole family was
14 concerned about what my wife had seen the surgery on
15 Facebook, and she was upset and all this other stuff
16 was kicking off at the same time, and it just wasn't a
17 good time in my life.

18 Q All right. But the post that I'm asking you
19 about was not -- it was something you put on your
20 public Facebook page, not something that you directed
21 to your daughter, right?

22 A It's on there but, like I said, I'm thinking
23 I was talking to her because she was asking me about
24 it and they was trying to cheer me up and all this.

25 Q All right. Let me get you to look at Page

1 6. You've got an August 7, 2018 post that says:
2 Thanks to everyone who wish me a happy birthday.

3 Is that a post that you wrote?

4 A Yeah.

5 Q And are you thanking people that wished you
6 happy birthday on Facebook or outside of Facebook or
7 both?

8 A I guess both. I got a lot of people -- a
9 lot of people know me and they had wished me a happy
10 birthday, and I was just trying to be polite and say
11 thank you.

12 Q Look at Page 5. The post -- looks like a
13 video's posted on October 1, 2018 called Stranger
14 Touch?

15 A Yeah.

16 Q Is that a post that you -- a video that you
17 posted?

18 A I think that's just something that was on
19 there. I don't think I posted that.

20 Q Okay. Who --

21 A It was just -- it just -- it was a -- more
22 or less a gag, the whole thing.

23 Q Was it -- was it put on your page by you
24 or --

25 A No, somebody else put it on there.

1 Q Who else has access to your page other than
2 you and your wife?

3 A I don't know, to be honest with you. I
4 don't know because people's hacking things right and
5 left right now so I don't know.

6 Q Do you -- you have Facebook log in
7 credentials, right?

8 A Yeah, but, you know, I don't -- I don't -- I
9 don't -- I don't know how to explain it to you, I
10 truly don't.

11 Q Okay. And I'm not asking you to identify
12 anyone who may have hacked your Facebook page or any
13 other account. But who has access to your Facebook
14 credentials that could log into your page and post
15 content?

16 A I don't know. I do not know.

17 Q Well, you have access, right? You have
18 those credentials, right?

19 A Yes, but I don't -- I don't log into my
20 Facebook page. It always be on. I don't log out,
21 don't log in, I just go in. And this time, I don't do
22 nothing on Facebook no more than Messenger, I talk to
23 my grandkids --

24 Q You're talking about --

25 A -- and my daughter.

1 Q -- as of the date of this deposition,
2 presently you don't do --

3 A Before that. It's been -- it's been -- it's
4 been before that.

5 Q All right. Well, we're looking at posts
6 that go through December of 2018, right?

7 A Uh-huh.

8 Q Yes?

9 A Yes, it's what you say.

10 Q Well, actually, there's on February 8th of
11 2019.

12 A What was that?

13 Q White man tells the truth about Trump, on
14 Page 1 --

15 A That was -- that was -- that was -- what
16 that was? I forgot what that was, but that was
17 something somebody sent me.

18 Q And then you turned around and posted on
19 Facebook?

20 A It done popped up on my Facebook.

21 Q All right. Well, is February 8th of 2019,
22 is that the last time you used Facebook?

23 A I -- honestly, I don't know. All I know is
24 I just don't use it no more.

25 Q Well, can we agree that you used it at least

1 until least February 8th of 2019?

2 A No, I can't agree to that because I'm not
3 sure.

4 Q You're not sure who posted this --

5 A No.

6 Q -- video about the Trump video?

7 A No.

8 Q All right. Look at the post underneath it,
9 December 24, 2018.

10 A Okay.

11 Q It's that time of the year to be happy. My
12 happiness left my 10/23/2018. The only one that loved
13 me no more what was going on.

14 Is that your post or did someone else post
15 that?

16 A I might have did that. I was thinking about
17 my mama.

18 THE COURT REPORTER: I'm sorry. I need you
19 to speak up, please.

20 THE WITNESS: I'm sorry. I said, I might
21 have did that while I was thinking about my mama.

22 BY MS. MCCLURKIN:

23 Q All right. And there's comments addressed
24 to you saying: Anthony, God is still here with you.
25 Lean on Him. No matter what, His grace and mercy are

1 always there.

2 And then there's one saying: Daddy, we love
3 you.

4 I'm guessing that's your daughter --

5 A Yes.

6 Q -- right?

7 A Uh-huh.

8 Q All right. I mean, you're not testifying
9 this isn't your information that you posted, are you?

10 A Now, like I said, I might have did post
11 that. I don't know. Like I said, I was thinking
12 about my mama.

13 Q Okay.

14 A And --

15 Q Okay. But -- so I understand you're saying
16 you're not using Facebook presently. But you used it
17 at least through the end of 2018, right?

18 A According to this. And see that -- that --
19 that lady right there (indicating), she works with my
20 wife, Becky.

21 Q All right. Let's talk about what we've been
22 calling the subject incident, so November 7, 2017. At
23 that time you're employed by Westberry working in the
24 shipping department, correct?

25 A Correct.

1 Q All right. Do you remember what time you
2 got to work that day?

3 A I think about 5:45.

4 Q A.m.?

5 A Yes.

6 Q What is the night shift schedule?

7 A 6:00 to 6:00.

8 Q 6:00 p.m. to 6:00 a.m., right?

9 A Right.

10 Q Who -- who else was already in the shipping
11 department when you arrived at work that day?

12 A I think Irving was there.

13 Q Is that his first name?

14 A Yes.

15 Q What's his last name?

16 A Oh, God. I can't tell you right off.

17 Q All right. Anyone else that you can recall
18 who was present at work that day?

19 A Yes, because before -- before the accident
20 or after?

21 Q Before, when you arrived at work.

22 A I think Chuck came in.

23 Q Chuck Price?

24 A Yes. You're just talking about the shipping
25 department or the whole plant site?

1 Q Just the shipping department, the area where
2 you were working.

3 A Every -- I think all the employees were
4 there because we had to clock in before 6:00.

5 Q So any employee who was scheduled to work
6 the day shift in shipping that day would have been
7 either there or arriving shortly --

8 A Right.

9 Q -- at -- when you arrived at 5:45 a.m.?

10 A Right.

11 Q And would the night shift employees be close
12 to coming off of their shift?

13 A Yes.

14 Q Is there anyone other than Irving, whose
15 name you can't recall, and Chuck Price that you
16 specifically remember seeing before the incident
17 occurred?

18 MR. PARKER: What's the question?

19 BY MS. MCCLURKIN:

20 Q Is there anyone other than Irving or Chuck
21 Price that you specifically recall seeing in the
22 shipping department before the incident occurred?

23 A I can't remember.

24 Q Okay. Tell me -- tell me what happened with
25 the incident.

1 A I -- I went out, got my card to check the
2 oil, water, and all the fluids in the forklift. I had
3 reported a week earlier about the hood wouldn't raise
4 up. It have a hydraulic hood on it. You hit a
5 button, the thing's supposed to pop open. It didn't
6 Hop open so I wrote it up. Told the supervisor about
7 it, told maintenance about it, and gave them the card
8 and everything.

9 So that morning I had been -- I tried to
10 lift it up like I had been doing. I had one foot up
11 on one side, one foot down this way, and when I pulled
12 up on it, I felt something give. And I got off and
13 Irving said -- Irving was sitting right there on the
14 other forklift. He say, You all right? No, man,
15 something gave. And by that time I could feel
16 everything swelling up.

17 So I went in there and told Chuck, I said,
18 Chuck, I need to get in the office so I can see what's
19 going on. So I went in the bathroom, they were
20 (indicating by sound). I mean -- what I mean was they
21 was swollen real bad and they were throbbing like a
22 toothache.

23 And he -- I went back and told Chuck, I
24 said, Chuck, I've got to go to the doctor. I'm
25 hurting something terrible. He said, Well, you want

1 me to get somebody? And I said, Yeah, get somebody
2 because I've got to go. He called Steve Johnson.
3 Steve Johnson is -- he was over the dry-in
4 superintendent, if I ain't mistaken. He come up
5 there, and it wasn't long after that I think Quinton
6 come in and --

7 Q Quinton?

8 A Yeah, Quinton Wilson. They gave me an
9 icepack and told me, Put them on. I mean, just,
10 uh-uh. I said, I got to go to doc's. Somebody got to
11 tell me what's going on.

12 They finally got ahold of Keith. Keith come
13 in and he wanted to wait until the company doctor get
14 in the office. I said, Uh-uh, uh-uh, uh-uh. I said,
15 We got to go. We got to go. I got to go. Somebody
16 got to tell me what's going on. I said, These things
17 are killing me. So --

18 Q And let me -- let me stop you and back you
19 up a little bit so we are clear on the record what we
20 talk about.

21 A Okay.

22 Q When you're saying "these things" and the
23 area that was swollen, we're talking about your
24 testicles?

25 A Right.

1 Q Okay. And when you said that you were
2 working in the forklift and you felt something give,
3 you -- what area of your body part did -- were you
4 hurting in?

5 A There.

6 Q Okay. So in the groin area?

7 A Yeah.

8 Q And did -- and Irving was there and
9 witnessed this?

10 A Yes.

11 Q And did Irving know where you were hurting?

12 A Yeah, because I told him.

13 Q And then I think you said you told Chuck
14 Price you needed to get into the office --

15 A Yeah.

16 Q -- so that you could go in the bathroom --

17 A Uh-huh.

18 Q -- and sort of self-examine what happened,
19 right?

20 A Yeah.

21 Q And did you tell Chuck Price where you were
22 hurting?

23 A Yes.

24 Q And then you went in the bathroom. Were you
25 by yourself in the bathroom?

1 A Yes.

2 Q And then you said Chuck Price called when
3 you came out of the bathroom.

4 A Uh-huh.

5 Q Are you able to walk at this time?

6 A Yeah, I'm walking. I'm wobbling.

7 Q But you're wobbling?

8 A Yeah.

9 Q Are you hunched over?

10 A Yeah.

11 Q So you weren't able to walk upright?

12 A No. When you -- when you -- when that
13 thing -- when it gave, it gave.

14 Q Okay. And I'm just -- I'm trying to
15 understand because I wasn't --

16 A You'd never understand.

17 Q Well --

18 A You're no man.

19 Q -- and there's that, too, so that's why I
20 got to ask you --

21 A I'm sorry.

22 Q -- a few questions. I don't have those and
23 I wasn't there.

24 Was -- when you came out of the bathroom --

25 A Uh-huh/

1 Q -- so you're walking but you're hunched
2 over, right?

3 A Yeah.

4 Q And where are your hands? Are you hands
5 covering --

6 A I'm holding --

7 Q -- your groin area?

8 A I'm holding them, holding them.

9 Q Okay.

10 A And like I told you, they -- they -- they
11 are throbbing and I'm feeling them swelling up.

12 Q All right. And you're in a lot of pain?

13 A Yeah.

14 Q And did anyone offer you a place to sit down
15 or --

16 A Yeah, I went in -- I went in the office and
17 sat down, in the shipping office, sat down.

18 Q Did you sit down in a chair or on a bench
19 or --

20 A I was sitting down in the chair. I kind of
21 leaned back like this here (indicating) and I sat down
22 and I was sitting there holding them. And then, like
23 I said, Quinton and them come in with an icepack and
24 told me to hold that on there, that it would probably
25 take the swelling down. But all that did was make

1 them throb worser. And we, like I said, waited till
2 Keith get there. Keith got there and he wanted to
3 wait until the company doctor opened up and I told
4 him, I said, No, no. I say, You got to take me to the
5 doctor now. So he took me over to the emergency room.

6 Q And I just -- let me catch up with you real
7 quick because I want to make sure I've got all the
8 names but then I'm going to ask you about what
9 happened in the emergency room.

10 Did -- Steve Johnson, what department does
11 he work in?

12 A He's -- at that time he was production
13 manager over dry-in. He was over the dry-in
14 superintendent.

15 Q All right. Do you know why Chuck Price
16 called him?

17 A Because dry-in superintendent in over
18 shipping.

19 Q All right. So he's -- and he was present
20 that day --

21 A Yes.

22 Q -- that morning?

23 A Uh-huh.

24 Q And he's upper management?

25 A Yes.

1 Q And did he physically come to the office
2 where you were?

3 A Yes.

4 Q And did he come back in the office where you
5 were sitting down?

6 A Yes.

7 Q All right. And was Quinton already there
8 when --

9 A No, Quinton came up a little later with the
10 icepack.

11 Q All right. Did you and Mr. Johnson discuss
12 anything about, you know, what happened or you were
13 hurting or anything else? Did you have a
14 conversation?

15 A Yeah, I told him that -- what happened and I
16 was hurting, where I was hurting at.

17 Q And that you wanted to go to the doctor?

18 A Yeah.

19 Q And what did Mr. Johnson say?

20 A He say, Hop, we'll get somebody.

21 Q And that's when Quinton showed up with the
22 ice pack?

23 A Yes.

24 Q And then was the next person who showed up
25 Keith Nelson?

1 A Yes.

2 Q All right. So the people who came to see
3 you in the office where you were sitting down and
4 holding your testicles in pain --

5 A Uh-huh.

6 Q -- were Steve Johnson, Quinton Wilson --

7 A Uh-huh.

8 Q -- Keith Nelson --

9 A Uh-huh.

10 Q -- and Chuck Price?

11 A Yeah, he was already -- see, he -- Chuck
12 is -- is more or less supervisor over shipping.

13 Q It was his office?

14 A Yes.

15 Q Okay.

16 A Well, we got -- we got more or less to like
17 this, the canteen and all of that little break area
18 all that, and then we got the part where you can fill
19 out bills of lading and all that on one side. But all
20 of it's just one big office.

21 Q Okay. All right. But Chuck Price also
22 would have seen you?

23 A Yeah.

24 Q And Irving saw when -- when this occurred
25 out in -- where were you?

1 A We was out in the yard.

2 Q You were out in the yard?

3 A Uh-huh.

4 Q And did Irving come into the office with
5 you?

6 A I -- I'm not for sure. All I know is told
7 him he had to write a statement.

8 Q They told Irving -- who told Irving?

9 A That's what Chuck was telling him. And
10 upper management told me he had to write a statement
11 to tell what he seen.

12 Q Because there had been an on-the-job
13 accident and potential injury?

14 A Yeah.

15 Q All right. Is Irving an hourly employee?

16 A Yes.

17 Q Do you know if he's still employed by West
18 Fraser?

19 A No, he's not employed by West Fraser
20 anymore.

21 Q Okay. Is that everyone who you recall
22 coming in to see you in the office as you're waiting
23 to be taken to the doctor?

24 A Yes.

25 MS. MCCLURKIN: Let's go off the record for

1 a second.

2 THE VIDEOGRAPHER: Going off the record at
3 12:43.

4 (Conference off the record.)

5 THE VIDEOGRAPHER: We're back on the video
6 record, correcting that we went off at 12:13.
7 We're back on at 12:14.

8 BY MS. MCCLURKIN:

9 Q About what time, if you know, did Mr. Nelson
10 arrive?

11 A It was after. I want to say between 6:30,
12 7:00. Might have been a little later.

13 Q So you weren't on the job very long at all
14 when this incident happened?

15 A No, because you had to check your equipment
16 out before you crank it up or anything.

17 Q Okay. So it's the first work that you tried
18 to perform that day and that's when you were -- you
19 had this incident?

20 A Yeah, it's automatically there.

21 Q Okay. And you think that Keith got there
22 about 6:30 or 6:45 a.m.?

23 A I don't know exact what time it was but I
24 know.

25 Q But approximately?

1 A Yeah.

2 Q That's your best judgment?

3 A Yes.

4 Q And what did Keith say when he arrived?

5 A He wanted to wait on the company doctor to
6 open up. And I told him I couldn't wait. So he ended
7 up taking me to the emergency room.

8 Q And the emergency room was at the Newberry
9 Memorial Hospital, right?

10 A Correct.

11 Q Did he drive you there in his vehicle?

12 A No, I don't think so. I think it was a
13 company vehicle.

14 Q But did -- okay. Did Keith drive you there
15 in the company vehicle?

16 A Yeah, I think so.

17 Q You didn't drive?

18 A No, I didn't drive, uh-uh.

19 Q Was your personal vehicle back at the West
20 Fraser mill?

21 A Yes.

22 Q All right. Tell me what happened when --
23 well, was anyone else in the company vehicle when you
24 and Keith Nelson drove to the emergency room?

25 A No, it just -- just the two of us.

1 Q All right. Did you contact anyone in
2 between leaving West Fraser and going to the emergency
3 room?

4 A I called my wife.

5 Q Anyone else?

6 A No.

7 Q What did you tell your wife?

8 A I told her, I said, Don't come up the road
9 like you're crazy. I said, I'm heading to the
10 hospital. I said, Take your time. I said, I'm all
11 right but I had felt something pull in my groin. I
12 said, You need to come on up and I left it at that.

13 Q And when you said to her, "Don't come up the
14 road like you're crazy," you meant don't -- don't
15 drive unsafely?

16 A Yeah, don't drive fast because she get
17 excited when things happen to me.

18 Q So you said, you know, get here but take
19 your time, right?

20 A Yes.

21 Q Okay. And was she at the hospital when you
22 arrived?

23 A No, she got there a little later.

24 Q Tell me what happened when you arrived at
25 the hospital.

1 A When I got to the hospital, I -- they put me
2 in a little -- they finally got me in a little room.
3 I sat on the outside, they signed me in, and then they
4 put me in one of those little rooms in the back.

5 Q Were you able to walk inside by yourself or
6 did they get a wheelchair or stretcher and help you?

7 A I limped on in there.

8 Q All right. Did Mr. Nelson assist you as you
9 were walking in?

10 A No, I limped in on my own.

11 Q All right. Was he walking next to you?

12 A Yeah, next to me, kind of behind me, or in
13 front of me, I don't know. All I was trying to do was
14 get in.

15 Q And did you and Mr. Nelson have any
16 conversation about -- about the incident prior to
17 getting to the hospital, about what happened?

18 A I told him what happened on the job site.
19 They wanted to know that and I told him what happened
20 on the job site. And that's what -- they finally
21 decided they was going to go ahead and take me to the
22 hospital, the emergency room.

23 Q All right. And on the way to the emergency
24 room, did you and -- did you and Mr. Nelson discuss
25 your injuries?

1 A No, there wasn't nothing to discuss. They
2 were hurting. I didn't want to talk. I just wanted
3 to find out what was going on.

4 Q All right. And so when you got there, you
5 walked into the emergency room and you signed in,
6 right?

7 A Uh-huh.

8 Q And then they eventually put you in an exam
9 room, right?

10 A Right.

11 Q And where did Mr. Nelson go?

12 A At first he was sitting on the outside, and
13 then he started floating around, around in the
14 hospital back in there. He say, I got to go smoke a
15 cigarette, in and out, round through there like that
16 right there (indicating).

17 Q All right. So he wasn't sitting in the exam
18 room with you?

19 A No.

20 Q Okay.

21 A But he ease his way in there peeping through
22 the door like this (indicating).

23 Q Okay. So when you first got to -- into the
24 exam room --

25 A Uh-huh.

1 Q -- are you -- are you waiting on a nurse or
2 had you been seen by a nurse or a doctor?

3 A No, I hadn't been seen by nobody.

4 Q All right. Are you sitting on the bed, the
5 hospital bed?

6 A Yes, uh-huh.

7 Q And is that when Mr. Nelson was floating
8 about the hospital and going outside and taking
9 smoke -- smoke breaks?

10 A Uh-huh.

11 Q Yes?

12 A Yes.

13 Q Okay. And did Mr. Nelson return into the
14 hospital that you saw before you saw the nurse or the
15 doctor?

16 A It was -- had a nurse come in and told me I
17 needed to take my pants off.

18 Q And where was Mr. Nelson then? Do you know
19 what -- if you know?

20 A Right, but I don't know. Last time I seen
21 him he was peeping in the room like this right here
22 (indicating).

23 Q Okay. I'm going -- I'm going to go back to
24 that, but when the nurse -- the nurse is the first
25 person who -- from the hospital who saw you that day,

1 right?

2 A Yes.

3 Q And she said you're going to need to remove
4 your pants?

5 A Yes.

6 Q And Mr. Nelson wasn't in the room at that
7 time?

8 A Not that I can recall. I don't know.

9 Q You don't recall seeing him in the room at
10 that time, right?

11 A No, I don't. I'm not for sure but I don't
12 think I seen him in there then right at that moment.

13 Q If Mr. Nelson had been in the exam room when
14 the nurse asked you to remove your pants, would you
15 have asked him to leave?

16 A He shouldn't have been in there from the
17 start. He shouldn't have been floating around in
18 there.

19 Q Well, but you've already said that you don't
20 remember if he was in there so -- right?

21 MR. PARKER: Object because he said he
22 didn't know whether he was in there, so how can
23 he say what he would do if he was in there?

24 THE WITNESS: Like I told you, he kept
25 floating around.

1 BY MS. MCCLURKIN:

2 Q When you say "floating" -- and you said he
3 was going outside to take smoke breaks and he's just
4 walking around the hospital, right?

5 A Back in the examining part back there.

6 Q All right. From your hospital bed is
7 your -- where's your curtain? Is it open or closed?

8 A There wasn't no curtain.

9 Q Was there a door?

10 A Yeah.

11 Q Okay. Was the door open or closed?

12 A Open.

13 Q All right. So your line of view as to what
14 you could see, what did it include? So you're sitting
15 in the hospital bed. What can you see outside the
16 door?

17 A I can see the hallway, I can see part of the
18 nurse's station, and I can see people going up and
19 down.

20 Q All right. So unless Mr. Nelson was walking
21 in that line of view that you just described, you
22 don't know really where he was, right?

23 A Right.

24 Q All you can say is whether he was in that
25 line of view or inside your exam room, right?

1 A Right.

2 Q And you don't -- when the nurse first came
3 in and asked you to remove your pants, the best of
4 your memory is that Mr. Nelson was not in the room at
5 that time?

6 A I can't -- honestly, I can't remember
7 whether he was in the room. All I know is when I
8 looked up, he was like this here (indicating) in the
9 doorway.

10 Q Okay. Was that when the nurse was there
11 asking you to remove your pants?

12 A I -- I can't remember. I can't remember if
13 she was still there or not. I can't remember if she
14 was still there.

15 Q All right. When you saw Mr. Nelson lean his
16 head into your exam room, is that -- is that accurate?

17 A It wasn't more or less lean, you walk by a
18 door and you turn, and he like this right here
19 (indicating). He's standing in the doorway.

20 Q Okay. So --

21 A If I ain't mistaken, he was on the left-hand
22 side of the door.

23 Q So he's standing in the doorway?

24 A Yeah.

25 Q And you're there in the hospital bed, right?

1 A Yeah.

2 Q Are -- have you taken your pants off yet?

3 A Yeah, I had them down around my knees and
4 all this.

5 Q Okay. And is the nurse still there?

6 A I can't remember whether she was still
7 there.

8 Q Was the doctor there?

9 A I think the doctor came in later.

10 Q Was anyone else -- when Mr. Nelson came and
11 stood in the -- at the left side of the doorway, was
12 anyone else in the room with you at that point?

13 A I can't remember. I can't remember because
14 I was hurting something terrible. So I can't -- I
15 can't remember who -- if he was in the room or not at
16 that point.

17 Q Okay. And that's fine. If you can't
18 remember, that's a perfectly, you know, reasonable
19 answer. But if -- if -- you said that you have this
20 memory of Mr. Nelson sticking his head either inside
21 or at the front of the doorway so I'm trying to figure
22 out what was going on at that time. And I think your
23 testimony is to your knowledge you can't remember
24 anyone -- whether anyone else was in the room at that
25 time?

1 A Right. I don't remember anyone else in the
2 room at that time. I can't remember whether somebody
3 else was in there at that time or not.

4 Q All right. And when Mr. Nelson did that,
5 that was after you had seen him floating about the
6 hospital and going and taking smoke breaks, right?

7 A I think so.

8 Q Well, I don't want you to guess. Do you
9 remember? Do you -- do you know or not?

10 A I remember him standing in the doorway like
11 this right here (indicating).

12 Q All right. When you said before that he was
13 floating about and going and smoking cigarettes, how
14 do you know that he was going and smoking cigarettes?

15 A Because that's what he do.

16 Q All right. Are you testifying about
17 something that you actually saw or that he told you he
18 did? I'm asking how you know?

19 A When he -- he came -- he came in the room
20 one time right before the doctor. I don't know
21 whether -- let me make sure. I don't know whether it
22 was before the doctor or after the doctor. And he
23 said, I'm going to smoke a cigarette, and he left.
24 But like I tell you, he kept coming in, going out,
25 coming in, going out. When my wife came there, he was

1 trying to explain to her why -- what happened and why
2 he was there. And she was saying, I'm here now. So
3 he left.

4 Q How long --

5 A That's --

6 Q Okay.

7 A That's when the doctor came in and he said
8 that they -- we going to run some tests and see what's
9 going on.

10 Q Okay. But before -- you're getting ahead of
11 me so -- and I'm going to let -- we're going to get to
12 all of that. But you said your wife got there. About
13 how long do you think you'd been at the hospital when
14 your wife arrived?

15 A Oh, God. Maybe an hour.

16 Q Had you already seen the doctor?

17 A No.

18 Q Okay. Had you seen the nurse?

19 A The nurse had come in and told me to take my
20 pants off.

21 Q So you'd already seen the nurse but not yet
22 the doctor, right?

23 A Not yet the doctor.

24 Q And was your wife having to drive from --
25 was she at work that day?

1 A Yeah, Lowe's.

2 Q Lowe's in Columbia?

3 A Uh-huh.

4 Q Yes?

5 A Yes.

6 Q And is that about an hour drive?

7 A It all depends.

8 Q Okay. But she got there in about an hour,
9 you think?

10 A Yeah, or before.

11 Q Okay. And she and Mr. Nelson had a
12 conversation when she arrived, right?

13 A Yeah, he -- he was talking to her.

14 Q Could you -- was it in your presence? Could
15 you hear what they were saying?

16 A Yeah, it was in my presence but I -- I
17 really wasn't interested in what he was telling her.
18 I was hurting real bad.

19 Q So you weren't focused on what they were
20 saying?

21 A Yeah.

22 Q Okay. And do you remember what they were
23 saying at all?

24 A Vaguely. He -- he was trying to explain
25 something to her and -- I don't know. And I remember

1 her saying that, I'm here now.

2 Q Was she saying I'm here now so you can --

3 A Yeah.

4 Q -- go, Mr. Nelson, right?

5 A I guess. I don't know. Like I said --

6 Q Okay.

7 A -- I remember her saying that.

8 Q That's all you can remember from hearing
9 between Mr. Nelson and your wife that day?

10 A Uh-huh.

11 Q And was that conversation in the exam room
12 or was it out in the hallway?

13 A It was -- it was right there in front of me,
14 right -- right in that area.

15 Q Was it in the exam room?

16 A Yeah, right there in the area. What I'm
17 saying is, you don't understand how that exam room's
18 made. It's more or less open. It's not closed.

19 Q But you said it had a door, right?

20 A I don't remember seeing no door.

21 Q Okay.

22 A There might have been one there but I don't
23 remember seeing no door.

24 Q I thought before you said it had a door and
25 it was open?

1 A It got -- it had a doorway but I don't
2 remember seeing no door.

3 Q And do you remember whether there was a
4 curtain or anything to --

5 A If I'm not mistaken here, there was a
6 curtain there. I don't know if it had glass all
7 around it.

8 Q All right. And then did -- Mr. Nelson
9 stayed, right, after your wife got there?

10 A I ain't --

11 Q Well, no, I'm sorry, you said he left,
12 right?

13 A I don't know. I don't know. All I know is
14 I told you I remember her saying that I'm here now.
15 And I don't know whether he stayed because I was
16 turned over on one side sitting there holding my
17 testicals and --

18 Q Okay. And did -- but after she said, I'm
19 here now, you can leave, Mr. Nelson, did --

20 A Wait a minute. Wait a minute now. I don't
21 know if she said you can leave now. All I know is she
22 said that I'm here now.

23 Q Okay. But I think we agreed that it was in
24 the context of your -- you don't need to stay here
25 anymore because I'm here now?

1 MR. PARKER: I object. That wasn't his
2 testimony. That's your testimony.

3 MS. MCCLURKIN: I thought he said --

4 BY MS. MCCLURKIN:

5 Q Do you disagree with that?

6 A I just --

7 Q I thought you already --

8 A I told you that --

9 Q Well, it's in the record.

10 A -- all I heard was that she said that I'm
11 here now. And I wasn't interested in that
12 conversation. You don't understand. When you hurting
13 the way I'm hurting, that's all you can think about.

14 Q All right. And they're standing there in
15 the doorway area having the conversation, right?

16 A Yes, I guess.

17 Q And then after that do you remember whether
18 Mr. Nelson walked away or did he stay there with your
19 wife in the doorway?

20 A I keep telling you, I do not know.

21 Q Okay. And about how long -- well, did
22 anyone else from the hospital come and see you before
23 the doctor got there in between the time your wife
24 arrived and the time that Dr. Leap arrived?

25 A They -- the doctor came in and he said,

1 Well, we're going to take you back there and check you
2 out. So the nurse came in and -- a wheelchair and
3 they wheeled me in the back, put me on I reckon some
4 kind of examining table, and they took X-ray, some
5 kind of test they took and all that.

6 And they wheeled me back out and I was
7 laying there in the bed. While I was laying there in
8 the bed, another little nurse come in with some
9 medication or something. She shot half of that down
10 the sink, and she give me some. It kind of made me
11 woozy and all this. And I'm sitting there, and I
12 asked her, I said, Why did you do that? She said, I
13 don't know. Maybe it looked like it was too much. So
14 she left.

15 And then the doctor come in and he said,
16 Well, we don't see no -- whatever he was saying that
17 caused a hernia and all that. Now, my wife is there
18 and all these people out in the hall and the nurse is
19 in the room. And that fool come out of his mouth and
20 said something about there been a change in sexual
21 partners.

22 Q Who said that?

23 A The doctor.

24 Q Dr. Leap?

25 A Yeah.

1 Q And --

2 A Nelson standing there like this right here
3 (indicating).

4 Q All right. So we're going to break some of
5 this down. So you -- you said that -- because my
6 question was did you see anyone else in between your
7 wife arriving and the doctor arriving, and then you
8 gave this --

9 A This -- this --

10 Q -- this story.

11 A This is what happened.

12 Q Okay. But -- so I'm going to break it down,
13 though. All right. So you went -- they took you to
14 an X-ray room, right?

15 A Yeah.

16 Q And that was -- who was in the X-ray room?
17 The nurse was there?

18 A Yeah.

19 Q All right. Was Dr. Leap there?

20 A No.

21 Q No. Was your wife there?

22 A No, she wasn't back there with me.

23 Q Was doc -- was Keith Nelson there?

24 A Not back there when they're doing the X-ray.
25 Wasn't nobody in there but me and the X-ray

1 technician.

2 Q Okay. And then they -- the X-ray technician
3 or the nurse brought you back to --

4 A That little holding area.

5 Q Okay. And put you where, on the bed?

6 A Back in the bed.

7 Q And who's in the room or the holding area?

8 A My wife was there and then after that, the
9 doctor come in. The nurse come in and give me a shot
10 before the doctor got there. And then he come in and
11 he was trying to explain to me about I didn't have no
12 hernia or nothing, and then this change of sexual
13 partners come out.

14 Q That's when that statement was made?

15 A Yeah.

16 Q All right. The nurse that gave you the
17 shot --

18 A Uh-huh.

19 Q -- you said before she injected you she
20 dumped -- she injected half of it into the sink?

21 A Yeah.

22 Q All right. Do you know what medication that
23 was?

24 A I don't know what it was.

25 Q Was it an antibiotic?

1 A I don't know what it was.

2 Q You don't know. You said it made you woozy,
3 right?

4 A Yeah.

5 Q Did you ask the doctor or the nurse, why am
6 I feeling woozy?

7 A I asked her what it was but she couldn't
8 give me no answer. And I asked him, and he really
9 didn't tell me nothing either.

10 Q So the nurse -- neither the nurse nor
11 Dr. Leap were able to tell you what the medication was
12 that they injected?

13 MR. PARKER: Object to the form of the
14 question.

15 THE WITNESS: They didn't tell me about the
16 medication. You know, the whole case scenario
17 was wrong. I don't know if you understand that
18 but that whole deal there was wrong. Number one,
19 when I went in there and being hurt on the job,
20 that's why they got a drug test. That's number
21 one priority right there. Anytime you get hurt
22 on the job, automatic drug test before treatment.
23 Never got one. Never got one.

24 BY MS. MCCLURKIN:

25 Q Okay. And I don't mean to interrupt you but

1 we do have -- we do want to get out of here as quickly
2 as possible so --

3 A Okay.

4 Q And your attorney can ask you questions if
5 this is information that needs to be on the record.
6 But I'm going to try to get you to answer my
7 questions.

8 When -- you do not know and don't know
9 sitting here today what the injection was that you
10 were given, right?

11 A No.

12 Q And when Dr. Leap came in after you got the
13 injection, was the nurse in the room?

14 A There was a bunch of people in the room.

15 Q All right. Tell me -- tell me everyone.

16 A I can't tell you everyone because I ain't
17 know everyone.

18 Q Okay. Tell me everyone that you can
19 identify.

20 A My wife was there, the doctor was there,
21 nurse was there, people standing out in the hall. I
22 don't know who them people was. All I know is they
23 worked at the hospital.

24 Q Okay. You've told me everyone that you can
25 identify by name or position, right?

1 A Yeah.

2 Q Okay. And Dr. Leap said -- the first thing
3 he said to you was I don't see anything to cause me to
4 believe that you have a hernia?

5 A Yeah.

6 Q And then the second thing he said to you was
7 what?

8 A Looks like somebody's been changing sexual
9 partner.

10 Q All right. What was the next thing that he
11 said?

12 A He looked at me crazy and I'm looking at
13 him. What else you going to say?

14 Q All right. Did you -- did you have a
15 response to that, to Dr. Leap's statement?

16 A I'm looking at my wife then.

17 Q Did you have a verbal response to Dr. Leap's
18 statement?

19 A No. I'm looking at him like he's damn
20 crazy.

21 Q And you're looking at your wife?

22 A Yeah.

23 Q And did she have a verbal response to Dr.
24 Leap's statement?

25 A No, she's looking at me, too. She's looking

1 at me, I'm looking at her, and then we looked at him.
2 And then that's when we looked at everybody.

3 Q Okay. Nelson was not some -- one of the
4 people that you identified as being in the room. Are
5 you saying now --

6 A Yes, I did.

7 Q -- that he was in the room?

8 A Yes, I did say that.

9 Q Okay.

10 A You weren't listening to me.

11 Q All right. Let me make sure I've got it
12 right. So the people that you can identify by name or
13 position that were in the room when Dr. Leap made this
14 statement were your wife?

15 A Yes.

16 Q Dr. Leap?

17 A Yeah.

18 Q A nurse?

19 A Yes.

20 Q And Keith Nelson?

21 A Yep, and -- and a lot of more people was
22 standing right there in the line of fire and could
23 hear all this.

24 Q But you've now told me everyone you can
25 identify by name or position, right?

1 A Yeah, as far as -- as far as I know.

2 Q All right. And so did -- did Keith Nelson
3 do or say anything in response to what Dr. Leap said?

4 A All I know is after that, they left out and
5 had a conference.

6 Q I'm sorry, what?

7 A They left out and started talking to each
8 other.

9 Q Dr. Leap and Keith Nelson?

10 A Nelson, yeah.

11 Q And did the nurse leave?

12 A I think so.

13 Q And you and your wife stayed alone in the
14 room or the holding area that we've been talking
15 about?

16 A Yeah, with everybody else around like this
17 (indicating).

18 Q And what -- what else -- I mean, what
19 happened after Dr. Leap made this -- or allegedly made
20 this statement about it looks like somebody's been
21 changing sexual partners?

22 A He walked out.

23 Q That was it? That was his diagnosis?
24 That's all he said?

25 A That -- that's all -- after that, that's all

1 I heard. When I -- when they got ready to roll me
2 out, a friend of mine, she came to me and she was
3 telling me, she said, That wasn't right.

4 Q Sorry. You had a friend that was there --

5 A Yes.

6 Q -- at the hospital? What's her name?

7 A It don't -- it don't matter. She's dead.

8 Q What was her name?

9 A Kathy Stry -- Stroud (phonetic).

10 Q Why was she at the hospital?

11 A She worked there.

12 Q All right. Was she in the room when this
13 happened?

14 A She heard it.

15 Q Was she in the room when it happened?

16 A I don't know. She was telling me, That
17 ain't right.

18 Q What's not right?

19 A What was told, what was said, that shouldn't
20 have never happened.

21 Q All right. What was -- what's her last --
22 how do you spell her last name?

23 A I don't know. It's just like I told you,
24 she's deceased.

25 Q Kathy, did you say it was Stroud?

1 A Yeah.

2 Q And she was an employee of the hospital?

3 A Yeah.

4 Q All right. Did Dr. Leap say anything else
5 to you other than telling you he couldn't find any
6 evidence of a hernia and it looks like someone's been
7 changing sexual partners?

8 A I can't remember. I remember -- I remember
9 he evidently, he must have told Nelson that.

10 Q I'm going to --

11 MR. PARKER: Wait a minute. He can answer
12 the question. You don't get --

13 MS. MCCLURKIN: That wasn't the question.

14 MR. PARKER: It doesn't matter. You cannot
15 interrupt him.

16 Go ahead.

17 THE WITNESS: He told Nelson because Nelson
18 said -- told me that he said somebody got some
19 kind of infection. And Nelson was telling me,
20 Well, maybe your wife got some kind of infection.
21 And I said a couple of few choice words that I
22 don't want to say in here and asked him was he
23 crazy.

24 BY MS. MCCLURKIN:

25 Q All right. Well, I'm going to go back to

1 the question I asked and then we'll come back to all
2 that.

3 Did Dr. Leap say anything to you or in your
4 presence other than he doesn't find any evidence of
5 hernia and it looks like someone's been changing
6 sexual partners?

7 A And I'm telling you one more time, if he
8 said anything else after that, I do not know simply
9 because when that -- when you get something shocking
10 like that slapped in your face in front of your wife
11 and you know you ain't did nothing, what you going to
12 hear after that? That's -- that's a shock to
13 anybody's system.

14 Q And so if the answer is not that you can
15 recall, you can just tell me that. But I -- so I want
16 to make sure I'm clear. You didn't hear --

17 A You (unintelligible) --

18 Q -- that can you recall --

19 All right. Well, explain it to me. Was
20 there another statement that you can tell me about
21 today that you can recall Dr. Leap making in your
22 presence?

23 A Like I said, he -- he -- he said something.
24 I do not know exactly what he said. Like I said, him
25 and Nelson left out the room.

1 Q So in your -- you've already told me about
2 all the statements from Dr. Leap that you can remember
3 that were made in your presence, right?

4 A As far as I can recall at this time.

5 Q And what -- did you get any other treatment
6 from -- or any other testing done other than the
7 X-rays and the shot that you don't know what it was?

8 A Wait --

9 Q I'm sorry. That was a bad question.

10 A Yeah, I know.

11 Q You told me about the nurse gave you a shot
12 and you don't know what medication that was, right?

13 A No, not at -- to be honest with you, not at
14 the time, no, I didn't. But Nelson went back and told
15 them on the job that I got some kind of antibiotic.

16 Q All right. When you got back to the --
17 well, that statement that you just made that
18 Mr. Nelson went back to the job and told someone that
19 you got some kind of antibiotic --

20 A Uh-huh.

21 Q -- is that something that you personally
22 heard?

23 A No, that was something I was personally told
24 from a couple different people and were asked about
25 it.

1 Q All right. Can you identify anyone who told
2 you that?

3 A Yeah, George Wilson told me you.

4 Q George Wilson told you that?

5 A Yeah.

6 Q And what exactly did George Wilson tell you
7 that Keith -- that he heard Keith Nelson say?

8 A Keith Nelson, George asked him how was I
9 doing. And to my understanding, Nelson hollered
10 across the parking lot and told him, said, He got some
11 antibiotics and it didn't come from the accident.

12 Q All right. That's what George Wilson told
13 you?

14 A Yeah.

15 Q Okay.

16 A And the plant manager told me out of his own
17 mouth firsthand that, Didn't you get some antibiotics?

18 Q By "plant manager" are you meaning DJ
19 Russell?

20 A Yes.

21 Q All right. Did anyone -- any employee of
22 West Fraser tell you that they personally heard Keith
23 Nelson make any statement about you having a sexually
24 transmitted disease?

25 A Yep.

1 Q All right. Who?

2 A Bruce -- Bruce Young heard the whole
3 conversation.

4 Q Bruce Young told you that he heard Keith
5 Nelson say --

6 A The whole conversation that he was telling
7 that day. I was told by Mike Shealy that Keith called
8 him in his office and was discussing the situation.

9 Q When you say -- but I'm asking specifically
10 about the sexually transmitted disease component of
11 it. Did anyone from West Fraser tell you that they
12 personally heard Keith Nelson say that Anthony Wise
13 has a sexually transmitted disease?

14 A I just told you that.

15 Q All right. And the person is Bruce?

16 A Bruce Young --

17 Q Bruce Young.

18 A -- heard the whole conversation.

19 Q And Mike Shealy?

20 A Yep. He called Mike Shealy in his office
21 and was discussing it.

22 Q Okay. Anyone else other than Mike Shealy or
23 Bruce Young who told you that they heard Keith Nelson
24 say that you had an STD?

25 A CJ -- God -- Dudley.

1 Q CJ Dudley told you that?

2 A Yeah. He talked to Keith personally and
3 Keith was telling him about it.

4 Q All right. So you given me three names. Is
5 there anyone else who's told you that they personally
6 heard Keith Nelson say that you had an STD?

7 A I don't know who all done said what. Like I
8 said, when -- when I got back to work -- I was out of
9 work a week. When I walked back on the plant cite,
10 that's the first thing I heard.

11 Q Right. And I know -- I know there were
12 things that were said to you, but I'm asking you just
13 specifically about the people who told you that Keith
14 Nelson said that you had an STD.

15 A Harry Shelton was telling me that Nelson was
16 telling it, Chuck Price was telling it. And then I
17 had other guys telling me all what they heard from --

18 Q From Keith Nelson?

19 A From all this.

20 Q And --

21 A I'm not -- I'm no -- I can't sit here and
22 say that they heard it directly from him, but it went
23 through that plant like a wild fire.

24 Q Okay. But -- and we're going to get to
25 that, but I think we've got to take a break soon. So

1 before we do that, I just want to make sure these
2 names that you've given me, are these people who said
3 to that that they personally heard Keith Nelson say
4 that you had an STD?

5 A No, I didn't say that. I'm telling you once
6 again that's what was going through there and that's
7 where they said it came from. I can't sit here and
8 tell you that they told me they personally heard it
9 from them no more than the ones that told me that they
10 heard it from him.

11 Q Okay.

12 A Other than that, I don't know. All I know
13 is what they was telling me what was going on and what
14 they was ragging me about.

15 Q And these individuals telling you what was
16 going on, you mean the rumors that were going around
17 about you having a sexually transmitted disease,
18 right?

19 A Yes.

20 Q And the things that they were saying is that
21 it came -- it originated with Keith Nelson, right?

22 A Yes.

23 Q But none of them told you that they
24 personally heard Keith Nelson make the statement,
25 right?

1 A Bruce Young did.

2 Q Okay. Is he the only one that told you he
3 personally heard Keith?

4 A I don't -- I don't -- I can't recall who
5 else told me, but I know Bruce was telling me he heard
6 the whole conversation when he was telling Chuck and I
7 don't know who else.

8 Q All right. Is there anyone else that you
9 can identify by name who heard or claims to have heard
10 Keith Nelson make the statement?

11 A I ain't -- I don't know. Like I said, I was
12 ragged so bad about all this, I can't remember who all
13 was saying what. All I know is everybody in my
14 department was ragging me about it.

15 Q Everyone in your department was talking
16 about it. But the --

17 A Yeah.

18 Q -- only name that you can remember telling
19 you that they heard Keith Nelson say it is the Bruce
20 Young person, right?

21 A Yes, and Harry saying that he heard that he
22 told Chuck.

23 Q Harry heard Keith Nelson make the
24 statement --

25 A And told Chuck.

1 Q -- to Chuck?

2 A No, no, no, I already -- I told you I said
3 Harry told me that he heard Nelson had made that
4 statement to Chuck.

5 Q And I'm not talking to you -- I'm not asking
6 you about people who heard -- overheard things, I'm
7 asking you about people who told you they heard
8 something come out of Keith Nelson's mouth.

9 A Well, I told you, Mike Shealy and Bruce
10 Young.

11 Q Okay. And those are the only -- only two
12 names that you can recall --

13 A Yeah.

14 Q -- sitting here today?

15 MS. MCCLURKIN: All right. I think we've
16 got to take a break. Let's go off the record.

17 THE VIDEOGRAPHER: This completes media unit
18 two. We're off the record at 12:48.

19 (A break was taken.)

20 THE VIDEOGRAPHER: We're going back on the
21 record, the start of media unit three, at 13:00
22 hours 7 minutes.

23 BY MS. MCCLURKIN:

24 Q Mr. Wise, I'm going to take you back to the
25 hospital, to the emergency room. After Dr. Leap made

1 these statements that you told me about in front you
2 and your wife, and then you said that he walked off
3 with Keith Nelson and they had a conversation outside
4 your presence; is that right?

5 A Yeah.

6 Q Okay. Did you ever hear Dr. Leap tell Keith
7 Nelson that he had diagnosed you as having an STD?

8 A I don't know the exact word he told him.

9 Q Right.

10 A All I know what he told me in front of me
11 and my wife. And every time my wife left the room --
12 and I wanted to make sure that I was right. She left
13 the room and every time she would go out of the room,
14 Nelson would be out there talking to one of the
15 nurses, and when she'd walk up, they'd cut it off.

16 Q So your wife saw Mr. Nelson talking to some
17 nurses?

18 A Yeah, nurses, doctors. And she told me
19 every time she would walk up, they would cut it off,
20 and she would just kind of keep walking.

21 Q And we may depose your wife at some point,
22 but right now my questions are just about -- so I
23 appreciate you offering that but right now my
24 questions are just going to be about what you heard
25 Dr. Leap tell Mr. Nelson. And you've told me

1 everything that -- that you're aware of, right?

2 A Right.

3 Q Did -- after that, after Dr. Leap had left
4 the room, did you get any further treatment or testing
5 while you were at the emergency room?

6 A No. He wrote out a prescription and Nelson
7 had to go fill it and we had to follow him to the
8 drugstore. After he filled the prescription, I went
9 home.

10 Q Was the prescription for an antibiotic?

11 A I can't remember what it was for. All I
12 know is he filled the prescription and I went home.

13 Q Okay. So whatever prescriptions Dr. Leap
14 wrote to you, Mr. Nelson took them to be filed, right?

15 A Right.

16 Q All right. And other than that, did you
17 receive any other treatment other than what you've
18 already told me about while you were at the Newberry
19 emergency room?

20 A No. Not from them no, uh-uh.

21 Q Was it your understanding that you had any
22 type of infection?

23 A Yeah, they said I had an infection, a
24 disease.

25 Q Doctor -- who said that?

1 A That's -- that's the understanding that I
2 got because I'm telling you, Nelson asked me -- well,
3 let's see. Let me tell you how he said it. He said,
4 You reckon your wife got some kind of infection?

5 Q Who said that?

6 A Keith Nelson.

7 Q All right. Did anyone tell you that you had
8 an infection, that you were diagnosed with an
9 infection?

10 A Yep.

11 Q All right. Who was that?

12 A When I got to work that Monday morning.

13 Q Sorry. I'm just limiting it to the hospital
14 right now. While you -- was it your understanding
15 that you had an infection while you -- before you were
16 discharged from the hospital?

17 A Yep, that's what they were saying I had.

18 Q Who did that come from?

19 A It's coming from the doctors and nurse.

20 Q And what exactly do you remember Dr. Leap
21 saying to you about you having an infection?

22 A The way it was put to me and my
23 understanding of it was that I had some kind of STD.
24 That's where that change of sexual partners come into
25 play.

1 Q So your understanding before you left the
2 hospital was that you had been diagnosed with an STD
3 based on Dr. Leap's comment about changing sexual
4 partners?

5 A Yeah, pretty much.

6 Q Okay. And then did Dr. Leap -- did you have
7 any other interaction with him to get your
8 prescriptions or otherwise after that conversation?

9 A No.

10 Q Those prescriptions were provided to
11 Mr. Nelson?

12 A Yes.

13 Q So you didn't see or talk to Dr. Leap again
14 after he left the room after making the comment about
15 the switching of the sexual partners?

16 A No.

17 Q And when is the next -- so at that point
18 after Dr. Leap left, was it you in your room -- you
19 and your wife alone in the room?

20 A Yeah.

21 Q And did you have a conversation with your
22 wife?

23 A Yeah.

24 Q What did you discuss?

25 A Let's get the hell out of here.

1 Q Both of you were in agreement that we need
2 to get the hell out of here?

3 A Uh-huh.

4 Q Yes?

5 A Yes.

6 Q And what was your wife's reaction to what
7 Dr. Leap had said?

8 A Shock.

9 Q And when you said that you both agreed that
10 we need to get the hell out of here, was that because
11 you disagreed with what Dr. Leap had said?

12 A Very much.

13 Q Both of you, you and your wife?

14 A Yes.

15 Q Did either of you believe -- either you or
16 your wife actually believe that you had an STD?

17 A I know I didn't have one, but it -- it
18 doesn't matter whether she believed it, it was put out
19 there in her face and that means a whole heap. She
20 knowed -- she know me and I know her, but yet still it
21 was put in our face and it -- it put doubts in your
22 head. Even though you know better, you still have
23 that thought because you're human. And it's just the
24 bottom line. So when I left there and heard it all
25 night, the next morning I got up and went to my

1 doctor, Dr. Hutson.

2 Q Okay. And did you and your -- before you
3 left the hospital, I think you said Mr. Nelson went to
4 the pharmacy to get your prescriptions filled, right?

5 A Yes.

6 Q And prior to that did you have -- when
7 Mr. Nelson was in the -- you said that he was standing
8 in the doorway, did you have any objection to him
9 standing in the doorway? Did you ask anyone -- strike
10 that. Let me ask just one question.

11 Did you ask Mr. Nelson to back off, back
12 away from the doorway?

13 A No, I didn't ask him to back off, but to my
14 understanding, shouldn't nobody have been back there
15 but me and her because my medical record or whatever I
16 was diagnosed with, wasn't nobody's concern by mine
17 and hers. Her name is the only one on my doctor paper
18 that my medical record's supposed to be discussed
19 with. That's the only somebody I gave permission to
20 until I went to my doctor and filled out a blank for
21 her to get my medical record.

22 Q All right. Well, you -- you would agree
23 that in the workers' comp context, if you're claiming
24 an on-the-job accident that that information has to be
25 discussed with the employer, the employer's

1 representatives for -- if you're going to make a
2 workers' comp claim, right?

3 A No.

4 Q You don't agree with that?

5 A I don't agree with that.

6 Q All right. When you and your wife -- or
7 excuse me, Mr. Nelson, did he return to the hospital
8 to give you your prescriptions?

9 A No, we followed him to the drugstore.

10 Q Okay. So you all left together to get --

11 A Yeah.

12 Q -- the prescriptions filled?

13 And did Mr. Nelson, when you said -- I think
14 you said he left with Dr. Leap and they had a
15 conversation outside your presence, right?

16 A They had a conversation out there in the
17 hall.

18 Q And --

19 A Look, I could see them but I don't know what
20 they were saying.

21 Q Right. And then did -- did you see
22 Mr. Nelson again before you left to go to the
23 pharmacy?

24 A Yeah. I told you. You're not listening to
25 what I'm saying. I told you he told me that my

1 wife -- maybe my wife got some kind of infection.

2 Q Okay. Where did that conversation take
3 place?

4 A As we were walking out of the hospital.

5 Q So you walked out of the hospital together,
6 right?

7 A Well, he -- he come up behind me and my
8 wife. And my wife went to get the car. And when she
9 walked off, he eased on up beside me and he was
10 telling me that, and I lit into him like a bad habit.

11 Q Did you say anything to him or did he
12 approach you and just make this comment?

13 A He approached me and made that comment.

14 Q So you're waiting on your wife to pull the
15 car up. Are you standing in the parking lot or the
16 hospital sidewalk? Where are you standing?

17 A Sidewalk.

18 Q In the -- near the hospital entrance?

19 A Yeah, the emergency entrance.

20 Q And it's just the two of you --

21 A Yeah.

22 Q -- you and Mr. Nelson?

23 A Uh-huh.

24 Q And what was your demeanor at the time?

25 A You got to be kidding me, ain't you?

1 Q No, it's a genuine question. What were
2 you -- what was your demeanor before Mr. Nelson
3 approached you?

4 A I was trying to get over the initial shock
5 of what was said. And for him to walk up to me and
6 tell me that about my wife, he's lucky I didn't knock
7 all his damn teeth out of his head.

8 Q Had there -- there had been no discussion
9 before that between you and Mr. Nelson about you
10 having an infection?

11 A Right.

12 Q And no discussion between you and Mr. Nelson
13 about anything related to an STD, right?

14 A No, because I didn't get to talk to him
15 until we come out of the hospital, and he eased up
16 behind me and told me that when my wife walked off to
17 go get the car.

18 Q And the first thing he said to you was what?

19 A Maybe your wife's got some kind of
20 infection.

21 Q And what was your response?

22 A You don't want to know.

23 Q I do.

24 A No, you don't.

25 Q I do.

1 A No, you don't.

2 Q All right. I'm going to ask you again.
3 What was your response? And we'll excuse any colorful
4 language. But just for the record, what did you say
5 in response to Mr. Nelson?

6 A You out your mother-fucking mind?

7 Q And what -- what did he say back to you?

8 A He said nothing. Looked at me like I was
9 crazy. Because if I wouldn't have been hurting so
10 bad, as God as my witness, I'd have been in jail.

11 Q What else was -- what other statements, if
12 anything, were exchanged between you and Mr. Nelson?

13 A There wasn't nothing else to say. Well, he
14 did say, Well, I'll come pick you up in the morning
15 and bring you to work. And my wife said, No, the hell
16 you ain't. He ain't coming to no work.

17 Q All right. Before your wife pulled up, did
18 you and Mr. Nelson have any other exchanges?

19 A His exchange was trying to get away from me
20 because I'm -- I'm about to lose all my composure.

21 Q All right. And before you were about to
22 lose all your composure, when did Mr. Nelson invite --
23 or offer to pick you up the next morning and take you
24 to work?

25 A When my wife pulled up.

1 Q And then -- so nothing else was said, and
2 then your wife pulled up and he offered to bring you
3 to work the next morning?

4 A Yeah, he was going to --

5 Q And what did your wife say?

6 A -- come pick me up.

7 He ain't coming to no work.

8 Q All right. And then what happened next?

9 A Well, he went and got the medication and
10 took me home. And I laid --

11 Q You rode with your wife, yeah?

12 A Yeah, I left my vehicle. And I laid there
13 on the chair and suffered all night. And the next
14 morning, I got up and went to the doctor, went to my
15 doctor.

16 Q When you say you left your vehicle, what do
17 you mean?

18 A I left my car at work. I never did return
19 back to the job site. She picked me up and we went
20 from CVS drugs to Columbia.

21 Q So you went to the CVS here in Newberry?

22 A Yes.

23 Q And Mr. Nelson filled your prescription?

24 A Yes.

25 Q Was it two prescriptions?

1 A Might have been. I don't know.

2 Q And whatever Dr. Leap prescribed is what
3 Keith Nelson gave to you?

4 A Yes.

5 Q And that was filled at CVS?

6 A Well, he gave it to my wife while I stayed
7 in the car. I didn't get out.

8 Q Did your wife tell you that Keith Nelson
9 said anything else about what you understood the
10 diagnosis to be from Dr. Leap?

11 A You don't understand, I keep telling you.

12 Q Well, because she got out of the car to get
13 the prescription from Keith Nelson, right?

14 A Uh-huh. She went in the drugstore with him
15 to get it.

16 Q Okay.

17 A She got -- he got the medication, he handed
18 it to her, and she come back and got in the car and we
19 left.

20 Q All right.

21 A There's no more conversation after that.

22 Q All right. But that was my question so you
23 can just say no, right?

24 A As far as I understand, there wasn't no more
25 conversation after that.

1 Q And then you went home?

2 A Yes.

3 Q When was the -- how long -- and the next day
4 you went to see your regular doctor, right?

5 A Yes.

6 Q At Lexington Family?

7 A Yes.

8 Q And that was Cynthia Hutson?

9 A Yes.

10 Q And Cynthia Hutson ordered some tests,
11 right?

12 A When? Yeah, she ordered all the tests. And
13 I told her they're saying that I got some kind of STD
14 disease, and she ordered all the tests to prove
15 that -- she told me, she said, Mr. Wise, you ain't got
16 that. You ain't got nothing.

17 Q And is it your understanding that her
18 diagnosis was that you had a -- an infection but not a
19 sexually transmitted infection?

20 A Right.

21 Q And --

22 A It's her understanding that my PS level had
23 risen so high from me straining myself, and that it --
24 it -- I think it's something like she said
25 prostatitis.

1 Q Prostatitis?

2 A Yeah.

3 Q An infection of the prostate --

4 A Yeah.

5 Q -- right?

6 A Yeah.

7 Q So we agree that you did have an infection
8 but it was not sexually transmitted, right?

9 A If prostatitis is an infection, yes, that's
10 what I was diagnosed with. But instead of them
11 treating the accident, all they was thinking about is
12 that -- even all the peoples at the plant are thinking
13 about, A, you've been out doing something. You've got
14 some kind of transmitted disease, sexual transmitted
15 disease. That was broadcast all up in the office.
16 Instead of them putting the file up, they'd be
17 discussing it.

18 Q Did you also -- you had several visits with
19 Cynthia Hutson --

20 A Yes.

21 Q -- about to -- about treating this prostate
22 infection, right?

23 A Yes.

24 Q Did you also see the company's doctor?

25 A No.

1 Q All right. And about how long do you think
2 it was before you returned to work?

3 A I went back to work the following week, but
4 I really wasn't -- I really couldn't do my job the way
5 that it's supposed to have been done because I
6 couldn't lift nothing and I couldn't get on that
7 forklift. So I went back to doing my hot checks and
8 checking lumber and stuff like that, making sure the
9 lumber is dry.

10 Then they finally got me an appointment
11 with -- God -- occupational health. When they finally
12 got that, that's when they found out that, yeah, you
13 pulled a muscle in your groin and all this.

14 Q All right. Let me -- let's look at the
15 record from occupational health and see if this is
16 what you're talking about.

17 MS. MCCLURKIN: And I'm going to -- this is
18 the original. The copy has been produced but I
19 don't think it -- it's not -- it's not legible,
20 at least to me, so I'm going to use the original
21 and mark it as Defendants' Exhibit 6. But for
22 you guys, I can probably get a Bates number for
23 this record.

24 THE WITNESS: Do you see how long it's took
25 them to figure that out? Do you see the date on

1 that?

2 MS. MCCLURKIN: Do you to see -- look at
3 this? I don't know what the Bates number is.
4 I'm just going to use the original because, like
5 I said, I can't read the copy that's been
6 produced.

7 MR. PARKER: All right.

8 MS. MCCLURKIN: And we'll mark -- I'll mark
9 this as Defendants' 6.

10 (Defendants' Exhibit 6, Occupational Health
11 Return-to-Work Certification, was marked for
12 identification.)

13 BY MS. MCCLURKIN:

14 Q All right. This is the Occupational Health
15 Return to Work Certification. Is that your signature
16 at the bottom?

17 A Yes.

18 Q And what's the date on that?

19 A I don't see no date.

20 Q It may be at the top.

21 A January, what is that, 2nd or 3rd?

22 Q Yeah, I think it's 2nd.

23 A Yeah. See now, this is what he recommended,
24 but yet still I was put back on a forklift. And now I
25 got two bad knees that I got to take shots for,

1 ankles, legs and all this, but yet still I was telling
2 them this. And before I got with my knees and all
3 this, I was up there running forklift at the planing
4 mill again knowing that I suppose -- didn't supposed
5 to be on it. And I had an attack and they had to rush
6 me from the planer mill down to the emergency room in
7 Richland.

8 Q Okay. And I understand that, I just -- I'm
9 trying to focus my examination to help get us out of
10 here faster.

11 All right. The date that you saw the
12 occupational health center was January 2nd of 2018?

13 A Okay.

14 Q Is that right?

15 A I guess. That's what it says right there.

16 Q All right. And you were provided this
17 document, right?

18 A Yes, I provided one for work.

19 Q So that you could give it back to West
20 Fraser, right?

21 A Yes.

22 Q And the diagnosis said -- that the return to
23 work says is the same as what Cynthia Hutson said, the
24 prostatitis?

25 A Well, see, you don't understand. There was

1 two different -- there was two different diagnosis
2 given. I was given this and another nurse from
3 another company came in and she gave something, also.

4 Q Okay. Let me see if I can streamline that.
5 You had the diagnosis for the prostate infection.
6 That was one thing, right?

7 A Uh-huh.

8 Q And then there was another -- another injury
9 that was the pulled groin, right?

10 A Uh-huh.

11 Q Is that right?

12 A Yeah, I guess so.

13 Q Okay. Is that what you're saying, there
14 were two things?

15 A Yeah.

16 Q Okay. But the occupational health doctor
17 concurred with what Cynthia Hutson said as far as the
18 prostate infection diagnosis --

19 A Yeah.

20 Q -- right?

21 A Yes.

22 Q Okay.

23 A And he also did the groin thing. He gave
24 that to another -- God, I can't remember that lady's
25 name. But when I brought it back to work and

1 explained it to them, they wanted me to get my doctor
2 to sign off on it, and she wouldn't do it and I don't
3 blame her.

4 Q What you're talking about is Cynthia Hutson,
5 she's your personal medical provider, right?

6 A Yes.

7 Q She doesn't have anything to do with
8 workers' comp, right?

9 A Right.

10 Q She's not the company's doctor?

11 A Right.

12 Q So she wasn't going to be concerned with
13 treating anything that might fall with under workers'
14 comp like the pulled groin, right?

15 A Right.

16 Q Okay.

17 A But you're still missing what I'm saying.
18 They -- peoples at the plant site were wanting me to
19 take this back to my doctor and get her to sign off on
20 it.

21 Q Because -- because she was the doctor that
22 was treating you for the prostate infection, right?

23 A Yeah. But what I'm saying is, this is
24 somebody else's diagnosis here.

25 Q I understand.

1 A And they wanted -- they wanted her to sign
2 off on it. And I'm pretty sure you've got a copy of
3 the other one somewhere, you just ain't pulled it out
4 from the other -- that it gave to the other doctor --
5 the other doctor gave to the other woman. Same doctor
6 with the pulled groin muscle and all of that.

7 Q Okay. Let's talk about when you came back
8 to work approximate a week after the November 7, 2017
9 incident.

10 A Uh-huh.

11 Q And tell me -- you talked before about some
12 things that were said to you and some things that you
13 heard. Tell me the first person that made a comment
14 to you about the alleged sexually transmitted disease
15 diagnosis.

16 A Chuck Price.

17 Q All right. What did Chuck Price tell you?

18 A Yeah, I heard you had some kind of disease
19 or infection.

20 Q Did he say anything about it being sexually
21 related?

22 A When you work with a bunch of men, that's
23 what they mean. When you say disease, that's what
24 they mean.

25 Q All right. I understand that your testimony

1 is that's what he meant and that's what you understood
2 him to mean. But I'm asking you did he actually say
3 the words sexual?

4 A I can't -- I can't recall but I'm just
5 telling you what he -- what I know he's saying.

6 Q All right. And you said he said I heard you
7 had some kind of disease or infection?

8 A Yes.

9 Q And why do you believe, Mr. Wise, that that
10 meant a sexually transmitted disease?

11 A Because when you a black man, that's all
12 people think that you supposed to do. That's all they
13 think you do. You got to be some kind of little whore
14 or something like that. That's what people expect of
15 you, but I ain't that man.

16 Q Did Chuck Price say or do anything else that
17 caused you to believe that the statement he made was
18 suggesting you had a sexually transmitted infection?

19 A Yeah, because when I handed him the paper, I
20 said, I don't know who's telling all this bullshit,
21 but read this.

22 Q Well, what paper -- because this is -- this
23 is a week after the November 7 incident so --

24 A Yeah, when I -- I had -- I had a statement
25 that I didn't have nothing and I had my whole doctor

1 records there that I had to turn in to them at that
2 office and I didn't have nothing.

3 Q Well, we can get the records if we need to.

4 A Well, I'm pretty sure you can get them.

5 Q But at that time I don't think the sexual --
6 you're talking about the sexual testing that Cynthia
7 Hutson did?

8 A Yeah.

9 Q All right. You didn't have those records
10 back when you returned to work, did you?

11 A If I'm not mistaken, I did.

12 Q And you think you showed those records to
13 Chuck Price?

14 A I told him I didn't have nothing. And I
15 showed him, I said, Look, do you see anything on here
16 that say that I got any kind of disease? I mean, he
17 stood there and looked like a -- stupid. That's the
18 best word for it.

19 Q Well, did you actually -- did you actually
20 respond to Chuck Price and say I don't have a sexually
21 transmitted disease?

22 A Yeah, because he had already told that I had
23 the clap. He told Harry, Harry Shelton that.

24 Q All right. Before we get there so that I
25 don't lose you, let me focus on what -- just what you

1 and Chuck Price said during that first communication
2 that you had when you returned to work a week after
3 the November 7 incident. And I know what he said to
4 you, and then what did you say back?

5 A I don't have nothing. I don't know why
6 y'all telling these kind of lies.

7 Q And what did Chuck say?

8 A I told you what he said. That's what I
9 heard. I heard you had some kind of transmitted
10 disease, an infection.

11 Q And in your mind he must be referring to a
12 sexual infection because -- and you've already
13 explained --

14 MR. PARKER: Object to the form of the
15 question. He just said what he told him.

16 THE WITNESS: She don't --

17 BY MS. MCCLURKIN:

18 Q I'm sorry. Did Chuck say that --

19 MR. PARKER: You're not listening.

20 THE WITNESS: Yeah, she don't get it. I'm
21 sorry, but you don't.

22 BY MS. MCCLURKIN:

23 Q Okay. Tell me exactly then what Chuck said.

24 A I told you. He said that I heard you had
25 some kind of disease and infection. And I told him, I

1 said, I don't have nothing. I said, I don't know why
2 y'all telling these kind of lies. And it basically
3 boiled down to it, just like I told you, it feels like
4 if something happened to you, you've got to be a
5 whore. But you don't -- you don't quite get that.
6 I'm sorry. I ain't trying to downgrade you or make
7 you feel bad in no kind of way, but I'm just being
8 honest with you.

9 Q Mr. Wise, all I care about is getting your
10 testimony and I understood what that -- I understood
11 what you said. You told Chuck I didn't have nothing.
12 So at this point there's been no mention by you or
13 Chuck Price of the word sexual or sexual transmitted,
14 right?

15 A Clap. What you think that is?

16 Q When did Chuck say you had the clap --

17 A He said that --

18 Q -- to you?

19 A -- before I even -- he said that before I
20 even got there --

21 Q No, I --

22 A -- and then when I -- when I -- when I
23 confronted him with it, you know what he said? I
24 didn't say that.

25 Q All right. When you replied to Mr. Price, I

1 don't have nothing --

2 A Yeah.

3 Q -- what did Chuck say next?

4 A I told you, he couldn't say nothing because
5 he already knew that I know he had said that. When
6 I -- when I made that statement, he knew I knowed that
7 he had already said that, done said something.
8 Because, see, and understand me, when I -- when I --
9 when I got there and I seen him and he was saying all
10 of this, and when I went to fuel up, here come the
11 onslaught then.

12 Q All right. And we'll get to that. Let
13 me --

14 A Oh, boy.

15 Q So that I can understand the question with
16 Mr. Price first, because I think the clap statement,
17 that was a different conversation, right?

18 A No, it was all the same one but he just
19 didn't come out and say it right then.

20 Q Okay.

21 A After I confirmed it, I went up there and
22 hit him in the face with it and he kind of (indicating
23 by sound).

24 Q All right. Before we leave this first
25 conversation, though, the first conversation with you

1 and Mr. Price where he said I heard you had some
2 disease and infection and you replied, I don't have
3 nothing, was anything else said during that
4 conversation between you and Chuck Price?

5 A Yeah, there was a lot of things said.

6 Q Was there anything said about sexually
7 transmitted disease during that first conversation?

8 A Honestly, there were a lot of things said.
9 And I'm not proud of some of the things that I said,
10 but there was a lot of things said.

11 Q All right. Again, I mean, was there -- was
12 the phrase sexually transmitted used during that first
13 conversation with you and Chuck Price?

14 A It was not transmitted, it was clap.

15 Q It was clap, all right. Who said -- who
16 brought up the clap?

17 A In so many words, he did, until I just come
18 on out and said, You trying to say I got the fucking
19 clap?

20 Q All right. So Chuck said -- did Chuck say
21 clap first or did you say clap first?

22 A I said clap first but that's what he was
23 leaning towards. That's what he said in so many
24 words.

25 Q By saying that I heard you had an infection,

1 you took that as he's accusing you of having the clap?

2 A Yeah.

3 Q And so --

4 A It's not -- it's not as I took it that way,
5 I keep telling you that's the way the men's minds goes
6 up there. You never have worked around a bunch of
7 men. If you ever been in the workplace with a bunch
8 of mens and something happen, it jumps out at you like
9 a sore thumb.

10 Q Well, you might be surprised but --

11 A Well, yeah, you're right --

12 Q -- let's stick with this conversation.

13 A -- I might be.

14 Q So you -- you said Chuck, Are you trying to
15 saying I have the clap?

16 A Yeah.

17 Q That was the first time the clap was
18 mentioned during that conversation?

19 A Directly, yes.

20 Q And what was Chuck's response?

21 A Sitting there looking like he got shit on
22 his face.

23 Q What was Chuck's verbal response?

24 A (Indicating.)

25 Q So Chuck didn't have -- he didn't say

1 anything in response to that?

2 A He wondered if I was going to nail him or
3 not.

4 Q He didn't say anything in response to you
5 asking him are you saying I have the clap?

6 A One more time. He wondered if I was going
7 to nail him or not.

8 Q I'm not asking what he was wondering. I'm
9 asking what he said.

10 A He said nothing. His reaction was like this
11 here (indicating).

12 Q All right. Was that the end of the
13 conversation on that occasion?

14 A Right there, yeah.

15 Q All right. Who was the next person that you
16 had any conversation with about the alleged sexually
17 transmitted disease diagnosis?

18 A I think it was Harry that came to me when I
19 was fueling up.

20 Q Harry Shelton?

21 A Yeah. And the first -- when I -- when I --
22 when I first initially got to work, George Wilson, he
23 told me about it later on down there at the shop.

24 Q All right. But can we stick with Harry
25 Shelton first so that I follow you. Tell me what

1 Harry -- what you remember Harry saying.

2 A Harry said, Yeah, yeah, man, I heard Chuck
3 going around saying you got the clap. That's what I
4 heard.

5 Q Harry said, I've heard Chuck Price is going
6 around --

7 A Saying you got the clap.

8 Q -- saying you've got the clap?

9 A Yeah. He said, I don't know who else knew
10 it, but he said, Yeah, that's what I heard.

11 Q And this was after the conversation with
12 Chuck Price that you'd had that you already told me
13 about?

14 A Yeah. And I -- I seen Big Bruce, and I was
15 telling Bruce, I said, Bruce, I ought to go up there
16 and take him out.

17 Q Don't get ahead of me because you know
18 you'll lose me. All right. Harry Shelton, let's go
19 back to that conversation. After he said I heard
20 Chuck is going around saying you had the clap, what
21 did you say back?

22 A I said, Do what? I said, Let me go up there
23 and whoop his ass.

24 Q And that was -- was that the end of your
25 conversation with Harry Shelton?

1 A Yeah, for right there.

2 Q All right. Did you say the next person you
3 talked to was George Wilson or Bruce?

4 A I talked to Big Bruce.

5 Q Is that Bruce Young?

6 A Yeah.

7 Q All right. What -- what was your
8 conversation with Bruce Young?

9 A I was telling Bruce, Bruce, this SOB's
10 saying that I got clap.

11 Q You said that? You told Bruce that?

12 A Yeah. And Bruce said, Yeah, I heard him say
13 that. And how he had it, he said -- let me get it
14 right now. He said, Oh, man, I know that ain't right.
15 So I just got on the forklift and left. And as I went
16 to the other shop, I run up on George Wilson and he
17 got to ragging me about it and all this. Well, he
18 didn't say nothing about the clap, he's just telling
19 me about Keith there hollering across the parking lot
20 and told him that I had some kind of infection and got
21 an antibiotic and it wasn't due to the accident. And
22 it went on and on and on from there from different
23 people.

24 Q And the conversation that you had with
25 George Wilson, you approached George Wilson, right?

1 A No, he come asked me how I was doing, and --
2 and he told me that.

3 Q And what was your response?

4 A I say, I'm doing all right. And then he --
5 he told me, he said, Yeah, he hollered across the
6 parking lot and told me that. Then after I came and
7 calmed down a little bit, I went to the office.

8 Q And before we finish with George Wilson,
9 George told that you he heard Keith holler across
10 the --

11 A Keith holler across the parking lot and told
12 him that I -- George asked him how I was doing. Keith
13 hollered across the parking lot and said, He -- let's
14 see. He got some antibiotic and he got an infection
15 and it wasn't due to the accident.

16 Q George told you that he asked Keith how you
17 were doing?

18 A Yeah.

19 Q And Keith hollered across the parking lot --

20 A Uh-huh.

21 Q -- that you had an infection --

22 A Yeah.

23 Q -- and got an antibiotic --

24 A Uh-huh.

25 Q -- and it was not related to the accident?

1 A Right.

2 Q George didn't say that Keith said it was
3 sexual in nature? He didn't come out and use those
4 words, right?

5 A No, he -- you know --

6 Q When was -- sorry.

7 A You know, you keep trying to make a point
8 about it ain't sexual in nature. But you don't
9 understand, when mens talk like that, that's what they
10 talking about, sex. They ain't talking about no just
11 plain infection. Don't you know that?

12 Q Well, no, I don't know that but I do
13 understand that that's your testimony. And I'm just
14 trying to distinguish between what you -- what you're
15 saying is assumed and what was said. That's the only
16 purpose of these questions. And that's why I'm trying
17 to be precise --

18 A Yeah.

19 Q -- so that I have it clear in my head.

20 A Okay.

21 MR. PARKER: Let's take a break.

22 THE WITNESS: And --

23 MR. PARKER: Hold on a minute. Let's take a
24 break for a minute and we'll eat our sandwiches.

25 THE WITNESS: Yeah, you're going to ruin my

1 appetite.

2 THE VIDEOGRAPHER: We're going off the
3 record at 1300 hours 45 minutes.

4 (A break was taken.)

5 THE VIDEOGRAPHER: At 1300 hours 59 minutes,
6 we're back on the record.

7 BY MS. MCCLURKIN:

8 Q All right. Mr. Wise, I think before we took
9 the break you had finished telling me about your
10 conversation with George Wilson, right?

11 A Yeah, I think so.

12 Q All right. Who was the next person that you
13 talked to about the alleged STD diagnosis after George
14 Wilson?

15 A If I'm not mistaken, I parked the forklift
16 and I went to the main office. I told the HR manager
17 that I needed to talk to her and DJ, the plant
18 manager. And she kind of said, Well, he's down in the
19 mill right now. And I told her, I said, Look, I said,
20 you've got people going around here telling vicious
21 lies and I need to talk to somebody and we need to
22 straighten this out. So she said, Okay.

23 Q Is the HR manager that you're referring to
24 Melody Jepson?

25 A Yes.

1 Q All right. And then after that were you
2 called back for a meeting with DJ Russell?

3 A No, I wasn't called back. I went back on my
4 own.

5 Q All right. How -- about how much time
6 passed in between when you first talked to Melody
7 Jepson and when you returned?

8 A That was in -- that was in the morning
9 before lunch because before I returned back to the
10 office, I went down there and I seen Quinton Wilson.
11 And I asked him, I said, Have you seen Keith? And he
12 said, No, I think he's over there in his office. I
13 said, Well, you need to come on and go over there with
14 me. So we went over there and I was telling him, I
15 said, You know, I don't appreciate the fact that --
16 what you did and, you know -- and he kind of was
17 sitting there looking at me like, Oh, boy, here we go.

18 Q Now, prior to that, had -- did -- to your
19 knowledge did Quinton Wilson know anything about the
20 rumor about the alleged STD?

21 A Honestly, I don't truly know.

22 Q Okay.

23 A But, like I said, it was the main topic.
24 What I mean about that is that they more or less was
25 saying that I had an STD and I was trying to get the

1 plant to pay for it so --

2 Q All right. So you and Quinton walk over to
3 Keith's office, and then what happened?

4 A I told him I didn't appreciate the fact that
5 what was said. And he kind of was standing there
6 looking at me like, Oh, boy, here we go. And I told
7 him, I said, Look, where do you get off telling
8 somebody that? That when Quinton, you know, he kind
9 of stepped in, then they kind of wanted to make a
10 little joke about it. I said, Let me tell both of
11 y'all something. A black man ain't got nothing but
12 his pride. And I say, Y'all just stepped all over
13 mine. And it kind of wanted to simmer it down so I
14 got up and left because I knew what was going to
15 happen and I didn't want to lose my job so I left.
16 Later on that evening --

17 Q Can I ask you a question about before you
18 left?

19 A Yeah.

20 Q And then I'll let you tell me about what
21 happened later that evening. Before you left Keith's
22 office, was there any discussion specifically about
23 what Keith supposedly had said?

24 A Yeah.

25 Q What was discussed and who --

1 A It was discussed that I had some kind of
2 disease.

3 Q And who said that?

4 A I said that. I said, That's what you've
5 been going around saying that I got some kind of
6 disease.

7 Q Did you -- did you use the words sexual
8 disease or you just said disease?

9 A Disease.

10 Q And did Keith -- what was Keith's response
11 to that?

12 A He -- he couldn't say nothing. He was
13 sitting there looking at me. And then Quinton come
14 out with the quack -- a little joke about these
15 womens -- some kind of womens and all this. And
16 during the course of that conversation, Keith was
17 trying to say that, Well, the doctor said that you had
18 a sexual disease. And Quinton said, Keith, there
19 ain't no way he had no sexual disease and he ain't got
20 nothing now.

21 Q All right. So Keith told you that doctor --

22 A He and Quinton both was in there when he
23 said that. I'm sorry but I wanted you to know that
24 fact.

25 Q Yes, thank you. So Keith said to you and

1 Quinton that Dr. Leap said that you had a disease?

2 A Yeah, some kind of sexual -- some kind of
3 sexually transmitted disease. That's what I told you,
4 that's where that swapping -- changing sex partners
5 come in at.

6 Q Okay.

7 A You know, if you're going to say -- if
8 you're going to break down the words and say changing
9 sex partners, you know what that -- what that means?
10 It don't take a rocket scientist to figure that out.

11 Q All right. So Keith told you and Quinton
12 that Dr. Leap said or inferred that you had a sexually
13 transmitted disease?

14 MR. PARKER: Object. That's not what he
15 testified. You continue to do that. When he
16 testifies to one thing, then you change it --

17 MS. MCCLURKIN: Well, he --

18 MR. PARKER: -- to something else.

19 MS. MCCLURKIN: Well, no, he can say that's
20 not -- that's not right.

21 MR. PARKER: No, you can -- it's your
22 obligation as an attorney to truthfully say what
23 he said.

24 MS. MCCLURKIN: And that is what I'm -- I'm
25 trying to do and --

1 MR. PARKER: You know that he didn't --

2 MS. MCCLURKIN: -- you disrupting me --

3 MR. PARKER: No, you said --

4 MS. MCCLURKIN: No, I --

5 MR. PARKER: -- he said that he inferred.

6 MS. MCCLURKIN: Don't tell me what I -- all
7 right. We're not going to do this on the record.
8 Can we go off the record?

9 MR. PARKER: No, we won't -- we'll get the
10 Judge on the record because you're not going to
11 do that.

12 MS. MCCLURKIN: Are you -- is this an
13 objection to --

14 MR. PARKER: That is an objection but --

15 MS. MCCLURKIN: To what?

16 MR. PARKER: -- I will instruct him not to
17 answer it if you're going to continue to do that.
18 You misquoted what he said back to him as if he
19 had said it and you've done it a number of times.

20 MS. MCCLURKIN: And all of that is on the
21 record, and if you think it's worth bringing
22 before the Judge, then you can do that.

23 MR. PARKER: Well, there's a -- we do --
24 there's an ethical rule that says that you should
25 not do that.

1 MS. MCCLURKIN: All right. Well, the
2 record's going to reflect what I've said and what
3 I've done --

4 MR. PARKER: It will.

5 MS. MCCLURKIN: -- and I know what my
6 intentions are which is to try to understand what
7 his testimony is. So can I ask my next question?

8 MR. PARKER: But it won't -- the record
9 won't reflect your intentions. The record will
10 reflect what you said.

11 MS. MCCLURKIN: Well, I guess you can make
12 argument about that.

13 MR. PARKER: No, we won't.

14 MS. MCCLURKIN: Can I ask --

15 MR. PARKER: We'll go forward and you ask
16 your question, but I do think you should quit
17 doing that.

18 BY MS. MCCLURKIN:

19 Q All right. That disruption is going to
20 cause me to have to reask the question because I don't
21 remember where we left off. So I apologize if we're
22 now backtracking.

23 The statement that Keith made about what
24 Dr. Leap said in this meeting where you and Quinton
25 were there, what did Keith say that the doctor said?

1 A He was saying that -- he was referring to
2 that I had some kind of transmitted disease, sexually
3 transmitted disease.

4 You know, you -- you -- you keep -- to me,
5 you're trying to confuse me. You ask me one thing,
6 then I tell you one, and then you come back with the
7 same thing in a different form. I know you're trying
8 to understand but --

9 Q Did Keith say that that statement that
10 Dr. Leap -- the statement that you just described, did
11 he say that Dr. Leap said that to him?

12 A Yeah. You know, I just said that.

13 Q Okay. So what your understanding what Keith
14 said to you and Quinton was that he heard Dr. Leap
15 make the statement?

16 A Damn.

17 Q Did I get that right or am I -- am I
18 twisting things around.

19 A I keep turning it. I'm telling you what he
20 said to me and Quinton, and then you go back and
21 you'll say, Did Dr. Leap say this or -- it's like more
22 or less that you're twisting it.

23 Q No, what I --

24 A It basically boils down to the man made a
25 statement and he made the statement. Keith hit me and

1 Quinton in the head with it telling us, and then he
2 turned around and Quinton said, Keith, if he had
3 something, he'll still have it now but he ain't got
4 nothing because it shows -- it shows on the record
5 that he ain't had nothing. Because, see, they had
6 already discussed my record as I took it to the
7 office. Now, that was that morning when I took my
8 excuse up there but yet still he knew.

9 Q All right. Maybe I can ask the question a
10 better way and you'll understand what I'm -- what I'm
11 trying to get at. Was Keith saying that he heard
12 Dr. Leap make the statement or was Keith repeating
13 something else that he heard about somebody else that
14 said something about what the doctor said? I mean --

15 A It couldn't come from nobody but him.

16 Q All right.

17 A I keep telling you, wasn't nobody there but
18 me and Keith. That's the only somebody was there the
19 whole time, me and Keith.

20 Q I understand that.

21 A And the only way it could have got back to
22 the plant is through Keith Nelson because I hadn't got
23 back to work. And when I went down there to confront
24 him, I took Quinton in there as a witness and so that
25 I wouldn't jump on him and beat him down in there. So

1 that way it made me feel a little bit better. I was
2 still teed off and all that, and that's when he said
3 what he said about that transmitted disease. And
4 Quinton told him, he said, Well, Keith, if he had
5 something, he would still have it now and it shows
6 that he don't.

7 Q All right.

8 A Keith was thinking that if you got
9 something, it'll be gone the next day.

10 Q All right. I just want to focus on what
11 Keith actually said not what he must have meant or
12 where he got it from but what you actually -- what you
13 heard him say, okay?

14 A I just told you that, sweetheart. I don't
15 mean no harm but I did.

16 Q My name's Ms. McClurkin.

17 A Ms. McClurkin.

18 Q All right. When -- all right. After that
19 did Keith say anything else to you?

20 A No. I got up and left, I told you. I got
21 up and left.

22 Q Did Keith apologize to you --

23 A They claimed they apologized, just like I
24 told DJ.

25 Q Let me finish my question so --

1 A Okay.

2 Q -- I'm going to reask it. During that
3 meeting with you and Quinton and Keith, did Keith
4 apologize to you?

5 A No.

6 Q All right. You got up and left and where'd
7 you go next?

8 A Office. No, I think I might have went to
9 eat lunch. I tried to eat lunch, and then I went to
10 the office.

11 Q And who did you talk to when you got to the
12 office?

13 A When I got to the office, I talked to DJ
14 because I asked Melody, I said, Is he in there now?
15 She said, Yeah. So I went back there in his office
16 and we had a conversation.

17 Q Was it just you and DJ Russell?

18 A Right. He was telling me that, Well, I
19 don't know how your information got all over the mill.
20 And I already knew from the start how it got out
21 there. And he said, Well, I'm going to have to do an
22 investigation. He already knew how it got out there.

23 Q How do you know --

24 A Because they had --

25 Q Did Mr. Russell tell you --

1 A They had discussed it.

2 Q All right. I'm going to ask my question and
3 then I'm going to let you answer. Did Mr. Russell
4 tell you that he knew how your information got around
5 the mill?

6 A Not directly.

7 Q What did Mr. Russell tell you directly?

8 A Didn't you get some antibiotic?

9 Q All right. What else did Mr. Russell say to
10 you?

11 A I'm going to have to do an investigation and
12 I'll get back with you.

13 Q All right. Did he say anything else to you?

14 A No. I got up and left.

15 Q All right. What happened next?

16 A Next, him, Quinton, Keith, they left the
17 plant for like three days to a meeting somewhere. And
18 when they got back the following week, he called me up
19 there.

20 Q DJ Russell?

21 A Yeah.

22 Q Was this the second time that you met with
23 DJ Russell about this incident?

24 A Yeah.

25 Q Who was present at that meeting?

1 A Just me and him.

2 Q All right. What was discussed during that
3 meeting?

4 A The situation on hand. I told him, I said,
5 Look, I'm giving y'all the opportunity to fix this and
6 I need it fixed.

7 Q And what specifically were you complaining
8 to Mr. Russell about?

9 A About all the stuff going on at the plant
10 about me and --

11 Q You're complaining to him about the rumors
12 that were going on about you?

13 A Yeah, and about what Keith had said. And I
14 didn't tell him that I know Keith had said it. And he
15 said, Well, I've did my investigation and I've
16 completed it, and I know this sounds a little
17 open-ended and -- he never did call Keith's name. He
18 said, I know it sounds open-ended, but I've handled
19 the situation and I took the corrective measures for
20 the situation. And I said, Yeah? He said, Yeah. And
21 it escalated from there. I told him, I said, You
22 know, I don't appreciate the fact about all this going
23 on and people ragging me and all this, and he said,
24 Well, it's unfortunate and I'm sorry. I can't -- I
25 can't -- right now I can't remember all the exact

1 words that he said, but I do know what he said. He
2 said, Well, I'm sorry and I apologize for your
3 information getting out in the plant like that. And I
4 told him, I said, DJ, it's too late for an apology. I
5 said, And apology ain't going to accomplish nothing.
6 I say, You know, I came back to work. I come in and I
7 work hard for you every day. I give you a good eight,
8 ten or 12 hours or however long that you ask me to be
9 here. I say, You ask me to go from one department to
10 the other department, I do. I said, I don't complain.
11 I just do my job, I said, because that's what I do. I
12 come in and I go to work. He say, Yeah, yeah, yeah,
13 you're good at what you do. He said, I don't have no
14 complaints. I said, Yeah. I said, Every time I've
15 asked you for a raise or something, you always say,
16 No, I can't do that. He said, Yeah, I have rules and
17 regulations I have to go by. I said, All right. And
18 I told him, I said, Look, I said, you know that you
19 done spread my name all over the plant and it ain't
20 right. He said, Well, I'm sorry.

21 Q I'm sorry. Who -- you told DJ that who had
22 spread your name all over?

23 A I didn't call no name right then. And --

24 Q At that point had you mentioned Keith
25 Nelson's name at all?

1 A No, I hadn't called a name right then. See,
2 he hadn't either because he didn't know that I already
3 know. And he got to running off at the mouth and I
4 just got tired of hearing all the lies that he was
5 telling me. And I told him, I said, It's a damn shame
6 that your safety manager come back and spread these
7 kind of lies across the plant. Your safety manager
8 hollering across the parking lot, Yeah, he got some
9 antibiotics and it wasn't due to the accident. And he
10 said, Well, I'm sorry. If I was out -- you know I
11 can't change things, but if I was out there when it
12 happened, I would have. He handled it poorly. I
13 would have changed it. It was a bad decision on his
14 part. I said, A bad decision is not doing me any
15 good. I said, I gave y'all every opportunity to
16 straighten this out and you didn't. He said, Well, I
17 did. You know I can't change nothing. I said, Yeah,
18 I know you can't change nothing, I said, but I can. I
19 said -- I said, This ain't fair to me. This ain't
20 fair to me and my wife. You know, you got people
21 going around here and telling all these kind of lies.
22 What's fair about that? I said, What makes that
23 right? And he went mumbling on, bumbling about
24 something.

25 And then he wanted to change the subject

1 about accident. Yeah, I know when you came in here
2 the other Monday that you was kind of upset, and all I
3 was trying to tell you was that you had to watch where
4 you put your -- place your body parts and all this.
5 And he said, You do believe that accidents can be
6 avoided? And I said, In reality, no. Well, I know
7 people for 30 years, they ain't have no accidents. I
8 said, Well, you live in an fantasy world because if
9 you know people doing 30 years, then they're not doing
10 anything but just standing there. They ain't working.

11 Q And in this meeting with Mr. Russell, you're
12 sure that it was just you and Mr. Russell?

13 A Yeah, I'm sure it was me and him, nobody
14 else there.

15 Q And Mr. Russell, when you told him that him
16 being sorry about the situation wasn't helping you
17 any, what did you mean by that?

18 A It wasn't -- it wasn't easing my pain.

19 Q What did you -- what did you think
20 Mr. Russell should do at that point?

21 A At that point, you know, if that had been me
22 did something like that, before it got out of my mouth
23 good, I would have been across the track away from
24 there and probably prosecuting.

25 Q So you think that he should have fired Keith

1 Nelson, is that what you're saying?

2 A Don't you know it's company policy, you
3 can't be speeding people's health information and
4 especially when it's a lie. Wasn't no truth about
5 that.

6 Q Was it true that you got an antibiotic?

7 A Yeah, it's true about an antibiotic but I
8 ain't had no damn -- I had a disease but there wasn't
9 no transmitted disease. The way he was portraying it
10 was that's what it was. In first place, what gave him
11 the right to even open his mouth about that? What
12 right did he have to say anything about it?

13 Q And the statements that Keith said saying
14 that you had an infection and got an antibiotic that
15 wasn't related to the accident --

16 A Uh-huh.

17 Q -- do you believe that it was Keith's
18 intention to suggest that you had a sexually
19 transmitted disease?

20 A I'm going to tell you one more time. When
21 you're in an environment like that and you said
22 infection, disease, what do you think? You got a --
23 you got a bunch of old dirty ass men there. Now, what
24 do you think?

25 Q Well, I think what your testimony has been,

1 and your attorney will correct me if I'm wrong I'm
2 sure, but -- is that that was the understanding among
3 the workforce, that that was how they would have taken
4 it. But my question was a little different this time.
5 I'm asking you what you believe Keith Nelson intended
6 in hollering across the parking lot what he did to
7 George Wilson?

8 A He intended to let everybody know. There's
9 no excuse for him to open his mouth.

10 Q Okay. That's -- that's -- that's one point,
11 but this is a different question. In saying -- in
12 hollering across the parking lot to George Wilson that
13 you had gotten -- you had an infection and you'd
14 gotten an antibiotic and it wasn't related to the
15 accident, do you believe that Keith Nelson intended to
16 publish or relay to anyone who could hear him that you
17 had a sexually transmitted disease?

18 A Yes, I do.

19 Q Did -- was your relationship prior to that
20 point -- your relationship with Keith Nelson, describe
21 it for me.

22 A My relationship with him and everybody, I
23 believe in live and let live. I try to get along with
24 everybody. I go in in the morning, I speak to
25 everybody. Whether you like me or not, I still speak.

1 But after this situation, I stayed away from him.

2 Q So prior to this you had no controversy or
3 issues with Keith Nelson?

4 A No.

5 Q You guys never had a disagreement?

6 A No, I ain't disagreed with him. I talk to
7 him just like I -- just like I just said, I talk to
8 everybody.

9 Q Did he talk to you?

10 A Yeah, he talked to me. But after this
11 incident, no, I was done.

12 Q All right. And so I'm going to just focus
13 on before this incident. Before this incident were
14 you and Keith friendly at work?

15 A Not friendly. We were just working
16 companions.

17 Q All right. You were cordial at work?

18 A Yeah, he -- he would see me working and
19 he'll come back and speak to me, Hopper. Because the
20 part you don't understand is I'm a go-getter. I do a
21 job. When I say I do a job, I do a job. You know,
22 you've got people that go to work just to be at work
23 for a paycheck. No, I'm there doing a job. I get
24 paid for it so I do it.

25 Q You're a hard worker, right?

1 A Yeah.

2 Q A model employee, right?

3 A Yeah.

4 Q And Keith Nelson knew that, right?

5 A Yeah, everybody there knows that.

6 Q Everybody at West Fraser knew that, right.

7 A Yeah.

8 Q All right. So Keith Nelson never had any
9 beef with you, he never had any reason to criticize
10 you, right?

11 A No.

12 Q And you guys never exchanged any, I don't
13 know, insults or name-calling, nothing like that?

14 A No, no, no, no, no, no, no, uh-uh.

15 Q No bad feelings that you're aware of --

16 A Not --

17 Q -- between you and --

18 A Not --

19 Q -- Keith Nelson?

20 A Not -- not on my part because, like I said,
21 I try to live and let live. I don't be bothering
22 people.

23 Q And you don't have any reason to believe or
24 to testify that before this incident Keith Nelson had
25 any bad feelings towards you, right?

1 A I -- I -- I don't think so. I don't know.
2 You never know what a person thinks.

3 Q All right. But you --

4 A But I know what he did. Thinking one thing
5 and doing is another. And he did the unforgivable.

6 Q All right. Going back to the meeting
7 between you and DJ Russell --

8 A Uh-huh.

9 Q -- where you told Mr. Russell that his
10 apologies weren't helping you at all.

11 A No.

12 Q I asked you what you thought Mr. Russell
13 should have done to remedy the situation. Remember
14 that?

15 A Yeah, I remember that.

16 Q All right. And I asked you if you thought
17 he should have fired Keith Nelson immediately.

18 A By law he should have.

19 Q All right. And sitting here today you
20 believe Mr. Nelson should have been fired on the spot?

21 A Yeah.

22 Q Do you believe that West Fraser should have
23 done anything else to remedy this situation?

24 A You know, they could -- they could apologize
25 to me. They could have did something for me and my

1 wife because, see, me and my wife got to live with
2 this the rest of our life.

3 Q What could they have done for you and your
4 wife?

5 A It's just -- it's just a simple thing in
6 showing compassion. That little damn I'm sorry, you
7 know how far that took him? No farther than here and
8 here (indicating). If he was --

9 Q So --

10 A Wait a minute. Let me finish. If he was so
11 damn sorry -- you know, he hadn't said anything about
12 that until he wanted me to go to nights. Then he
13 going to say, How's your wife? How y'all doing? Now
14 we talking years later.

15 Q All right. So can we focus on this meeting
16 with DJ Russell so that I don't get the conversations
17 confused?

18 When -- he apologized to you during that
19 meeting, right?

20 A He -- he say he did.

21 Q Well, you testified that he said --

22 A Yeah.

23 Q -- he was sorry.

24 A Yeah, he said he was sorry. Saying and
25 meaning is different.

1 Q Okay. So you didn't want an apology from
2 Mr. Russell, right? That wasn't good enough?

3 A No, it wasn't good enough because there
4 wasn't nothing sincere about that. You can't tell
5 this man that -- this man know every freaking thing
6 that he think you do.

7 Q What else then should -- do you think the
8 company West Fraser should have done at that point?

9 A Well, you know, at that point, you know what
10 he told me? He told me, he said -- I told him, I
11 said, You know what defamation of character is, don't
12 you? He said, Yeah. I said, Okay, then. I'm glad
13 you understand. And so he was supposed to have got
14 back with me and he didn't. I said, Now I'm going to
15 do what I need to do and you need to do what you got
16 to do. I said, Are we clear on this? And he said,
17 Yeah. So I got up and walked out.

18 Q What did you mean by that?

19 A I was going to take it to the next level.

20 Q What does that mean?

21 A That means that I was going to sue him,
22 plain and simple as that, because what he said and --
23 and the reaction I got, uh-uh. There wasn't -- there
24 wasn't nothing good about that. There was no good in
25 that exchange, none whatsoever.

1 Q All right. Prior to telling Mr. Russell
2 that you were going to sue the company for
3 defamation --

4 A I didn't -- I didn't say sue.

5 Q You said --

6 A I just said I'm going to do what I have to
7 do, and I left it at that.

8 Q And what you meant by that was that you were
9 going to sue the company for defamation?

10 A That's right.

11 Q All right. Prior to saying that to
12 Mr. Russell, you said that you mentioned the occasions
13 that you had asked him for a raise?

14 A Yeah.

15 Q All right. Why were you bringing up raises
16 in this conversation with Mr. Russell?

17 A Because, you know, he was bringing up
18 accidents and all this other kind of thing, and I was
19 telling him, I said, Look, you know, I bent over
20 backward to do everything you asked me to do. And
21 what do y'all do? I get ridiculed for coming to work
22 and doing my job and got hurt. Y'all ridiculed me for
23 that. Y'all put this false accusation out there. And
24 I say, Y'all act like me and my wife are nasty damn
25 people as it is. I don't think that.

1 Q If Mr. Russell had then said at that point
2 Well, we'll revisit the raises that you asked for,
3 we'll give you a raise, would that have -- would that
4 have been an appropriate response?

5 A No, because he told me a lie when he told me
6 that, Yeah, we're going to do that later on down the
7 road. Yeah, yeah. He gave everybody a raise. You
8 know what I got? Nothing.

9 Q So at that point in this meeting with
10 Mr. Russell, was there anything that Mr. Russell could
11 have done to -- that in your mind would have at least
12 somewhat satisfactorily remedied the damages that you
13 suffered as a result of this?

14 A You know, if he was a man like men are
15 supposed to be, he could have said, Look, why don't
16 you bring your wife in here and we'll sit down and
17 we'll discuss this to see can we come to some kind of
18 conclusion that will help y'all. That was never
19 brought forward. It would have meant a lot to her and
20 it would have meant more to me than just saying, Oh,
21 I'm sorry.

22 Q So you thought that Mr. Russell should have
23 included your wife in this meeting?

24 A You know what? They included her in it
25 when she -- they had been saying that maybe she got an

1 infection. She ain't had a damn thing to do with
2 nothing. She just came to check on me.

3 Q Mr. -- I'm sorry. Are we talking about
4 things that Mr. Russell said?

5 A He didn't say that. That's Keith Nelson.
6 But you don't -- like you still -- you're still
7 missing the point. The point is that, okay, he should
8 have -- he should have left it alone. And then when I
9 went in there to talk to him, all he did was try to
10 give me the run-around. That's all it was. And then
11 later on, he got Peter involved. He finally come back
12 and talked to me and he told me, he said, Well, I've
13 talked to upper management and as far as we're
14 concerned, this case is closed. And I said, Do what?
15 He said, This case is closed. And I said, Okay, thank
16 you, and I got up and walked out of the office.

17 Q And that meeting was after your meeting with
18 Mr. Russell?

19 A Yep.

20 Q Because we've talked about two meetings that
21 you had with Ms. Russell, right?

22 A Yep.

23 Q And after this second meeting --

24 A Well --

25 Q -- with Mr. -- go ahead.

1 A Okay. You said two, yes. Two -- and I'm
2 sorry to interrupt you, but that -- the one I just
3 told you about, that'd be the third one.

4 Q Okay. So there was a -- there was a second
5 one in between?

6 A Uh-huh.

7 Q All right. Tell me about that meeting.

8 A I did. The first one was when I went up
9 there and I told them about it.

10 Q You told Melody about it?

11 A And --

12 Q And --

13 A No, I told Melody first --

14 Q Right.

15 A -- and I went to talk to both of them, but
16 she said he was down in the mill. So I went back that
17 afternoon and I talked to him and he said he was going
18 to investigate.

19 Q That was the first meeting?

20 A Yeah.

21 Q Okay.

22 A All right. The second meeting is where I
23 went back and me and him talked about it, fell out and
24 all this and slammed a couple doors and I walked out.
25 The third meeting was when Peter came in there and

1 told me that as far as they're concerned, the case was
2 closed.

3 Q The second meeting was when you told
4 Mr. Russell that you were going to take it to the next
5 level?

6 A Yeah.

7 Q And then there was a third meeting that
8 Peter attended, and was Mr. Russell also there?

9 A Yes.

10 Q Okay. Before we move on to the Peter -- the
11 meeting that Peter attended, in the second meeting
12 when you said that Mr. Russell, if he had wanted to
13 remedy the situation could have called your wife and
14 met with both of you together, right?

15 A Yeah.

16 Q All right. What do you think that
17 Mr. Russell or West Fraser should have done for you
18 and your wife?

19 A You know, a simple sincere apology would
20 have been a start, but we never did get that. We
21 never did get that, none whatsoever. When I -- I hate
22 to take you back in time, but when I tripped and I
23 didn't fell and my wife came up there to get me, he --
24 he was standing there telling her that, Well, if he'd
25 take care of the company, we'll take care of him. In

1 other words, he was saying the hell with me, the
2 company means more than I do. He didn't give a shit
3 about what I felt or what was going on with me. Now,
4 he's telling my wife that. Like I'm saying, you know,
5 you -- you're sticking to the facts of what you think
6 it is but you don't see the whole picture. So I had
7 to live in this and try to make my living out of a
8 bunch of bull crap that goes on every day. I hush and
9 I just go on.

10 Q Let me ask you this, Mr. Wise: Wouldn't the
11 most straightforward -- and you've talked about you
12 thought Keith Nelson should have been terminated,
13 right?

14 A Uh-huh.

15 Q What about the people that you said were
16 giving you a hard time and making fun of you and
17 repeating this rumor to your face?

18 A Okay. You know what? If he never would
19 have brought that there, this would never happen. The
20 bottom line is if he -- he should have never
21 whatsoever brought that on that plant site. It wasn't
22 his right to say nothing about nothing like that, and
23 to be a lie. If he wouldn't have said nothing about
24 it, them guys wouldn't have never knowed. They
25 wouldn't have been ragging me and going on.

1 Q And the people that were ragging you, are
2 those your co-workers?

3 A Yeah, co-workers.

4 Q And Mr. Russell asked you to identify those
5 people, didn't he?

6 A Yeah.

7 Q All right. And did you -- did you tell him
8 any of the names of the people who were --

9 A No, I didn't.

10 Q Let me finish. Did you tell Mr. Russell any
11 of the names of the people who were harassing you or
12 ragging you about this rumor?

13 A No, because it was too late then.
14 Everything was in motion. What was he going to do?
15 Here I am, I was 62 years old and I'm supposed to be
16 going crying to him like, Okay, daddy, I need your
17 help. Will you just get them off me?

18 Q Well, but you told him about what you
19 believe was Keith Nelson's wrongdoing, right?

20 A Yeah, because he shouldn't have done it.
21 You act like you don't get the point. The point is he
22 should have never brought that to the plant site.

23 Q And for the record, you never heard with
24 your ears Mr. Nelson say anything about you having a
25 sexually transmitted disease?

1 A No. But for -- I know for a fact he is the
2 only one could have come to the plant site and told
3 that because we was the only two that went to the
4 doctor. One of us returned, one of us didn't.

5 Q You testified there were a number of people
6 who saw you in physical pain in your groin area,
7 right?

8 A Yeah. But due to that fact, yeah, pain in
9 my groin area but ain't nobody know I got no shot.
10 Ain't nobody know that I got nothing. Ain't nobody
11 know that but who? Nelson.

12 Q All right. When -- you said there would --
13 there would be no point in you identifying to
14 Mr. Russell or West Fraser the names of the co-workers
15 who were harassing --

16 A Uh-huh.

17 Q -- is that right?

18 A Right.

19 Q Okay. Because it was too late at that
20 point --

21 A Yeah.

22 Q -- right?

23 A Uh-huh.

24 Q Where are we in the timeline? Approximately
25 how long has it been since the November 7, 2017

1 incident?

2 A What you mean? What you mean by that?

3 Q Well, when you made the decision that there
4 was no point in telling Mr. Russell the names of the
5 co-workers who were harassing you because it was too
6 late, where -- what date was it?

7 A I don't know what date it was. All I know
8 is that once it started, it's too late. It's too
9 late. What you going to say? Well, they're saying
10 this and they're saying that. And the first thing
11 it's going to come out to be, Well, where did they get
12 it from? Where did they get it from? Why are they
13 saying these things?

14 Q Did -- did the harassment that you're -- by
15 the co-workers, did it continue after this meeting
16 with Mr. Russell when you wouldn't identify their
17 names?

18 A It stopped when Harry Shelton seen that I
19 was flipping out. And he was telling them, Man, y'all
20 better leave him alone. He ain't taking this too good
21 no more. At first I tried to kind of go along with
22 it, you know, just walk away from it, but when you
23 keep kicking a dog, sooner or later he's going to
24 bite. And I had got to that point and I was freaking.

25 Q And Harry Shelton is another hourly

1 employee, right?

2 A Yeah.

3 Q He's a co-worker?

4 A Uh-huh.

5 Q Yes?

6 A Yes. I say yes. I'm sorry.

7 Q And don't you think that -- and the
8 co-workers, your co-workers, listened to Mr. Shelton,
9 right?

10 A Yeah, because that's when they took the time
11 to see that I was really flipping out about this
12 thing. It got real bad. It got real freaking ugly.
13 You don't have an idea because you don't -- you don't
14 know what I was going through in my mind. And then
15 when it got back to my mama, here I am 62 years old
16 and I'm sitting there with my head down like I'm some
17 kind of little chap trying to explain to my mama why
18 all this shit's been talked about me, and she's
19 ten miles away from the plant and she hears it.

20 Q All right. I'll come back to that.

21 A Oh, boy.

22 Q Did -- don't you think that if DJ Russell,
23 the plant manager, had come down and talked to the
24 co-workers, everybody in the kiln department and got
25 everybody together and said there's not going to be

1 anymore of this talk about these rumors, there's not
2 going to be anymore harassment or you're going to be
3 fired, don't you think that that would have caused the
4 wrongdoers to stop?

5 A No.

6 Q If you had given names to Mr. Russell of
7 who -- who specifically was harassing you and he had
8 called them into his office one by one and said if you
9 do it again, you're going to be fired, don't you think
10 that that would have -- have helped?

11 A No. All it would have did was make it
12 worse. That's all it would have did. Man, you up
13 there crying to that white man now. I'm saying, you
14 don't get it. You truly don't.

15 Q So, in other words, there was nothing at
16 that point that West Fraser could do?

17 A What are they going to do? They done did
18 enough.

19 Q Well, I'm asking you. There was nothing
20 that West Fraser could do to remedy the harassment
21 that you were experiencing or stop the rumors that
22 were being spread?

23 A No. I told you what stopped them. After
24 that seen that I was freaking totally out, that's what
25 stopped it. Because you know everybody know that I'm

1 more or less happy go lucky like to, you know, speak
2 to people and keep going. If I can help somebody, I
3 help them. Well, that got to the point that I'm more
4 or less to myself and it wasn't -- it wasn't pretty.
5 It wasn't.

6 Q All right. The meeting that Peter
7 attended -- what's Peter's last name?

8 A I -- I can't think of his last name.

9 Q Is it Proventure (phonetic)?

10 A Yeah, that's it.

11 Q All right. The meeting that Peter attended
12 with you and Mr. Russell, you said that Peter told you
13 that the company considers the matter closed at this
14 point, right?

15 A Yeah, uh-huh.

16 Q All right. Was there anything else
17 discussed in that meeting?

18 A No, that was it. As far as I'm concerned
19 and the company's concerned, the case is closed.

20 Q I want to go back and make sure that I got
21 your testimony about everyone that you can remember
22 having a conversation with about this allegation.

23 The ones that you told me about, we're
24 starting with Chuck Price. His was the first. And
25 then the next person you talked to was Harry Shelton.

1 And the next person you talked to was Bruce Young, and
2 you said that you actually approached Mr. Young and
3 said to him, This SOB, Chuck Price, is going around
4 saying I have the clap.

5 A Uh-huh.

6 Q And then was there any other conversation
7 that you had with Mr. Young?

8 A No, he -- he told me that he went in there
9 and he told Chuck about it, and then Chuck got real
10 offensive about it and said, No, I didn't say that. I
11 didn't say that.

12 Q Okay. Did you have any other conversations
13 with Bruce about -- about the alleged rumors that
14 we're talking about?

15 A Not then.

16 Q Okay. At some later time did you have any
17 other conversations with Bruce Young about these
18 rumors?

19 A Yeah, after I decided to go ahead and bring
20 it forward with the lawyers, I talked to him and he
21 was telling me that -- some of the things that he
22 heard.

23 Q All right. And what did he tell you he
24 heard?

25 A He told me he -- he heard that whole

1 conversation between Chuck and Nelson.

2 Q Tell me what Bruce told you he heard.

3 A I can't remember what he -- all he told me
4 because after he told me that, I called my lawyer then
5 and asked him did Bruce -- could I get Bruce in on
6 this. And we had -- we had started winding things up
7 then so it was -- I guess it was too late right at
8 that moment so I don't know. But I guess if we have
9 to, we will.

10 Q And I don't want you to tell me about things
11 that your attorney said to you because that's all
12 protected.

13 A Okay.

14 Q So I don't get to know that. But I think
15 are you saying -- is the question that you asked, Can
16 we get -- I'm sorry. Is the question that you asked,
17 Can we get Bruce involved, meaning as a witness?

18 A Uh-huh.

19 Q Is that what you meant?

20 A Uh-huh.

21 Q Okay.

22 A For him to tell his side.

23 Q Okay. And can you remember anything more
24 about what Bruce said he overheard Chuck and Keith
25 talking about?

1 A No, because it -- it pisses me off to have
2 to relive all this stuff over and over again. And
3 like I say, I had got it somewhat behind me a little
4 bit and we were just kind of moving right along with
5 it, and then they hit me in the face, wanted me to
6 sign a paper up there to go on nights and all this, so
7 it -- it escalated again.

8 Q And I understand and litigation tends to
9 drag on. That's just the nature of the beast. So I'm
10 sorry about the timing of this but this is my only
11 opportunity to ask you. So I'm just trying to get as
12 much information I can about who you talked to and
13 what was said.

14 So going back to the conversation with Bruce
15 Young after you had already engaged a lawyer. Do you
16 remember anything in detail about what he told you he
17 heard Keith and Chuck Price talking about?

18 A The understanding that I got is that he
19 heard everything that was said between them. Now,
20 what that everything is, I do not know.

21 Q All right. Do you remember -- and, again,
22 I'm not asking about anything that you and your
23 attorney talked about, but do you remember at what
24 point in this timeline that you engaged your attorney?

25 A After people and them saying that as far as

1 they concerned this case is closed, that's when I went
2 and got an attorney. It's just like I told them.

3 Q All right. Let's go back to making sure
4 I've -- I know everyone that you talked to about the
5 rumor that we're here about. After Bruce Young you
6 told me about George Wilson.

7 A Yeah.

8 Q And George told you that he asked Keith how
9 you were doing and that's when Keith said what he did
10 across the parking lot?

11 A Yeah.

12 Q After that you told me that you went to HR
13 and then we discussed --

14 A No, no, no --

15 Q -- the various meetings, right?

16 A Yeah, but after I talked to George, yeah, I
17 did go to HR. Go ahead.

18 Q Well, you went to HR and then when you went
19 back to work following -- because you only talked to
20 Melody during that first HR visit, right?

21 A Uh-huh.

22 Q And then when you went back to work, that's
23 when you saw Quinton Wilson and you and Quinton went
24 over to Keith's office together, right?

25 A Uh-huh.

1 Q And you told me about that conversation?

2 A Uh-huh.

3 Q And after that, the next conversation that
4 you told me about were the meetings with DJ Russell
5 and then eventually DJ Russell and Peter Proventure.
6 So other than those employees we've already talked
7 about, is there anyone else that you can recall having
8 a conversation about anything that Keith Nelson
9 supposedly said or this allegation that you had an
10 STD?

11 A Yeah. I told you that Keith Nelson called
12 Mike Shealy in his office and was telling him about it
13 and --

14 Q How do you know that?

15 A Mike told me himself.

16 Q Tell me about your conversation with Mike.

17 A Mike just told me that he went in -- Keith
18 called him in his office, was telling him all this
19 about what supposedly had happened and all this. Mike
20 told me, he said, when he got back to his office, them
21 guys was in there already talking about it. So he
22 turns around and he goes back and asks Nelson, he
23 said, Nelson, who did you tell there? He said, Did
24 you tell George Wilson? And said Nelson got to
25 looking kind of stupid then and said, Yeah, I suppose

1 I did.

2 Q All right. Let me see if you can be a
3 little bit more specific for me because you know I
4 want to know exactly what was said, if you can
5 remember. What did George specifically tell you that
6 he -- that he said to Keith?

7 A It ain't what George said to Keith, George
8 asked Keith how I was doing. And then Keith was
9 telling him about the antibiotics and the accident.

10 Q Okay. But then --

11 A And it caught fire after that.

12 Q All right. And I'm sorry, I said George and
13 I think I meant Mike. When Mike Shealy -- you were
14 telling me about the conversation that you had with
15 Mike Shealy. And you said that Keith called Mike in
16 his office and told him about the incident --

17 A Uh-huh.

18 Q -- right?

19 A Yeah.

20 Q When -- was it your understanding that he
21 told him about the on the -- the potential on-the-job
22 injury and that you had to go to the emergency room,
23 or did he tell him something else?

24 A He didn't come out with specific details.
25 He just told me that Keith called him in there and

1 told him about all the stuff that was going on with
2 me. And when he got back to his office, the guys in
3 the dry department already knew, and Mike left out and
4 went back and talked to Keith and asked Keith had he
5 told George Wilson. And said Keith got to looking
6 kind of stupid and say, Yeah, I suppose I did and --

7 Q What did Mike ask Keith --

8 A No, it ain't -- it ain't -- it ain't what
9 Mike asked Keith, it's what Keith was telling Mike.
10 And like I explained, Mike didn't go into no specific
11 details about what he was telling him, he just told me
12 that Keith called him in his office and told him about
13 this stuff.

14 Q Okay. So other than he told him about what
15 was going on, you can't be any more specific about
16 what Mike told you that he and Keith talked about?

17 A No, I can't. But like I'm saying, I'm
18 telling you, it's -- it's the -- basically the same
19 thing because when he got back to his office, the guy
20 was in there talking about the same stuff that Keith
21 had done told. So he goes back and talks to Keith
22 about it, asks Keith did he tell George.

23 Q Did he tell George what?

24 A About the shots and this other -- STDs and
25 all this stuff, and there you go.

1 Q All right. Did Mike tell you that he
2 specifically confronted Keith and asked him did you,
3 Keith, tell George Wilson that Anthony, or Hop, had an
4 STD?

5 A He said stuff.

6 Q All right. So you don't know in specific
7 detail what was discussed between Mike --

8 A I --

9 Q -- Shealy and Keith Nelson?

10 A I -- I told you how that went.

11 Q It was all discussed in the general terms
12 that you just relayed?

13 A Yeah, and he come back and he asked Keith
14 about it because the guys in the office already knew
15 and Keith had already spilled the beans.

16 Q Did -- okay. After Mike Shealy, was there
17 anybody else that you had a conversation with about
18 the rumors or the alleged STD diagnosis?

19 A No, because, like I said, all the guys in
20 the department knew. I mean, like I said, then here
21 come that rag they were beating me up with.

22 You know, I had -- I was in the bathroom.
23 Every time I used to go to the bathroom, they'd be
24 sitting out there on the picnic table, people be
25 (indicating). I went in the bathroom one afternoon

1 and I went in there and I was in the stall. Somebody
2 come in there and cut the light off, left. The
3 bathroom was so dark I couldn't even see my hand in
4 front of my face, and I had to wait until somebody
5 come in and cut the light back on so I could get out
6 of there.

7 So I come out of the bathroom and there
8 stood Quinton and Alex Moses. That's his last name.
9 And I lit into them like a bad habit. And Quinton's
10 excuse was that you don't know who did it.

11 Q Okay. Is there -- when did this occur?

12 A After all this stuff happened.

13 Q When specifically?

14 A I can't keep up with dates. This thing --
15 this thing went on for a while. You know, it -- it --
16 it'll be people tell you right now, I ain't heard
17 nothing about it who was right there in the mix of all
18 of it. There's no way on God's green earth that if
19 you work there on day shift that you didn't know that
20 because it went from one end of the plant to the
21 other, from on the hill all the way down to the dry
22 kiln and we at the bottom of the hill down there.

23 Q I understand. I got the -- that image. I
24 got the picture but -- and I'm just asking you
25 about --

1 MS. MCCLURKIN: Oh, sorry, do we need to
2 take a break? All right. We've got to change
3 the tape real quick.

4 THE VIDEOGRAPHER: This ends media unit
5 number three. We're off the record at 1400 hours
6 55 minutes.

7 (A break was taken.)

8 THE VIDEOGRAPHER: This is the start of
9 media unit number four. We're going back on the
10 record the 1500 hours 2 minutes.

11 BY MS. MCCLURKIN:

12 Q Mr. Wise, have you now told me about
13 everyone that you recall having a conversation about
14 the alleged STD diagnosis rumor?

15 A To be honest with you right now, I'm kind of
16 lost.

17 Q And that's fair enough. I know it's been a
18 long day. And I understand the difference between
19 your testimony that everybody was talking about this,
20 everybody knew about it. But just the best that you
21 can remember sitting here today, have you told me
22 about everyone that you had a specific conversation
23 with about this rumor?

24 A Well, it's like I said, the guys -- the guys
25 on the job, there's, I don't know, about six or seven

1 of them, I think you got -- I think you already done
2 talked to them so --

3 Q Did -- other than the people we've already
4 talked about, have you had any conversations with
5 anyone else at West Fraser about Keith Nelson making
6 the comments about you having an infection and getting
7 an antibiotic?

8 A I don't know. I can't -- I can't -- I can't
9 answer that right now. I'm sorry.

10 (Cell phone ringing.)

11 THE WITNESS: God, I'll have to talk to them
12 later.

13 I'm sorry. I don't know.

14 BY MS. MCCLURKIN:

15 Q So -- and just to make sure you heard my
16 question, that question was a little bit different
17 because it involves Keith Nelson, not just about the
18 rumor generally.

19 A Uh-huh.

20 Q So can I ask you again, get your answer?
21 Other than the people you've already told me about, is
22 there anyone else that you can recall at West Fraser
23 having a specific conversation about Keith Nelson
24 making statements about you having an infection or
25 getting antibiotics?

1 A I -- I want to say I think me and Steve
2 Johnson talked, but I can't -- I can't recall what we
3 talked about because we talked about a lot of job
4 things and it's -- I don't know whether that was in
5 there or not.

6 Q And I'm going to go through your
7 interrogatory responses with you and if a name -- if
8 you recall a name during that questioning, you can
9 tell me about it then. But other than -- and I'm
10 assuming with Steve Johnson, since you're not sure if
11 you had a conversation with him, you can't tell me
12 anything specific that you've talked with Mr. Johnson
13 concerning Keith Nelson; is that right?

14 A I can't -- I can't -- I kind of recall and I
15 don't recall. Like I say, it's -- that's kind of up
16 in the air right now. Let's -- let's just move on.

17 Q Well, I have -- if there's somebody else you
18 can remember, I need you to tell me. And if you've
19 told me everyone that you can remember right now, then
20 just tell me that and we will move on.

21 A No, let's just move on. You know, my head's
22 about to bust open. Let's just move on.

23 Q All right. There's no one else that you can
24 remember and identify for me right now?

25 A Yeah, okay. Like I said, let's just move

1 on.

2 Q All right. Did you ever have a conversation
3 with Keith Nelson about the alleged rumor?

4 A I told you we did.

5 Q Fair enough. I'm sorry. My head's feeling
6 like yours.

7 You had a conversation with him that Quinton
8 Wilson attended --

9 A Yes.

10 Q -- in his office, right?

11 A Uh-huh.

12 Q Other than that conversation, did you have
13 any other conversations with Keith Nelson about this
14 incident?

15 A No.

16 Q And to the best of your recollection he
17 never -- Mr. Nelson never apologized to you?

18 A No.

19 Q Is the only STD testing that you had done,
20 that was performed by Cynthia Hudson's office,
21 correct?

22 A Right, uh-huh.

23 Q And so whatever her records show about when
24 that testing was performed, that's going to be the
25 only STD testing you had done related to this

1 incident?

2 A Right.

3 Q You said that this rumor got back to your
4 mama?

5 A Yes.

6 Q And she lived approximately ten minutes from
7 the mill?

8 A No, I said ten miles.

9 Q Ten miles?

10 A Uh-huh.

11 Q How did it back to your mom?

12 A Small town.

13 Q You don't know how it got back to your mom?

14 A No. But when she sat me down and talked to
15 me about it, I knew. She didn't call no name. She
16 just said, Boy -- I'm her oldest son.

17 Q And she said that she had heard from some
18 unidentified person in town that there was a rumor
19 going around?

20 A She just said she heard. She didn't say no
21 unidentified person there, she just said she heard
22 talk of what was going on with me, you know, and that
23 was the hardest thing I went through. And she was --
24 she was laying there in the bed with cancer eating her
25 alive, and she wanted to tell me that. And she told

1 me, she said, Boy, just let me tell you something.
2 And I said, Yes, ma'am. She said, Don't do what
3 you're thinking. You're going to get in more trouble
4 in 15 minutes than you can get out of in 15 years.
5 And I said, Yes, ma'am.

6 Q And at that time was your mom, did her
7 illness -- was she confined to a bed?

8 A Yeah, in the end she was.

9 Q At the time that she had this conversation
10 with you, was she --

11 A No.

12 Q -- confined to a bed?

13 A No, she wasn't in the bed then.

14 Q She was able to get out and go to the
15 grocery store or go get her hair done or --

16 A No, my niece -- my niece would come to the
17 house and do her hair. She would get out and she
18 would go ride with me and I'll take her to my house
19 and do little things like that. My mom had -- I can't
20 think of the name of the cancer, but they gave her six
21 months to live. Paneak (phonetic) --

22 Q Pancreatic?

23 A Yeah.

24 Q And just to focus just on what -- what, if
25 anything, she told you about where she heard and what

1 she heard, that's kind of where I want to go with
2 this. So did she tell you specifically what she heard
3 about you?

4 A Yeah.

5 Q What did she tell you?

6 A She told me, she said, I understand that
7 they're saying that you done got ahold of something.
8 And she said, That don't sound like you but I don't
9 know, they swear it up and down you done got ahold of
10 something. And I said, No, ma'am. I said, Mama, I
11 said, Who's telling you that? She said, That's what
12 them white folks are saying. My mom was 87 years old.

13 Q And do you have any -- did she say or do you
14 have any idea who the white folks were?

15 A No. There's certain things you don't
16 question. She told me that and all I said was, Yes,
17 ma'am. There wasn't no need for me to be making her
18 life no worser than it already was. And I'm my mama's
19 baby even though I was the grown -- older one.

20 Q Did you tell your mom that it was not true
21 that you had gotten --

22 A Yeah.

23 Q -- a sexually transmitted disease?

24 A Yeah, I told her, but --

25 Q And did she believe you?

1 A Whether she believed me or not, the thing
2 about that, that was put out there.

3 Q Okay. I understand your point but answer my
4 question, if you can. Do you know whether she
5 believed you?

6 A I don't know what she believed. She always
7 believed me but when -- when -- here she was sick and
8 she -- I know within her heart she wanted to, but when
9 people is telling her all this kind of stuff, who
10 knows what to believe.

11 Q Do you know at that time in your mom's life
12 where she would have encountered a group of white
13 people that would have been talking about this?

14 A My mama -- my mama was well known. My mama
15 used to cook at the school where she stayed at. She
16 was the cook there. She was the head cook at -- in
17 the cafeteria. A lot of people know she worked at the
18 Back Porch when it was open in Prosperity and she was
19 well known. And I don't know where she could have got
20 that from.

21 Q Okay. I'm going to ask you about some of
22 your interrogatory responses that you provided.

23 Oh, before we move on to that, is there
24 anyone else who you believe Keith Nelson called into
25 his office to have a discussion about the alleged STD

1 diagnosis other than Mike Shealy?

2 A I don't know. I do know one thing, though.

3 Q What's that?

4 A The woman in the supply room, she didn't
5 tell me but she was telling Bruce that Keith got in
6 trouble about that.

7 Q All right. But the only -- of the West
8 Fraser employees that we've talked about, the only
9 ones that told you about conversations that they
10 supposedly had with Keith were George Wilson, Mike
11 Shealy --

12 A CJ.

13 Q What did CJ say?

14 A He just told me that Keith had -- boy, Keith
15 told him everything. He didn't tell me exactly what,
16 he just told him, he said, Keith, boy, Keith told him
17 everything.

18 Q But he didn't say exactly what?

19 A No.

20 Q Okay. Are there any other West Fraser
21 employees that told you about a conversation they
22 supposedly had with Keith about this incident?

23 A No, not that I can recall.

24 Q Okay. We'll get to those. I'm going to
25 mark your interrogatory responses as an exhibit. All

1 right. Let's -- let's use your interrogatory answers
2 to the interrogatories that the hospital served.

3 MS. MCCLURKIN: And I'll mark that as
4 Exhibit 7.

5 (Defendants' Exhibit 7, Plaintiff's
6 Responses to Defendant Newberry County Memorial
7 Hospital's Interrogatories, was marked for
8 identification.)

9 MS. MCCLURKIN: I should have extra copies
10 of those. You know what, I'm going to take off
11 the document production and just do the
12 interrogatory responses.

13 Do you want a copy?

14 MR. HAILE: (Shakes head.)

15 MS. MCCLURKIN: Do you need a copy? So for
16 the exhibit I took out the document request and
17 your cover letter and it's just the
18 interrogatories.

19 BY MS. MCCLURKIN:

20 Q All right. You remember at some point in
21 this case there were some written interrogatories
22 served. And did you assist your attorney in preparing
23 responses to those interrogatories?

24 A Yeah.

25 Q All right. And that's what we're looking at

1 at Defendants' Exhibit 7, right?

2 A Okay, yeah.

3 Q These are the responses to Defendant
4 Newberry County Memorial Hospital's interrogatories.

5 All right. Looking at Number 1, the
6 question asks about the names and addresses of persons
7 you're aware of who might be witnesses concerning the
8 facts of this case.

9 A Uh-huh.

10 Q And then if you look over at Page 2 there's
11 a group of West Fraser employees that you identify --

12 A Uh-huh.

13 Q -- down at the bottom of the page starting
14 with Jeremy Mills.

15 A No, that wasn't supposed to be Mills. It's
16 supposed to be Neal.

17 Q Neal, okay. N-E-A-L?

18 A Uh-huh.

19 Q Okay. And I don't think you've talked about
20 him today. So what do you -- what does Jeremy Neal --
21 what information does he have that might be relevant
22 to this case?

23 A He was -- he was telling me, he said, Man,
24 you know, I walked in on the conversation and these
25 boys talking all kind of shit. And he said, I just

1 didn't want to hear it. And he -- he said he just
2 kind of walked off because there he wasn't believing
3 it no way.

4 Q All right. So Jeremy Mills told you he
5 heard who talking?

6 A People talking about it.

7 Q So he just heard -- he just overheard the
8 rumor, right?

9 A Yeah.

10 Q And he said he didn't believe it and walked
11 away?

12 A Yeah.

13 Q Okay. We've already talked about Harry
14 Shelton. Joseph Prayler, is that supposed to be
15 Joseph Praylow (phonetic)?

16 A He more or less heard a bunch of stuff, too.
17 He didn't really give no details and he didn't say
18 anything other than he heard things.

19 Q All right. Did he tell you whether he
20 believed the rumors or not?

21 A No, he didn't -- he didn't -- he didn't
22 indicate either way, he just saying that he heard all
23 this going on.

24 Q All right. And other than that he had heard
25 the rumor, too --

1 A Yeah.

2 Q -- does Joseph Praylow know anything that's
3 relevant to your claims in this case?

4 A I -- honestly, I truly don't know what all
5 he knows. I just heard that he heard all this going
6 on.

7 Q All right. That's the only -- that's the
8 only fact that you're aware of that Mr. Praylow knows?

9 A Yeah.

10 Q All right. Raphael --

11 A Maybin.

12 Q -- Maybin, what information does he have
13 that might be relevant to your claims in this case?

14 A Ralph was telling me that he overheard them
15 boys talking about that I had STDs, I had got my
16 penicillin shot and all this.

17 Q All right. So he was giving you a hard
18 time?

19 A Well, you know, mostly, yeah, in a kidding
20 manor like, you know -- like I said, ragging me about
21 it.

22 Q Okay. And other than that, do you believe
23 that Mr. Maybin has any information about facts that
24 might be relevant to your claims?

25 A Yeah. They like -- it's just like I said,

1 the rumor went through the mill. And they was in the
2 department and I can't sit here and swear up and down
3 to all what they heard. All I know is what they're
4 telling me or telling me and ragging me about.

5 Q Okay. But other than that, do you know of
6 any other information that they're going to have
7 that's going to be relevant to this case?

8 A I don't know.

9 Q Anthony Cannon?

10 A He told me about, Hey (unintelligible), do
11 not -- he's just -- I know you don't understand.

12 Q No, I understand that. I'm pretty sure she
13 didn't get your testimony. So can you --

14 THE WITNESS: You didn't get it? Oh, sorry.

15 THE COURT REPORTER: Repeat your answer,
16 please.

17 THE WITNESS: He was saying, Hey, man, you
18 running them whores down there on
19 (unintelligible)? I thought I heard you running
20 them whores down there until you done got burnt.
21 But, you know, and more or less just that's
22 another part of the ragging and going on.

23 BY MS. MCCLURKIN:

24 Q So in different verbiage, he was also
25 ragging you about the rumor that he had heard,

1 correct?

2 A Yeah.

3 Q All right. Other than that, does he have
4 any information that you're aware of about facts that
5 might be relevant to your claims?

6 A I don't know.

7 Q Okay. Same question as to Anthony Byrd.

8 A Byrd was telling me, he said, Yeah, man, I
9 heard all this stuff -- this stuff that they was
10 talking about. He said, I don't know what to think or
11 what to believe. I know they're going around telling
12 it, that's what he said.

13 Q All right. Anything else that Mr. Cannon
14 has said to you or that information you believe he may
15 have that may be relevant to your claims?

16 A I don't know.

17 Q All right. We've already talked about Mike
18 Shealy, right?

19 A Yes.

20 Q We've talked about everything that you and
21 Chuck Price have talked about and any information that
22 you believe he may have, right?

23 A I -- I don't know. You know, like this
24 here, right now, everybody try to save their own ass.
25 That's what it basically boils down to.

1 Q All right. And just so we can get through
2 this process, though, I'm -- because I want to just
3 make sure what these people are supposedly supposed to
4 know and you're doing a good job telling me. So for
5 Chuck Price, you've told me -- we've already talked
6 about him, right?

7 A Yes.

8 Q Okay. And George Wilson, we've talked about
9 him, correct?

10 A Yes.

11 Q And we've talked about CJ Dudley?

12 A Yes.

13 Q All right. Let me get to you look at Number
14 5 which is on Page 4 of that same exhibit.

15 A Page 5?

16 Q It's on Page 4. It's Number 5.

17 A Okay. All right.

18 Q So Interrogatory 5 asks you about the names
19 and address of all hospitals, clinics, physicians,
20 psychiatrists, and it continues on. But it's asking
21 about health care providers or facilities where you've
22 been treated for the last 15 years. Do you see that?

23 A Yeah, I see that.

24 Q And then you list several. Richland
25 Memorial Hospital in Columbia that you list first,

1 were you treated there after this incident or before?

2 A My -- I was treated -- I think I had
3 treatment after this, if I ain't mistaken.

4 Q All right. Was that for your blood
5 pressure?

6 A Blood pressure, yeah.

7 Q Anything else that you can recall being
8 treated for at Richland Memorial?

9 A My heart.

10 Q Okay. Anything that's related -- that you
11 relate to this -- the claims in your lawsuit?

12 A Well, when you're upset, you're upset so
13 that's it. I got -- I got upset, blood pressure run
14 up, and rushed me to the hospital. When I say "run
15 up," it went way up.

16 Q And are you claiming that your blood
17 pressure and hypertension is the result of things that
18 happened in this lawsuit -- or excuse me, let me
19 rephrase that. Are you claiming that your blood
20 pressure and hypertension were caused by the events
21 that are the subject of this lawsuit?

22 A What I'm saying is it played a part in it.
23 I can't sit here and swear up and down that it caused
24 it, but I know it played a part in it because, you
25 know, I -- it -- when you get so that you're depressed

1 and people fucking -- people messing with you, it --
2 it do a lot to you. And then you'll happen home where
3 it happens no more.

4 Q And we'll get to that. Did -- is -- you
5 were diagnosed with hypertension before this incident,
6 right?

7 A Yeah.

8 Q All right. And you've been --

9 A But it ain't never been -- it ain't never
10 been nothing like this.

11 Q Okay. And you've been treated for
12 hypertension for several years even before you came to
13 work at West Fraser, right?

14 A No, I wasn't treated for it, no, uh-uh.

15 Q You've been diagnosed with it --

16 A They said that -- they said that I had a
17 fluctuating blood pressure sometimes, but I wasn't on
18 no blood pressure pills or none of that stuff, uh-uh.

19 Q Had you been diagnosed with hypertension
20 before coming to work at West Fraser?

21 A No, not that I know of. Like I said, they
22 said that it was just like my heartbeat, it was
23 irregular.

24 Q And as a result of your irregular heartbeat,
25 you had two heart caths put it, right?

1 A Yeah, something like that.

2 Q Well, that was all before you came to work
3 at West Fraser, right?

4 A Yeah.

5 Q Who was the doctor that first diagnosed you
6 with hypertension?

7 A I don't know. Like I said, they didn't --
8 they didn't tell me I had hypertension because I'd
9 never been on any blood pressure medicine.

10 Q None of your doctors have ever diagnosed you
11 with hypertension before this incident?

12 A If they said anything about hypertension,
13 like I said, I've never been on any medication for my
14 blood pressure.

15 Q All right. I'm asking you whether you've
16 ever been diagnosed. I'm not asking you about
17 medication.

18 A I don't know if you consider that diagnosed
19 because, you know -- let's see, what is her name,
20 Carlotta Davis, she told me I was borderline diabetic.
21 I went to a specialist and they told me, they said,
22 there's no such thing as borderline, either you is or
23 you ain't. So they run a bunch of tests and, like I
24 said, my blood pressure fluctuates sometimes.

25 Q Okay. So to your knowledge you've never

1 been diagnosed with hypertension that required any
2 kind of treatment?

3 A No.

4 Q All right. What about after this incident
5 or currently today?

6 A You said what?

7 Q Do you have hypertension that requires
8 ongoing treatment today?

9 A No, I'm not on any medication.

10 Q Okay.

11 A Not for my blood pressure.

12 Q So still sitting here today you don't suffer
13 from hypertension?

14 A It fluctuates. I don't take any medication.
15 It just fluctuates sometimes.

16 Q Prior to coming to work at West Fraser you
17 had fluctuating episodes of hypertension, right?

18 A Sometimes.

19 Q And then after working West Fraser and
20 sitting here today, you still have fluctuating
21 episodes of hypertension, right?

22 A Sometimes but now they're more severe but it
23 still -- nobody's still put me on any medication or
24 nothing.

25 Q All right. Is there any doctor that you

1 consult with or treat with for your fluctuating
2 hypertension?

3 A No.

4 Q Is there any -- okay. Other than Richland
5 Memorial, we've talked about -- you've been to New
6 County Memorial other than for this -- for this --

7 A Newberry?

8 Q Newberry, yes, excuse me. Newberry County
9 Memorial other than for this incident, correct?

10 A Yeah, a long time back.

11 Q Lexington Family. Who is Thomas Willard?

12 A Who?

13 Q Dr. Thomas Willard in West Columbia, do you
14 recall what you've seen him for?

15 A That's my -- what you called it? Oh, God.
16 Prostate.

17 Q And Lexington Medical Center, is that --

18 A Dr. Hutson and the other doctor I've got in
19 there.

20 Q What do you see -- I think -- I think that's
21 different. Look -- I'm not asking about Lexington
22 Family Practice --

23 A Medical center when I went and had surgery
24 there for my cancer.

25 Q Okay.

1 A Lexington Hospital.

2 Q For your thyroid?

3 A Uh-huh.

4 Q Who's Dr. Eric Horst, what have you seen him
5 for?

6 A That's a thyroid specialist and follow up.

7 Q All right. In looking at this list, do you
8 believe this is a complete list of all of the
9 providers that you've seen in the last 15 years, or
10 facilities?

11 A I ain't -- I don't know. Honestly, I don't
12 know.

13 Q Are these the -- is this a complete list of
14 everyone that you can recall seeing on more than one
15 occasion?

16 A Yes, and I know Dr. Horst I have. And I had
17 a -- a, God, colonoscopy and Dr. Hutson.

18 Q Is the insurance that you received while
19 employed by West Fraser, is that Blue Cross Blue
20 Shield of Texas?

21 A No.

22 Q Who's it --

23 A Tennessee.

24 Q Tennessee. Blue Cross Blue Shield of
25 Tennessee. Has that been -- do you have individual

1 coverage with Blue Cross Blue Shield?

2 A No, not -- not yet, just had employee
3 insurance.

4 Q Okay. It's just -- it's just you, your
5 wife's not on that plan, right?

6 A No, she -- she's got hers and I got mine.
7 It's always been Blue Cross Blue Shield even when I
8 was working at --

9 Q Of Tennessee?

10 A Yeah.

11 Q And that would be true throughout your
12 employment with West Fraser, right?

13 A Yes.

14 Q And prior to coming to West Fraser when you
15 were at Walmart, who was your health insurance
16 through?

17 A Same somebody, Blue Cross Blue Shield.

18 Q Blue Cross Blue Shield of South Carolina?

19 A Yeah.

20 Q What about when you were with Nor --

21 A Norbord?

22 Q Norbord?

23 A It was Blue Cross Blue Shield.

24 Q Of South Carolina?

25 A Yeah.

1 Q Okay. All right. Looking over at Number 6
2 at the bottom of that page asks you about pharmacies
3 that you've had where you've had prescriptions filled.

4 A Uh-huh.

5 Q And on the next page you list CVS, Kroger
6 and Walmart.

7 A Uh-huh.

8 Q Is that a complete list of all the
9 pharmacies that you can recall having prescriptions
10 filled for the last 15 years?

11 A Yeah.

12 Q All right.

13 A As far as I can -- I can remember.

14 Q You've never been convicted of a felony,
15 have you?

16 A What you consider a felony?

17 Q Punishable by crime -- or punishable by more
18 than one year imprisonment?

19 A No, I ain't never been in no prison.

20 Q Well, I'm not asking if you've been in
21 prison, sometimes people get convicted of felonies and
22 they don't go to prison. But usually if they're --
23 the crime carries a punishment of imprisonment of one
24 year or more, it's considered -- it's classified as a
25 felony. But let me just ask about your criminal

1 history. Have you been convicted of any crimes that
2 are more than a traffic violation, something like
3 that?

4 A Yeah. I pleaded no contest in a thing one
5 time.

6 Q What was --

7 A That's been over 30 -- been longer than
8 that. It's been about 40 years ago.

9 Q All right. Let's look at Number 13. It's
10 on Page 8 of the exhibit. And it asks you about
11 arrests or convictions, criminal convictions. And you
12 answer that Plaintiff was arrested for illegal use of
13 a telephone in the 1970s in Newberry County.

14 A Yeah.

15 Q Is that the -- is that the charge you're
16 referring to that's 30 --

17 A Yeah.

18 Q -- or 40 years old? Okay. What is the
19 illegal use of a phone?

20 A Well, they claim I was talking to somebody
21 that I wasn't but due to the circumstance, I couldn't
22 prove it none differently. And I was young and didn't
23 have no money so I had to plead no contest.

24 Q Your wife Pauline, what was her relationship
25 with your mother when your mother was alive?

1 A My mama loved her.

2 Q Did they visit or talk regularly?

3 A Yeah.

4 Q Do you know whether Pauline talked to your
5 mom about this incident?

6 A I don't know. She ain't -- she ain't never
7 said anything to me about it.

8 Q Is Keith Nelson the only West Fraser
9 employee that you -- that you assign any fault to with
10 regard to your defamation claim?

11 A Yes. It was his fault and the company.

12 Q And why do you believe it's the company's
13 fault?

14 A He's an agent of the company. Therefore he
15 represents the company. Now, if the company didn't
16 have sense enough to do the right thing, it's their
17 fault. So they just as much to blame as he is.

18 Q And by "the right thing" you're referring to
19 what we already talked about about calling you and
20 your wife in to meet --

21 A The right thing was -- you know, we wouldn't
22 be sitting here if they had terminated him. I
23 wouldn't have had a case.

24 Q All right. Your wife -- you've alluded to
25 this but I haven't really asked you questions about

1 the request that you not have to work night shifts, so
2 that's been a recent thing, right?

3 A Uh-huh.

4 Q Yes?

5 A It's been a what thing?

6 Q That's a recent thing, right? That's after
7 this incident occurred?

8 A Was that after? It might have -- it might
9 have been -- it was before.

10 Q Well, let's -- let's just back up. Your
11 wife has -- does your wife -- how is her health? Does
12 she have some kind of condition?

13 A Yeah, she -- she sleep walks.

14 Q Okay. And that requires someone to be home
15 with her at night?

16 A Well, now she just -- well, my daughter be
17 there sometimes with her and I got cameras inside the
18 house and I check on her.

19 Q But you and your wife are the only ones who
20 live in your home, right?

21 A Right.

22 Q On a permanent basis anyway?

23 A Right.

24 Q And how long has she had the condition that
25 causes her to sleepwalk?

1 A About -- I want to say about two -- two or
2 three years.

3 Q And has her doctor said that she doesn't
4 need to be at home alone when she's asleep?

5 A Her doctor gave her a bunch of medication
6 that kept making her sick and she just quit taking it
7 because it wasn't doing her no good.

8 Q Uh-huh.

9 A So she said she ain't going back to no damn
10 doctor, to leave her alone with it, we'll deal with it
11 the best way we can.

12 Q So the medication was making her feel bad,
13 she quit taking that on her own?

14 A It was making her sick.

15 Q And -- but now her sleepwalking symptoms
16 aren't controlled, right?

17 A No, she still do it but it ain't -- it ain't
18 as bad. It was so bad that when I was there at home
19 with her and she would get up and walk the hall. And
20 I would go up the hall with her, and the next morning
21 she wouldn't remember a thing.

22 Q And so you requested -- you made the request
23 at West Fraser to not be assigned to work on the night
24 shift --

25 A Right.

1 Q -- so that you could stay home with your
2 wife?

3 A Right.

4 Q And they allowed you to do that temporarily,
5 right?

6 A Right.

7 Q Are you still -- is that a accommodation
8 still in place?

9 A No. When the lawsuit hit the fan, they
10 said, You got to go on nights.

11 Q Well, I think -- I think you might have your
12 time mixed up so let's -- let's introduce this is an
13 exhibit.

14 A I ain't got my time mixed up.

15 Q All right. Well, this has -- this has been
16 produced as Defendants 132. I'll mark it as
17 Defendants' 8.

18 (Defendants' Exhibit 8, Letter Dated May 31,
19 2019 from DJ Russell, was marked for identification.)
20 BY MS. MCCLURKIN:

21 Q I think you alluded to this earlier when you
22 mentioned a letter that you were asked to sign and you
23 said no.

24 A Yeah.

25 Q Let's get it on the record.

1 A That's it. And the reason I -- the reason I
2 refused to sign it because you know --

3 Q Let's identify for the record what this
4 is --

5 A Okay.

6 Q -- what it is. This is a letter dated
7 May 31, 2019 from DJ Russell?

8 A Uh-huh.

9 Q The Newberry plant manager, right?

10 A Uh-huh.

11 Q And it's a letter to you, correct?

12 A Uh-huh.

13 Q And it's talking about this accommodation to
14 your schedule which is --

15 A Uh-huh.

16 Q -- that accommodation is to allow you not to
17 work night shifts so that you can be home with your
18 wife, right?

19 A Uh-huh, right.

20 Q All right. And this is all -- this is in
21 May of 2019, right?

22 A Uh-huh, uh-huh.

23 Q All right. And this -- and prior to this,
24 prior to the May of 2019, you had already been
25 accommodated and allowed to work -- you would have

1 been allowed to work just during the day, right?

2 A Right.

3 Q All right. And what this letter told you is
4 that they're going to extend that accommodation and
5 allow you to do that until July 31st of 2019 --

6 A Uh-huh.

7 Q -- right?

8 A Uh-huh.

9 Q Yes?

10 A Yes. I'm sorry.

11 Q Okay. And did -- when they allowed this
12 accommodation, when they said we're going to allow you
13 to work only during the day, did -- were you told that
14 that was going to be a temporary accommodation?

15 A No.

16 Q You were never told that?

17 A No.

18 Q Did you believe that -- well, when you were
19 hired, you knew you were going to be -- before your
20 wife had this condition, you knew that part of your
21 job was to work nights when needed, right?

22 A Right.

23 Q And you did work nights, right?

24 A Right.

25 Q And you're currently working nights, right?

1 A Right.

2 Q And everybody else that's in your position
3 they have to work nights sometimes, too?

4 A No.

5 Q Okay. Who in your position only -- only
6 works day?

7 A George Wilson only work days, no weekends.

8 Q All right. He's a supervisor, right?

9 A No, he ain't no supervisor.

10 Q George Wilson's not a lead -- he's not a
11 leadman?

12 A Not that I know of unless they done changed
13 his title or something. You got lead person on
14 sawmill that work one shift. You got people down here
15 in the timber department, one shift. I'm the only
16 relief operator, like I stated earlier, that be
17 bounced -- and they work only in their department.
18 I'm the only one that will be bounced all over the
19 mill regardless what to do their business because they
20 allow me to work days, and I'm from one department to
21 the other department. And when this lawsuit came
22 about, oh, that was the end of that. The
23 understanding I got, Kim from the home office, the
24 head HR person --

25 Q Uh-huh.

1 A -- said she was the one that wrote up the
2 letter and don't give him no special favor.

3 Q Did -- were you advised of your rights under
4 the Family Medical Leave Act? Was that discussed? Do
5 you remember that?

6 A Yeah, I remember that.

7 Q All right. And did they tell you that you
8 have a certain amount of leave available under the law
9 to care for your wife if she had a serious health
10 condition?

11 A Yeah. But let me explain that to you. It's
12 no matter how serious it is, if she won't go to the
13 doctor, what good does it do me? She had been, it
14 wasn't helping her, all it was doing was making her
15 sick, and she had made up her mind that she wasn't
16 going no more so --

17 Q I understand. Did -- but did you
18 understand, though, that the time that you could take
19 off work under that -- under that law was limited?

20 A But you have to have a doctor to sign off on
21 that.

22 Q And you didn't have that?

23 A No, because she wouldn't go. And if she --
24 if she refused to go, how could I get that signed off
25 on?

1 Q I understand. But the company still allowed
2 you to do -- to work this modified schedule for some
3 period of time, maybe it was a little more than eight
4 weeks, right?

5 A Yeah, but understand this: When all this
6 happened, I was working on night doing DJ a favor.
7 And they called up here on the job for me because when
8 we're not allowed to carry our phone and my phone was
9 in my bag.

10 Q Uh-huh.

11 A And it was 11:00 that night. This thing
12 happened at 6:00 in the afternoon. And I hadn't heard
13 nothing from her so when I went to lunch, I seen on my
14 phone 911. And I called and a friend told me what had
15 done happened. And I told Eric Reynolds, I said, Man,
16 I've got to go. My wife's been in a wreck. So I come
17 back that Monday and they said they had been calling
18 the guard shack, calling the guard shack, won't nobody
19 answer the answer, nobody answer the phone answer. So
20 I come back and I talk to DJ about it. DJ said, Well,
21 the reason they didn't answer the phone is the guard
22 was out making rounds. And the truth of the matter is
23 here I am was all over the yard that night moving
24 lumber around, I ain't seen the guard nowhere. And so
25 that was another lie he told me, and so I just don't

1 have no faith in what the man says. He known to lie,
2 make up excuses and all that.

3 And up until he presented this letter to me,
4 that's when he asked about my wife. And guess what?
5 That was a year, maybe a year and a half later. And
6 I'm supposed to take his apology, it's supposed to be
7 good?

8 Q Well, do you think that he might have been
9 asking about your wife because you were asking for a
10 modified schedule because she had developed this
11 health condition?

12 A No, he was asking about my wife because
13 he -- he was mad about this lawsuit and wanted me to
14 go back on nights for payback. That's what that is.

15 Q Did he tell you that?

16 A In so many words.

17 Q Did he tell you that in actual words?

18 A No. Let me ask you this: You know I
19 didn't -- I didn't -- I didn't sign no paper stating
20 that they was giving me this privilege, that they was
21 going to modify my schedule. He ain't said nothing
22 about signing no paper, didn't even tell me that they
23 was going to do it. Now all of a sudden when that
24 lawsuit come into play, Hey, I need you to sign this
25 right here. And I refused to sign it and I told him

1 why. I said, Due to the circumstances and the things
2 going on now, no, I'm not signing it.

3 Q Let me -- let me ask you about the damages
4 that you're claiming in this lawsuit. You understand
5 what I mean when I'm saying damages?

6 A Uh-huh, yes.

7 Q How do you -- the defamation that you've
8 sued West Fraser and the hospital over, how do you
9 claim to have been damaged as a result of that?

10 A My whole life's been turned upside down,
11 inside out, right side, any way you want to put it.
12 You know, you got people, even though, you know,
13 whether they're talking about you or not, you know you
14 got it in your head that, Oh, hell, what they
15 thinking?

16 Q Let's do -- let's do it this way: Can you
17 look at Exhibit 7 which is your answers to
18 interrogatories. Let me catch up with you and I'll
19 give you a page.

20 A Three.

21 Q Yep, Page 3, Number 3. And you were asked
22 about -- to describe all of the damages you claim to
23 have suffered. And you identified damage to your
24 privacy interest, damage to your reputation, and
25 mental and emotional anguish and stress. And I'll ask

1 you about those specifically, but those are all of the
2 categories of damages that you're claiming in the
3 lawsuit, right?

4 A Uh-huh.

5 Q Right? Yes?

6 A Yes.

7 Q Okay.

8 A I'm sorry.

9 Q All right. How do you -- how do you claim
10 that your reputation has been affected as a result of
11 the alleged defamation?

12 A You know, it's like I told you earlier, I
13 don't bother nobody. But now people looking at me in
14 a different light. You're a damn cheat, you're no
15 good, you run around on your wife and --

16 Q Who said that to you?

17 A That's -- that's -- that's what I'm -- I'm
18 seeing. You know when -- when people start making
19 their little accusations and all that, it's always
20 something behind it whether you get it or you don't.

21 Q Well, some of these -- some of these people,
22 for instance your co-workers that you identified on
23 Page Number 2 of that same exhibit --

24 A Uh-huh.

25 Q -- you told me that some of them told you

1 that they didn't believe the rumors.

2 A Whether they believe it or not it's out
3 there. It ain't -- whether -- whether -- it's more or
4 less people lie all the time. And which one is easier
5 to believe, the truth or a lie?

6 Q But if, in fact, the person did not believe
7 the rumor --

8 A That's just --

9 Q -- your -- your reputation, at least in
10 their eyes, hasn't been damaged, right?

11 A That's just what they say. That's what they
12 say. You know, they can say anything just like
13 they're likely to come in here and tell you anything
14 now, but that don't necessarily make it true.

15 Q I understand. Is there anyone who has --
16 who has told you -- because I think -- I think you've
17 testified about what you believe people's opinions to
18 be of you now, right?

19 A Yeah.

20 Q That's what you just described.

21 A Uh-huh.

22 Q Is there anyone who has expressed to you
23 that they have a lower opinion of you or of your
24 reputation since hearing the rumors about the STD
25 diagnosis?

1 A Well, let me tell you the one that really
2 matters to me. The one that I live with every day.
3 You know, I have to wake up in the morning and look in
4 her face. And some mornings she have that frown on
5 her face and I know that this is eating at her and
6 what can I say if she knows it's not true but yet
7 still that ain't stopping her from thinking all kind
8 of crazy things.

9 Q Before we move on to -- to your wife, is
10 there -- has anybody, whether at West Fraser or
11 otherwise in the community, has anybody expressed to
12 you that their opinion of you or your reputation is
13 lower because of this incident?

14 A Do you actually believe somebody's going to
15 come to you and say, Well, you know, I got a low
16 opinion of you now?

17 Q So the answer's no?

18 A What I'm saying is that I don't know.

19 Q You don't know --

20 A I don't know -- like I tried to explain to
21 you, I don't know what people think. They can tell
22 you one thing and it'll be a whole different scenario.

23 Q Fair enough, but no one has told you that,
24 right?

25 A Face to face?

1 Q Yes.

2 A No, because guess what, even though I'm easy
3 going, that don't mean that things don't happen.

4 Q And the community where you live is
5 Columbia, South Carolina --

6 A Yes, it is.

7 Q -- correct? And that's 60 or more miles
8 from Newberry, correct?

9 A Yeah, about 30. About 30, 30 -- about 39,
10 40, something like that.

11 Q Okay, excuse me. It's around 40 miles?

12 A Uh-huh.

13 Q Is that yes?

14 A Yes.

15 Q So about an hour drive is what you said?

16 A It all depends on traffic.

17 Q Okay. I think I had my miles and my drive
18 time confused.

19 Okay. Have you seen a doctor or a
20 psychologist or a psychiatrist about any emotional
21 injuries or emotional symptoms that you're claiming as
22 a result of this defamation?

23 A No, I haven't seen no doctor.

24 Q All right. And you testified a minute ago
25 about believing that your wife was affected by this

1 incident and, you know, the basis of your defamation
2 claim.

3 A Uh-huh, yes.

4 Q Has the -- has the incident affected your
5 relationship with your wife?

6 A Yes.

7 Q How is that?

8 A She don't trust me. She --

9 Q Has she told you that?

10 A Actions speak louder than words.

11 Q Has she told you that?

12 A Actions speak louder than words.

13 Q Has she told you that?

14 A Yes, in so many words.

15 Q Has she told you that -- has she told you --

16 A She did --

17 Q -- that in words?

18 A She did -- she did that a little better and
19 she showed me that when she called and she can't get
20 ahold of me, guess what? She's tracking the hell out
21 of me on my phone.

22 Q All right. We're going to talk about her
23 actions first. But, you know, we've been here long
24 enough that you know how I'm going to keep asking the
25 same question until I get the answer. So is the

1 answer that she hasn't told you in words that she
2 doesn't trust you?

3 A She said it's not the same and it never will
4 be the same no more simply because of what was put out
5 there. That is just a simple saying and long term is,
6 you know, I can't trust you like I did, even though I
7 know you, I love you, you love me, it just -- that's
8 out there now.

9 Q Your wife has told you that?

10 A Yeah, she told me that.

11 Q When is the last time that she said that to
12 you?

13 A I don't know. I try not to piss her off
14 anymore.

15 Q Did she say that to you -- are you certain
16 that she said those words to you after this incident
17 occurred?

18 A Yeah.

19 Q How many times did she say that to you?

20 A I don't know. When a woman's crying and she
21 hurt, I don't know. I'm crying, I'm hurt. I don't
22 know.

23 Q Has your wife seen a doctor or a therapist
24 or a psychologist about any emotional suffering she's
25 experiencing --

1 A No.

2 Q -- as a result of this?

3 A No. We -- we've been trying all we can to
4 try to keep this on the down low and work it out
5 between us. Nobody really know we're have married
6 problems but we are. And it -- it's -- it's just
7 going to happen until she finally get this out of her
8 system, if she ever get it out of her system.

9 Q Is -- and you haven't been to any marital
10 counseling or anything like that?

11 A No.

12 Q No?

13 A No. She said I don't want everybody in our
14 business. I shouldn't even had said nothing about it.

15 Q All right. You mentioned that if she can't
16 reach you on your cell phone, she gets upset, right?

17 A Yeah.

18 Q And she starts calling you --

19 A Yeah.

20 Q -- repeatedly?

21 A Yeah.

22 Q Does -- do you and your wife have the same
23 cell phone carrier?

24 A Yeah.

25 Q Who is that?

1 A Verizon.

2 Q What's your cell phone number?

3 A 944-3049.

4 Q What's the area code?

5 A 803.

6 Q What's your wife's cell phone number?

7 A 944 -- no, no, no, it ain't. It's 730-9586.

8 Q Area code 803?

9 A Yeah.

10 MS. MCCLURKIN: All right. I may be about
11 done. That's not a promise, but I may -- I'm
12 going to look over my notes and let the other
13 attorney ask you questions, and then I'll -- I'll
14 come back and talk to you if I have more
15 questions, okay.

16 THE WITNESS: Okay.

17 MS. MCCLURKIN: You want to slide or just.

18 MR. HAILE: Pass me the microphone. Will
19 this be enough? Okay.

20 EXAMINATION

21 BY MR. HAILE:

22 Q Mr. Wise, I'm Shelton Haile.

23 MR. HAILE: I can use this one.

24 MS. MCCLURKIN: Oh, okay.

25 BY MR. HAILE:

1 Q I represent the hospital.

2 A All right.

3 Q The good news is, you're halfway done.

4 A Okay.

5 Q I'm going to bounce around some. I've just
6 taken notes --

7 A Okay.

8 Q -- as you all have been talking so it's not
9 going to go in kind of chronological order or
10 anything. If you don't understand, just let me know
11 and I'll try to restate it --

12 A All right.

13 Q -- and get back on the same page. And if
14 you've already answered this or any of my questions,
15 just let me know. It's been a long day so I might
16 have missed it.

17 A Yeah, okay.

18 Q For the incident with the forklift that
19 caused you to go to Newberry County Memorial Hospital
20 to see Dr. Leap where you injured your groin or had
21 the swelling, have you filed a workers' comp claim as
22 a result of that?

23 A I don't think I filed no claim.

24 Q Do you have any family members by blood or
25 marriage who live in Newberry County?

1 A Yes.

2 Q What are their last names?

3 A Wise.

4 Q Anybody else?

5 A The Moons, the Stevens, the Pitts. God, I
6 got a big family.

7 Q Okay. Other than working in Newberry County
8 and having those family members who live here, do you
9 have any other community connections? Do you go to
10 church in Newberry County --

11 A Yes, I go to --

12 Q -- member of any clubs or what?

13 A No, I go to Antioch Baptist Church.

14 Q Okay. Where is that, in Prosperity?

15 A Yeah.

16 Q All right. Do you have any other community
17 connections in Newberry County?

18 A No, no more than work.

19 Q And when Mr. Keith Nelson was at Newberry
20 County Memorial Hospital with you --

21 A Uh-huh.

22 Q -- did you ever ask him to leave your exam
23 room or let you have some privacy?

24 A No, I didn't. I didn't ask him. To my
25 understanding, he ain't supposed to be back there from

1 the start no way.

2 Q Okay. And there was some testimony about
3 your friend, Kathy Stroud, who worked at the hospital
4 and has since passed away.

5 A Yes.

6 Q And she came to you, as I understood it, and
7 said the things that were said to you weren't right?

8 A Right.

9 Q She wasn't happy about it?

10 A Right.

11 Q How did she get that information of what was
12 said?

13 A I guess she heard -- she heard it like
14 everybody else was hearing that in the hall.

15 Q Okay. You don't know how it -- how it got
16 to her?

17 A Uh-uh. When I -- when I first got there,
18 she seen that -- she seen me and she come over there
19 and we talked. And she asked me what was going on and
20 I told her I got hurt. And she said, Well, I'll check
21 back with you, asked me how I was doing and all that.

22 Q Can you give me the word-for-word quote of
23 what Dr. Leap said when he came into the room or is it
24 just your recollection of what he said?

25 A My recollection.

1 Q Okay. And did Dr. Leap say anything to you
2 in the hospital about your condition other than what
3 you've already told us about today?

4 A Not that I can recall.

5 Q Have you ever had any other conversations
6 with Dr. Leap either before, during or after the
7 incident we're talking about today about your medical
8 condition?

9 A No, that's the first I met him.

10 Q Have you seen Dr. Leap since this happened?

11 A No, uh-uh.

12 Q I think I heard you say that Mr. Nelson and
13 your wife both went into the drugstore to get the
14 antibiotic prescription filled; is that right?

15 A Yes.

16 Q Had you given Mr. Nelson some kind of verbal
17 authorization or permission to take that prescription
18 in to get it filled for you?

19 A No, he -- they gave the prescription to him
20 and he took it on in there to get it simply because I
21 guess he was representing the company and the company
22 had to pay for it.

23 Q So he got it straight from somebody at the
24 hospital --

25 A Yes.

1 Q -- is how you understand it?

2 A Yes.

3 Q All right.

4 MR. PARKER: You're talking about the
5 prescription?

6 MR. HAILE: Yeah, the prescription.

7 THE WITNESS: Yes.

8 MR. HAILE: Yeah.

9 BY MR. HAILE:

10 Q I'm not sure that you put a time frame on it
11 and you may not be able to, but you testified as I
12 heard it that the harassment or ribbing from your
13 co-workers eventually stopped when one of the guys
14 kind of told them you were about to blow a gasket,
15 they better leave you alone?

16 A Yes.

17 Q Can you say when that was? How long after
18 the event it was? Are we talking weeks or months?
19 Days?

20 A We --

21 Q What?

22 A We talking weeks --

23 Q Okay.

24 A -- because --

25 Q So this went on for a few weeks?

1 A Yeah, because, you know, I -- I -- like I
2 said, I always try to get away from it, and it got to
3 the point that it just could run no more. It was just
4 gnawing at me.

5 Q Okay. I hate to ask you this next question
6 but I need to know the answer whether it's yes or no
7 for purposes of defending the hospital. Have you ever
8 been unfaithful to your wife?

9 A No. Now, my first wife, she was unfaithful
10 to me and we both did dumb stuff.

11 Q Okay. I'm talking about your --

12 A The wife I got now --

13 Q I'm talking about your current wife.

14 A No, uh-uh.

15 Q Okay. Have you ever called Dr. Leap a
16 quack?

17 A I might have did today.

18 Q Other than today?

19 A No, uh-uh.

20 Q Have you ever accused him of either being a
21 racist or showing some tendencies of racism in his
22 interactions with you?

23 A No, no, no, uh-uh.

24 Q I'm going to show you a document that's been
25 produced in discovery. It's Bates stamped D dash

1 000002.

2 MR. HAILE: And we can mark that as the next
3 exhibit, whatever it is --

4 MS. MCCLURKIN: Nine.

5 MR. HAILE: -- unless it's already been
6 marked. I'm not sure.

7 MS. MCCLURKIN: It's not, so you're 9.

8 MR. HAILE: Okay.

9 (Defendants' Exhibit 9, Handwritten
10 Statement, was marked for identification.)

11 THE WITNESS: These are our corporation?

12 MR. HAILE: Well, I'm going to show you
13 this --

14 THE WITNESS: Okay.

15 MR. HAILE: -- and give you a chance to look
16 at it and answer my questions.

17 THE WITNESS: All right.

18 MR. HAILE: Would you pass that to him,
19 please.

20 MS. MCCLURKIN: (Complies.)

21 MR. HAILE: Do you want a copy of it?

22 MS. MCCLURKIN: I've got it.

23 MR. HAILE: Okay.

24 BY MR. HAILE:

25 Q So this highlighting is something that

1 somebody at my office did. This is a handwritten
2 statement, as I understand it, from somebody who works
3 at West Fraser. If you look down in the bottom right
4 corner below where it's Bates stamped D dash 000002,
5 it looks like somebody's name or a signature but I
6 can't read it. Can you tell whose name that is?

7 A No.

8 Q If you look pretty much in the middle of
9 this handwritten statement, I'll read what it says
10 word for word.

11 A Okay.

12 Q It says, quote, Anthony said the doctor was
13 a quack and showed racism. Anthony said that every
14 black man that goes to the doctor that they assume
15 they have an STD, period, end quote.

16 Did you say that about Dr. Leap to somebody
17 at West Fraser?

18 A No, I didn't say that about him.

19 Q Okay. So --

20 A Now, let's make -- let me clear the record.
21 Now, that other doctor that was squeezing my ankles, I
22 said that he was a quack but I didn't say nothing
23 about no racism. What I said -- my statement that I
24 made about racism was when I was talking about what
25 people were thinking that black people do. That's all

1 they know what to do is that and they always got to be
2 coming up with some kind of disease. That's what I
3 meant in my statement that I made today. But I never
4 said anything about him being a quack or a racist.

5 Q Just take a look up at the top of the
6 statement. Do you see the date up there, November 13,
7 2017?

8 A Uh-huh.

9 Q And then take all the time you want to, but
10 if you read through this statement, this is clearly a
11 conversation talking about your interactions with
12 Dr. Leap and the folks at Newberry after you had the
13 injury with the forklift and the problems with your
14 groin. This is not a statement regarding the trip and
15 fall before that, correct?

16 A Okay. Right.

17 Q Putting it in your own words, Mr. Wise, what
18 are your complaints against the hospital in this case?
19 If you want to -- I don't mean to take you away from
20 that statement. If you want to keep looking at it,
21 you're welcome --

22 A Okay. I will --

23 Q -- to do that. If you're done with it, I'll
24 keep moving.

25 A My -- my thing with the hospital is that

1 he -- he more or less -- like Nelson, he come in there
2 and he was telling this in front of all these people
3 and it wasn't true. I didn't have no STD and I hadn't
4 changed no sexual partners. All that was lies and
5 that put a big wedge between me and my wife.

6 Q So would it be fair to say other than
7 Dr. Leap making this statement, you don't have any
8 complaints against anyone else at the hospital?

9 A No. That little girl didn't give me all my
10 medicine but I have no complaint against her because I
11 really didn't know what she was giving me but --

12 Q Okay. So you're focused on Dr. Leap and the
13 statement that he made?

14 A Yes.

15 Q All right.

16 MR. HAILE: Okay. That's all I've got for
17 you. Thank you.

18 THE WITNESS: Thank you.

19 MR. HAILE: The second half was shorter than
20 the first half.

21 THE WITNESS: Yeah.

22 MR. PARKER: No questions. She might have
23 something else.

24 MS. MCCLURKIN: Do you mind if we go off the
25 record for just -- just two or three minutes?

1 THE VIDEOGRAPHER: Going off the record at
2 1600 hours 8 minutes.

3 (A break was taken.)

4 THE VIDEOGRAPHER: We're back on the record
5 at 1600 hours 10 minutes 15 seconds.

6 EXAMINATION

7 BY MS. MCCLURKIN:

8 Q What is your relationship with George
9 Wilson?

10 A We work together.

11 Q Are you friends?

12 A We -- we laugh, we cut up.

13 Q What do you believe -- you've told me about
14 your conversation with George Wilson about the
15 incident that we're here about. What do you believe
16 were George Wilson's intentions when he asked Keith
17 Nelson how's Hop doing?

18 A I believe that he was truly concerned, but
19 he's like the 6:00 news.

20 Q What does that mean?

21 A That means he can't hold water. If you want
22 something told, tell George.

23 Q Do you have -- do you know one way or the
24 other whether George Wilson repeated the statements
25 that Keith Nelson allegedly said to him?

1 A All I know is what he told me and he told
2 other people in shipping also about it. Now, what he
3 told them exactly, I don't know. I know that George
4 told me that -- we was in the shop working and he
5 said, Hop, man, one of y'all's got to be a big enough
6 man and apologize and let this go. I told George, I
7 said, George, I can let it go but I ain't forgetting.
8 And I said, My idea is that I stay away from him.
9 I'll speak to him and keep moving but that's -- that's
10 it.

11 Q All right. When you said George Wilson is
12 like the 6:00 news and that --

13 A Yeah.

14 Q -- he tends to have a big mouth, that's what
15 you meant, right?

16 A Oh, yeah, he's going to talk now.

17 Q All right. Do you believe that he repeated
18 these statements to other people?

19 A He told other people. I don't know exactly
20 what he repeated. All I know that he told other
21 people. I was told that he told other people.

22 Q All right. And if that's true, and you
23 don't know whether it's true or not, but if that's
24 true do you fault George Wilson for that?

25 A No, because George would have never known

1 nothing if Keith wouldn't have never told him.
2 That's -- that's -- that's the whole scenario right
3 there. If he never would have brought that back and
4 spread it, it never would have -- nobody never would
5 have known. It wasn't his place to do that.

6 Q And the information that you've testified to
7 today and that we also saw some about -- in that
8 written statement that's Defendant's 9 about the
9 belief that if a black man has infection, everybody
10 just assumes it's sexually transmitted.

11 A Yes.

12 Q Is that true about a white man?

13 A I can't -- I can't answer that for a white
14 man. I just know how black people do things. I've
15 never been white so I can't -- I can't answer that.
16 I'm being honest. Because, you know, y'all think
17 different from what black people do.

18 Q But you don't believe that that's an
19 assumption that people make about men in general?

20 A Some of them, yeah. Some men are just
21 whores, ain't no getting around it. Don't make no
22 difference whether they're black, white, blue, green,
23 orange, whatever. But nine times out of ten when
24 something like that comes the black man's way, that's
25 what it is. That's what they're going to say

1 regardless whether it's true or not. In this case it
2 wasn't true.

3 Q Is that what you believe?

4 A Yeah.

5 Q If you heard that a black man had an
6 infection, would you assume it was a sexual infection?

7 A No, I don't -- I don't like to assume
8 things. When you assume, you make a fool of me and
9 you, so I don't like to assume things.

10 Q So you personally don't believe that and you
11 personally would not assume that, right?

12 A No, I ain't going to assume that. You know,
13 in the first place, I wouldn't even try to think that
14 because I know how I feel about it and it's not a good
15 feeling.

16 Q But nonetheless, you think that the majority
17 of people, whether they're black or white, if they
18 hear that a black man has an infection, they assume
19 it's sexually --

20 MR. PARKER: I object. You're -- again,
21 done the exact same thing. He didn't say what
22 you're saying.

23 MS. MCCLURKIN: I didn't say he testified to
24 it. I'm asking him what he thinks.

25 MR. PARKER: No, you didn't. You said --

1 MS. MCCLURKIN: I'm sorry. Would you read
2 the question back?

3 (The court reporter read back the last
4 question propounded to the witness.)

5 MR. PARKER: Are you're indicating that he,
6 in fact, has said that before and that's not what
7 he told you.

8 MS. MCCLURKIN: I'm asking him what he
9 thinks and I'm going to ask him again now.

10 BY MS. MCCLURKIN:

11 Q You think that the majority people, if they
12 hear that a black man has an infection, they assume
13 it's a sexual infection?

14 A If you're black, yeah.

15 MS. MCCLURKIN: Nothing further.

16 THE VIDEOGRAPHER: This completes our
17 videotaped deposition. We created four media
18 files. We're going off the record at 1600 hours
19 16 minutes and 30 seconds.

20 THE COURT REPORTER: I need to know who
21 wants a copy and how you'd like that.

22 MR. PARKER: I want a copy.

23 THE COURT REPORTER: Do you want a hard
24 copy?

25 MR. PARKER: Electronic.

1 THE COURT REPORTER: Mr. Haile, do you want
2 a copy?

3 MR. HAILE: With electronic exhibits.

4 (The reading and signing were waived.)

5 (The deposition concluded at 4:16 p.m.)
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Deposition of:
Anthony I. Cannon

December 19, 2019

In the Matter of:
**Wise, Anthony Vs. Newberry Hospital,
LLC**

[A. William Roberts, Jr & Assoc.](#)

800-743-3376 | calendar-awr@veritext.com | www.veritext.com

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

ANTHONY WISE,

Plaintiff,

vs.

CASE NO. 2019-CP-36-00103

NEWBERRY HOSPITAL, LLC, d/b/a NEWBERRY COUNTY

MEMORIAL HOSPITAL, WEST FRASER, INC.,

Defendants.

DEPOSITION OF: ANTHONY CANNON

DATE: December 19, 2019

TIME: 2:17 PM

LOCATION: Pope Parker Jenkins
1508 College Street
Newberry, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: AMY R. COPE,
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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9
10 (INDEX AT REAR OF TRANSCRIPT)
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ANTHONY CANNON

being first duly sworn, testified as follows:

EXAMINATION

BY MR. PARKER:

Q. Would you please state your full name?

A. Anthony Leon Cannon.

Q. And, Mr. Cannon, where do you live?

A. Fox Run out on the Short Cut Road.

Q. That's in Newberry?

A. Yes, sir.

Q. And how long have you lived in Newberry
County?

A. I'd say 30, 35 years.

Q. All your life?

A. Pretty much.

Q. And you went to school here?

A. Newberry.

Q. And how long have you worked for West
Fraser?

A. Going on 12 years next month, sir.

Q. And what's your job?

A. Forklift operator.

Q. And you work with Anthony Wise?

A. Here and there, yes, sir.

Q. Y'all see each other?

1 A. Yes, sir.

2 Q. We're here about an event that happened
3 in November of 2017 involving Anthony Wise. Do you
4 recall something happening then?

5 A. Well, something about him pulling a
6 groin or something like that.

7 Q. Right. He got hurt on the job?

8 A. Yes.

9 Q. And afterwards did you know about it
10 getting around that he had had some type of
11 disease?

12 A. Heard it, but -- you hear it for a
13 little bit and then it's gone.

14 Q. What did you hear?

15 A. Guys just joking with him saying that
16 he had a disease or something. And that's pretty
17 much all I heard.

18 Q. And what kind of disease did they say?

19 A. They didn't say, sir.

20 Q. What did you understand what type of
21 disease that he had?

22 A. They never did say, no one said.

23 Q. Let me ask you: Did you ever tell
24 Mr. Wise that he was running whores on Two Notch
25 Road?

1 A. Who, me?

2 Q. Yeah.

3 A. No, sir.

4 Q. Did not?

5 A. No, sir.

6 Q. Did you ever hear that?

7 A. Not really, but it might have popped
8 up. I'm not for sure, it has been so long ago.

9 Q. You recall they were saying things
10 about Mr. Wise, the workforce at the plant?

11 A. Yeah, it was a couple of things was
12 said, you know, about him having a disease or
13 something like that. I heard that pretty much.

14 Q. And you understood that to be a
15 sexually transmitted disease?

16 A. Now, you know, the guys was just joking
17 with him, so I don't know what kind of disease he
18 had, sir.

19 Q. They were joking with him about having
20 a disease?

21 A. You know, making a little wisecracks
22 about it.

23 Q. Who was doing that?

24 A. Just a couple of fellas around the job.

25 Q. Can you remember any names? Anybody

1 specifically?

2 A. Now, they pretty much gone, they've
3 been fired.

4 Q. Who was that?

5 A. I think Robert Johnson was one, I
6 believe, but I wasn't -- the morning he got hurt,
7 we was getting off. We was coming up to the gate,
8 he was in shipping, we wasn't in the same
9 department at the time. So he -- I seen him back
10 off the lift holding himself, somebody believed he
11 hurt himself or something like that. And then my
12 lead man, he cracked a little joke on him saying
13 there ain't nothing wrong with you, he's probably
14 been with, you know, that's about it.

15 Q. Probably been with some woman?

16 A. Yeah, but that was about it, sir.

17 Q. Who was that that said it?

18 A. My lead man Robert Johnson.

19 Q. And he's no longer working with you?

20 A. No, sir.

21 Q. Where is he now, Robert Johnson?

22 A. I do not know.

23 Q. Where was he the last time you knew?

24 A. He was doing his own business. So
25 delivering parts and stuff like that, something

1 like that.

2 Q. And he lived in Newberry?

3 A. No, sir.

4 Q. Where did he live?

5 A. Fairfield, Chester, somewhere along in
6 there.

7 Q. Okay. Do you remember hearing anything
8 else said about Anthony Wise?

9 A. No, sir.

10 Q. Other than the people you overheard we
11 talked about, was it pretty all over the plant
12 among the employees about this, do you know?

13 A. I don't know, sir.

14 MR. PARKER: Answer any questions they
15 may have for you.

16 EXAMINATION

17 BY MR. HAILE:

18 Q. You didn't go to the hospital with
19 Mr. Wise when he got hurt; did you?

20 A. Oh, no, sir.

21 MR. HAILE: That's all I got.

22 EXAMINATION

23 BY MS. MCCLURKIN:

24 Q. Mr. Cannon, on the date of the
25 incident, which I'll represent to you was

1 November 7th, 2017, and I'm talking about the
2 accident where Mr. Wise was hurt working on a
3 forklift, you were coming off work at the
4 nightshift, right?

5 A. Yes, ma'am.

6 Q. And about what time would that have
7 been?

8 A. We get off at 6:00. So probably about
9 five minutes after 6:00, something like that.

10 Q. And as you're leaving the mill, are
11 other people leaving with you?

12 A. Just me and my lead man at the time.

13 Q. It was just you and your lead man?

14 A. Yeah. Uh-huh.

15 Q. And both of you saw Anthony Wise after
16 he had been injured, right?

17 A. Yes.

18 Q. And could you tell -- did he appear to
19 be in pain?

20 A. Couldn't really tell, but he was
21 holding his self though, so you know...

22 Q. Was he holding himself in his groin
23 area?

24 A. Yes.

25 Q. So it was clear to anyone who saw him

1 where he was hurt?

2 A. Yes.

3 Q. And when your lead man, Robert Johnson,
4 when he cracked the joke, there's nothing wrong
5 with you, you've probably just been with some
6 woman --

7 A. Sorry.

8 Q. -- did -- he made that joke in response
9 to seeing Anthony holding his groin?

10 A. Yes, but they always back and forth at
11 one another. So, you know, I didn't seem to take
12 it serious myself.

13 Q. No, I understand. But my question was:
14 Robert saw Anthony holding his groin and then
15 that's what led him to crack the joke?

16 A. Yes.

17 Q. Did he say it where Anthony could hear
18 him?

19 A. Yeah, I would assume. I mean, he was
20 standing right there with him, I walked off, ma'am.

21 Q. Okay. Did Anthony say anything in
22 response?

23 A. I do not know.

24 MS. MCCLURKIN: Nothing else.

25 MR. PARKER: Thank you so much.

1 Appreciate it. That's it.

2 (The witness, after having been advised
3 of his right to read and sign this transcript,
4 waives that right.)

5 (The deposition was concluded at 2:24 PM.)
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