

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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**SC Court of Appeals**

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
APPELLATE PANEL

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WCC FILE NO. 1823614

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James Freshley, Claimant, .....Appellant,

vs.

Conbraco Industries, Employer, and Great American Alliance  
Insurance Company, Carrier, ..... Respondents.

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**RECORD ON APPEAL  
VOLUME IV**

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- 1 Q. OKAY. SO TRUCKS COME TO GET THE PARTS THAT YOU GUYS  
2 HAVE COATED AND CLEANED, AND YOU PUT THEM IN THE  
3 TRUCKS?
- 4 A. AFTER THEY GET THEM ASSEMBLED TOGETHER, THEY COME  
5 OVER THERE AND WE SHIP THEM OUT OVER THERE.
- 6 Q. I SEE. DOES THAT DOOR NORMALLY STAY OPENED OR  
7 CLOSED?
- 8 A. IT STAY CLOSED.
- 9 Q. OKAY. CAN YOU SMELL ANYTHING IN THAT AREA IN THE  
10 SHIPPING DEPARTMENT?
- 11 A. YES, SIR.
- 12 Q. WHAT DO YOU SMELL?
- 13 A. YOU SMELL THE ACID OFF ALL THE CHEMICALS IN THERE.
- 14 Q. NOW, I SEE IN THAT PHOTO THERE YOU'RE WEARING A MASK  
15 OF SOME SORT?
- 16 A. YES, SIR.
- 17 Q. WHAT IS THAT MASK MADE OF?
- 18 A. PAPER.
- 19 Q. DID YOU EVER HAVE A RESPIRATOR?
- 20 A. NO, SIR.
- 21 Q. DID YOU EVER REQUEST A RESPIRATOR?
- 22 A. WE HAD FOUND TWO, AND THEY TOLD US WE COULDN'T USE  
23 THEM.
- 24 Q. WHO TOLD YOU THAT?
- 25 A. KAREN.

- 1 Q. OKAY. THAT'S MS. BROOKS, THE SAFETY MANAGER WHO IS  
2 HERE TODAY?
- 3 A. YES, SIR.
- 4 Q. AND WHEN YOU SAID WE FOUND THEM, WHO'S THE WE?
- 5 A. SARA HAD US CLEANING OUT THE STORAGE ROOM. ME AND  
6 JASON FOUND THEM, AND WE ASKED SARA COULD WE USE  
7 THEM. SHE SAID IF WE COULD USE THEM, GO AHEAD AND  
8 USE THEM. BUT KAREN SEEN US WITH THEM ON. SHE TOLD  
9 US HER SUPERVISOR SAID WE CAN'T WEAR THEM.
- 10 Q. OKAY. SO SARA WAS YOUR DIRECT SUPERVISOR?
- 11 A. YES, SIR.
- 12 Q. SARA HUFFMAN?
- 13 A. SARA HUFFMAN; YES, SIR.
- 14 Q. AND JASON PURSER IS THAT GENTLEMAN WHO WORKS WITH  
15 YOU, WHO WORKS ON THAT LINE ADJACENT TO YOURS?
- 16 A. YES, SIR.
- 17 Q. PASSIVATION LINE?
- 18 A. PASSIVATION, YEAH.
- 19 Q. OKAY. SO, OTHER THAN THE DUST MASKS, DID YOU EVER  
20 HAVE THE BENEFIT OF WEARING A RESPIRATOR?
- 21 A. NO, SIR.
- 22 Q. OKAY. NOW, I WANT TO PAGE FORWARD THERE. IF YOU  
23 LOOK ON THE BOTTOM RIGHT-HAND SIDE, THERE'S NUMBERS,  
24 AND I WANT YOU TO TURN TO PAGE FIVE.
- 25 A. YES, SIR.

1 Q. WE HAVE PRESENTED THE COMMISSION WITH, FRANKLY, OVER  
2 A HUNDRED PAGES OF WHAT'S CALLED MATERIAL SAFETY  
3 DATA SHEETS. AT PAGE FIVE OF MY BRIEF, WHICH  
4 CONTAINS ONE OF THOSE, AN EXCERPT FROM ONE OF THOSE,  
5 C-52, WHICH IS THE CHEMICAL MICRO 24, OR THE  
6 CHEMICAL COMPOUND MICRO 24. HAD YOU EVER SEEN THAT  
7 MATERIAL SAFETY DATA SHEET BEFORE?

8 A. NO, SIR.

9 Q. OKAY. NOW, IT WARNS FOLKS THAT VAPORS AND MISTS ARE  
10 CORROSIVE TO THE NOSE, THROAT, MUCOUS MEMBRANES,  
11 BRONCHITIS, PULMONARY EDEMA. CHEMICAL PNEUMONITIS  
12 MAY OCCUR. IRRITATION, COUGHING, CHEST PAIN,  
13 DIFFICULTY BREATHING MAY OCCUR WITH BRIEF EXPOSURE  
14 WHILE PROLONGED EXPOSURE MAY RESULT IN MORE SEVERE  
15 IRRITATION AND TISSUE DAMAGE. HAD ANYONE AT THE  
16 EMPLOYER SHOWED YOU THAT MSDS SHEET TO WARN YOU  
17 ABOUT THAT CHEMICAL USED IN THE ZINC COATING  
18 PROCESS?

19 A. NO, SIR.

20 **BY MR. WUKELA:**

21 AND I DON'T WANT TO GO THROUGH EACH ONE OF  
22 THESE, COMMISSIONER, BUT SEVERAL OF THESE MSDS  
23 SHEETS TALK ABOUT THE IMPORTANCE OF ADEQUATE  
24 VENTILATION AND VENTILATORS.

25 **DIRECT EXAMINATION RESUMED BY MR. WUKELA:**

- 1 Q. DID ANYONE AT THE EMPLOYER WARN YOU THAT YOU NEED TO  
2 BE WEARING A VENTILATOR AND REQUIRE YOU TO HAVE A  
3 VENTILATOR OR PROVIDE YOU ADEQUATE VENTILATION?
- 4 A. NO, SIR.
- 5 Q. THE MSDS SHEET FOR MARTRON MARTEX, WHICH IS FOUND AT  
6 PAGE SEVEN, WHICH IS EXHIBIT C-32, IN ADDITION TO  
7 WARNING ABOUT MIST AND VAPOR CAUSING IRRITATION IN  
8 THE THROAT AND LUNGS, ALSO INDICATES THAT IT CAN  
9 CAUSE IRREGULAR HEARTBEAT, WHICH CAN CAUSE DEATH.  
10 HAD ANYBODY AT THE JOB WARNED YOU ABOUT THE DANGER  
11 OF THESE CHEMICALS CAUSING IRREGULAR HEARTBEATS OR  
12 DEATH?
- 13 A. NO, SIR.
- 14 Q. WHILE YOU WORKED AT CONBRACO, DID YOU HAVE IRREGULAR  
15 HEARTBEATS?
- 16 A. IRREGULAR HEARTBEAT? YES, SIR.
- 17 Q. DID YOU HAVE IRRITATION TO YOUR THROAT AND LUNGS?
- 18 A. NO, SIR.
- 19 Q. DID YOU HAVE IRRITATION AND COUGHING AND CHEST PAIN,  
20 DIFFICULTY BREATHING, DIZZINESS?
- 21 A. NO, SIR.
- 22 Q. AND WHEN YOU WORKED AT CONBRACO, DID YOU HAVE IT?
- 23 A. NO, SIR.
- 24 Q. NOW, WHEN DID YOU FIRST START HAVING SHORTNESS OF  
25 BREATH AND DIZZINESS?

1 A. I TOLD SARA IT WAS IN -- MS. HUFFMAN -- I TOLD MS.  
2 HUFFMAN, IT WAS 2018. IT WASN'T THE BREATHING; IT  
3 WAS JUST WITH MY SKIN AND HEADACHE AND EYES BURNING.

4 Q. OKAY. SO IN 2018 YOU COMPLAINED TO SARA HUFFMAN OF  
5 YOUR EYES BURNING AND YOUR SKIN BURNING?

6 A. YES, SIR.

7 Q. ALL RIGHT. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED  
8 IN PAGE NINE OF MY BRIEF, EXHIBIT A-1. IF YOU'LL  
9 TURN TO PAGE NINE. WHAT IS THAT DOCUMENT?

10 A. THAT'S AN ACCIDENT REPORT WHEN I WENT AND TOLD HER  
11 WHAT WAS GOING ON.

12 Q. OKAY. AND IN THAT -- IS THAT MS. HUFFMAN'S  
13 HANDWRITING OR YOUR HANDWRITING?

14 A. THAT'S HER HANDWRITING.

15 Q. AND THERE YOU'RE COMPLAINING ABOUT WHAT SYMPTOMS?

16 A. MY SKIN, HEADACHES, SKIN, AND BREAKING OUT WITH EYES  
17 BURNING.

18 Q. OKAY. AND YOU INDICATE THERE THAT -- OR SHE  
19 INDICATES THAT YOU HAD COMPLAINED TO HER IN AUGUST  
20 OF 2018?

21 A. YES, SIR.

22 Q. OKAY. AND SHE RECOMMENDED AT THAT TIME, OR  
23 INDICATED TO YOU THAT PPE, PERSONAL PROTECTIVE  
24 EQUIPMENT, WAS GOING TO BE LOOKED AT AND ORDERED,  
25 INCLUDING GLOVES ---

1 **BY MR. FARRY:**

2 OBJECT TO THE FORM OF THE QUESTION. THAT'S  
3 LEADING AND IT'S IN A CRITICAL AREA. I HAVEN'T  
4 OBJECTED IN OTHER AREAS, BUT...

5 **BY MR. WUKELA:**

6 OKAY.

7 **BY THE COMMISSIONER:**

8 SUSTAINED. REPHRASE, PLEASE.

9 **BY MR. WUKELA:**

10 I WILL. THANK YOU, YOUR HONOR.

11 **DIRECT EXAMINATION RESUMED BY MR. WUKELA:**

12 Q. DID SHE TELL YOU ANYTHING ABOUT WHETHER THEY WERE  
13 GOING TO PROVIDE ANY RESPIRATORS OR GLOVES OR  
14 GOGGLES OR JACKETS?

15 A. NO, SIR.

16 **BY MR. WUKELA:**

17 YOUR HONOR, OF COURSE, WE WOULD POINT YOU TO  
18 THE LANGUAGE THERE THAT MS. HUFFMAN PUTS IN HER  
19 REPORT TO HER EMPLOYER.

20 **DIRECT EXAMINATION RESUMED BY MR. WUKELA:**

21 Q. NOW, WERE YOU EVER PROVIDED ANY PERSONAL PROTECTIVE  
22 EQUIPMENT?

23 A. NOTHING BUT GLOVES.

24 Q. NOTHING BUT GLOVES?

25 A. THAT'S IT.

- 1 Q. OKAY. NOW, THEN THERE'S ANOTHER REPORT HERE IN MAY  
2 OF 2019, PAGE 12 OF THAT BRIEF. DO YOU REMEMBER  
3 MAKING THAT REPORT TO MS. HUFFMAN?
- 4 A. YES, SIR.
- 5 Q. OKAY. AND HOW WERE YOUR SYMPTOMS AT THAT POINT?
- 6 A. WITH THE SKIN AND EYES BURNING, AND I TELL HER WITH  
7 MY BREATHING WAS COMING ON, MY BREATHING WAS GETTING  
8 BAD. YES, SIR.
- 9 Q. OKAY. AND IT'S AT THAT POINT THAT YOUR BREATHING  
10 STARTED GIVING YOU TROUBLE?
- 11 A. YES, SIR.
- 12 Q. OKAY. NOW, YOU HAD HAD HEART PALPITATIONS BACK IN  
13 2015?
- 14 A. YES, SIR.
- 15 Q. AND THEN IN 2018 YOU COMPLAINED OF THE SKIN SYMPTOMS  
16 AND THE HEADACHES?
- 17 A. YES, SIR.
- 18 Q. AND THEN YOU SAY BY MAY OF 2019, NOW YOU'RE STARTING  
19 TO HAVE BREATHING PROBLEMS?
- 20 A. YES, SIR.
- 21 Q. OKAY. AND DID YOU DESCRIBE TO MS. HUFFMAN WHAT YOU  
22 THOUGHT WAS THE CAUSE OF THESE SYMPTOMS?
- 23 A. I TOLD HER THE CHEMICALS.
- 24 Q. AND DID SHE GIVE YOU ANY INSTRUCTIONS?
- 25 A. THE ONLY THING SHE TOLD ME TO DO WAS GO UP THERE AND

- 1           LET RENEE KNOW.
- 2           Q.    OKAY, RENEE.  NOW, RENEE IS MS. RENEE CHAISSON?
- 3           A.    YES, SIR; OVER HUMAN RESOURCES.
- 4           Q.    SHE'S HERE WITH US TODAY?
- 5           A.    YES, SIR.
- 6           Q.    OKAY.  AND DID YOU COMPLAIN TO RENEE OF SHORTNESS OF
- 7           BREATH?
- 8           A.    YES, SIR; THREE OR FOUR TIMES.
- 9           Q.    OKAY.  AND WOULD THAT HAVE BEEN AROUND THIS TIME,
- 10          MAY OF 2019?
- 11          A.    I REMEMBER I TOLD HER WHEN SHE FIRST GOT THE
- 12          POSITION IN HUMAN RESOURCES ABOUT MY SKIN AND STUFF.
- 13          AND SHE'S LIKE, NO, AIN'T NOTHING GOING WRONG.
- 14          THAT'S WHEN I SHAVED THE HAIR OFF MY FACE.
- 15          Q.    SHAVED THE HAIR OFF?
- 16          A.    AND THEN I SHOWED HER THE BREAKOUT AND MY SKIN
- 17          IRRITATED.
- 18          Q.    OKAY.  ALL RIGHT.  NOW, DID MS. CHAISSON PROVIDE YOU
- 19          ANY RESPIRATORS?
- 20          A.    NO, SIR.
- 21          Q.    OKAY.  AND SHE DID, THOUGH, ORDER AN AIR QUALITY
- 22          TEST?
- 23          A.    YES, SIR.
- 24          Q.    DO YOU REMEMBER WHEN THAT AIR QUALITY TEST WAS
- 25          PERFORMED?

1           A.    YES, SIR.

2           Q.    AND DID THEY GIVE MONITORS TO EMPLOYEES TO WEAR TO  
3                TEST THE AIR QUALITY?

4           A.    SHE GIVE ONE TO JESSE, CAUSE JESSE RUN THE SAME LINE  
5                I RUN. I GOT CAUGHT UP IN AN ACCIDENT, BUT I GOT  
6                THERE FIVE MINUTES LATER. THEY PUT IT ON JASON, BUT  
7                WHEN THE DUDE -- WHEN THE YOUNG MAN CAME BACK, JASON  
8                TOLD HIM, "THIS IS THE MAN WHO RUN THIS LINE." HE  
9                SAID, "YOU NEED TO PUT IT ON HIM BECAUSE I DON'T RUN  
10              THIS LINE; HE RUNS THE LINE." THEN KAREN WALKED UP.  
11              KAREN SAID, "NO, YOU'RE GOING TO KEEP IT ON." THEN  
12              SHE CAME BACK FIVE MINUTES LATER, AND SHE APOLOGIZED  
13              TO ME. I TOLD HER, "YOU ALL RIGHT; I'M GOOD." BUT  
14              JASON'S WIFE HAD JUST GOT OUT THE HOSPITAL THAT DAY.

15           **BY MR. FARRY:**

16                        I'M SORRY. I COULDN'T HEAR WHAT HE SAID.

17           **WITNESS RESUMES:**

18           A.    I SAID JASON'S WIFE JUST GOT OUT THE HOSPITAL THAT  
19                DAY, THE DAY THEY PUT THAT TEST ON HIM, THAT HE WAS  
20                RUNNING BACK AND FORTH OUTSIDE USING THE PHONE TO  
21                CHECK ON HIS WIFE, AND THE YOUNG MAN WHO HAD THE  
22                TEST ON HIM, HE WAS RUNNING TO TWO PLANTS. HE WAS  
23                RUNNING TO THE FOUNDRY, AND HE WAS RUNNING UP THERE  
24                WHERE WE WERE WORKING AT, AND HE DIDN'T STAY OVER  
25                WITH JASON FOR FIVE TO TEN MINUTES TO GET THE RIGHT

1           READING. IF THEY WOULD HAVE PUT IT ON ME, THEY  
2           WOULD HAVE GOT THE RIGHT READING.

3           Q.    OKAY. DID YOU WEAR A MONITOR?

4           A.    NO, SIR. THEY DIDN'T PUT IT ON ME.

5           Q.    OKAY. DO YOU HAVE ANY WAY OF MEASURING HOW MUCH  
6           TIME MR. PURSER, WHO HAD A MONITOR, AND MR.  
7           ROBINSON, WHO HAD A MONITOR, WERE AT THE LINE THAT  
8           YOU NORMALLY WORK?

9           A.    YES, SIR.

10          Q.    HOW?

11          A.    BY THE WORK WE DOING, AND I WAS RIGHT THERE BESIDE  
12          HIM, 'CAUSE I HELP HIM KEPT THE WORK CAUGHT UP WHEN  
13          HE WENT TO GO MAKE A PHONE CALL ON HIS WIFE. I TOLD  
14          HIM, I SAID, KEEP AN EYE ON THAT CAMERA. THEY HAD A  
15          CAMERA IN THERE. I SAID, YOU GO CHECK ON YOUR WIFE,  
16          'CAUSE I WAS THE LEAD MAN. I SAID, CHECK ON YOUR  
17          WIFE, MAKE SURE SHE ALL RIGHT. I SAID, I GOT YOUR  
18          BACK OVER HERE.

19          Q.    LET ME ASK YOU THIS. AT THE END OF THE DAY, WAS  
20          PRODUCTION ON THOSE LINES MEASURED EVERY DAY?

21          A.    YES, SIR.

22          Q.    AND WHAT WAS THE PRODUCTION THAT DAY THAT THE TEST  
23          WAS PERFORMED COMPARED TO PRODUCTION ON THE PREVIOUS  
24          DAY?

25          A.    THAT DAY, I BELIEVE WE RAN ABOUT 12 BASKETS.

- 1 Q. AND WHAT WOULD A NORMAL DAY RUN?
- 2 A. A NORMAL DAY WE RUN ABOUT 20 BASKETS.
- 3 Q. HOW ABOUT THE NIGHT SHIFT? DO YOU HAVE ANY IDEA
- 4 WHAT THE PRODUCTION WAS ON THE NIGHT SHIFT?
- 5 A. I WAS ON NIGHT SHIFT.
- 6 Q. OH, I'M SORRY. THE DAY SHIFT.
- 7 A. DAY SHIFT, THEY GOT -- KAREN USED TO COME TO ME AND
- 8 ASK ME TO WORK FOR HER WHILE FIRST SHIFT WASN'T
- 9 DOING. BEFORE SHE GOT THE SAFETY LADY JOB, SHE USED
- 10 TO WORK IN THE QUALITY DEPARTMENT.
- 11 Q. WHAT I'M ASKING IS, YOU JUST TOLD ME THAT THE
- 12 PRODUCTION ON THE NIGHT SHIFT THE DAY THE TEST WAS
- 13 RUN WAS LESS.
- 14 A. LESS.
- 15 Q. AND HOW ABOUT THE PRODUCTION ON THE DAY SHIFT THE
- 16 DAY THE TEST WAS RUN?
- 17 A. THE DAY SHIFT WAS LESS.
- 18 Q. HOW DO YOU KNOW?
- 19 A. 'CAUSE WE ALL WAS WORKING ONLINE.
- 20 Q. HOW MUCH LESS WAS THE PRODUCTION ON THE DAY SHIFT
- 21 THAT DAY THEY RAN THE TEST?
- 22 A. I BELIEVE JESSE -- THEY SAID JESSE RAN ABOUT THREE
- 23 OR FOUR BASKETS.
- 24 Q. ALL RIGHT. COMPARED WITH THE NORMAL RUN OF...?
- 25 A. THAT NIGHT WE DID A TEST, I KEPT THE WORK CAUGHT UP

1           WHILE JESSE -- NOT JESSE, JASON WAS CALLING AND  
2           CHECKING ON HIS WIFE, 'CAUSE SHE HAD JUST GOT OUT OF  
3           THE HOSPITAL THAT MORNING.

4           Q.    OKAY.  ALL RIGHT.  SO LET'S GO BACK AND MAKE SURE I  
5           UNDERSTAND.  THEY RAN THE TEST ON THE DAY SHIFT AND  
6           THE NIGHT SHIFT?

7           A.    YES, SIR.

8           Q.    YOU WORKED THE NIGHT SHIFT?

9           A.    YES, SIR.

10          Q.    ON THE DAY SHIFT, THE INDIVIDUAL WHO THEY HAD BEING  
11          MONITORED WAS...?

12          A.    IN AND OUT THE DOOR.

13          Q.    AND HIS NAME WAS?

14          A.    JESSE ROBINSON.

15          Q.    AND HE WAS IN AND OUT THE DOOR BECAUSE?

16          A.    HE DO THAT ALL DAY.

17          Q.    WAS HE THE INDIVIDUAL WHO HAD SOME PROBLEMS WITH HIS  
18          WIFE?

19          A.    NO.  JASON WAS HIS -- HAD PROBLEMS WITH HIS WIFE ON  
20          THE SECOND SHIFT.

21          Q.    GOT IT.  ALL RIGHT.  AND SO ON THE DAY SHIFT -- WHEN  
22          YOU GUYS ARRIVED ON THE NIGHT SHIFT, COULD YOU TELL  
23          HOW MUCH PRODUCTION HAD HAPPENED ON THE DAY SHIFT?

24          A.    YES, SIR.

25          Q.    AND HOW MUCH PRODUCTION HAD HAPPENED?

1 A. WHEN WE WALK IN, THE BOYS TELL US.

2 Q. AND HOW MANY BASKETS HAD BEEN COMPLETED?

3 A. JESSE RAN ABOUT THREE OR FOUR BASKETS.

4 Q. COMPARED WITH HOW MANY BASKETS WOULD NORMALLY BE  
5 RUN?

6 A. ON FIRST SHIFT?

7 Q. YES, SIR.

8 A. THREE OR FOUR BASKETS.

9 Q. NOW, THEN, YOUR SHIFT, THE NIGHT SHIFT, YOU DIDN'T  
10 WEAR THE MONITOR; MR. PURSER WORE THE MONITOR, AND  
11 HE NORMALLY RUNS THE LINE NEXT TO YOU?

12 A. PASSIVATION.

13 Q. OKAY. AND I THINK I HEARD YOUR TESTIMONY THAT HE  
14 WAS THE ONE THAT WAS HAVING SOME PROBLEMS WITH HIS  
15 WIFE?

16 A. YES, SIR.

17 Q. NOW, WHEN HE WAS GONE FROM THE LINE TO DEAL WITH HIS  
18 WIFE, WHO WAS RUNNING THE LINE?

19 A. I WAS.

20 Q. WERE YOU WEARING A MONITOR?

21 A. NO, SIR.

22 Q. NOW, AFTER THE TEST, THE AIR QUALITY TEST, DID  
23 ANYTHING CHANGE AS FAR AS WHETHER YOU HAD A  
24 VENTILATOR OR WHETHER YOU HAD VENTILATION TO THE  
25 OUTSIDE AREA, ANYTHING LIKE THAT? YOU HAVE TO

1 SPEAK.

2 A. NO, SIR.

3 Q. OKAY. THIS NICE COURT REPORTER IS TAKING EVERYTHING  
4 DOWN, AND SHE CAN'T TAKE DOWN HEAD NODS.

5 A. ALL RIGHT. NO, SIR.

6 Q. ALL RIGHT. SO, NOW, LET'S -- I'M WANT TO TALK NOW  
7 ABOUT YOUR MEDICAL HISTORY. ARE YOU A SMOKER?

8 A. NO, SIR.

9 Q. ALL RIGHT. HAD YOU EVER HAD ANY PROBLEMS WITH YOUR  
10 LUNGS BEFORE YOU WORKED AT CONBRACO IN AUGUST OF  
11 2007?

12 A. NO, SIR.

13 Q. DID YOU HAVE ANY PROBLEMS WITH YOUR HEART BEFORE YOU  
14 WORKED AT CONBRACO IN 2007?

15 A. NO, SIR.

16 Q. ALL RIGHT. NOW, THE RECORDS WE HAVE HERE, AND WE'VE  
17 GOT A TON OF THEM, SHOW THAT YOU STARTED SEEING DR.  
18 GUHA IN 2015 WITH HEART PALPITATIONS?

19 A. YES, SIR.

20 Q. DO YOU REMEMBER THAT?

21 A. YES, SIR.

22 Q. AND I THINK OUR RECORDS INDICATE -- AND WHEN MR.  
23 FARRY GETS TIRED OF ME LEADING ON THIS, HE'LL TELL  
24 ME, BUT I DON'T THINK THERE'S A DISPUTE ABOUT THESE  
25 FACTS -- THAT YOU UNDERWENT A HEART ABLATION IN

1           SEPTEMBER OF 2016?

2           A.    YES, SIR.

3           Q.    OKAY.  AND THEN THE RECORDS INDICATE THAT YOU HAD A  
4           NORMAL HEART RHYTHM UNTIL JUNE OF 2018.  YOU SAW DR.  
5           GUHA AGAIN, AND HE PERFORMED ANOTHER ABLATION IN  
6           APRIL OF 2019?

7           A.    YES, SIR.

8           BY MR. WUKELA:

9                         AND I'M LOOKING AT APA FOUR, PAGE 178,  
10           COMMISSIONER.

11           DIRECT EXAMINATION RESUMED BY MR. WUKELA:

12           Q.    AT SOME POINT -- NOT AT SOME POINT.  IN AUGUST OF  
13           2019, DR. GUHA REFERRED YOU OVER TO DR. JONA?

14           A.    YES, SIR.

15           Q.    AND DR. JONA'S NOTE THERE INDICATES, "PATIENT STATES  
16           THAT DR. GUHA HAS REFERRED HIM FOR SHORTNESS OF  
17           BREATH"?

18           A.    YES, SIR.

19           Q.    "HE WORKS AROUND CHEMICALS AT HIS JOB AND HAS  
20           MULTIPLE HEART-RELATED ISSUES AND NOW SHORTNESS OF  
21           BREATH HAS STARTED"?

22           A.    YES, SIR.

23           Q.    IS THAT ACCURATE?

24           A.    YES, SIR.

25           Q.    IS THAT WHAT YOU TOLD DR. JONA?

1 A. YES, SIR.

2 Q. IS THAT WHAT YOU TOLD DR. GUHA?

3 A. YES, SIR.

4 Q. IS THAT WHAT YOU TOLD MS. CHAISSON?

5 A. YES, SIR.

6 Q. ALL RIGHT. NOW, LOOKS LIKE THAT DURING THAT TIME  
7 DR. GUHA HAD TAKEN YOU OUT OF WORK?

8 A. YES, SIR.

9 Q. BETWEEN AUGUST THE 13TH OF '19 TO AUGUST THE 23RD OF  
10 2019?

11 A. YES, SIR.

12 Q. FOR YOU TO GO SEE DR. JONA?

13 A. YES, SIR.

14 Q. ALL RIGHT. AND YOU SAW DR. JONA IN AUGUST THE 26TH  
15 OF '19, AND SHORTLY AFTER THAT DR. GUHA RELEASED YOU  
16 TO RETURN TO WORK FROM A CARDIAC STANDPOINT?

17 A. YES, SIR.

18 Q. NOW, THERE'S A NOTE IN HERE ---

19 **BY MR. WUKELA:**

20 PAGE 17 OF MY BRIEF, COMMISSIONER, WHICH IS APA  
21 ONE, PAGE 129.

22 **DIRECT EXAMINATION RESUMED BY MR. WUKELA:**

23 Q. IF YOU LOOK AT PAGE 17 OF THAT PACKET, DO YOU  
24 RECOGNIZE THAT NOTE?

25 A. YES, SIR.

1 Q. WHERE DID YOU SEE THAT NOTE?

2 A. DR. GUHA.

3 Q. ALL RIGHT. AND DID YOU TAKE THAT NOTE TO THE JOB?

4 A. YES, SIR.

5 Q. AND THAT NOTE INDICATES THAT FROM A CARDIAC  
6 STANDPOINT MR. FRESHLEY CAN GO BACK TO WORK?

7 A. YES, SIR.

8 Q. AND AT THAT POINT, DID THE JOB TAKE YOU BACK TO  
9 WORK?

10 A. THEY TOLD ME, THEY SAID WORKERS' COMP TOLD ME I  
11 COULDN'T COME BACK TO WORK.

12 **BY MR. WUKELA:**

13 OKAY. AND WE HAD FILED A WORKERS' COMPENSATION  
14 CLAIM, FORM 50, FOR THE RECORD, COMMISSIONER, AUGUST  
15 OF 2019.

16 **DIRECT EXAMINATION RESUMED BY MR. WUKELA:**

17 Q. NOW, AFTER THAT YOU GO AND SEE DR. MILLER SHORTLY  
18 AFTER, IN NOVEMBER OF 2019?

19 A. YES, SIR.

20 Q. AND YOU HAD BEEN REFERRED TO DR. MILLER. HE'S IS A  
21 PULMONOLOGIST AT MUSC CHARLESTON. YOU HAD BEEN  
22 REFERRED THERE BY DR. JONA?

23 A. YES, SIR.

24 Q. OKAY. AND DID DR. JONA INDICATE TO YOU WHETHER YOU  
25 COULD GO BACK TO WORK FOR A TRIAL PERIOD?

1 **BY MR. FARRY:**

2 OBJECT TO WHAT DR. JONA INDICATED. CLEARLY  
3 HEARSAY. ALL THOSE RECORDS ARE IN EVIDENCE.

4 **BY THE COMMISSIONER:**

5 SUSTAINED.

6 **DIRECT EXAMINATION RESUMED BY MR. WUKELA:**

7 Q. ALL RIGHT. THE RECORD INDICATES THAT DR. JONA SAID  
8 YOU COULD GO BACK TO WORK. DID YOU GO BACK?

9 A. TRIED TO.

10 Q. OKAY. AND DID THEY ACCEPT YOU BACK?

11 A. NO, SIR.

12 Q. OKAY. I KNOW THEY DIDN'T ACCEPT YOU BACK WHEN DR.  
13 GUHA SAID YOU COULD RETURN, BUT IN DECEMBER OF 2019  
14 DID YOU GO BACK?

15 A. I WENT BACK; YES, SIR. 2019, YES, SIR, DECEMBER.

16 Q. OKAY. AND WHEN YOU WENT BACK, DID YOU GO BACK TO  
17 THE SHIPPING DEPARTMENT?

18 A. NO, SIR.

19 Q. WHERE DID YOU GO?

20 A. TO ASSEMBLY.

21 Q. ASSEMBLY. OKAY. AND WHAT KIND OF WORK DID YOU DO  
22 THERE?

23 A. WE PUT PARTS TOGETHER.

24 Q. OKAY. AND DID YOU HAVE ANY PROBLEM DOING THAT WORK?

25 A. YES, SIR; STANDING UP ALL NIGHT. YES, SIR, BENDING.

- 1 Q. OKAY. AND DID YOU COMPLAIN TO THE EMPLOYER ABOUT  
2 HAVING PROBLEMS BEING ABLE TO DO THAT WORK?
- 3 A. YES, SIR. I TOLD EDDIE SIMS. HE TOLD ME I HAD TO  
4 GET A PAPER FROM MY DOCTOR TO GIVE ME RESTRICTIONS  
5 FOR WHAT I COULDN'T DO.
- 6 Q. OKAY. AND DID YOU DO THAT?
- 7 A. YES, SIR.
- 8 Q. AND THEN DID THEY MAKE ANY ACCOMMODATION FOR YOU  
9 THERE?
- 10 A. EDDIE SIMS. EDDIE SIMS IS EDDIE SIMS, BUT HE TRIED.
- 11 Q. WHAT DID HE DO TO HELP YOU?
- 12 A. HE TOLD ME IF I FEEL EXHAUSTED DON'T PUSH MYSELF.
- 13 Q. OKAY. AND DID HE PROVIDE YOU ANYTHING? DID HE LET  
14 YOU SIT, FOR EXAMPLE?
- 15 A. HE LET ME SIT; YES, SIR.
- 16 Q. AND HOW WERE YOU ABLE TO SIT? DID THEY PROVIDE A  
17 CHAIR?
- 18 A. A CHAIR.
- 19 Q. AND WERE YOU -- THEY PROVIDED THAT CHAIR FOR YOU TO  
20 USE WHILE YOU DID YOUR WORK?
- 21 A. YES, SIR.
- 22 Q. AND WHY WAS THAT?
- 23 A. 'CAUSE I WOULD GET SHORT TO WIND, BENDING, TURNING  
24 AROUND AND GETTING THE PARTS TO PUT THEM TOGETHER.
- 25 Q. NOW, IN THE MEANTIME, DR. MILLER SENT YOU OVER TO A

1 NEUROLOGIST AND A CARDIOLOGIST; DO YOU RECALL THAT?

2 A. YES, SIR.

3 Q. DR. OWENS ---

4 **BY MR. WUKELA:**

5 AND, COMMISSIONER, APA 21 -- DEFENDANTS' APA  
6 21, PAGE 906 TO 911, IS A DR. OWENS NOTE. IN  
7 PARTICULAR, PAGE 910 INDICATES THAT HIS CONDITION  
8 DOESN'T HAVE A NEUROLOGICAL ORIGIN.

9 **DIRECT EXAMINATION RESUMED BY MR. WUKELA:**

10 Q. YOU SAW A CARDIOLOGIST AT MUSC AS WELL, DR.  
11 STURDIVANT?

12 A. DR. STURDIVANT; YES, SIR.

13 Q. OKAY. AND AT SOME POINT DID DR. STURDIVANT DO A  
14 SURGERY ON YOU?

15 A. ONLY JUST PUT A NEW PART IN MY CHEST.

16 Q. OKAY. WHEN THE DEFENDANTS WERE MAKING THEIR OPENING  
17 ARGUMENTS, THEY TALKED ABOUT THE UNRELATED CARDIAC  
18 SURGERY THAT YOU HAD IN MAY OF 2019, JUST BEFORE YOU  
19 WERE TERMINATED.

20 A. I DON'T REMEMBER THAT.

21 Q. OKAY. WELL, SUFFICE TO SAY, IN THAT TIME DR.  
22 STURDIVANT HAD PERFORMED THE SURGERY TO IMPLANT THE  
23 MONITOR IN YOUR HEART.

24 A. THAT'S IT. THAT'S IT.

25 Q. DO YOU RECALL THAT?

1 A. YES, SIR.

2 Q. OKAY. AND WERE THOSE PROCEDURES THAT DR. STURDIVANT  
3 WAS DOING TO TRY TO IDENTIFY YOUR -- WHETHER YOU  
4 WERE HAVING PALPITATIONS IN YOUR HEART?

5 **BY MR. FARRY:**

6 OBJECT TO -- THAT IS CLEARLY HEARSAY.

7 **BY THE COMMISSIONER:**

8 SUSTAINED.

9 **BY MR. WUKELA:**

10 WE'LL LET THE RECORD STAND FOR ITSELF.

11 **BY THE COMMISSIONER:**

12 OKAY.

13 **DIRECT EXAMINATION RESUMED BY MR. WUKELA:**

14 Q. IN ANY EVENT, WHEN YOU -- YOU WENT BACK TO SEE DR.  
15 MILLER IN FEBRUARY OF 2020.

16 **BY MR. WUKELA:**

17 AND I'M LOOKING AT PAGE 22 OF MY BRIEF,  
18 COMMISSIONER.

19 **DIRECT EXAMINATION RESUMED BY MR. WUKELA:**

20 Q. THERE DR. MILLER SAYS, "PATIENT IS BACK AT WORK."  
21 SO YOU WERE BACK AT THAT TRIAL IN FEBRUARY OF 2020  
22 OF WORK?

23 Q. YES, SIR.

24 A. IT SAYS THAT YOU CONTINUE TO BE WEAK AND TIRED?

25 Q. YES, SIR.

1 A. HE SAYS YOU SAW NEUROLOGY; HE FELT YOU DID NOT HAVE  
2 A SIGNIFICANT NEUROLOGICAL ISSUE?

3 Q. YES, SIR.

4 A. HE TELLS -- HE SAYS YOU CONTINUE TO BE VERY WEAK AND  
5 TIRED AND SHORT OF BREATH ON ANY EXERTION. IS THAT  
6 TRUE?

7 Q. YES, SIR.

8 A. AND HE SAYS, HE IS NOT CONSIDERED TO HAVE A SERIOUS  
9 CARDIAC ISSUE AT THIS TIME?

10 Q. THAT'S TRUE.

11 A. ALL RIGHT. SO THEN DR. MILLER DID A VARIETY OF  
12 TESTS ON YOU, AND I WON'T GO THROUGH ALL THOSE.

13 **BY MR. WUKELA:**

14 THOSE ARE IN THE RECORD, COMMISSIONER.

15 **DIRECT EXAMINATION RESUMED BY MR. WUKELA:**

16 Q. THEN YOU WERE TERMINATED ON MAY THE 8TH, 2020?

17 A. I WENT OUT FOR SURGERY ON MAY THE 8TH.

18 Q. THAT'S THAT SURGERY FOR THE IMPLANTATION OF THE  
19 MONITOR?

20 A. NO. HEMORRHOIDS.

21 Q. AND WHY DID YOU HAVE TO HAVE HEMORRHOID SURGERY?

22 A. 'CAUSE I HAD INTERNAL BLEEDING.

23 Q. OKAY. AND DID THAT DELAY THE SURGERY TO IMPLANT THE  
24 MONITOR?

25 A. YES, SIR.

1 Q. OKAY. AND WHO DISCOVERED IT?

2 A. WHEN I HAD WENT THERE TO HAVE THIS DONE, ---

3 Q. YES, SIR.

4 A. --- MY HEMOGLOBIN WAS ---

5 Q. I SEE.

6 A. AND THEY WERE TRYING TO FIND OUT WHERE THE BLOOD --  
7 WHERE I WAS LOSING BLOOD AT.

8 Q. OKAY. AND SO THEY TOLD YOU YOU HAD TO HAVE THE  
9 HEMORRHOID SURGERY BEFORE THEY COULD IMPLANT THE  
10 CARDIAC MONITOR?

11 A. YES, SIR.

12 Q. OKAY. AND YOU WENT OUT FOR THAT?

13 A. YES, SIR.

14 Q. AND THEN WHAT HAPPENED AS FAR AS YOUR JOB AFTER  
15 THAT?

16 A. WHEN I WENT BACK -- WELL, I SUPPOSED TO HAD WENT  
17 BACK TO WORK JUNE THE 2ND. RENEE CHAISSON CALLED ME  
18 THE 29TH AND TOLD ME THEY LAID THREE OTHER PEOPLE  
19 OFF, AND I ASKED HER, "WE GOING BY SENIORITY?" SHE  
20 SAID NO. SO I TOOK IT UPON MYSELF TO CALL PAGELAND.  
21 I BELIEVE THE LADY'S NAME WAS MS. CONNIE OR  
22 SOMETHING. I TALKED TO HER AND I ASKED HER. SHE  
23 SAID, "NO, WE DID AWAY WITH SENIORITY." SHE SAID,  
24 "WHY?" I SAID, "I BEEN ON MY JOB GOING ON 13 YEARS.  
25 THEY LAID ME OFF." SHE TOLD ME TO CALL HER BACK.

1                   WHEN I CALLED HER BACK, THEY WOULDN'T LET ME TALK TO  
2                   HER.

3           Q.     OKAY.   SO YOU HAD GONE OUT OF WORK ON MAY THE 8TH TO  
4                   HAVE THE HEMORRHOID SURGERY SO YOU COULD HAVE THE  
5                   CARDIAC MONITOR IMPLANTED?

6           A.     YES, SIR.

7           Q.     OKAY.   AND YOU SAID ON MAY THE WHAT?

8           A.     29TH.

9           Q.     YOU CALLED MS. CHAISSON?

10          A.     NO, MS. CHAISSON -- RENEE CALLED ME.

11          Q.     MS. CHAISSON CALLED YOU.   AND SHE TOLD YOU?

12          A.     I WAS LAID OFF.

13          Q.     OKAY.   AND YOU SAID YOU QUESTIONED SENIORITY?

14          A.     I HAD -- I HAD ASKED HER ABOUT SENIORITY.

15          Q.     OKAY.   AND EXPLAIN THAT TO ME.   WHAT WAS THE  
16                   IMPORTANCE OF SENIORITY?

17          A.     HOW LONG YOU BEEN ON YOUR JOB.

18          Q.     AND WHY WAS THAT IMPORTANT?

19          A.     'CAUSE I KNEW MY JOB ALREADY, BUT THE AREA THEY PUT  
20                   ME IN, I KNEW ABOUT ASSEMBLY, DOING SOME PARTS, BUT  
21                   SHE JUST SAID MY NAME CAME UP.   I WAS THE ONE THEY  
22                   PICKED TO LAY OFF.

23          Q.     NOW, DID THE EMPLOYER HAVE A PRACTICE OF LAYING OFF  
24                   MORE JUNIOR PEOPLE FIRST?

25          A.     YES, SIR; THEY DID.

1 Q. AND WERE THERE MORE JUNIOR PEOPLE WHO CONTINUED TO  
2 HAVE THEIR JOB AFTER YOU WERE LAID OFF?

3 A. YES, SIR.

4 Q. GIVE ME AN EXAMPLE.

5 A. THERE WAS ABOUT TWO OR THREE OF THEM IN THE  
6 DEPARTMENT I WAS AT.

7 Q. I MEAN, HOW ABOUT JASON PURSER WHO WORKED NEXT TO  
8 YOU; WAS HE MORE JUNIOR THAN YOU?

9 A. YES, SIR.

10 Q. WAS HE LAID OFF?

11 A. NO, SIR.

12 **BY MR. WUKELA:**

13 THOSE ARE ALL THE QUESTIONS I HAVE,  
14 COMMISSIONER.

15 **BY THE COMMISSIONER:**

16 OKAY. THANK YOU. MR. FARRY.

17 **BY MR. FARRY:**

18 THANK YOU.

19 **CROSS EXAMINATION BY MR. FARRY:**

20 Q. YOU'VE ALLEGED IN A WORKERS' COMPENSATION CLAIM THAT  
21 YOU HAVE INJURY TO YOUR LUNGS AND SKIN, CORRECT?

22 A. NO. MY SKIN AT FIRST.

23 Q. OKAY. AND NOW YOUR LUNGS. THOSE ARE THE TWO BODY  
24 PARTS THAT YOU CLAIM WERE INJURED BY WORKING AT  
25 CONBRACO, CORRECT?

1 A. I SAID SKIN, HEADACHE, AND THEN LATER ON I WENT WITH  
2 MY BREATHING. I TOLD RENEE THAT.

3 **BY MR. FARRY:**

4 COMMISSIONER, I'D JUST POINT TO THE FORM 50 AND  
5 FORM 58 ARE SKIN AND LUNGS.

6 **BY THE COMMISSIONER:**

7 THANK YOU.

8 **CROSS EXAMINATION RESUMED BY MR. FARRY:**

9 Q. AND THE DATE OF INJURY THAT YOUR LAWYER IS USING IS  
10 NOVEMBER 28, 2018, WHEN YOU WERE TALKING TO SARA  
11 HUFFMAN ---

12 A. HUFFMAN.

13 Q. --- ABOUT THE LESIONS ON YOUR FACE OR THE SPOTS ON  
14 YOU FACE?

15 A. YES, SIR.

16 Q. AND YOU FILLED OUT AN INJURY REPORT -- THIS IS  
17 CLAIMANT'S EXHIBIT "A" -- ALLEGING THAT YOU WERE  
18 HAVING PROBLEMS WITH SKIN LESIONS. WHAT ARE SKIN  
19 LESIONS?

20 A. SKIN LESIONS, FACE BREAKING OUT WITH BUMPS,  
21 CONSTANTLY ITCHING, EYES -- MY EYES WERE BURNING.

22 Q. YOU HAD HEADACHES AS WELL, I BELIEVE?

23 A. HEADACHES; YES, SIR.

24 Q. DIDN'T COMPLAIN OF ANY BREATHING PROBLEMS AT THAT  
25 TIME?

1 A. NO, NOT AT THAT TIME.

2 Q. AND I BELIEVE YOU'VE TESTIFIED YOU WEREN'T HAVING  
3 ANY BREATHING PROBLEMS AT THAT TIME?

4 A. I TOLD RENEE. SHE WAS TELLING ME WHEN I TOLD HER  
5 ABOUT WITH MY HEART, AND I TOLD HER. ME AND RENEE  
6 WAS TALKING. I TOLD HER, I SAID, "THEY'RE TRYING TO  
7 RULE OUT IF IT'S MY BREATHING OR MY HEART."

8 Q. RIGHT. BUT WHEN YOU FILLED OUT THIS EMPLOYEE INJURY  
9 REPORT THAT SARA HUFFMAN DID ---

10 A. I DIDN'T FILL IT OUT. SHE FILLED IT OUT.

11 Q. BUT YOU TOLD HER WHAT KIND OF PROBLEMS YOU WERE  
12 HAVING?

13 A. YES, SIR.

14 Q. AND YOU DIDN'T TELL HER ANYTHING ABOUT ANY BREATHING  
15 PROBLEMS, DID YOU?

16 A. YES, I DID, BUT SHE DIDN'T PUT IT IN THERE.

17 Q. SHE DIDN'T PUT IT IN THERE. OKAY. NOW, YOU'VE BEEN  
18 TREATED AT FLORENCE MEDICAL CENTER YEARS EARLIER FOR  
19 HEADACHE PROBLEMS, HAVEN'T YOU?

20 A. I HAD A BAD SINUS PROBLEM.

21 **BY MR. FARRY:**

22 APA NUMBER 13, PAGE 397, COMMISSIONER.

23 **CROSS EXAMINATION RESUMED BY MR. FARRY:**

24 Q. AUGUST 16, 2009, YOU WERE IN THE EMERGENCY ROOM WITH  
25 YOUR CHIEF COMPLAINT BEING HEADACHE. DO YOU

1 REMEMBER THAT, IN 2009?

2 A. 2009?

3 Q. YES, SIR.

4 A. NO, I DON'T REMEMBER THAT.

5 Q. YOU WERE SEEN AGAIN A WEEK OR TWO LATER FOR  
6 HEADACHES AT THE EMERGENCY ROOM IN FLORENCE MEDICAL  
7 CENTER FOR HEADACHES AGAIN; DO YOU REMEMBER THAT?

8 A. WHEN?

9 Q. 2009.

10 A. I DON'T RECALL OF IT.

11 **BY MR. FARRY:**

12 APA 13, PAGE 410, COMMISSIONER.

13 **CROSS EXAMINATION RESUMED BY MR. FARRY:**

14 Q. NOW, YOU WERE TREATED AT FLORENCE MEDICAL CENTER FOR  
15 HEADACHES AGAIN IN JANUARY OF 2014; REMEMBER THAT?

16 A. I REMEMBER THAT.

17 Q. OKAY. AND IN THAT MEDICAL REPORT IT STATES, QUOTE,  
18 "PAST MEDICAL HISTORY, POSITIVE FOR CHRONIC  
19 HEADACHES," MEANING YOU'VE HAD THEM FOR A WHILE.

20 A. NO, SIR.

21 Q. YOU DIDN'T TELL THEM THAT?

22 A. NO, SIR.

23 **BY MR. FARRY:**

24 APA 13, COMMISSIONER, PAGE 569.

25 **CROSS EXAMINATION RESUMED BY MR. FARRY:**

1 Q. NOW, YOU'VE BEEN TREATED FOR DIZZINESS AND VERTIGO  
2 FOR YEARS PRIOR TO THIS 2018 REPORT THAT YOU MADE TO  
3 SARA HUFFMAN, HADN'T YOU?

4 A. NO, SIR.

5 **BY MR. FARRY:**

6 APA 13, COMMISSIONER, PAGE 427.

7 **CROSS EXAMINATION RESUMED BY MR. FARRY:**

8 Q. DIZZINESS AND HEADACHES AGAIN, SEPTEMBER 19, 2011;  
9 DO YOU REMEMBER THAT?

10 A. YES, SIR.

11 Q. WHAT WAS GOING ON SEPTEMBER 19TH, 2011?

12 A. I HAD GOT SICK, FOOD POISONING OR SOMETHING.

13 Q. OKAY. SO YOU HAD DIZZINESS AND HEADACHES AND HAD TO  
14 GO TO THE DOCTOR FOR IT?

15 A. YES, SIR.

16 Q. YOU WERE ADMITTED TO THE FLORENCE MEDICAL CENTER FOR  
17 DIZZINESS ON SEPTEMBER 20, 2011, HAD TO SPEND AT  
18 LEAST ONE NIGHT IN THE HOSPITAL, CORRECT?

19 A. 2011?

20 Q. SEPTEMBER 20, 2011.

21 A. THEY HAD RUN TESTS ON ME THAT NIGHT.

22 **BY MR. FARRY:**

23 APA 13, COMMISSIONER, PAGE 520.

24 **CROSS EXAMINATION RESUMED BY MR. FARRY:**

25 Q. NOW, YOU'VE BEEN DIAGNOSED WITH CHRONIC SLEEP APNEA

1 FOR YEARS PRIOR TO NOVEMBER '18, CORRECT?

2 A. STARTED -- I GOT DIAGNOSED IN 2015.

3 Q. 2015. WELL, THAT'S YEARS PRIOR TO 2018; YOU WOULD  
4 AGREE WITH THAT, WOULDN'T YOU?

5 A. YEAH.

6 Q. OKAY. YOU HAD YOUR FIRST SLEEP STUDY DONE IN AUGUST  
7 OF 2010 WHEN THEY STARTED LOOKING AT THAT?

8 **BY MR. WUKELA:**

9 COMMISSIONER, WE'LL STIPULATE THAT ALL THOSE  
10 PRIOR MEDICALS SAY WHAT THEY SAY IF DEFENSE WILL  
11 STIPULATE THEY ALL WERE WHILE HE WORKED AT CONBRACO.

12 **BY THE WITNESS:**

13 THAT'S WHEN IT STARTED.

14 **BY MR. FARRY:**

15 WELL, THE TEMPORAL RELATIONSHIP, COUNSEL, I  
16 MAINTAIN HAS NOTHING TO DO WITH THE MEDICATION. I'M  
17 SURE MR. FRESHLEY HAD A LOT MORE HAIR BEFORE HE  
18 WORKED AT CONBRACO, MUCH LIKE I DIDN'T HAVE GRAY  
19 HAIR BEFORE I WENT TO WORK AS A LAWYER.

20 **BY MR. WUKELA:**

21 I'M SURE THE COMMISSIONER WILL READ ALL THE  
22 PRIOR MEDICALS, WHICH ARE ALL POST HIS EMPLOYMENT  
23 WITH CONBRACO.

24 **BY MR. FARRY:**

25 THE POINT IS NOTED, BUT I THINK I'M PERMITTED

1 CROSS EXAMINATION.

2 **BY THE COMMISSIONER:**

3 YOU ARE.

4 **BY MR. FARRY:**

5 THANK YOU. APA 14, PAGE 612 THROUGH 624, A  
6 SLEEP STUDY IS DONE IN AUGUST OF 2010 AND SEPTEMBER  
7 OF 2010.

8 **CROSS EXAMINATION RESUMED BY MR. FARRY:**

9 Q. NOW, YOU'VE ADMITTED THAT YOU HAVE A HISTORY OF  
10 HEART PROBLEMS FOR YEARS PRIOR TO YOUR REPORTED  
11 ACCIDENT IN NOVEMBER 2018?

12 A. WHEN -- WHEN YOU SAY I DID?

13 Q. WHEN YOUR LAWYER WAS ASKING YOU QUESTIONS, YOU SAID  
14 THAT STARTED AT LEAST IN 2015?

15 A. RIGHT, WITH MY HEART, YEAH.

16 Q. YES, SIR. AND YOU'VE BEEN TAKING MEDICATION FOR  
17 HIGH BLOOD PRESSURE FOR YEARS, HAVEN'T YOU?

18 A. NO, SIR.

19 Q. YOU HAVEN'T? HAVE YOU HAD -- HAVE YOU BEEN  
20 DIAGNOSED WITH HYPERTENSION?

21 A. NO, SIR.

22 Q. HIGH BLOOD PRESSURE?

23 A. NO, SIR.

24 **BY MR. FARRY:**

25 APA 15, COMMISSIONER, STARTING AT PAGE 625, DR.

1                    ELLIS'S REPORT.

2                    **CROSS EXAMINATION RESUMED BY MR. FARRY:**

3                    Q.    NOW, DR. ELLIS WAS YOUR FAMILY PHYSICIAN OR PERSONAL  
4                    CARE PHYSICIAN, CORRECT?

5                    A.    YES, SIR.

6                    Q.    AND DR. ELLIS IS THE DOCTOR THAT REFERRED YOU TO A  
7                    CARDIOLOGIST BACK IN AUGUST OF 2015?

8                    A.    YES, SIR.

9                    Q.    WHEN YOU SAW DR. GUHA FOR THE FIRST TIME, OR AT  
10                    LEAST ON AUGUST 24, 2015, YOU TOLD DR. GUHA THAT YOU  
11                    HAD SHORTNESS OF BREATH AND PALPATIONS FOR TWO  
12                    YEARS?

13                    A.    NO, I DIDN'T.

14                    Q.    YOU DIDN'T TELL HIM THAT?

15                    A.    NO, SIR.

16                    **BY MR. FARRY:**

17                                       APA NUMBER ONE, PAGE 14, COMMISSIONER.

18                    **CROSS EXAMINATION RESUMED BY MR. FARRY:**

19                    Q.    AND WHEN YOU SAW DR. GUHA ON AUGUST 24, 2015, YOU  
20                    TOLD DR. GUHA, QUOTE, "NOW YOU GET MORE SHORT OF  
21                    BREATH," END OF QUOTE?

22                    A.    NO, SIR. I TOLD HIM I WAS HAVING SKIN PROBLEMS AND  
23                    SHORTNESS OF BREATH, BUT IT WASN'T NO -- IT WASN'T  
24                    THAT BAD THEN.

25                    Q.    OKAY. AND YOU ALSO TOLD HIM IN AUGUST 2015 THAT YOU

1 HAD, QUOTE, "EPISODES OF DIZZINESS," BACK IN 2015?

2 A. YES, SIR.

3 Q. NOW, YOUR ATRIAL FIBRILLATION, YOU'VE HAD AT LEAST  
4 THREE PROCEDURES, ABLATION PROCEDURES, WHERE YOU HAD  
5 TO GO IN THE HOSPITAL AND THEY PUT THE PROBES IN,  
6 CORRECT?

7 A. NO, THEY WENT UP TWO TIMES ON MY LEG.

8 Q. RIGHT, RIGHT. THEY GO UP INTO YOUR HEART ---

9 A. YEAH.

10 Q. --- AND DO WHAT THOSE PROBES DO TO TRY TO GET YOUR  
11 HEART BACK IN REGULAR HEARTBEAT?

12 A. YES, SIR.

13 Q. AND THE FIRST PROCEDURE WAS DONE IN 2016, SEPTEMBER,  
14 SECOND ONE IN JULY OF 2018, AND THE THIRD ONE APRIL  
15 OF 2019, ACCORDING TO THE RECORDS?

16 A. YES, SIR.

17 Q. AND DR. GUHA SENT YOU TO THE MEDICAL UNIVERSITY OF  
18 SOUTH CAROLINA IN CHARLESTON TO SEE A CARDIOLOGIST  
19 FOR YOUR HEART?

20 A. NO.

21 Q. SO HOW DID YOU GET DOWN TO SEE A CARDIOLOGIST IN  
22 CHARLESTON?

23 A. DR. JONA -- NOT JONA, MILLER.

24 Q. DR. MILLER IS THE PULMONOLOGIST IN CHARLESTON.

25 A. HE THE ONE -- HE HAD ME TO GO SEE STURDIVANT.

1 Q. RIGHT.

2 A. DR. MILLER DID.

3 Q. OKAY.

4 A. 'CAUSE HE WAS TRYING TO RULE OUT THE HEART WITH MY  
5 BREATHING.

6 Q. ARE YOU AWARE THAT DR. STURDIVANT HAS TESTIFIED THAT  
7 YOUR ATRIAL FIBRILLATION CAN CAUSE SHORTNESS OF  
8 BREATH AND SHORTNESS ON EXERTION? DIDN'T KNOW THAT?

9 A. HE DIDN'T SAY THAT.

10 Q. OKAY. WORKING AT CONBRACO IN 2018, YOU DIDN'T MISS  
11 ANY TIME FROM WORK FOR ANY ALLEGED PROBLEMS YOU  
12 BELIEVE CAUSED BY YOUR WORK, CORRECT?

13 A. PERFECT ATTENDANCE.

14 Q. RIGHT.

15 **BY MR. FARRY:**

16 EXHIBIT ONE OF DEFENDANTS' EXHIBITS,  
17 COMMISSIONER.

18 **CROSS EXAMINATION RESUMED BY MR. FARRY:**

19 Q. NOW, YOU WENT OUT IN AUGUST OF 2019 BECAUSE YOU WERE  
20 HOSPITALIZED FOR YOUR HEART PROBLEMS; REMEMBER THAT?

21 A. YES, SIR.

22 Q. AND THAT'S WHEN YOU WERE RELEASED TO COME BACK TO  
23 CONBRACO, AND YOU CAME BACK OCTOBER 9, I BELIEVE,  
24 AND WORKED FOR A FEW HOURS, AND THAT'S WHEN YOU WERE  
25 SENT HOME BY RENEE BECAUSE THEY SAID WORKERS' COMP

1 SAID YOU HAD TO GO?

2 A. YES, SIR.

3 Q. AND THAT'S AFTER YOU HAD FILED A FORM 50, A CLAIM  
4 THROUGH YOUR LAWYER, ALLEGING INJURY TO YOUR LUNGS  
5 AND SKIN, CORRECT?

6 A. YES, SIR.

7 Q. THEN WHEN YOU CAME BACK TO WORK IN DECEMBER, THEY  
8 PUT YOU IN A DIFFERENT DEPARTMENT?

9 A. YES, SIR.

10 Q. YOU WORKED IN ASSEMBLY?

11 A. YES, SIR.

12 Q. YOU TESTIFIED ABOUT THIS PHOTOGRAPH THAT WAS TAKEN  
13 BY A COWORKER, I BELIEVE, I WANT TO SAY AUGUST. LET  
14 ME LOOK AT THAT EXHIBIT.

15 A. 8/19?

16 Q. 8/19 -- EXCUSE ME, 8/8/19, AUGUST 8TH, 2019. AND  
17 YOU SAID YOU WERE WORKING TEN-HOUR DAYS, SIX DAYS A  
18 WEEK, RIGHT?

19 A. TEN-HOUR DAYS, FIVE DAYS, SIX ON SATURDAY.

20 **BY MR. FARRY:**

21 OKAY. COMMISSIONER, I'D DIRECT YOUR ATTENTION  
22 TO EXHIBIT TWO, WHICH ARE THE ATTENDANCE RECORDS,  
23 AND FOR THE MONTH OF AUGUST THERE'S ONLY ONE DAY,  
24 TUESDAY, LOOKS LIKE AUGUST 1ST, TEN HOURS. THE REST  
25 WERE EIGHT HOURS AND ONE NINE-HOUR.

CROSS EXAMINATION RESUMED BY MR. FARRY:

- 1
- 2 Q. THEY KEPT ATTENDANCE RECORDS ON YOU FOR YOUR PAY,
- 3 DIDN'T THEY?
- 4 A. YEAH.
- 5 Q. NOW, YOU WENT INTO THE ASSEMBLY DEPARTMENT. YOU'RE
- 6 WORKING A DIFFERENT JOB, AND YOU'RE WORKING THOSE --
- 7 THAT JOB EIGHT HOURS A DAY, CORRECT?
- 8 A. YES, SIR.
- 9 Q. AND YOU WERE ABLE TO WORK THOSE HOURS, CORRECT?
- 10 A. YES, SIR.
- 11 Q. AND YOU'VE ALREADY TESTIFIED THAT WHEN YOU WENT OUT
- 12 ON MAY 8TH YOU WENT OUT TO HAVE A HEART PROCEDURE
- 13 DONE, OR WERE GOING TO, AND THAT'S WHEN THEY
- 14 DISCOVERED -- NO, BEFORE THAT THEY DISCOVERED THE
- 15 HEMOGLOBIN PROBLEM, AND YOU HAD TO GO OUT MAY 8TH,
- 16 THE LAST DAY YOU WORKED, TO TAKE CARE OF THE
- 17 HEMORRHOIDS BEFORE THEY COULD TAKE CARE OF THE HEART
- 18 PROBLEM?
- 19 A. YES, SIR.
- 20 Q. OKAY. NOW, IN MAY YOU TALKED TO KAREN BROOKS, THE
- 21 SAFETY LADY, ABOUT PROBLEMS THAT YOU WERE HAVING,
- 22 CORRECT?
- 23 A. MAY 8TH?
- 24 Q. NO, IN MAY.
- 25 A. I AIN'T NEVER TALKED TO KAREN ABOUT NOTHING IN NO

- 1           MAY.
- 2           Q.    IN MAY OF 2019?
- 3           A.    PROBABLY AROUND -- NO.
- 4           Q.    SO WHEN WOULD YOU HAVE TALKED TO HER?
- 5           A.    WHEN KAREN FIRST GOT THE SAFETY LADY POSITION, I
- 6           TOLD HER ABOUT COMING OVER THERE AND TAKING PHOTOS
- 7           OF OUR WORK AREA TO LET THEM SEE THAT WE NEED A
- 8           VENTILATOR OVER HERE BECAUSE THE FUMES OVER THERE
- 9           MESSING WITH US.
- 10          Q.    OKAY.  SOMETIME IN MAY, THOUGH, YOU'RE TALKING TO
- 11          KAREN ABOUT PROBLEMS YOU THINK YOUR WORK IS CAUSING,
- 12          THE SKIN LESIONS ON YOUR FACE AND BURNING EYES AND
- 13          HEADACHES?  THIS IS IN MAY.
- 14          A.    I TALKED TO KAREN AT THAT TIME WHEN SHE TOLD ME TO
- 15          TAKE THE DRUG TEST, WITH HER AND RENEE.
- 16          Q.    ON MAY 9 DID KAREN TAKE YOU TO DOCTORS CARE?
- 17          A.    YES, SHE DID, SOMEWHERE AROUND THERE.  I DON'T
- 18          REMEMBER WHAT DAY IT WAS.
- 19          Q.    BUT SOMETIME IN MAY OF 2019 YOU WENT TO DOCTORS
- 20          CARE?
- 21          A.    YEAH.
- 22          Q.    ALL RIGHT.  AND KAREN BROOKS OF CONBRACO TOOK YOU,
- 23          CORRECT?
- 24          A.    YES, SIR.
- 25          Q.    AND THAT'S WHEN YOU WERE COMPLAINING OF PROBLEMS

1            THAT THE WORK WAS CAUSING?

2            A.    YES, SIR.

3            Q.    AND YOU WENT TO SEE A DOCTOR?

4            A.    I BEEN COMPLAINING TO RENEE.    RENEE CALLED KAREN  
5            OVER THERE.    THEY CAME IN MY WORK AREA AND TALKED TO  
6            ME.    THEY TOLD ME, LET'S WALK OUTSIDE.

7            Q.    OKAY.

8            A.    THEY ASKED ME DID I FEEL LIKE GOING TO DOCTORS CARE.  
9            IS SAID, YEAH, YOU WANT ME TO DRIVE MYSELF?    SHE  
10           SAID, NO, KAREN WILL TAKE ME.    KAREN GOT ME THERE.  
11           WE SAT DOWN BESIDE EACH OTHER.    I'M DOING MY  
12           PAPERWORK SO I COULD GO AHEAD AND TAKE THE DRUG  
13           TEST.    KAREN ASKED ME, YOU KNOW, "MR. FRESHLEY, WHAT  
14           KIND OF DRUGS ARE YOU USING?    IT'LL BE BETWEEN ME  
15           AND YOU."    AND I ASKED KAREN -- I TOLD YOU ABOUT IT,  
16           RENEE.    DON'T LOOK AT KAREN LIKE THAT.    BUT THE  
17           THING WAS, I WENT BACK AND TOLD RENEE THAT FRIDAY.  
18           SHE SAID, "MR. FRESHLEY, YOU ACT LIKE YOU GOT A  
19           PROBLEM."    I SAID, "YEAH.    YOUR FRIEND ASKED ME,  
20           WHEN WE WAS AT DOCTORS CARE, BETWEEN ME AND HER, TO  
21           LET HER KNOW WHAT KIND OF DRUGS I WAS USING, AND I  
22           TOLD HER" -- I AIN'T TRYING TO BE NASTY OR RUDE.    I  
23           TOLD HER, HOW ABOUT VIAGRAS?    SHE LOOKED AT ME,  
24           "WHAT YOU SAY?"    I SAID, "YOU WANT ME TO CALL MY  
25           DOCTOR TO SEND RENEE THE PAPER WHILE SHE AT THE

1 OFFICE?" SHE SAID, "NO." THAT'S WHEN THEY CALLED  
2 ME IN THE BACK. THE MAN SAID, "I KNOW SHE JUST  
3 DIDN'T ASK YOU THAT," BUT SHE ASKED ME.

4 Q. ALL RIGHT. BUT ON MAY 9, WHEN YOU WERE AT DOCTORS  
5 CARE, YOU'RE THERE BECAUSE YOU'RE SEEING THE DOCTOR  
6 FOR PROBLEMS YOU BELIEVE ARE RELATED TO WORK?

7 A. YES, SIR.

8 Q. OKAY. AND SO YOU GOT TO SEE A DOCTOR?

9 A. YES, I DID.

10 Q. AND THIS WAS ON MAY 9, 2019?

11 A. I AIN'T GOING TO SAY MAY 9. I DON'T KNOW WHAT ---

12 Q. WELL, WHATEVER DATE IT WAS, IT WAS DOCTORS CARE.

13 A. DOCTORS CARE, YEAH.

14 **BY MR. FARRY:**

15 COMMISSIONER, APA NUMBER TWO, PAGE 141, IS THE  
16 MAY 9 DOCTORS CARE.

17 **WITNESS RESUMES:**

18 A. I THINK IT WAS IN APRIL, 'CAUSE THAT'S WHEN RENEE  
19 TOLD ME AND SARA TO WRITE THE ACCIDENT REPORT OVER,  
20 BUT THE SUPERVISOR WRITE THE ACCIDENT REPORT OVER.

21 **CROSS EXAMINATION RESUMED BY MR. FARRY:**

22 Q. OKAY. AND THAT'S WHEN SARA DID THE MAY 17, 2019,  
23 REPORT THAT'S IN THE EXHIBITS?

24 A. 2018 REPORT; YES, SIR.

25 Q. OKAY. I WANT THIS RECORD TO BE CLEAR. WHEN YOU

1 SAID THAT REPORT WAS REWRITTEN ---

2 **BY MR. FARRY:**

3 MAY I APPROACH THE WITNESS?

4 **BY THE COMMISSIONER:**

5 SURE.

6 **CROSS EXAMINATION RESUMED BY MR. FARRY:**

7 Q. YOU'RE TALKING ABOUT WHEN SARA HUFFMAN DID THIS  
8 ACCIDENT REPORT MAY 17, 2019?

9 A. YES, SIR; WE HAD TO WRITE IT OVER.

10 Q. I UNDERSTAND.

11 A. SHE HAD TO WRITE IT OVER.

12 Q. I JUST WANT TO MAKE SURE WE GET THE YEAR RIGHT.  
13 WE'RE IN 2019?

14 A. YEAH, BUT SHE WROTE IT FOR 2018.

15 Q. AND WHEN YOU SAY SHE WROTE IT FOR 2018, YOU'RE  
16 TALKING ABOUT APA EXHIBIT ONE THAT'S DATED NOVEMBER  
17 28, 2018?

18 A. THAT'S WHAT SHE WROTE.

19 Q. RIGHT.

20 A. AND THAT.

21 Q. RIGHT. ALL OF THIS.

22 A. YEAH.

23 Q. THAT'S NOVEMBER 2018?

24 A. YES, SIR.

25 Q. THAT'S WHAT YOU'RE TALKING ABOUT, AND WHEN YOU SAY

- 1 SHE REWROTE IT, YOU'RE TALKING ABOUT THE MAY 17,  
2 2019?
- 3 A. YEAH.
- 4 Q. GOT IT.
- 5 A. RENEE HAD US TO DO THAT.
- 6 Q. RIGHT. LET'S GO BACK TO DOCTORS CARE. YOU'RE AT  
7 DOCTORS CARE ON MAY 9, 2019?
- 8 A. I DON'T REMEMBER. IT WAS AROUND APRIL SOMEWHERE.
- 9 Q. OKAY. YOU WENT TO DOCTORS CARE SOMETIME?
- 10 A. YEAH. IT WAS IN APRIL, RIGHT AFTER I TOLD RENEE.
- 11 Q. WHEN YOU'RE AT DOCTORS CARE, THIS IS THE TIME THAT  
12 RENEE DROVE YOU, CORRECT?
- 13 A. NO.
- 14 Q. I'M SORRY; THAT KAREN DROVE YOU?
- 15 A. YES, SIR.
- 16 Q. OKAY. BUT YOU GOT TO MEET WITH A DOCTOR, AND KAREN  
17 WASN'T IN THERE?
- 18 A. NO.
- 19 Q. MY STATEMENT IS CORRECT?
- 20 A. NO, SHE WAS OUTSIDE SITTING IN THE FRONT.
- 21 Q. SO YOU WERE ABLE TO TELL THE DOCTOR THE PROBLEMS YOU  
22 WERE HAVING?
- 23 A. I TOLD HIM I WAS HAVING SKIN, EYES BURNING,  
24 HEADACHE, AND LIGHT -- MY BREATHING WAS KIND OF  
25 LIGHT.

1 Q. YOU DIDN'T TELL HIM ANYTHING ABOUT BREATHING, DID  
2 YOU?

3 A. HUH?

4 Q. YOU DIDN'T TELL HIM ANYTHING ABOUT ---

5 A. (ANSWER STRICKEN FROM THE RECORD PER COMMISSIONER  
6 TAYLOR).

7 **BY MR. FARRY:**

8 OBJECT TO WHAT HE SAID AS BEING HEARSAY.

9 **BY MR. WUKELA:**

10 NO. COMMISSIONER, HE OPENS THE DOOR WHEN HE  
11 ASKS HIM ABOUT THE CONVERSATION WITH THE DOCTOR.

12 **BY MR. FARRY:**

13 I DIDN'T ASK HIM WHAT HE SAID. MY QUESTION  
14 WAS, YOU DIDN'T TELL THE DOCTOR ABOUT THE LUNG  
15 PROBLEMS, AND I MOVE THAT TO BE STRICKEN.

16 **BY MR. FARRY:**

17 YOUR HONOR, YOU CAN'T ASK A WITNESS ABOUT A  
18 CONVERSATION WITH A DOCTOR AND ASK HIM NOT TO TELL  
19 YOU WHAT THE DOCTOR SAID.

20 **BY THE COMMISSIONER:**

21 HE ASKED HIM WHAT HE TOLD THE DOCTOR. HE  
22 DIDN'T ASK HIM WHAT THE DOCTOR TOLD HIM. I'LL  
23 STRIKE THAT ANSWER FROM THE RECORD.

24 **BY MR. WUKELA:**

25 THANK YOU.

1 **BY THE COMMISSIONER:**

2 MR. FARRY.

3 **BY MR. FARRY:**

4 COMMISSIONER, I'D JUST POINT OUT AT APA NUMBER  
5 TWO, PAGE 141, THERE IS ABSOLUTELY NO REFERENCE TO  
6 ANY BREATHING, LUNG, SHORTNESS OF HIS BREATH,  
7 FATIGUE, ANYTHING.

8 **CROSS EXAMINATION RESUMED BY MR. FARRY:**

9 Q. YOU GO BACK TO DOCTORS CARE ---

10 A. THE WEEK LATER.

11 Q. --- A WEEK OR SO LATER?

12 A. YES, SIR.

13 Q. WHEN YOU WENT TO DOCTORS CARE A WEEK OR SO LATER,  
14 YOU DIDN'T TELL THE DOCTOR ABOUT ANY BREATHING OR  
15 LUNG PROBLEMS, DID YOU?

16 A. I TOLD HIM ABOUT MY BREATHING, MY SKIN, MY HEADACHE,  
17 AND EYES. HE DIDN'T WRITE IT DOWN. HE SAID, "I  
18 DON'T KNOW WHY THEY SENT YOU" ---

19 **BY MR. FARRY:**

20 I'M GOING TO OBJECT TO ANYTHING HE SAID AS NOT  
21 BEING WRITTEN DOWN. I HAVEN'T ASKED ABOUT THAT.  
22 COMMISSIONER, I'D CALL YOUR ATTENTION TO APA TWO,  
23 PAGE 162. AND I'D ALSO NOTE, COMMISSIONER, AND I'LL  
24 QUOTE FROM THAT RECORD, "NO FURTHER VISIT HERE AS  
25 WHAT HE IS -- WHAT HE IS BEYOND OUR EXPERTISE,"

1           WHICH I TAKE TO MEAN THE DOCTOR CAN'T HELP HIM; HE  
2           NEEDS SOMEBODY ELSE.

3           BY THE WITNESS:

4           THERE YOU GO.

5           BY MR. WUKELA:

6           NO, NO. YOUR HONOR, THIS EXPOSITION OF THE ---

7           BY THE COMMISSIONER:

8           SUSTAINED. SUSTAINED. THE MEDICAL RECORDS ARE  
9           IN EVIDENCE.

10          BY MR. FARRY:

11          FAIR ENOUGH.

12          BY THE COMMISSIONER:

13          OKAY.

14          CROSS EXAMINATION RESUMED BY MR. FARRY:

15          Q. BEFORE YOU WENT OUT MAY 8TH -- EXCUSE ME; MARCH 8  
16          WAS THE LAST DAY YOU WORKED, 2020, IS THAT RIGHT?

17          A. NO, MAY.

18          Q. MAY 8, 2020, IS THE LAST DAY YOU WORKED. BEFORE YOU  
19          WENT OUT ON THAT DATE, YOU WERE WORKING IN ASSEMBLY,  
20          I BELIEVE YOU TOLD ME, CORRECT?

21          A. YES, SIR.

22          Q. AND YOU WERE ABLE TO DO YOUR JOB?

23          A. YES, SIR. SITTING DOWN, YES, SIR.

24          Q. AND YOU WERE WORKING, I BELIEVE, EIGHT HOURS A DAY?

25          A. YES, SIR.

1 Q. AND THEN WHILE YOU WERE OUT ON THIS MEDICAL LEAVE  
2 FOR YOUR HEMORRHOIDS, THAT'S WHEN THIS LAYOFF  
3 OCCURRED AT CONBRACO AND YOU WERE NOTIFIED OF THAT?

4 A. MAY THE 29TH.

5 Q. MAY THE 29TH. NOW, YOU FILED FOR SHORT-TERM  
6 DISABILITY, I BELIEVE; DO YOU REMEMBER DOING THAT?

7 A. YES, SIR.

8 Q. AND ACCORDING TO THAT SHORT-TERM DISABILITY  
9 APPLICATION ---

10 **BY MR. FARRY:**

11 I'M NOW AT EXHIBIT FOUR, PAGE EIGHT,  
12 COMMISSIONER.

13 **CROSS EXAMINATION RESUMED BY MR. FARRY:**

14 Q. YOU'RE ALLEGING THE FIRST DATE YOU MISSED FROM WORK  
15 WAS MAY 11, 2020. I DON'T GUESS YOU WERE SCHEDULED  
16 TO WORK 9 AND 10. THAT WOULD HAVE BEEN A FRIDAY --  
17 A SATURDAY, SUNDAY, AND THEN MAY 11TH WOULD HAVE  
18 BEEN A MONDAY, IS THAT RIGHT?

19 A. YEAH. THAT'S WHEN I HAD MY SURGERY.

20 Q. RIGHT. AND IN THAT APPLICATION IT'S NOTED,  
21 CONDITION -- IS CONDITION WORK-RELATED, AND WHAT IS  
22 CHECKED THERE, WHICH BOX?

23 A. I CHECKED NO 'CAUSE NOBODY TOLD ME TO CHECK NO,  
24 'CAUSE THE PEOPLE AT (UNINTELLIGIBLE) TOLD ME TO  
25 CHECK NO.

1 Q. OKAY. BUT THE REASON YOU WERE MISSING TIME FROM  
2 WORK WAS BECAUSE OF THE HEMORRHOID SURGERY?

3 A. YES, SIR, 'CAUSE RENEE TOLD ME TO GO OUT 'CAUSE THEY  
4 GOT PERMISSION FROM THE FIRST LAWYER.

5 Q. AND WHAT YOU'RE TALKING ABOUT THERE IS THE TIME THAT  
6 YOU HAD MISSED FROM WORK, YOU HAD EXCEEDED YOUR FMLA  
7 ALLOCATION WITH ALL THESE HEART ISSUES THAT YOU HAD  
8 HAD, AND IF YOU MISSED ANY MORE TIME FROM WORK YOU  
9 MAY LOSE YOUR JOB, AND THE FIRST LAWYER ---

10 A. NO, HER AND COPELY (PHONETIC) TOLD ME I WOULDN'T  
11 LOSE MY JOB.

12 Q. RIGHT.

13 **BY MR. FARRY:**

14 MAY I HAVE A BRIEF COUNSEL WITH -- CONFERENCE  
15 WITH COUNSEL?

16 **BY THE COMMISSIONER:**

17 SURE.

18 **BY MR. FARRY:**

19 BECAUSE I THINK WE CAN STIPULATE TO SOMETHING  
20 THAT WILL CLEAR THIS UP.

21 **BY THE COMMISSIONER:**

22 OKAY.

23 (OFF THE RECORD)

24 **CROSS EXAMINATION RESUMED BY MR. FARRY:**

25 Q. YOU WERE TOLD BY CONBRACO THAT WHEN YOU WENT OUT FOR

1                   YOUR HEMORRHOID SURGERY, THE TIME YOU MISSED WASN'T  
2                   GOING TO COST YOU YOUR JOB BECAUSE OF BEING OUT?

3                   A.    YES, SIR.

4                   BY MR. FARRY:

5                                THANK YOU, COMMISSIONER.  I HAVE NO FURTHER  
6                   QUESTIONS.

7                   BY THE COMMISSIONER:

8                                ALL RIGHT.  THANK YOU.  MR. WUKELA?

9                   REDIRECT EXAMINATION BY MR. WUKELA:

10                   Q.    YOU HAD TO HAVE HEMORRHOID SURGERY SO YOU COULD HAVE  
11                   THE HEART MONITOR IMPLANTED, RIGHT?

12                   A.    YES, SIR.

13                   Q.    HEART MONITOR EVER SHOWING ANY PALPITATIONS?

14                   A.    NO, SIR.

15                   BY MR. FARRY:

16                                OBJECT TO WHAT THE HEART MONITOR SAID.  IT'S  
17                   CLEARLY HEARSAY.  IT WOULD BE BASED UPON WHAT  
18                   SOMEONE TOLD HIM.  HE DOESN'T KNOW WHAT A MONITOR  
19                   SAYS.

20                   REDIRECT EXAMINATION RESUMED BY MR. WUKELA:

21                   Q.    HAVE YOU HAD HEART PALPITATIONS SINCE YOU HAD THE  
22                   HEART MONITOR?

23                   BY THE COMMISSIONER:

24                                WAIT A MINUTE, MR. FRESHLEY.

25                   BY MR. WUKELA:

1 I'LL TELL YOU WHAT, WE'LL RELY ON THE RECORD,  
2 COMMISSIONER.

3 BY THE COMMISSIONER:

4 OKAY. ALL RIGHT.

5 REDIRECT EXAMINATION RESUMED BY MR. WUKELA:

6 Q. MR. FARRY SPENT A GOOD AMOUNT OF TIME UP HERE TRYING  
7 TO ESTABLISH THAT YOU DIDN'T COMPLAIN TO ANYBODY OF  
8 SHORTNESS OF BREATH IN MAY OF 2019. MS. CHAISSON  
9 SITS RIGHT THERE. DID YOU TELL HER?

10 A. YES, SIR.

11 Q. WE'LL ASK HER.

12 BY MR. WUKELA:

13 THAT'S THE CLAIMANT'S CASE.

14 BY THE COMMISSIONER:

15 ALL RIGHT. THANK YOU, SIR.

16 BY MR. WUKELA:

17 WELL, NOW, THAT'S THIS WITNESS.

18 BY THE COMMISSIONER:

19 YES, SIR. THANK YOU, MR. FRESHLEY. YOU MAY  
20 HAVE A SEAT NEXT TO YOUR ATTORNEY. ANY OTHER  
21 WITNESSES FOR THE CLAIMANT?

22 BY MR. WUKELA:

23 WE'LL CALL MS. CHAISSON.

24 BY THE COMMISSIONER:

25 ALL RIGHT. MS. CHAISSON.

1 (OFF THE RECORD)

2 BY THE COMMISSIONER:

3 ALL RIGHT. MADAM COURT REPORTER, PLEASE PLACE  
4 MS. CHAISSON UNDER OATH.

5 BY MADAM COURT REPORTER:

6 MA'AM, IF YOU WOULD RAISE YOUR RIGHT HAND,  
7 PLEASE.

8 \* \* \* \* \*

9 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE  
10 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE  
11 MATTER HEREIN:

12 RENEE CHAISSON,

13 BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS  
14 FOLLOWS:

15 BY THE COMMISSIONER:

16 MA'AM, WILL YOU PLEASE STATE AND SPELL YOUR  
17 FULL NAME FOR THE RECORD?

18 BY THE WITNESS:

19 IT'S RENEE CHAISSON. WOULD YOU LIKE MY  
20 FULL...?

21 BY THE COMMISSIONER:

22 NO, THAT'S FINE. CAN YOU SPELL CHAISSON FOR  
23 ME?

24 BY THE WITNESS:

25 OKAY. C-H-A-I-S-S-O-N.

1 **BY THE COMMISSIONER:**

2 OKAY. THANK YOU. ALL RIGHT. MR. WUKELA.

3 **DIRECT EXAMINATION BY MR. WUKELA:**

4 Q. MS. CHAISSON, IN MAY OF 2019 MR. FRESHLEY TOLD YOU  
5 THAT HE WAS HAVING PROBLEMS BREATHING BECAUSE OF  
6 FUMES FROM THE TANK, IS THAT RIGHT?

7 A. I CANNOT TELL YOU EXACTLY WHEN HE TOLD ME HE WAS  
8 HAVING BREATHING ISSUES.

9 Q. YOU DON'T REMEMBER?

10 A. I DON'T REMEMBER EXACTLY.

11 Q. LET ME SHOW YOU YOUR DEPOSITION. MAYBE THAT WILL  
12 REFRESH YOUR MEMORY.

13 A. OKAY. OKAY.

14 **BY MR. WUKELA:**

15 YOUR HONOR, I'M TURNING TO THE DEPOSITION OF  
16 MS. CHAISSON, PAGE 28. I'M LOOKING AT LINE 23.

17 **DIRECT EXAMINATION RESUMED BY MR. WUKELA:**

18 Q. DO YOU REMEMBER YOU HAVING YOUR DEPOSITION TAKEN?

19 A. I DO. I DO.

20 Q. DO YOU REMEMBER BEING ASKED, "WHEN DID YOU FIRST  
21 LEARN THAT HE WAS COMPLAINING THAT HE WAS HAVING  
22 PROBLEMS BREATHING BECAUSE OF THE FUMES FROM THE  
23 TANK?" DO YOU REMEMBER BEING ASKED THAT?

24 A. I DO.

25 Q. DO YOU REMEMBER ANSWERING, "THAT WAS AFTER HE HAD

1 GONE TO DOCTORS CARE FOR THE LESION, OR WHATEVER,  
2 ON HIS CHIN?" DO YOU REMEMBER TESTIFYING THAT?

3 A. YES.

4 Q. AND DO YOU REMEMBER BEING ASKED, AND -- AND THE  
5 QUESTION WAS: "OKAY." AND DO YOU REMEMBER  
6 ANSWERING, "AND HE SAID HE WAS HAVING SHORTNESS OF  
7 BREATH." DO YOU REMEMBER TESTIFYING TO THAT, MS.  
8 CHAISSON?

9 A. YES.

10 Q. DO YOU REMEMBER TESTIFYING THAT HE SAID HE WAS  
11 HAVING SHORTNESS OF BREATH?

12 A. AFTER ---

13 Q. NO, I'M ASKING IF YOU REMEMBER THAT TESTIMONY?

14 A. I DO REMEMBER HIM TELLING ME HE HAD SHORTNESS OF  
15 BREATH.

16 Q. AND DO YOU REMEMBER HE THAT HE ---

17 A. IT WAS NOT PRIOR TO HIM GOING TO THE DOCTOR.

18 Q. DO YOU REMEMBER HIM TELLING YOU THAT IN MAY OF 2019?

19 A. I DON'T KNOW THE EXACT DATE.

20 Q. WELL, I MEAN, LOOK AT YOUR DEPOSITION. IN YOUR  
21 DEPOSITION YOU ANSWERED, "AND HE SAID HE WAS HAVING  
22 SHORTNESS OF BREATH," RIGHT?

23 A. I DID.

24 Q. AND THE QUESTION WAS, "AND WHEN WOULD THAT HAVE BEEN  
25 -- AND THAT WOULD HAVE BEEN WHEN?" AND YOUR ANSWER

1 WAS WHAT, MS. CHAISSON? WHAT DID YOU ANSWER IN YOUR  
2 DEPOSITION?

3 A. I SAID MAY OF 2019.

4 Q. DO YOU REMEMBER MR. FRESHLEY TELLING YOU IN MAY OF  
5 2019 THAT HE WAS HAVING SHORTNESS OF BREATH FROM  
6 EXPOSURE TO FUMES ON THE JOB?

7 **BY MR. FARRY:**

8 OBJECT TO THE FORM OF THE QUESTION. THAT'S NOT  
9 WHAT THE DEPOSITION ASKED HIM -- ASKED HER, RATHER.  
10 IT SAID, REMEMBER HIM HAVING SHORTNESS OF BREATH?  
11 IT DIDN'T SAY BECAUSE OF THE JOB.

12 **BY THE COMMISSIONER:**

13 OKAY. SO, YOU CAN REPHRASE THE QUESTION.

14 **BY MR. WUKELA:**

15 WELL, LET ME READ THE TESTIMONY AND ASK HER IF  
16 THIS IS ACCURATE.

17 **BY THE COMMISSIONER:**

18 OKAY, SURE.

19 **BY THE WITNESS:**

20 OKAY.

21 **DIRECT EXAMINATION RESUMED BY MR. WUKELA:**

22 Q. DO YOU REMEMBER YOUR DEPOSITION MARCH 24TH, 2020?

23 A. YES.

24 Q. YOU'RE LOOKING AT IT?

25 A. I AM LOOKING AT IT.

1 Q. I'M READING FROM PAGE 28, LINE 23.

2 A. OKAY.

3 Q. THE QUESTION: "WHEN DID YOU FIRST LEARN THAT HE WAS  
4 COMPLAINING HE WAS HAVING PROBLEMS BREATHING BECAUSE  
5 OF THE FUMES FROM THE TANK?" AND THE ANSWER: "THAT  
6 WAS AFTER HE HAD GONE TO THE DOCTORS CARE FOR THE  
7 LESION, OR WHATEVER, ON HIS CHIN." QUESTION:  
8 "OKAY." ANSWER: AND THIS IS YOUR TESTIMONY, "AND  
9 HE SAID HE WAS HAVING SHORTNESS OF BREATH."  
10 QUESTION: "AND THAT WOULD HAVE BEEN WHEN?" ANSWER:  
11 "SO THAT WOULD HAVE BEEN IN MAY OF 2019."

12 WAS THAT YOUR TESTIMONY IN MARCH OF 2020, MS.  
13 CHAISSON?

14 A. YES.

15 Q. WAS THAT TESTIMONY TRUTHFUL?

16 A. YES.

17 Q. IS THAT THE TRUTH?

18 A. THAT'S THE TRUTH.

19 Q. SO, IN MAY OF 2019 MR. FRESHLEY TOLD YOU HE WAS  
20 HAVING SHORTNESS OF BREATH THAT HE RELATED TO THE  
21 JOB?

22 A. NOT AT THE TIME THAT HE WENT TO HIS FIRST VISIT WITH  
23 DOCTORS CARE.

24 Q. IN MAY OF 2019 MR. FRESHLEY TOLD YOU HE WAS HAVING  
25 SHORTNESS OF BREATH RELATED TO EXPOSURE TO FUMES AT

1 THE JOB, CORRECT?

2 A. HE TOLD ME AFTER HE HAD GONE TO THE DOCTOR. I  
3 TALKED TO HIM MANY TIMES ---

4 **BY THE COMMISSIONER:**

5 MS. CHAISSON, YOU HAVE TO ANSWER THE QUESTION,  
6 OKAY?

7 **BY THE WITNESS:**

8 YES. YES.

9 **BY THE COMMISSIONER:**

10 AND THEN YOU CAN EXPLAIN AS MUCH AS YOU WANT  
11 TO, BUT ANSWER THE QUESTION FIRST.

12 **BY THE WITNESS:**

13 OKAY. OKAY.

14 **DIRECT EXAMINATION RESUMED BY MR. WUKELA:**

15 Q. THE ANSWER TO MY QUESTION IS, YES?

16 A. YES.

17 Q. SO WE HAD ALL THIS CONVERSATION AND THIS TESTIMONY  
18 ABOUT WHETHER MR. FRESHLEY WAS TELLING ANYBODY THAT  
19 HE WAS COMPLAINING OF SHORTNESS OF BREATH HE RELATED  
20 TO THE JOB IN MAY OF 2019. YOU SAT THERE, RIGHT?

21 A. I DID.

22 Q. AND THE ANSWER IS YOU KNEW THAT HE DID BECAUSE HE  
23 TOLD YOU, RIGHT?

24 A. HE TOLD ME AFTER -- YES, HE TOLD ME ---

25 Q. HE TOLD YOU IN MAY OF 2019?

- 1 A. --- AFTER HE HAD GONE TO DOCTORS CARE.
- 2 Q. OKAY. IN MAY OF 2019 AFTER HE HAD GONE TO DOCTORS  
3 CARE?
- 4 A. YES. THAT WAS NOT THE REASON WE SENT HIM TO DOCTORS  
5 CARE. IT WAS NOT THAT -- I DO NOT -- I CANNOT TELL  
6 YOU THAT HE SAID IT'S RELATED TO THE FUMES. I CAN  
7 TELL YOU HE TOLD ME HE HAD SHORTNESS OF BREATH,  
8 BECAUSE WE HAD HAD MANY CONVERSATIONS ABOUT MEDICAL  
9 CONDITIONS THAT HE HAD. WE TALKED FREQUENTLY.
- 10 Q. WELL, LET'S GO BACK OVER THAT AGAIN, 'CAUSE THE  
11 QUESTION WAS: "WHEN DID YOU FIRST LEARN THAT HE WAS  
12 COMPLAINING HE WAS HAVING PROBLEMS BREATHING BECAUSE  
13 OF THE FUMES FROM THE TANK?" THAT WAS THE QUESTION,  
14 RIGHT?
- 15 A. THAT WAS THE QUESTION.
- 16 Q. AND YOU ANSWERED: "THAT WAS AFTER HE HAD GONE TO  
17 DOCTORS CARE," RIGHT?
- 18 A. CORRECT.
- 19 Q. AND THE QUESTION WAS: "AND WHEN WOULD THAT HAVE  
20 BEEN?" AND THE ANSWER WAS: "MAY OF 2019"?
- 21 A. CORRECT.
- 22 Q. SO LET'S MAKE SURE WE'RE CLEAR. IN MAY OF 2019 YOU  
23 FIRST LEARNED THAT HE WAS COMPLAINING HE WAS HAVING  
24 PROBLEMS BREATHING BECAUSE OF THE FUMES FROM THE  
25 TANK, CORRECT?

1 A. I DID SAY, YES.

2 Q. OKAY. NOW THAT WE GOT THAT CLEARED UP, I WANT TO  
3 SHOW YOU ---

4 **BY MR. WUKELA:**

5 I'M ASKING TO USE PAGE FIVE OF MY BRIEF,  
6 COMMISSIONER.

7 **BY THE COMMISSIONER:**

8 OKAY.

9 **DIRECT EXAMINATION RESUMED BY MR. WUKELA:**

10 Q. --- EXHIBIT C-52, MICRO 24.

11 A. OKAY.

12 Q. ARE YOU AWARE OF THAT MATERIAL SAFETY DATA SHEET?

13 A. YES.

14 Q. AND IT WARNS, DOES IT NOT, THAT VAPORS AND MISTS ARE  
15 CORROSIVE TO THE NOSE, THROAT, AND MUCOUS MEMBRANES.  
16 BRONCHITIS, PULMONARY EDEMA, CHEMICAL PNEUMONITIS  
17 MAY OCCUR. IRRITATION, COUGHING, CHEST PAIN,  
18 DIFFICULTY BREATHING MAY OCCUR WITH BRIEF EXPOSURE  
19 WHILE PROLONGED EXPOSURE MAY RESULT IN MORE SEVERE  
20 IRRITATION AND TISSUE DAMAGE? ARE YOU AWARE OF THAT  
21 WARNING FROM THE MANUFACTURER OF THE CHEMICAL USED  
22 IN THE PROCESS THAT MR. FRESHLEY WAS OPERATING?

23 A. YES.

24 Q. OKAY. AND YOU WERE AWARE IN MAY OF 2019 THAT HE WAS  
25 COMPLAINING TO YOU OF SHORTNESS OF BREATH?

1 A. YES.

2 Q. AND YOU WERE AWARE THAT HE WAS COMPLAINING THAT IT  
3 WAS RELATED TO EXPOSURE TO THOSE CHEMICALS? WE JUST  
4 DID IT, MS. CHAISSON.

5 A. I -- I UNDERSTAND THAT, AND WHEN I DID MY  
6 DEPOSITION, I OBVIOUSLY WAS NOT PAYING ATTENTION TO  
7 THE FACT THAT HE ADDED THE FUMES BEING THE CAUSE.  
8 WE TALKED ABOUT SHORTNESS OF BREATH.

9 Q. OKAY. DID YOU SEND HIM TO A PULMONOLOGIST?

10 A. DID I SEND HIM? NO.

11 Q. YOU LATER BECAME AWARE THAT HE WAS SEEING A  
12 PULMONOLOGIST?

13 A. YES.

14 Q. AND YOU WERE AWARE THAT HE SAW A DR. JONA IN AUGUST  
15 2019 COMPLAINING OF SHORTNESS OF BREATH AS A RESULT  
16 OF EXPOSURE TO CHEMICALS ON THE JOB?

17 A. I UNDERSTAND THAT'S THE ALLEGATION, YES.

18 Q. YOU UNDERSTAND HE WAS TELLING DR. JONA, THE  
19 PULMONOLOGIST, THAT?

20 A. I DO UNDERSTAND THAT.

21 Q. OKAY. AND HE WAS STILL WORKING WITH YOU GUYS?

22 A. YES.

23 Q. DID YOU GIVE HIM A VENTILATOR?

24 A. NO.

25 Q. DID HE ASK FOR A VENTILATOR?

- 1 A. HE MAY HAVE. AND I SAY THAT BECAUSE THAT COULD HAVE  
2 BEEN ASKED THROUGH KAREN.
- 3 Q. WELL, CERTAINLY HIS SUPERVISOR SUGGESTED A  
4 VENTILATOR, DIDN'T SHE?
- 5 A. WELL, THE USE OF VENTILATORS IS NOT JUST ---
- 6 Q. NO, NO.
- 7 A. --- WILLY-NILLY. YOU CAN'T DO THAT.
- 8 Q. YOU CAN EXPOUND AFTER YOU ANSWER.
- 9 A. OKAY.
- 10 Q. HIS SUPERVISOR SUGGESTED -- HIS SUPERVISOR SUGGESTED  
11 THAT HE HAVE A VENTILATOR, DIDN'T SHE?
- 12 A. I DID READ THAT LATER, YES.
- 13 Q. OKAY. BUT YOU DIDN'T GIVE A VENTILATOR. INSTEAD,  
14 YOU SENT THIS TO MS. BROOKS TO DO AN AIR QUALITY  
15 TEST, IS THAT RIGHT?
- 16 A. YES. YES.
- 17 Q. NOW, WHEN HE WENT TO DR. JONA, AFTER THAT DR. GUHA,  
18 HIS CARDIOLOGIST, RELEASED HIM TO RETURN TO WORK  
19 FROM THE CARDIAC PERSPECTIVE, CORRECT?
- 20 A. YES.
- 21 Q. YOU WERE AWARE OF THAT?
- 22 A. YES.
- 23 Q. AND WE'VE GOT A NOTE HERE FROM THE CARDIOLOGIST  
24 HERE. YOU'VE SEEN THIS NOTE, PAGE 17 OF THAT PACKET  
25 YOU HAVE HERE?

- 1 A. OH, OKAY.
- 2 Q. THIS IS APA ONE, PAGE 129.
- 3 A. YES.
- 4 Q. DID HE BRING -- DID HE, MR. FRESHLEY, BRING YOU THAT  
5 NOTE FROM HIS CARDIOLOGIST?
- 6 A. HE DID.
- 7 Q. AND THE CARDIOLOGIST INDICATED THAT FROM THE CARDIAC  
8 STANDPOINT THAT MR. FRESHLEY COULD WORK?
- 9 A. YES.
- 10 Q. OKAY. AND Y'ALL DID NOT ACCEPT HIM BACK, THOUGH, IN  
11 OCTOBER OF 2019, IS THAT RIGHT?
- 12 A. CORRECT.
- 13 Q. YOU SENT HIM HOME?
- 14 A. YES.
- 15 Q. AND HE WAS UPSET?
- 16 A. YES.
- 17 Q. WANTED TO WORK?
- 18 A. YES.
- 19 Q. BUT HE WAS NOT ALLOWED TO WORK?
- 20 A. CORRECT.
- 21 Q. NOT BECAUSE Y'ALL DIDN'T WANT HIM TO WORK, I ASSUME?
- 22 A. RIGHT.
- 23 Q. WHY WASN'T HE ALLOWED TO WORK?
- 24 A. AT THAT POINT, STRATEGIC COMP WANTED TO REVIEW HIS  
25 RECORDS.

- 1 Q. THAT'S THE WORKERS' COMP CARRIER?
- 2 A. YES.
- 3 Q. AND AFTER THEY DID THAT, LATER DR. MILLER SAID HE
- 4 COULD RETURN TO WORK FOR A TRIAL RETURN? YOU'RE
- 5 SHAKING YOUR HEAD YES, IS THAT RIGHT?
- 6 A. YES.
- 7 Q. AND Y'ALL DID ACCEPT HIM BACK?
- 8 A. YES. YES.
- 9 Q. BUT THERE WERE SOME LIMITATIONS ON YOUR ACCEPTING
- 10 HIM BACK?
- 11 A. YES.
- 12 Q. WHAT WERE THOSE?
- 13 A. WE PUT HIM IN A DIFFERENT DEPARTMENT.
- 14 Q. OKAY. THIS IS THE ASSEMBLY AREA THAT WE WERE
- 15 TALKING ABOUT?
- 16 A. RIGHT.
- 17 Q. AND THERE HE GOT LESS PAY?
- 18 A. HE DID.
- 19 Q. OVER \$3 LESS AN HOUR?
- 20 A. CORRECT.
- 21 Q. BUT HE ACCEPTED THAT?
- 22 A. CORRECT.
- 23 Q. AND HE WAS EAGER TO RETURN TO DO THAT?
- 24 A. YES.
- 25 Q. AND, NOW, ULTIMATELY, IN MAY OF 2000 (SIC), HE HAS

1 TO HAVE TWO PROCEDURES. HE HAS TO HAVE A CARDIAC  
2 MONITOR IMPLANTED; YOU WERE AWARE OF THAT?

3 A. MM-HMM.

4 Q. AND THE PURPOSE OF THAT CARDIAC MONITOR, AS YOU  
5 UNDERSTOOD IT, WAS TO SEE IF HE WAS HAVING HEART  
6 FIBRILLATIONS?

7 A. WELL, I CAN SAY I KNEW HE HAD SOME MEDICAL  
8 PROCEDURES TO BE COMPLETED. I DID NOT KNOW THE  
9 SCOPE OF ALL OF IT, NO. I KNEW PARTS OF IT, YES.

10 Q. OKAY. WELL, DID YOU KNOW THAT THEY WERE GOING TO  
11 JUST INSTALL A MONITOR?

12 A. WHAT I WAS TOLD AT THE DEPOSITION IS THAT HE WOULD  
13 HAVE SOME UPCOMING APPOINTMENTS, WOULD WE ALLOW HIM  
14 TO BE OUT OF WORK FOR THOSE.

15 Q. OKAY. AND YOU SAID YES?

16 A. YES, WE DID AGREE WITH THAT.

17 Q. OKAY. BUT, ULTIMATELY, Y'ALL DID LAY HIM OFF?

18 A. YES, WE DID.

19 Q. OKAY. AND, I GUESS, MAY THE 8TH OF 2020 WAS THE  
20 DATE HE LEFT WORK, BUT HE WASN'T LAID OFF UNTIL --  
21 OFFICIALLY UNTIL ---

22 A. THE 29TH.

23 Q. OF MAY?

24 A. YES.

25 Q. 2020?

1 A. YES.

2 Q. OKAY. AND THERE WERE PEOPLE WHO WERE LAID OFF -- I  
3 MEAN, THERE WERE PEOPLE WHO WERE NOT LAID OFF WHO  
4 HAD LESS SENIORITY THAN HIM, CORRECT?

5 A. CORRECT.

6 Q. WAS IT -- DID Y'ALL HAVE A PRACTICE OF LAYING OFF,  
7 IF YOU DID A GENERAL LAYOFF, ACCORDING TO SENIORITY?

8 A. YEARS BEFORE WE HAD ALWAYS USED SENIORITY WHEN ANY  
9 LAYOFFS WOULD TAKE PLACE. WE HAD CHANGED THAT TO  
10 LOOK AT DIFFERENT THINGS; ANY DISCIPLINARY ACTIONS,  
11 ATTENDANCE, PRODUCTIVITY.

12 Q. WORKPLACE INJURIES?

13 A. NO, NEVER.

14 Q. WELL, WHEN Y'ALL LAID OFF PEOPLE, WOULD YOU PREFER  
15 TO KEEP PEOPLE WHO HAD EXPERIENCE?

16 A. IF THEY ARE GOOD EMPLOYEES, DEFINITELY.

17 **BY MR. WUKELA:**

18 BEAR WITH ME FOR A SECOND, COMMISSIONER.

19 **BY THE COMMISSIONER:**

20 SURE.

21 **DIRECT EXAMINATION RESUMED BY MR. WUKELA:**

22 Q. THIS AIR QUALITY STUDY -- I ASKED EARLIER DID YOU  
23 SEND HIM TO A PULMONOLOGIST; YOU SAID NO. BUT YOU  
24 DID DO AN AIR QUALITY STUDY. AFTER THE AIR QUALITY  
25 STUDY, DID Y'ALL CHANGE ANYTHING? DID YOU PROVIDE

1 VENTILATORS?

2 A. NO.

3 Q. DID YOU CHANGE THE VENTILATION SYSTEM THERE IN THE  
4 SHIPPING DEPARTMENT?

5 A. NO.

6 Q. MR. FRESHLEY LEFT WORK IN MAY OF 2020. HAVE Y'ALL  
7 SINCE CHANGED THE VENTILATION SYSTEM IN THE SHIPPING  
8 DEPARTMENT?

9 A. NO.

10 Q. YOU HAVEN'T CHANGED THE VENTILATION SYSTEM IN THE  
11 SHIPPING DEPARTMENT?

12 A. NO. WE'VE CHANGED THE TANK, THE LINE THAT HE WAS  
13 WORKING ON, BUT THE VENTILATION HAS NOT CHANGED.

14 Q. IS THE LINE THAT HE'S WORKING ON NOW BEEN MODIFIED  
15 SO THAT THE FUMES ARE RELEASED INTO THE OUTSIDE AIR  
16 AND NOT INTO THE SHIPPING DEPARTMENT?

17 A. THERE'S -- TO MY KNOWLEDGE -- KAREN BROOKS CAN  
18 ELABORATE ON THIS, BUT TO MY KNOWLEDGE THERE'S NO  
19 CHANGE IN THE VENTILATION SYSTEM AT THIS POINT.

20 Q. WE'LL ASK MS. BROOKS. WERE YOU INVOLVED IN THE  
21 TESTING, COMMUNICATING WITH THE TESTING INDIVIDUAL?

22 A. NO. I SPOKE TO HIM, BUT I HAD NOTHING TO DO WITH  
23 THE TESTING.

24 Q. WE'LL TALK TO MS. BROOKS ABOUT THAT, TOO. THANK YOU  
25 FOR YOUR TIME, MS. CHAISSON.

1 **BY THE COMMISSIONER:**

2 MR. FARRY?

3 **BY MR. FARRY:**

4 THANK YOU.

5 **CROSS EXAMINATION BY MR. FARRY:**

6 Q. MS. CHAISSON, YOU'VE BEEN H.R. MANAGER WITH CONBRACO  
7 FOR HOW LONG?

8 A. FOUR YEARS.

9 Q. HOW LONG HAVE YOU BEEN WORKING AT CONBRACO?

10 A. TWENTY-SIX YEARS.

11 Q. HOW LONG HAVE YOU KNOWN MR. FRESHLEY?

12 A. SINCE HE STARTED.

13 Q. OVER THE LAST FOUR YEARS AS H.R. MANAGER, HAVE YOU  
14 HAD NUMEROUS CONVERSATIONS WITH MR. FRESHLEY ABOUT  
15 HIS GENERAL HEALTH?

16 A. YES.

17 Q. I BELIEVE YOU TESTIFIED UNDER DIRECT EXAMINATION  
18 THAT YOU WERE AWARE OF HIS HEART CONDITION AND  
19 PROBLEMS HE WAS HAVING WITH HIS HEART?

20 A. YES.

21 Q. DID HE MISS TIME INVOLVING HIS HEART CONDITION, TO  
22 YOUR KNOWLEDGE, OVER THE YEARS PRIOR TO NOVEMBER  
23 28TH, 2018, THE DATE OF HIS ALLEGED ACCIDENT?

24 A. YES.

25 Q. WOULD YOU HAVE CONVERSATIONS WITH HIM ABOUT THAT?

1 A. YES.

2 Q. WOULD YOU HAVE CONVERSATIONS WITH MR. FRESHLEY ABOUT  
3 HIS SHORTNESS OF BREATH OVER THE YEARS?

4 A. PRETTY MUCH ALL HIS ISSUES, YES.

5 Q. PRIOR TO NOVEMBER 28TH, 2018, OR EVEN MAY 2019,  
6 WOULD YOU HAVE CONVERSATIONS WITH MR. FRESHLEY ABOUT  
7 HIM COMPLAINING OF SHORTNESS OF BREATH?

8 A. NO, I THINK IT WAS FOCUSED ON ANY HEART ISSUES HE  
9 HAD.

10 Q. DID HE TELL YOU WHAT THE HEART ISSUES, THE SYMPTOMS  
11 OR PROBLEMS WERE FROM HIS AFIB THAT HE'S TESTIFIED  
12 HE HAD?

13 A. HE HAD TOLD ME THAT HE HAD AFIB AND PROCEDURES THAT  
14 HAD HAPPENED BECAUSE OF THAT.

15 Q. NOW, WHEN MR. FRESHLEY CAME BACK TO WORK AT CONBRACO  
16 IN THAT DECEMBER 2019 TIME PERIOD, HE WAS MOVED INTO  
17 ASSEMBLY, I BELIEVE, CORRECT?

18 A. CORRECT.

19 Q. NOW, YOU AS AN H.R. PERSON, IF SOMEONE HAS  
20 DIFFICULTY PERFORMING THEIR JOB, THAT INFORMATION  
21 CROSSES YOUR DESK, CORRECT?

22 A. YES.

23 Q. IF ACCOMMODATIONS NEED TO BE MADE, THAT INFORMATION  
24 CROSSES YOUR DESK, CORRECT?

25 A. CORRECT.

- 1 Q. IF THEY CAN'T WORK THE REQUISITE NUMBER OF HOURS  
2 THEY'RE SCHEDULED TO WORK, THAT INFORMATION FOR THAT  
3 PARTICULAR EMPLOYEE CROSSES YOUR DESK?
- 4 A. CORRECT.
- 5 Q. AND YOU WERE THE H.R. MANAGER IN 2018 AND 2019,  
6 CORRECT?
- 7 A. YES. YES.
- 8 Q. CONBRACO KEEPS TIME RECORDS OF THEIR EMPLOYEES?
- 9 A. YES.
- 10 Q. AND THE TIME RECORDS THEY KEEP, ARE THEY ENTERED --  
11 AT LEAST FOR 2018 AND BEFORE 2018, WERE THEY ENTERED  
12 IN A GRID LIKE THAT?
- 13 A. YES. YES.
- 14 Q. AND THE HOURS THAT ARE ENTERED IN THE GRID, DO THEY  
15 COME OFF OF THEIR TIME CARDS OR THEIR SCHEDULE THAT  
16 THEY WORK?
- 17 A. YES.
- 18 Q. NOW, IN 2020 I BELIEVE Y'ALL WENT TO A DIFFERENT  
19 SYSTEM OF KEEPING TIME AND WENT AWAY FROM THE GRID  
20 LIKE THE ONE I SHOWED YOU FOR 2018 AND 2019; IS THAT  
21 CORRECT?
- 22 A. WE DID, YES.
- 23 Q. AND I'M GOING TO SHOW YOU EXHIBIT THREE, WHICH  
24 PURPORTS TO BE ATTENDANCE HISTORY FOR JAMES FRESHLEY  
25 JANUARY 1, '20, THROUGH 12-31-20, THAT PERIOD OF

1 TIME IN 2020 THAT HE WORKED, CORRECT?

2 A. OKAY.

3 Q. IS HE WORKING FULL TIME, EIGHT HOURS A DAY FOR THE  
4 TIMES THAT HE DID WORK?

5 A. YES, HE IS.

6 Q. DID ANYTHING COME ACROSS YOUR DESK IN 2020 ABOUT MR.  
7 FRESHLEY NOT BEING ABLE TO PERFORM HIS JOB IN  
8 ASSEMBLY?

9 A. NO, IT DID NOT.

10 Q. DID ANYTHING COME ACROSS YOUR DESK AS TO THE NEED TO  
11 MAKE ANY ACCOMMODATIONS FOR MR. FRESHLEY IN ORDER  
12 FOR HIM TO BE ABLE TO PERFORM HIS JOB IN ASSEMBLY  
13 DURING 2020?

14 A. NO.

15 Q. MAY 29, 2020, MR. FRESHLEY WAS LAID OFF?

16 A. YES.

17 Q. YOU ADVISED MR. FRESHLEY OF THE FACT THAT HE WAS  
18 BEING LAID OFF?

19 A. I DID.

20 Q. HOW MANY PEOPLE AT THAT TIME DID CONBRACO LAY OFF?

21 A. FOURTEEN.

22 **BY MR. FARRY:**

23 THANK YOU. I HAVE NO FURTHER QUESTIONS.

24 **REDIRECT EXAMINATION BY MR. WUKELA:**

25 Q. YOU TESTIFIED YOU DIDN'T KNOW ABOUT ANY

1 ACCOMMODATIONS YOU HAD TO HAVE MADE IN ASSEMBLY.  
2 HIS SUPERVISOR IN ASSEMBLY WAS EDDIE SIMS, RIGHT?

3 A. CORRECT.

4 Q. Y'ALL IDENTIFIED HIM AS A WITNESS AND SUBPOENAED HIM  
5 HERE TODAY?

6 A. YES.

7 Q. WHERE IS EDDIE SIMS?

8 A. MY UNDERSTANDING IS HE HAD SOME MEDICAL ISSUES.

9 Q. SO ---

10 **BY MR. FARRY:**

11 MAY I RESPOND TO THAT? I THINK IT'S IMPORTANT  
12 FOR THE RECORD TO REFLECT THAT EDDIE SIMS WAS PLACED  
13 UNDER SUBPOENA BY ME, AND I CAN, AS AN OFFICER OF  
14 THE COURT, TELL YOU THAT I GOT A TEXT FROM HIM  
15 SAYING HE HAD AN APPOINTMENT WITH HIS CARDIOLOGIST  
16 TODAY AT 11:30 AND THAT I NEEDED TO COMPEL HIM TO  
17 COME OR HE WAS GOING TO SEE HIS CARDIOLOGIST, AND I  
18 OPTED NOT TO INTERFERE WITH THE MAN'S APPOINTMENT  
19 WITH HIS CARDIOLOGIST. AS AN OFFICER OF THE COURT,  
20 I'M TELLING YOU THAT. BUT, YES, MA'AM, HE WAS  
21 SUBPOENAED TO BE HERE TODAY, AND HE WAS GOING TO BE  
22 A WITNESS.

23 **BY MR. WUKELA:**

24 YOUR HONOR, I DON'T DISPUTE ANYTHING MR. FARRY  
25 SAYS AS AN OFFICER OF THE COURT. ALL I WOULD SAY IS

1 MR. FRESHLEY HAS TESTIFIED ABOUT ACCOMMODATIONS MR.  
2 SIMS MADE. MR. FARRY ASKED THE H.R. MANAGER IF SHE  
3 WAS AWARE OF THOSE. SHE TESTIFIED NO, BUT WE DON'T  
4 HAVE MR. SIMS, AND NOBODY IS DISPUTING MR.  
5 FRESHLEY'S TESTIMONY, AND MS. CHAISSON IS NOT IN A  
6 POSITION TO EITHER.

7 **BY THE COMMISSIONER:**

8 WELL, THAT'S NOTED FOR THE RECORD.

9 **BY MR. WUKELA:**

10 THANK YOU, YOUR HONOR. THAT'S ALL WE HAVE.

11 **BY THE COMMISSIONER:**

12 ALL RIGHT. THANK YOU. THANK YOU, MA'AM. YOU  
13 MAY HAVE A SEAT NEXT TO YOUR ATTORNEY.

14 MR. WUKELA, YOU MAY CALL YOUR NEXT WITNESS.

15 **BY MR. WUKELA:**

16 WE CALL MS. BROOKS.

17 **BY THE COMMISSIONER:**

18 MS. BROOKS. YOU MAY HAVE A SEAT, PLEASE.

19 WE DID REFER TO MS. CHAISSON'S DEPOSITION, AT  
20 LEAST THOSE PARTICULAR PAGES. I MEAN, DO YOU WANT  
21 THE PORTION -- YOU DID READ THEM INTO THE RECORD.

22 **BY MR. WUKELA:**

23 I READ THEM INTO THE RECORD. I'D OFFER THOSE  
24 PORTIONS ---

25 **BY MR. FARRY:**

1  
2  
3  
4  
5  
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25

I'LL STIPULATE THEY WERE READ ACCURATELY.

BY MR. WUKELA:

VERY WELL.

BY THE COMMISSIONER:

OKAY. NOTED. THANK YOU. PLEASE HAVE A SEAT.

BY MR. FARRY:

IF YOU WANT TO PUT IT IN, THAT'S FINE.

BY MR. WUKELA:

NO, NO; NOT NECESSARY.

BY MR. FARRY:

I DON'T THINK YOU NEED TO TOTE ANY MORE PAPER.

BY MR. WUKELA:

I DON'T THINK SO EITHER.

BY THE COMMISSIONER:

MADAM COURT REPORTER?

BY MADAM COURT REPORTER:

MA'AM, IF YOU WOULD RAISE YOUR RIGHT HAND,  
PLEASE.

\* \* \* \* \*

THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE  
WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE  
MATTER HEREIN:

KAREN BROOKS,

BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS  
FOLLOWS:

1 **BY THE COMMISSIONER:**

2 WILL YOU PLEASE STATE AND SPELL YOUR FULL NAME  
3 FOR THE RECORD.

4 **BY THE WITNESS:**

5 MY NAME IS KAREN BROOKS, K-A-R-E-N, B-R-O-O-K-  
6 S.

7 **BY THE COMMISSIONER:**

8 THANK YOU. MR. WUKELA.

9 **BY MR. WUKELA:**

10 THANK YOU, YOUR HONOR.

11 **DIRECT EXAMINATION BY MR. WUKELA:**

12 Q. GOOD AFTERNOON, MS. BROOKS.

13 A. HI.

14 Q. HELLO. YOUR JOB TITLE IS...?

15 A. MY JOB TITLE IS ENVIRONMENTAL HEALTH AND SAFETY  
16 MANAGER.

17 Q. GOT IT. AND YOU WERE IN CHARGE OF AIR QUALITY IN  
18 MR. FRESHLEY'S AREA BEGINNING -- AT LEAST IN APRIL  
19 OF '19, IF I REMEMBER CORRECTLY, RIGHT?

20 A. THAT'S CORRECT.

21 Q. OKAY. VERY GOOD. AND BEFORE I GO TO THE SCENE  
22 DESCRIPTION, LET'S TALK ABOUT THE ZINC LINE AND THE  
23 VENTILATION FOR THE ZINC LINE TODAY.

24 A. YES, SIR.

25 Q. IMMEDIATELY AFTER Y'ALL DID THAT AIR QUALITY TEST

1           WHILE MR. FRESHLEY WAS THERE, Y'ALL DIDN'T MAKE ANY  
2           CHANGE TO VENTILATORS, TO THE VENTILATION OF THE  
3           SHIPPING AREA, OR ANYTHING LIKE THAT?

4           A.    NO, SIR.

5           Q.    ALL RIGHT.  BUT LATER, AFTER MR. FRESHLEY LEFT, YOU  
6           DID?  YES?

7           A.    I'M SORRY.  ASK THE QUESTION ONE MORE TIME, PLEASE.

8           Q.    YEAH, LET ME TRY AGAIN.  AFTER MR. FRESHLEY LEFT THE  
9           JOB, ---

10          A.    YES, SIR.

11          Q.    --- YOU ALL CHANGED THE SHIPPING AREA SUCH THAT THE  
12          ZINC LINE VENTILATED TO THE OUTSIDE AIR SO THAT THE  
13          FUMES FROM THE ZINC LINE DID NOT ESCAPE INTO THE  
14          SHIPPING AREA; IS THAT CORRECT?

15          A.    NO.  NO, SIR.

16          Q.    ALL RIGHT.  DO YOU RECALL US TAKING YOUR DEPOSITION  
17          IN MARCH OF 2020?

18          A.    YES, SIR.

19          BY MR. WUKELA:

20                   YOUR HONOR, I'M GOING TO SHOW HER PAGE 61 OF  
21                   THE DEPOSITION.

22          BY THE COMMISSIONER:

23                   OKAY.

24          BY MR. WUKELA:

25                   PERHAPS I MISUNDERSTAND.

**DIRECT EXAMINATION RESUMED BY MR. WUKELA:**

1  
2 Q. AND I'M LOOKING AT PAGE 61, LINE TWO. DO YOU RECALL  
3 BEING ASKED, "HAVE THERE BEEN ANY CHANGES MADE IN  
4 THAT AREA OF THE PLANT SINCE MR. FRESHLEY MADE HIS  
5 COMPLAINTS?" AND THE ANSWER WAS, "YES, SIR"?

6 A. YES, SIR.

7 Q. AND THE QUESTION WAS, "CAN YOU TELL ME WHAT THE  
8 CHANGES WERE THAT WERE MADE?" AND YOUR RESPONSE  
9 WAS, "WE ARE" -- I GUESS THAT WAS IN MARCH OF 2020  
10 -- "INSTALLING A NEW ZINC LINE." IS THAT CORRECT?

11 A. YES, SIR.

12 Q. AND THE QUESTION WAS, "EXCUSE ME?" AND THE ANSWER  
13 WAS, "WE ARE INSTALLING NEW ZINC LINE." AND THE  
14 QUESTION WAS, "ZINC LINE?" AND THE ANSWER WAS,  
15 "YES, SIR." AND THE QUESTION WAS, "HOW IS IT  
16 DIFFERENT FROM THE OLD ZINC LINE?" AND THE ANSWER  
17 WAS, "IT IS ENCLOSED. IT RUNS ITSELF. THEY DON'T  
18 HAVE TO MANUALLY OPERATE IT. THEY CAN HIT BUTTONS,  
19 AND IT MOVES THE PARTS ALONG MANUALLY." QUESTION:  
20 "IS IT VENTILATED?" ANSWER: "YES, SIR." QUESTION:  
21 "TO THE OUTSIDE?" ANSWER: "YES, SIR." QUESTION:  
22 "WAS THE OLD ONE VENTILATED?" ANSWER: "NO, SIR."

23 A. CORRECT.

24 Q. WAS THAT YOUR TESTIMONY IN MARCH OF 2020?

25 A. YES, SIR.

- 1 Q. WAS IT TRUTHFUL?
- 2 A. YES, SIR.
- 3 Q. I DIDN'T MEAN TO INSULT YOU. BUT IS IT CORRECT?
- 4 A. YES, SIR.
- 5 Q. OKAY. SO, Y'ALL DO HAVE A NEW ZINC LINE?
- 6 A. YES, SIR.
- 7 Q. UNLIKE THE OLD ZINC LINE, EMPLOYEES DON'T HAVE TO
- 8 COME IN CONTACT WITH THE FUMES; IT'S VENTILATED TO
- 9 THE OUTSIDE AREA?
- 10 A. NO, SIR.
- 11 Q. OKAY. TELL ME WHAT I MISUNDERSTAND HERE.
- 12 A. WE HAD -- WE WERE INSTALLING A NEW ZINC LINE WITH AN
- 13 EXHAUST SYSTEM. WE HAVE NOT DONE THE EXHAUST SYSTEM
- 14 YET.
- 15 Q. I SEE. OKAY. SO IT'S NOT COMPLETE?
- 16 A. CORRECT.
- 17 Q. OKAY. BUT THAT'S THE PLAN?
- 18 A. YES, SIR.
- 19 Q. AND THE GOAL IS TO KEEP EMPLOYEES THAT DO MR.
- 20 FRESHLEY'S JOB FROM BEING EXPOSED TO THOSE
- 21 CHEMICALS?
- 22 A. ESSENTIALLY.
- 23 Q. WHY?
- 24 A. CONVENIENCE.
- 25 Q. CONVENIENCE? SOUNDS LIKE IT'S PRETTY INCONVENIENT

1 TO HAVE TO REBUILD THE ZINC LINE.

2 A. WELL, THE ZINC LINE, IT WASN'T REBUILT FOR THE  
3 PURPOSE OF TAKING THE FUMES OR VAPORS AWAY FROM IT.

4 Q. BUT THAT'S WHAT THE DESIGN IS?

5 A. YES. A PART OF THE DESIGN, YES.

6 Q. OKAY. AND WHY IS PART OF THE DESIGN TO TAKE THE  
7 FUMES AND VAPORS AWAY FROM THE EMPLOYEE?

8 A. AS I JUST STATED, IT WAS FOR CONVENIENCE.

9 Q. CONVENIENCE?

10 A. YES, SIR.

11 Q. I SEE. OKAY. NOW, YOU GOT A REPORT FROM ONE OF  
12 YOUR SUPERVISORS BACK IN MAY OF 2019. I'M GOING TO  
13 LOOK AT PAGE NINE OF THIS PACKET HERE. HAVE YOU  
14 SEEN THAT REPORT?

15 A. YES, SIR.

16 Q. THAT WAS FROM MS. SARA HUFFMAN?

17 A. YES, SIR.

18 Q. SHE IS MR. FRESHLEY'S SUPERVISOR?

19 A. YES, SIR.

20 Q. THAT'S HER HANDWRITING?

21 A. YES, SIR.

22 Q. AND MS. HUFFMAN INDICATED IN THIS REPORT THAT MR.  
23 FRESHLEY WAS COMPLAINING ABOUT EXPOSURE TO THE FUMES  
24 AND IT CAUSING HIM HEALTH PROBLEMS?

25 A. THAT'S WHAT IT STATES.

1 Q. OKAY. AND HE INDICATED, AMONG OTHER THINGS, THAT  
2 THE PROBLEMS GOT WORSE WHEN HE WAS AROUND THE FUMES  
3 AND GOT BETTER WHEN HE WAS AWAY FROM THE FUMES?

4 A. THAT IS WHAT IS STATES.

5 Q. ALL RIGHT. AND MS. HUFFMAN RECOMMENDED SOME CHANGES  
6 AS A RESULT? SHE RECOMMENDED SOME CHANGES, IS THAT  
7 RIGHT?

8 A. THAT'S WHAT IT STATES, YES.

9 Q. WHAT WERE THE CHANGES SHE RECOMMENDED? IN FACT, IF  
10 YOU WANT TO LOOK AT THE BOTTOM OF THE EXHIBIT A-2,  
11 PAGE TEN OF MY BRIEF THERE, THAT LAST PARAGRAPH.

12 A. "TO HELP REDUCE THIS PROBLEM, CURRENT NEW --  
13 CURRENTLY NEW PPE IS BEING LOOKED AT AND ORDERED."

14 Q. WHAT IS PPE?

15 A. PERSONAL PROTECTIVE EQUIPMENT.

16 Q. LIKE VENTILATORS?

17 A. YES, SIR.

18 Q. KEEP GOING.

19 A. "THIS INCLUDES GLOVES, JACKETS, RESPIRATORS,  
20 GOGGLES, AND A PROPERLY-INSTALLED VENTILATION SYSTEM  
21 IS REQUIRED."

22 Q. SO THAT'S MS. HUFFMAN. SHE IS THE SUPERVISOR OVER  
23 THE ENTIRE SHIPPING DEPARTMENT?

24 A. YES, SIR.

25 Q. SHE IS NOT HERE TODAY?

1 A. NO, SIR.

2 Q. BUT BACK IN MAY OF 2019, MR. FRESHLEY WAS  
3 COMPLAINING TO HER ABOUT EXPOSURE TO CHEMICALS?

4 A. YES, SIR.

5 Q. AND MS. HUFFMAN RECOMMENDED PPE, GLOVES, JACKET,  
6 RESPIRATOR, AND A PROPERLY-INSTALLED VENTILATION  
7 SYSTEM WAS REQUIRED?

8 A. SHE WROTE THAT ON THE 2018 DOCUMENT.

9 Q. I'M SORRY; I SAID MAY OF 2019, DIDN'T I?

10 A. THAT'S WHAT SHE WROTE ON THE '18, YES.

11 Q. IN 2018?

12 A. YES, SIR.

13 Q. IN NOVEMBER OF 2018?

14 A. YES, SIR.

15 Q. IN RESPONSE TO MS. HUFFMAN'S RECOMMENDATIONS, DID  
16 YOU ALL DO ANY OF THOSE THINGS?

17 A. I WAS NOT IN THIS POSITION IN 2018.

18 Q. WHEN YOU CAME INTO THE POSITION IN APRIL OF 2019,  
19 DID YOU DO ANY OF THOSE THINGS?

20 A. NO, SIR.

21 Q. NOW, YOU ARE AWARE, AS THE ENVIRONMENTAL SAFETY  
22 DIRECTOR, OF THE MATERIAL SAFETY DATA SHEETS, RIGHT?

23 A. YES, SIR.

24 Q. AND YOU ALL HAVE PRODUCED TO ME, IN RESPONSE TO  
25 SUBPOENA, EXHIBIT "C," WHICH IS 138 PAGES OF

1 MATERIAL SAFETY DATA SHEETS?

2 A. YES, SIR.

3 Q. ARE YOU FAMILIAR WITH THAT?

4 A. YES, SIR.

5 Q. WERE YOU THE PERSON WHO ASSEMBLED THESE?

6 A. YES, SIR.

7 Q. OKAY. AND THIS FIRST PAGE ACTUALLY IS A LITTLE  
8 SUMMARY; IS IT NOT, EXHIBIT C-3?

9 A. YES, SIR.

10 Q. DID YOU PREPARE THAT?

11 A. YES, SIR.

12 Q. OKAY. YOU PREPARED EXHIBIT C-3?

13 A. YES, SIR.

14 Q. OKAY. AND INCLUDED IN THAT 138 PAGES OF MSDS SHEETS  
15 IS ONE FOR MICRO 24, AND IF YOU LOOK AT PAGE FIVE OF  
16 THAT LITTLE PACKET YOU HAVE IN FRONT OF YOU, THAT'S  
17 MY BRIEF. DOWN THERE AT THE BOTTOM OF THAT PAGE YOU  
18 SEE AN EXCERPT FROM MICRO 24, RIGHT?

19 A. YES, SIR.

20 Q. OKAY. AND WERE YOU FAMILIAR WITH THAT MSDS SHEET  
21 FOR THAT CHEMICAL?

22 A. WAS I OR AM I?

23 Q. WELL, LET'S ASK IT BOTH WAYS. IN MAY OF 2019, WHEN  
24 MR. FRESHLEY WAS COMPLAINING TO MS. CHAISSON OF HIS  
25 SHORTNESS OF BREATH, WERE YOU AWARE OF IT?

- 1 A. NO, SIR.
- 2 Q. YOU WERE THE ENVIRONMENTAL SAFETY MANAGER. HE WAS  
3 COMPLAINING OF SHORTNESS OF BREATH AT THAT STATION,  
4 AND YOU WEREN'T AWARE OF THAT MSDS SHEET?
- 5 A. NOT UNTIL HE COMPLAINED.
- 6 Q. DID YOU BECOME AWARE OF IT WHEN HE COMPLAINED?
- 7 A. YES, SIR.
- 8 Q. AND DID YOU REVIEW IT?
- 9 A. YES, SIR.
- 10 Q. AND WOULD YOU AGREE WITH ME THAT IT GIVES CERTAIN  
11 WARNINGS FOR USERS OF THE CHEMICAL?
- 12 A. YES, SIR.
- 13 Q. AND WHAT ARE THOSE WARNINGS? IT'S HIGHLIGHTED THERE  
14 ON PAGE FIVE OF MY BRIEF?
- 15 A. I WANTED TO MAKE SURE BY READING IT. SORRY.
- 16 Q. NO, THAT'S OKAY. I DIDN'T MEAN TO RUSH YOU.
- 17 A. VAPORS AND MISTS ARE CORROSIVE TO THE NOSE, THROAT,  
18 AND MUCOUS MEMBRANES, BRON -- I'M SORRY. BRON -- I  
19 HAVE A DIFFICULT TIME SAYING THAT.
- 20 Q. THAT'S OKAY. BRONCHITIS.
- 21 A. BRONCHITIS. THANK YOU.
- 22 Q. I'M NOT GOOD WITH MEDICAL TERMS EITHER. THAT'S WHY  
23 I'M A LAWYER.
- 24 A. PULMONARY EMBOLI...?
- 25 Q. EDEMA.

- 1 A. EDEMA; I'M SORRY. AND CHEMICAL...
- 2 Q. PNEUMONITIS.
- 3 A. THANK YOU. ...MAY OCCUR. IRRITATION, COUGHING,  
4 CHEST PAIN AND DIFFICULTY IN BREATHING MAY OCCUR  
5 WITH BRIEF EXPOSURE, WHILE PROLONGED EXPOSURE MAY  
6 RESULT IN MORE SEVERE IRRITATION AND TISSUE DAMAGE.
- 7 Q. OKAY. NOW, THOSE SYMPTOMS INCLUDE SYMPTOMS THAT MR.  
8 FRESHLEY WAS COMPLAINING TO MS. CHAISSON OF IN MAY  
9 OF 2019, CORRECT? DIFFICULTY BREATHING?
- 10 A. I'M SORRY. WHAT, NOW? I'M SORRY; COULD YOU REPEAT  
11 THAT?
- 12 Q. THAT MSDS SHEET WARNS YOU, THE SAFETY MANAGER, THAT  
13 THIS CHEMICAL MAY CAUSE DIFFICULTY BREATHING,  
14 CORRECT?
- 15 A. CORRECT.
- 16 Q. MS. CHAISSON, THE H.R. MANAGER, JUST TESTIFIED THAT  
17 MR. FRESHLEY WAS COMPLAINING, WHO USES THIS  
18 CHEMICAL, OF DIFFICULTY BREATHING, CORRECT?
- 19 A. ON MAY 9TH HE COMPLAINED ABOUT A SORE ON HIS CHIN.
- 20 Q. I DON'T WANT TO GO AROUND THAT BUSH AGAIN. MS.  
21 CHAISSON TESTIFIED JUST EARLIER THAT HE COMPLAINED  
22 TO HER OF SHORTNESS OF BREATH AND HE LINKED IT TO  
23 CHEMICALS, RIGHT?
- 24 A. CORRECT.
- 25 Q. OKAY. AND WERE YOU AWARE OF THAT?

- 1 A. AFTER MAY 9? YES, SIR.
- 2 Q. OKAY. WHEN DID YOU BECOME AWARE OF IT?
- 3 A. I CAN'T PUT A DATE ON IT.
- 4 Q. WAS IT IN MAY?
- 5 A. I REALLY CAN'T PUT A DATE ON IT. I DON'T REMEMBER.
- 6 Q. WAS IT IN 2019?
- 7 A. YES, SIR.
- 8 Q. OKAY. SO IN 2019 YOU WERE AWARE OF THAT CHEMICAL;
- 9 YOU WERE AWARE THAT IT -- THE MANUFACTURER SAID IT
- 10 MIGHT CAUSE SHORTNESS OF BREATH; YOU WERE AWARE THAT
- 11 MR. FRESHLEY USED THE CHEMICAL, AND YOU WERE AWARE
- 12 THAT HE WAS COMPLAINING OF SHORTNESS OF BREATH; YOU
- 13 WERE AWARE THAT HE RELATED IT TO THAT CHEMICAL?
- 14 A. YES, SIR.
- 15 Q. DID YOU GIVE HIM A VENTILATOR?
- 16 A. NO, SIR.
- 17 Q. DID YOU DO ANY OF THE THINGS THAT HIS SUPERVISOR HAD
- 18 RECOMMENDED?
- 19 A. NO, SIR.
- 20 Q. YOU ORDERED A TEST?
- 21 A. YES, SIR.
- 22 Q. AN AIR QUALITY TEST?
- 23 A. YES, SIR.
- 24 Q. AND WHEN YOU ORDERED THE TEST, YOU HAD THIS
- 25 ENGINEER, MR. SHOOPMAN, PREPARE -- PERFORM THE TEST?

- 1 A. ENVIRONMENTAL HYGIENE SPECIALIST, YES.
- 2 Q. GOT IT. AND DID YOU GIVE HIM THAT MSDS SHEET?
- 3 A. THE MICRO 24?
- 4 Q. YES, MA'AM.
- 5 A. YES, SIR.
- 6 Q. EXCELLENT. AND THAT HAS FIVE PAGES?
- 7 A. LET ME MAKE SURE.
- 8 Q. WELL, NO, IT'S NOT GOING TO SHOW IT THERE.
- 9 A. OKAY. I'M SORRY.
- 10 Q. JUST ASSUME -- WELL, MAYBE -- LET ME MAKE SURE.
- 11 C-52, HERE IT GOES. THESE ARE THE MSDS SHEETS HERE.
- 12 THAT'S MICRO 24, RIGHT?
- 13 A. YES.
- 14 Q. SO I THINK IT'S C-52.
- 15 A. IT'S 11 PAGES.
- 16 Q. ELEVEN PAGES. I'M SORRY. THAT'S RIGHT. SO IT HAS
- 17 11 PAGES?
- 18 A. YES, SIR.
- 19 Q. AND HERE IS WHY I ASK. THE MATERIAL SAFETY DATA
- 20 SHEETS THAT YOU GUYS PRODUCED TO US CONTAIN C-1
- 21 THROUGH C-138, 138 PAGES, RIGHT?
- 22 A. CORRECT.
- 23 Q. YOU COMPILED THOSE?
- 24 A. CORRECT.
- 25 Q. YOU COMPILED THOSE WHEN YOU GAVE IT TO US?

1 A. CORRECT.

2 Q. BUT YOU DIDN'T GIVE THEM TO MR. SHOOPMAN?

3 A. NO, SIR.

4 Q. NOW, YOU MADE A LIST HERE, C-3, ---

5 A. YES, SIR.

6 Q. --- OF WHAT THOSE CHEMICALS WERE?

7 A. YES, SIR.

8 Q. AND WHERE THEY WERE USED?

9 A. YES, SIR.

10 Q. SOME OF THOSE CHEMICALS WEREN'T USED ON THE ZINC  
11 LINE?

12 A. NO, SIR.

13 Q. SOME OF THOSE CHEMICALS -- ALL OF THOSE CHEMICALS,  
14 THOUGH, WERE USED IN THE SHIPPING DEPARTMENT?

15 A. YES, SIR.

16 Q. AND SOME OF THOSE CHEMICALS, FOR EXAMPLE, WERE USED  
17 ON THE PASSIVATION LINE?

18 A. YES, SIR.

19 **BY MR. WUKELA:**

20 AND THE DIAGRAM THERE, COMMISSIONER, IS D-36.

21 **DIRECT EXAMINATION RESUMED BY MR. WUKELA:**

22 Q. THE PASSAVATION LINE IS A FEW FEET AWAY FROM THE  
23 ZINC LINE, RIGHT?

24 A. YES, SIR.

25 Q. AND IN THE PASSIVATION LINE YOUR LIST HERE INDICATES

- 1            THAT SOME OF THE THINGS USED IN THE PASSIVATION LINE  
2            ARE CHEMICALS ON THIS LIST?
- 3            A.    YES, SIR.
- 4            Q.    OTHERS, FOR EXAMPLE, ARE USED IN THE TITRATION?
- 5            A.    YES, SIR.
- 6            Q.    TITRATION IS JUST NEXT DOOR TO THE ZINC LINE, NEXT  
7            TO THE DOOR AS WELL?
- 8            A.    YES, SIR.
- 9            Q.    YOU DIDN'T GIVE HIM THE CHEMICALS FROM THE TITRATION  
10           LINE?
- 11           A.    NO, SIR.
- 12           Q.    AND THOSE CHEMICALS INCLUDE THINGS LIKE -- AND I'M  
13           LOOKING AT PAGE SIX OF MY BRIEF -- HYDROCHLORIC  
14           ACID?
- 15           A.    YES, SIR.
- 16           Q.    HYDROCHLORIC ACID IS USED IN THE TITRATION LINE, ---
- 17           A.    YES, SIR.
- 18           Q.    --- JUST RIGHT NEXT TO THE ZINC LINE?
- 19           A.    YES, SIR.
- 20           Q.    AND HYDROCHLORIC ACID, ACCORDING TO THE MSDS SHEET,  
21           IS HARMFUL IF INHALED AND MAY CAUSE ASTHMA SYSTEMS  
22           OR BREATHING DIFFICULTIES IF INHALED, CORRECT?
- 23           A.    YES, SIR.
- 24           Q.    BUT YOU DIDN'T GIVE THE EXPERT WHO PERFORMED THE AIR  
25           QUALITY TEST THE MSDS SHEET FOR HYDROCHLORIC ACID?

1 A. NO, SIR.

2 Q. AND THE WASHER, THE WASHER IN THAT DIAGRAM IS NEXT  
3 TO THE PASSIVATION LINE?

4 A. YES, SIR.

5 Q. A FEW FEET AWAY FROM THE ZINC LINE?

6 A. YES, SIR.

7 Q. AND IN THE WASHER, YOU GUYS USE CHEMICALS, ALSO.

8 **BY MR. WUKELA:**

9 I'M LOOKING AT PAGE SEVEN OF MY BRIEF, YOUR  
10 HONOR.

11 **DIRECT EXAMINATION RESUMED BY MR. WUKELA:**

12 Q. AND THOSE CHEMICALS, ALSO, THE MSDS SHEETS WARN THAT  
13 HIGH CONCENTRATIONS MAY BE HARMFUL, MAY AFFECT  
14 BREATHING, SUGGEST VENTILATION, CORRECT?

15 A. YES, SIR.

16 Q. BUT YOU DIDN'T GIVE THOSE TO THE EXPERT?

17 A. NO, SIR.

18 Q. IN FACT, ALL THOSE CHEMICALS ARE USED IN CLOSE  
19 PROXIMITY TO THE ZINC LINE. THERE'S 138 PAGES OF  
20 THEM, BUT THE ONLY ONES YOU GAVE TO THE EXPERT TO  
21 TEST FOR WAS THAT ONE?

22 A. YES, SIR.

23 Q. AND HE DIDN'T TEST FOR THE OTHER ONES?

24 A. NO, SIR.

25 Q. WERE YOU CONCERNED WHETHER, AS THE ENVIRONMENTAL

1 SAFETY MANAGER, THOSE OTHER CHEMICALS MIGHT BE  
2 HARMFUL TO THE EMPLOYEES IN THE SHIPPING DEPARTMENT,  
3 INCLUDING MR. FRESHLEY?

4 A. WAS I CONCERNED? I'M ALWAYS CONCERNED ABOUT MY  
5 EMPLOYEES.

6 Q. WELL, WHY DIDN'T YOU GIVE THOSE CHEMICALS TO THE  
7 EXPERT?

8 A. BECAUSE FRESHLEY DID NOT COMPLAIN ABOUT ANY OF THE  
9 OTHER AREAS. HE COMPLAINED ABOUT THE ZINC AREA.

10 Q. EVEN THOUGH TITRATION IS A FEW FEET AWAY?

11 A. YES, SIR. TITRATION IS A VERY -- THE AMOUNT OF  
12 CHEMICAL THEY USE IN THE TITRATION PROCESS IS VERY  
13 MINUTE.

14 Q. HYDROCHLORIC ACID?

15 A. YES, SIR.

16 Q. DID THEY MEASURE IT?

17 A. DID THEY MEASURE IT?

18 Q. DID THE EXPERT MEASURE HOW MUCH HYDROCHLORIC ACID  
19 WAS IN THE AIR IN THE AREA NEXT TO MR. FRESHLEY?

20 A. IT'S NOT RELEASED TO THE AIR.

21 Q. WELL, THAT'S WHAT THE MEASUREMENT IS FOR, ISN'T IT?

22 A. IF YOU TAKE A CHEMICAL AND YOU TAKE IT TO ITS  
23 BOILING POINT, IT BECOMES A VAPOR, AND IT'S RELEASED  
24 TO THE AIR.

25 Q. MS. BROOKS, WHY DID YOU HIRE THE EXPERT TO DO THE

1 TEST?

2 A. WHY DID WE HIRE THE EXPERT? WE WERE IN THE PROCESS  
3 OF DOING SOME SILICA TESTING IN OUR FOUNDRY AREA.  
4 WE COMPLETED THAT TESTING. WE DECIDED WE NEEDED TO  
5 DO SOME MORE TESTING WITH THE SILICA AND CHROME, AND  
6 SO WE SCHEDULED ANOTHER TESTING. AND DURING THAT  
7 TIME MR. FRESHLEY COMPLAINED ABOUT HIS CHIN  
8 IRRITATION, AND SO I ADDED THIS TO THE LIST.

9 Q. YOU WANTED TO FIND OUT WHAT THE AIR QUALITY WAS IN  
10 THAT AREA?

11 A. THAT'S CORRECT.

12 Q. THERE'S 138 PAGES OF MSDS SHEETS FOR CHEMICALS USED  
13 IN THAT AREA?

14 A. YES, SIR.

15 Q. AND YOU ONLY GAVE HIM ONE?

16 A. YES, SIR.

17 Q. AFTER THE TEST, YOU GUYS DIDN'T MAKE ANY CHANGES TO  
18 THE VENTILATION OR THE RESPIRATORS?

19 A. CORRECT.

20 Q. YOU ARE IN THE PROCESS NOW OF MAKING THE CHANGE SO  
21 THE ZINC LINE IS VENTILATED TO THE OUTSIDE AIR?

22 A. YES, SIR.

23 Q. BUT YOU'RE NOT DONE WITH THAT YET?

24 A. NO, SIR.

25 Q. AND YOU'VE DONE THAT ONLY FOR CONVENIENCE?

1 A. THE EXHAUST, YES, SIR. NOT ONLY FOR CONVENIENCE;  
2 IT'S -- THE PROCESS ITSELF WAS CHANGED DUE TO  
3 PRODUCT IMPROVEMENT.

4 Q. YOU DIDN'T VENTILATE TO THE OUTSIDE AIR TO PROTECT  
5 YOUR EMPLOYEES FROM EXPOSURE TO THOSE CHEMICALS THAT  
6 MIGHT CAUSE THEM LUNG PROBLEMS?

7 A. I DON'T KNOW HOW TO ANSWER THAT. I MEAN...

8 Q. TRUTHFUL.

9 **BY THE COMMISSIONER:**

10 IT'S EITHER YES OR NO.

11 **BY THE WITNESS:**

12 NO.

13 **WITNESS ANSWERS:**

14 A. NO.

15 **BY MR. WUKELA:**

16 THAT'S ALL QUESTIONS I HAVE, COMMISSIONER.

17 **BY THE COMMISSIONER:**

18 ALL RIGHT. THANK YOU. MR. FARRY?

19 **BY MR. FARRY:**

20 THANK YOU.

21 **CROSS EXAMINATION BY MR. FARRY:**

22 Q. MS. BROOKS, LET'S TALK A MINUTE ABOUT THE ZINC LINE  
23 THAT WE'RE REFERRING TO AND THE CHANGE FROM THE  
24 EXISTING ZINC LINE WHEN MR. FRESHLEY IS THERE TO  
25 WHAT'S THERE NOW AND BEING COMPLETED.

1 A. YES, SIR.

2 Q. AT SOME POINT A DECISION WAS MADE TO MODIFY OR  
3 CHANGE THE ZINC LINE. WHEN WAS THAT PROCESS  
4 STARTED, THINKING ABOUT IT, WHAT WE'RE GOING TO DO  
5 ABOUT IT, THE ZINC LINE?

6 A. NOVEMBER OF 2018.

7 Q. NOVEMBER OF 2018. AND WHAT WAS THE REASON IN  
8 NOVEMBER OF 2018 THAT CONBRACO WAS LOOKING AT  
9 CHANGING OR MODIFYING THE ZINC LINE?

10 A. THEY HAD HAD AN ISO AUDIT, ISO 900 -- A 9001, I  
11 THINK IS WHAT IT'S CALLED, AUDIT, AND THEY FOUND  
12 ROOM FOR IMPROVEMENT IN THEIR RECORD KEEPING.

13 Q. AND THE ROOM FOR IMPROVEMENT, DID IT HAVE ANYTHING  
14 TO DO WITH FUMES BEING IN THE AREA WHERE EMPLOYEES  
15 WERE WORKING?

16 A. NO, SIR.

17 Q. AND THIS ROOM FOR IMPROVEMENT, DOES THAT AFFECT THE  
18 ISO AUDIT OR ISO CERTIFICATION?

19 A. YES, SIR.

20 Q. AN ISO CERTIFICATION, IS THAT A CERTIFICATION THAT A  
21 COMPANY MUST GET TO BE ABLE TO DO CERTAIN PROCESSES  
22 TO BE ABLE TO SELL THEIR PRODUCT TO OTHER  
23 BUSINESSES?

24 A. YES, SIR.

25 Q. THE CHANGE TO THE ZINC LINE, DID IT HAVE ANYTHING TO

- 1 DO WITH MR. FRESHLEY'S COMPLAINT THAT HE MADE TO MS.  
2 RENEE CHAISSON IN MAY OF 2019 ---
- 3 A. NO, SIR.
- 4 Q. --- ABOUT ANY BREATHING PROBLEMS?
- 5 A. NO, SIR.
- 6 Q. DID THE CHANGE TO THE ZINC LINE HAVE ANYTHING TO DO  
7 WITH VENTING FUMES TO THE OUTSIDE VERSUS LEAVING THE  
8 FUMES IN THE AREA WHERE EMPLOYEES WORK?
- 9 A. NO, SIR.
- 10 Q. WAS THE MOTIVATION TO CHANGE THE ZINC LINE TO BE  
11 ABLE TO QUALIFY FOR CERTAIN ISO CERTIFICATIONS?
- 12 A. YES, SIR.
- 13 Q. TO QUALIFY FOR CERTAIN ISO CERTIFICATIONS, DOES THAT  
14 REQUIRE ANY PARTICULAR TYPE OF VENTILATION OF THE  
15 PROCESS?
- 16 A. NO, SIR.
- 17 Q. HAD CONBRACO DECIDED TO CHANGE THE VENT LINE -- THE  
18 ZINC LINE AND MODIFY THE ZINC LINE BEFORE ANY  
19 COMPLAINT OF BREATHING PROBLEMS DUE TO WORK BY MR.  
20 FRESHLEY?
- 21 A. YES, SIR.
- 22 Q. DOES THE NEW ZINC LINE OPERATE MORE EFFICIENTLY?
- 23 A. YES, SIR.
- 24 Q. DOES THE NEW ZINC LINE OPERATE QUICKER?
- 25 A. YES, SIR.

1 Q. DOES THE ZINC LINE PRODUCE A BETTER NOW ISO  
2 CERTIFICATION?

3 A. DOES IT -- DOES IT PRODUCE A BETTER CERTIFICATION?

4 Q. THE FACT THAT YOU'VE IMPROVED THE ZINC LINE, DOES IT  
5 AID THE ISO CERTIFICATION PROCESS?

6 A. NO, BUT IT DOES HELP US WITH OUR CUSTOMER.

7 Q. OKAY. AND THAT'S THE ISO CERTIFICATION SIDE?

8 A. YES, SIR.

9 Q. NOW, THERE'S BEEN SOME DISCUSSION ABOUT THIS AIR  
10 QUALITY SURVEY AND THE FACT THAT CERTAIN MSDS SHEETS  
11 WERE SENT AND CERTAIN WERE NOT SENT.

12 A. YES, SIR.

13 Q. HOW DID YOU MAKE THE DECISION WHAT TO SEND AND WHAT  
14 NOT TO SEND BEYOND WHAT MR. FRESHLEY SAID HE WAS  
15 COMPLAINING OF ZINC?

16 A. I SEEK THE GUIDANCE OF OUR, AT THAT TIME,  
17 ENVIRONMENTAL MANAGER FOR THE COMPANY.

18 Q. AND IF A CHEMICAL -- AND YOU WERE DISCUSSING THIS  
19 WITH COUNSEL -- IS NOT IN A VAPOR STATE, MEANING ---

20 **BY MR. WUKELA:**

21 YOUR HONOR, I'M GOING TO OBJECT TO HER EXPERT  
22 OPINION. I'M NOT SURE SHE HAS ANY QUALIFICATIONS.

23 **BY MR. FARRY:**

24 I'M NOT SEEKING AN EXPERT OPINION.

25 **BY THE COMMISSIONER:**

1 LET HIM FINISH THE QUESTION AND THEN...

2 **CROSS EXAMINATION RESUMED BY MR. FARRY:**

3 Q. YOU RESPONDED TO A QUESTION FROM COUNSEL ABOUT THE  
4 BOILING POINT OF A CHEMICAL ---

5 A. YES, SIR.

6 Q. --- THAT'S USED IN A -- THAT'S DILUTED WITH WATER OR  
7 MIXED WITH WATER. IF A PROCESS DID INCLUDE THE  
8 BOILING POINT OF THAT CHEMICAL, DID YOU SEND THAT TO  
9 -- OR DID YOU EXCLUDE THE MSDS SHEETS TO SEND?

10 A. I SENT THE MS -- EXCUSE ME -- THE SDS SHEETS BASED  
11 OFF OF THE RECOMMENDATION FROM OUR ENVIRONMENTAL  
12 MANAGER.

13 Q. BASED UPON COMPLAINTS BY MR. FRESHLEY?

14 A. YES, SIR.

15 Q. SO YOU DIDN'T DECIDE WHAT TO SEND HIM?

16 A. NO, SIR.

17 Q. YOU RELIED UPON THE ENVIRONMENTAL MANAGER FOR THE  
18 COMPANY?

19 A. YES, SIR.

20 Q. NOW, THERE'S BEEN TALK ABOUT ACID IN THIS TEST, THAT  
21 THERE WAS A SAMPLING OF ACID MIST, TABLE TWO, AS  
22 PART OF EXHIBIT FIVE, CORRECT?

23 A. YES, SIR.

24 Q. THAT'S THIS -- I'M NOT ASKING YOU TO TEST YOUR  
25 MEMORY HERE. WE'LL LOOK AT EXHIBIT NUMBER FIVE,

1 TABLE TWO. THAT'S AN ACID MIST SAMPLING?

2 A. YES, SIR.

3 Q. AND THAT'S IN THE AREA WHERE MR. FRESHLEY WAS  
4 WORKING?

5 A. YES, SIR.

6 Q. AND THEN TABLE THREE IS THE ZINC OXIDE, AND THAT'S  
7 IN THE AREA WHERE HE WAS WORKING?

8 A. YES, SIR.

9 Q. NOW, THERE APPEARS TO BE THREE SAMPLE GROUPS IN  
10 THESE TABLES.

11 A. YES, SIR.

12 Q. THERE'S, IT LOOKS TO BE, A FIRST SHIFT, A SECOND  
13 SHIFT, AND A FIRST SHIFT. DO YOU KNOW WHY THAT WAS  
14 DONE?

15 **BY MR. WUKELA:**

16 YOUR HONOR, NOW WE'RE TRYING TO SMUGGLE IN  
17 EXPERT TESTIMONY OF THE GUY WHO WROTE THAT REPORT.  
18 HE'S NOT HERE, AND SHE'S NOT QUALIFIED TO TESTIFY ON  
19 THOSE ISSUES. I'M GOING TO OBJECT.

20 **BY THE COMMISSIONER:**

21 SUSTAINED AS TO THAT QUESTION.

22 **BY MR. FARRY:**

23 OKAY.

24 **CROSS EXAMINATION RESUMED BY MR. FARRY:**

25 Q. WERE YOU AWARE THAT THERE WERE THREE SEPARATE

1           SAMPLES TAKEN BY THE EXPERT, ACCORDING TO THIS  
2           CHART?

3           A.    YES, SIR.

4           Q.    WAS ONE SAMPLE ON THE FIRST SHIFT, ONE SAMPLE ON THE  
5           SECOND SHIFT, AND ONE ON THE FIRST SHIFT?

6           BY MR. WUKELA:

7                   YOUR HONOR, IF HE'S GOT QUESTIONS ABOUT THE  
8           TESTING, THEY SHOULD GO TO THE GUY WHO DID THE  
9           TESTING. SHE'S NOT QUALIFIED TO ANSWER THOSE  
10          QUESTIONS. SHE DIDN'T DO THE TESTING.

11          BY MR. FARRY:

12                   I'M NOT ASKING HER ABOUT THAT TO BE QUALIFIED.  
13          I'LL WITHDRAW THAT.

14          BY THE COMMISSIONER:

15                   OKAY. THANK YOU.

16          BY MR. FARRY:

17                   YES, MA'AM.

18          CROSS EXAMINATION RESUMED BY MR. FARRY:

19          Q.    LOOKING AT TABLE TWO, ACID MIST IN THE SHIPPING  
20                AREA, 6-5, FIRST SHIFT; DO YOU SEE THAT?

21          A.    YES, SIR.

22          Q.    AND THEN THE NEXT SAMPLE IS 6-5 SECOND; DO YOU SEE  
23                THAT?

24          A.    YES, SIR.

25          Q.    AND THEN THE NEXT SAMPLING IS 6-6 FIRST?

- 1 A. YES, SIR.
- 2 Q. DOES A SUPERVISOR HAVE AUTHORITY TO DETERMINE WHAT  
3 IS NEEDED IN A PARTICULAR AREA BY PPE, WHAT PPE IS  
4 NEEDED?
- 5 A. NO, SIR.
- 6 Q. ARE THERE ANY AREAS IN CONBRACO THAT REQUIRE  
7 RESPIRATORS TO BE WORN?
- 8 A. AT THAT TIME, NO, SIR.
- 9 Q. DOES A SUPERVISOR HAVE AUTHORITY AND DETERMINATION  
10 AS TO WHETHER SOMETHING SHOULD BE VENTILATED OR NOT?
- 11 A. I'M SORRY; COULD YOU REPEAT THAT?
- 12 Q. SURE. DOES A SUPERVISOR HAVE THE AUTHORITY TO  
13 DETERMINE WHETHER OR NOT A VENTILATION SYSTEM NEEDS  
14 TO BE INSTALLED?
- 15 A. NO, SIR.
- 16 Q. PPE CONSISTS OF GLOVES?
- 17 A. YES, SIR.
- 18 Q. WERE GLOVES PROVIDED TO MR. FRESHLEY?
- 19 A. YES, SIR.
- 20 Q. PPE CONSISTS OF SAFETY GLASSES?
- 21 A. YES, SIR.
- 22 Q. WERE SAFETY GLASSES PROVIDED TO MR. FRESHLEY?
- 23 A. YES, SIR.
- 24 Q. PPE CONSISTS OF HEARING OR EAR PROTECTION?
- 25 A. YES, SIR.

1 Q. IF REQUESTED, PPE SAFETY FOR HEARING PROVIDED TO MR.  
2 FRESHLEY?

3 A. IT'S -- IT'S NOT SUGGESTED; IT'S REQUIRED.

4 Q. IT'S REQUIRED? OKAY.

5 A. YES, SIR.

6 Q. DUST MASKS, PAPER MASKS, WERE THOSE AVAILABLE IF  
7 REQUESTED?

8 A. N95; YES, SIR.

9 Q. SO THERE WERE PPEs PROVIDED ---

10 A. YES, SIR.

11 Q. --- TO EMPLOYEES OF CONBRACO, INCLUDING MR.  
12 FRESHLEY?

13 A. YES, SIR.

14 Q. NOW, YOU TOOK MR. FRESHLEY TO THE DOCTOR ON MAY 9  
15 WHEN HE WENT TO SEE DOCTORS CARE, CORRECT?

16 A. YES, SIR.

17 Q. AND WE'VE SEEN THE REPORT THAT THE SUPERVISOR DID  
18 MAY 17, WHICH MR. FRESHLEY HAS TALKED ABOUT HAD TO  
19 BE REDONE. YOU ARE AWARE OF THAT REPORT?

20 A. YES, SIR.

21 **BY MR. FARRY:**

22 AND I'M REFERRING TO NOW, COMMISSIONER, EXHIBIT  
23 A-3 IN REFERENCE TO EXHIBIT A-1.

24 **CROSS EXAMINATION RESUMED BY MR. FARRY:**

25 Q. WHAT DID MR. FRESHLEY TELL YOU ON THE WAY OVER TO

1 DOCTORS CARE HIS PROBLEMS WERE THAT HE BELIEVED WERE  
2 CAUSED BY HIS WORK?

3 A. I DON'T RECALL.

4 Q. DID HE TELL YOU WHY HE WANTED TO GO TO THE DOCTOR ON  
5 MAY 9TH?

6 A. YES, SIR.

7 Q. DID HE TELL YOU ---

8 **BY MR. WUKELA:**

9 YOUR HONOR, SHE'S TESTIFIED SHE DOESN'T RECALL,  
10 AND NOW MR. FARRY IS GOING TO LEAD HER. I OBJECT,  
11 YOUR HONOR.

12 **BY THE COMMISSIONER:**

13 SUSTAINED TO THE LEADING.

14 **BY MR. WUKELA:**

15 THANK YOU.

16 **CROSS EXAMINATION RESUMED BY MR. FARRY:**

17 Q. ON MAY 9, WHEN MR. FRESHLEY WENT TO THE DOCTOR, DID  
18 HE TELL YOU ABOUT ANY PROBLEMS THAT HE WAS HAVING  
19 WITH ANY BREATHING PROBLEMS?

20 A. NO, SIR.

21 **BY MR. FARRY:**

22 THANK YOU. I HAVE NO FURTHER QUESTIONS.

23 **BY THE COMMISSIONER:**

24 MR. WUKELA?

25 **REDIRECT EXAMINATION BY MR. WUKELA:**

- 1 Q. WERE YOU AWARE HE TOLD MS. CHAISSON IN MAY OF 2019?  
2 A. AFTER -- AFTER HE TOLD HER?  
3 Q. WERE YOU AWARE MR. FRESHLEY TOLD MS. CHAISSON, THE  
4 HUMAN RESOURCE DIRECTOR, IN MAY OF 2019, SHE HAS  
5 TESTIFIED, THAT HE WAS COMPLAINING OF PROBLEMS  
6 BREATHING, WHICH HE RELATED TO FUMES AT WORK?  
7 A. I AM NOW; YES, SIR.  
8 Q. WHEN DID YOU BECOME AWARE OF THAT?  
9 A. I DON'T RECALL THE DATE.  
10 Q. OKAY. YOU JUST TESTIFIED THAT Y'ALL GIVE FOLKS PPE,  
11 INCLUDING EARMUFFS, RIGHT?  
12 A. YES, SIR.  
13 Q. YOU DIDN'T GIVE MR. FRESHLEY A VENTILATOR, THOUGH,  
14 DID YOU?  
15 A. NO, SIR.  
16 Q. ARE VENTILATORS REQUIRED NOW?  
17 A. VENTILATORS ARE -- LIKE THERE'S TWO DIFFERENT TYPES.  
18 THERE'S -- N95 IS ACTUALLY CONSIDERED A VENTILATOR  
19 -- OR A RESPIRATOR; EXCUSE ME. THERE'S A TIGHT-FIT  
20 AND A LOOSE-FIT RESPIRATOR, AND WE DO PROVIDE LOOSE-  
21 FIT, WHICH IS THE N95, BUT WE DO NOT PROVIDE THE  
22 TIGHT-FIT.  
23 Q. SO YOU DO PROVIDE RESPIRATORS NOW?  
24 A. YES, SIR.  
25 Q. DIDN'T PROVIDE THEM THEN, BUT YOU DO NOW?

1 **BY MR. FARRY:**

2 COMMISSIONER, I OBJECT. HE'S INTERCHANGING,  
3 FOR THE WITNESS, VENTILATOR AND RESPIRATOR. I'M  
4 MEAN, WE'RE BOUNCING BACK AND FORTH.

5 **BY THE COMMISSIONER:**

6 ALL RIGHT.

7 **BY MR. WUKELA:**

8 OKAY. LET'S DO IT DIFFERENTLY.

9 **BY THE COMMISSIONER:**

10 I'M THE JURY AND THE -- I CAN CATCH THE ---

11 **BY MR. WUKELA:**

12 GOT IT. I DIDN'T MEAN TO CONFUSE YOU.

13 **REDIRECT EXAMINATION RESUMED BY MR. WUKELA:**

14 Q. LET'S BE CLEAR. PAPER MASKS?

15 A. YES, SIR.

16 Q. OKAY. MR. FRESHLEY HAD THOSE AVAILABLE TO HIM BACK  
17 THEN. HE WAS WEARING THEM IN THAT PICTURE?

18 A. YES, SIR. THE N95, YES, SIR.

19 Q. GOT IT. AND YOU CALL THAT A...?

20 A. A LOOSE -- WELL, IT'S A DUST MASK, SO TO SPEAK.

21 Q. OKAY. AND I THINK OF A VENTILATOR.

22 A. RESPIRATOR.

23 Q. OKAY. WHATEVER YOU WANT TO CALL IT. I'M NOT TRYING  
24 TO TRICK YOU. I WANT TO MAKE SURE WE'RE ALL TALKING  
25 ABOUT THE SAME THING.

- 1 A. OKAY.
- 2 Q. THINGS THAT HAVE -- THINGS THAT ARE MORE THAN A DUST  
3 MASK.
- 4 A. YES, SIR.
- 5 Q. DO YOU KNOW WHAT I MEAN?
- 6 A. YES, SIR.
- 7 Q. OKAY. THAT HAVE CANNISTERS OR THAT FILTER THE AIR  
8 IN A WAY THAT'S MORE SIGNIFICANT THAN A DUST MASK.
- 9 A. YES, SIR.
- 10 Q. OKAY. WHAT DO YOU WANT TO CALL THAT THING?
- 11 A. A RESPIRATOR.
- 12 Q. GOT IT. THAT'S WHAT WE'LL CALL IT.
- 13 A. OKAY.
- 14 Q. DIDN'T PROVIDE RESPIRATORS WHEN MR. FRESHLEY WAS  
15 THERE?
- 16 A. NO, SIR.
- 17 Q. DO YOU PROVIDE THEM NOW?
- 18 A. NO, SIR.
- 19 Q. GOT IT. OKAY. SORRY FOR THE CONFUSION. ALL RIGHT.  
20 WE TALKED ABOUT WHY THE ZINC LINE IS BEING  
21 VENTILATED NOW. EXHIBIT A-2, BACK IN NOVEMBER 2018  
22 THE SUPERVISOR, MS. HUFFMAN, ---
- 23 A. YES, SIR.
- 24 Q. --- WHO DIDN'T HAVE THE AUTHORITY TO MAKE ANY  
25 CHANGES, RIGHT?

1 A. NO, SIR.

2 Q. --- WROTE, "TO HELP REDUCE THIS PROBLEM..." -- SHE'S  
3 JUST BEEN TALKING ABOUT MR. FRESHLEY'S COMPLAINTS HE  
4 RELATES TO THE CHEMICALS.

5 A. YES, SIR.

6 Q. "TO HELP REDUCE THIS PROBLEM, CURRENTLY NEW PPE IS  
7 BEING LOOKED AT AND ORDERED." DO YOU KNOW WHAT MADE  
8 HER THINK THAT?

9 A. NO, SIR.

10 Q. OKAY. SHE GOES ON: "THIS INCLUDES GLOVES, JACKET,  
11 RESPIRATOR, GOGGLES, AND A PROPERLY-INSTALLED  
12 VENTILATION SYSTEM IS REQUIRED."

13 A. THAT'S WHAT'S WRITTEN; YES, SIR.

14 Q. MS. HUFFMAN THOUGHT THAT YOU GUYS NEEDED A  
15 VENTILATION SYSTEM THAT VENTILATED THE CHEMICALS  
16 PROPERLY, CORRECT?

17 A. THAT'S WHAT SHE WROTE. YES, SIR.

18 **BY MR. WUKELA:**

19 THAT'S ALL THE QUESTIONS I HAVE, COMMISSIONER.

20 **BY THE COMMISSIONER:**

21 ALL RIGHT. THANK YOU.

22 **BY MR. FARRY:**

23 NOTHING FURTHER OF THIS WITNESS, COMMISSIONER.

24 **BY THE COMMISSIONER:**

25 OKAY. THANK YOU, MA'AM.

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**BY THE WITNESS:**

THANK YOU.

**BY THE COMMISSIONER:**

ANY OTHER WITNESSES FOR THE CLAIMANT?

**BY MR. WUKELA:**

NONE FROM THE CLAIMANT, COMMISSIONER.

**BY THE COMMISSIONER:**

ALL RIGHT. ANY WITNESSES FROM THE DEFENDANTS?

**BY MR. FARRY:**

THREE MORE. JUST KIDDING. NO, THAT'S THE DEFENDANTS' CASE. I'M SORRY. I THOUGHT A LITTLE LEVITY WOULD BE APPROPRIATE.

**(OFF THE RECORD)**

**BY THE COMMISSIONER:**

I HAVE RECEIVED APA SUBMISSIONS FROM BOTH THE CLAIMANT AND THE DEFENDANTS. THERE WERE NO ADDITIONALLY-MARKED RECORDS ENTERED INTO EVIDENCE TODAY, SO THE NOTICE, APA SUBMISSIONS WITH THE WITHDRAWAL OF THE THREE DEPOSITIONS AS STIPULATED BY MR. WUKELA. I WILL RETAIN THE PAPER COPIES OF THOSE ITEMS, BUT I WILL ASK THE PARTIES TO UPLOAD SEPARATE ELECTRONIC COPIES TO THE RECORD.

**BY MR. FARRY:**

ABSOLUTELY.

**BY MR. WUKELA:**

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YES, MA'AM.

BY THE COMMISSIONER:

ALL RIGHT. THAT CONCLUDES THIS MATTER. THANK  
YOU ALL SO MUCH.

(THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS  
CONCLUDED AT THE HOUR OF 2:38 P.M.)

CERTIFICATE OF NOTARY PUBLIC  
 SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
 COLUMBIA, SOUTH CAROLINA  
 WCC FILE NO. 1823614

**EMPLOYEE/CLAIMANT: JAMES FRESHLEY**

**EMPLOYER: CONBRACO INDUSTRIES, INC.**

**CARRIER: GREAT AMERICAN ALLIANCE INSURANCE COMPANY**

I, TIMMI A. PARRISH, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING **135** PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF **JAMES FRESHLEY**, TAKEN ON THE 10TH DAY OF JUNE, 2021.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND OFFICIAL SEAL THIS 24TH DAY OF JANUARY, 2022.

---

TIMMI A. PARRISH  
 NOTARY PUBLIC FOR SOUTH CAROLINA  
 MY COMMISSION EXPIRES: 05-29-2028

\* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

STATE OF SOUTH CAROLINA  
BEFORE THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC No. 1823614

James Freshley, )  
 )  
 Claimant, )  
 )  
 v. )  
 )  
 Conbraco Industries, )  
 )  
 Employer, )  
 )  
 and )  
 )  
 Great American Alliance )  
 Insurance Company, )  
 )  
 Carrier/Defendants. )  
 ----- )

**FULL COMMISSION HEARING**

\*\*\*\*\*

**Monday, October 17, 2022**  
2:40 p.m. - 3:14 p.m.

The Full Commission Hearing was heard before Commissioners Melody James, Avery Wilkerson and T. Scott Beck virtually via ZOOM on the 17th day of October, 2022, before Amber Scarborough, Court Reporter and Notary Public in and for the State of South Carolina.



**APPEARANCES**

**Stephen J. Wukela, Esquire (virtually)**  
Wukela Law Office  
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Florence, South Carolina 29505  
Attorney for the Appellant/Claimant

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Greer, South Carolina 29650  
Attorney for Respondent

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**EXHIBITS**

(There were no exhibits marked during the hearing.)

**STIPULATIONS**

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



1 **CALL TO ORDER:**

2 **COURT REPORTER:** Today is October the 17th, 2022.  
3 This is South Carolina Workers' Compensation  
4 Case Number 1823614. This is a case of James  
5 Freshley versus Conbraco Industries and Great  
6 American Alliance Insurance. The Appellant is  
7 the Claimant represented by Steven J. Wukela.  
8 The Respondent is represented by Michael A.  
9 Farry. Each side is -- is it Ferry [ph] or  
10 Farry?

11 **MR. FARRY:** Ferry [ph]. Yes.

12 **COURT REPORTER:** Ferry [ph], I'm sorry, I apologize.  
13 The Respondent is represented by Michael A.  
14 Farry. Each side is allowed ten minutes for  
15 oral argument and the Appellant three minutes  
16 in reply. You are requested to argue the  
17 grounds of except- -- exception and stay within  
18 the record.

19 **COMMISSIONER JAMES:** Okay, Mr. Wukela?

20 **CLAIMANT'S POSITION:**

21 **MR. WUKELA:** Please the Commission. Good afternoon.  
22 This is a occupational disease case. The  
23 Claimant was diagnosed with reactive airways  
24 dysfunction syndrome by two different  
25 pulmonologists. He worked at Conbraco in the



1 shipping department for about two and a half  
2 years between October 2017 and May of 2020.  
3 Page six of my brief has a photo of, of the --  
4 of the work he performed. He worked at the so  
5 called zinc line where they coated and treated  
6 machine parts with a variety of chemicals. The  
7 -- page seven of my brief shows that shipping  
8 department. The zinc line is located in  
9 proximity to other lines, the oxidation line,  
10 wash and (technical break in audio) line. All  
11 within feed of one another. The MSDS sheet,  
12 Material Safety Data Sheets in that area are  
13 shown at page eight of my brief. As you can  
14 see there's a lot of them. But among them are  
15 included: hydrochloric acid, phosphoric acid,  
16 zinc acid, nitric acid, sulfuric acid and  
17 others. All those were used in, in close  
18 proximity to the Claimant's work at the zinc  
19 line. The MSDS sheets which are exempt -- are  
20 exerted in my brief, pages 38 to 39, some of  
21 them. I won't go through all of them but  
22 suffice to say, they warn of the dangers of  
23 inhalation, damage to the lungs, and recommend  
24 the use of respirators. During his time there  
25 Mr. Freshley used only a dust mask and that's



1 all that was provided. He complained to his  
2 supervisor, Sarah Huffman. She wrote a couple  
3 of different reports found at page 13 and 16 of  
4 my -- 13 through 16 of my brief where she noted  
5 his symptoms, his complaints assoc- -- he  
6 associated them with the chemicals and she  
7 recommended the job provide respirators and  
8 provide a properly installed ventilation  
9 system. The Claimant was treated by his  
10 cardiologist first. He has a condition of  
11 atrial fibrillation and had, although it did  
12 not arise from his work there, he'd had that  
13 for some time. His -- his cardiologist, Dr.  
14 Guha, indicated that he was released to full  
15 duty without any restrictions with regard to  
16 his heart, but he sent him to a pulmonologist,  
17 Dr. Jona here in Florence. Dr. Jona diagnosed  
18 reactive airways dysfunction syndrome, and sent  
19 him over to MUSC where he saw pulmonologist,  
20 Dr. Miller. Dr. Miller ultimately testified  
21 the Claimant suffered from reactive airways  
22 dysfunction syndrome, secondary to exposure to  
23 chemicals at work. And his testimony is to be  
24 found at pages 40 and 41 of my brief. Dr.  
25 Miller did quite a bit of work trying to



1           exclude other possible causes, including the  
2           heart. And that work included referring the  
3           Claimant over to another cardiologist who also  
4           excluded the heart and indicated that the  
5           Claimant had no restrictions with regard to his  
6           heart condition. Now, this, of course, is a  
7           occupational disease case. And so the focus,  
8           as our Courts have told us and as the statute  
9           tells us, is not on some specific accidental  
10          contact, but rather the focus of the inquiry is  
11          on whether the disease is associated with the  
12          employment. That is to say, whether it's  
13          caused by a hazard that's recognized as  
14          peculiar to a particular trade, process or  
15          occupation. And then the medical question of  
16          whether the disease is the direct result of  
17          that continuous exposure to that hazard of that  
18          particular process. The MSDS sheets  
19          established the hazard and it's peculiar to the  
20          process. The chemicals are recognized to cause  
21          lung conditions. In fact, the employers  
22          represented the environmental Health -- Health  
23          Safety Manager, Ms. Karen Brooks, testified at  
24          page 38 to 39 of my brief, that those chemicals  
25          and MSDS sheets warned that high concentration



1           may be harmful and effect breathing and suggest  
2           ventilation. And she went on to testify those  
3           chemicals are used in close proximity to the  
4           zinc line where the Claimant worked. Again,  
5           and my -- Dr. Miller testified to the medical  
6           aspect, that he in fact suffered from this  
7           occupational disease, and that in his opinion  
8           it was as a result of that chemi- -- chemical  
9           exposure to a reasonable degree of medical  
10          certainty.

11                 Now, the Single Commissioner found the  
12          case was not compensable. She found first that  
13          there wasn't evidence linking the exposure to  
14          the condition. Of course, I point the Co- --  
15          Commission to the testimony of Dr. Miller. The  
16          Defense argues that Dr. Miller is not a  
17          toxicologist. And indeed Dr. Miller says as  
18          much in his testimony. He says, I'm not a  
19          toxicologist, but from what he, the Claimant,  
20          tells me of his exposure, which I have in the  
21          first part of my note, I believe he has  
22          reactive airway defunction [sic] -- dysfunction  
23          syndrome secondary to his exposure to work.  
24          Now, that takes us though to the point of  
25          occupational disease to begin with. As the



1 Courts have told us, the, the focus is not on  
2 demonstrating a particular injury that the  
3 parti- -- that the disease was caused by a  
4 particular exposure to a particular chemical on  
5 a particular date in a certain concentration.  
6 Rather, occu- -- the point of occupational  
7 disease is that the legislature has seen fit to  
8 determine that certain diseases that are  
9 peculiar to certain processes, pneumoconiosis,  
10 black lung disease, asbestosis, carry with them  
11 a presumption that the, that the condition was  
12 caused by that exposure, particularly when  
13 supported by the testimony of a pulmonologist  
14 to that effect. The focus on occupational  
15 disease and determining compensability is  
16 whether, I'm sorry, in determining  
17 compensability, is whether the Claimant has a  
18 disability as a result of the occupational  
19 disease, not on some specific accidental  
20 contact. And Dr. Miller testified that he has  
21 a disability as a result of hypersensitivity  
22 pneumonitis. And again, the MSDS sheets  
23 established that that is a disease that's  
24 peculiar to the process of using these  
25 particular chemicals.



1 My last point is, as to the disability  
2 itself, the Single Commissioner found, and I'm  
3 referencing page 16, paragraph 25 of her Order  
4 at page 47 of my brief. The Single  
5 Commissioner found none of the physicians could  
6 exclude the Claimant's serious pre-existing  
7 comorbidities as the basis or at least a  
8 contributing factor to the Claimant's medical  
9 condition. Now, occupational disease is  
10 different in that it focuses on disabilities as  
11 opposed to some particular accident or date of  
12 injury, but it also is different because it  
13 provides for an allocation unlike traditional  
14 entry by accident. Here in 42-11-90, the  
15 legislature has allow allocation of disability  
16 and occupational disease cases as between  
17 compensable causes and noncompensable causes.  
18 However, the, the Courts have been clear and  
19 the, and the textbook law is clear that the  
20 burden in those allocations, the burden to  
21 deter- -- to show a noncompensable cause is  
22 responsible for some portion of the disability  
23 and what that percentage is, falls on the  
24 employer. That's, that's established in *Hanks*  
25 *v. Blair*, that's all quoted in page 47 of my



1           brief. So it's not for the Claimant to exclude  
2           other pre-morbidities but rather for the  
3           employer to show the disability the Claimant  
4           has and that he has occupational disease is  
5           actually the product of some other  
6           noncompensable cause. Not the -- not the  
7           Claimant's burden to, to disprove those other  
8           causes. However, the Claimant went further  
9           here because the -- the doctors actually did  
10          exclude the heart as the cause of his  
11          disability. Dr. Guha, APA page 178, the  
12          initial cardiologist, released him to return to  
13          work from the cardiac standpoint and sent him  
14          on to a pulmonologist. Dr. Miller, of course,  
15          sent the Claimant over to another cardiologist  
16          at MUSC, Dr. Sturdivant And Dr. Sturdivant  
17          also was deposed and excluded the Claimants a--  
18          -- atrial fibrillation as a source of any  
19          disability, as found at page 43 of my brief,  
20          and that testimony of Dr. Sturdivant from page  
21          33 and 34 of his deposition. Respectfully, the  
22          Claimant would argue that the Single  
23          Commissioner erred in shifting that burden to  
24          the Claimant to excu- -- exclude other causes  
25          as a matter of law, but also as a matter of



1 fact, the Commissioner erred in finding that,  
2 that the co-morbidity of the heart condition  
3 was the cause of his disability where there  
4 wasn't any evidence of that. In fact, two  
5 cardiologist testified directly to the contrary  
6 (timer beeps). I'm sorry, I see that my time  
7 has expired.

8 **COMMISSIONER JAMES:** Your time has expired. I do  
9 have a question and some of the other panel  
10 members may have questions. I see in your  
11 arguments that the finding of Commissioner  
12 Taylor and in Finding Number 24, where it says  
13 none of the doctors find that it's related, you  
14 indicate that Dr. Miller finds that is related.  
15 And I've heard your argument now. But my  
16 understanding then is from looking at this  
17 record, that the two competing opinions are Dr.  
18 Miller and Dr. Feldman. Is that, is that  
19 correct?

20 **MR. WUKELA:** It is correct, Your Honor.

21 **COMMISSIONER JAMES:** Okay. Because Dr. Jona, even  
22 though he's a pulmonologist, never opined as to  
23 the causation. Is, is that not correct?

24 **MR. WUKELA:** What -- I think that's correct. That's  
25 -- not directly, Your Honor. He did find that



1           -- opine that he had, in his notes he had  
2           reactive airways disease and he had chemical  
3           exposure, but he never spoke directly to  
4           whether the reactive airways disease was a  
5           result of that chemical exposure. We rely on  
6           Dr. Min- -- Miller's testimony to that extent.  
7           Yes ---

8           **COMMISSIONER JAMES:** Okay.

9           **MR. WUKELA:** --- that's correct, Your Honor.

10          **COMMISSIONER JAMES:** And in some places Dr. Jona  
11          actually said probably, I believe, but at any  
12          rate we're looking at Dr. Miller and Dr.  
13          Feldman, correct? So ---

14          **MR. WUKELA:** That's correct, Your Honor.

15          **COMMISSIONER JAMES:** And if you're correct that the  
16          statement none is, is not correct. I hate to  
17          use correct. But how, how would you say that  
18          Dr. Miller's opinion would outweigh -- I'm  
19          going to ask both of you, how would you say  
20          that Dr. Miller's opinion would outweigh Dr.  
21          Feldman's opinion? What, what is the ---

22          **MR. WUKELA:** Well ---

23          **COMMISSIONER JAMES:** --- why does one take priority  
24          over the other?

25          **MR. WUKELA:** I would say for two reasons,



1 Commissioner. First, I think if you read Dr.  
2 Miller's deposition, as I know you have, and  
3 will review, its extensive. Dr. Miller went to  
4 a lot of work to try to exclude other causes,  
5 about sending him to a cardiologist, by  
6 performing a variety of different tests, and he  
7 testified at length as to why those tests were  
8 supportive of his conclusion. This wasn't a  
9 one time visit where, where Dr. Miller said, I  
10 think X, this was a product of a long course of  
11 investigation and treatment that Dr. Miller  
12 underwent, and in particular bronchodilator  
13 studies and stress test studies to, to exclude  
14 other conditions. And the, and the second  
15 point I would say is, that I think Dr. Feldman,  
16 while was an IME and had not done that  
17 investigation Dr. Miller did as a treating  
18 physician, Dr. Feldman also, I think, engages  
19 in the same erroneous burden to think that  
20 respectfully I contend the Commissioner did.  
21 Dr. Feldman's essential conclusion was that,  
22 that the criteria of exclusion had not been  
23 established. And therefore, because the  
24 Claimant couldn't show or didn't show, in Dr.  
25 Feldman's view, that the heart condition wasn't



1 the source of his disability and therefore it  
2 could not be that he had reactive airways  
3 dysfunction as a result of the chemical  
4 exposure that was the cause of his disability.  
5 Of course, the burden on excluding other  
6 sources of disability falls on the employer.  
7 But I would also say as to that finding about  
8 the Single Commissioner, that you've got the,  
9 the testimony of Dr. Sturdivant, which Dr.  
10 Feldman doesn't address, and the opinion of Dr.  
11 Guha that Dr. Feldman doesn't address, both of  
12 which do exclude the Claimant's atrial  
13 fibrillation as a cause of his disability. And  
14 so I think, on balance when the Commission  
15 would weigh the testimony of Dr. Miller and  
16 his, his extensive testing and evaluation with  
17 the IME of Dr. Feldman, we would respectfully  
18 contend that Dr. Miller is, is more persuasive.  
19 But at the end of the day Commission, if, if  
20 the client has an occupational disease in the  
21 context of that hazard that's peculiar to his  
22 occupation, if you take it out of his context,  
23 go to the case of the black lung disease, or of  
24 the construction worker who has asbestosis, or  
25 the, the textile worker who has byssinosis,



1 the, the legislature doesn't require that  
2 Claimant to prove it was that even if that  
3 particular employer, or it was that poll at  
4 that particular mind on that particular day or  
5 those particular days. The conclusion is once  
6 you established that you have an occupational  
7 disease, then the question becomes, what's the  
8 source of the disability and can the employ- --  
9 can the employer meet the burden of showing  
10 that the disability is in fact, the product of  
11 some other nonphysical cause.

12 **COMMISSIONER JAMES:** Thank you, sir. Does anyone  
13 have any further questions?

14 (No audible response heard.)

15 **COMMISSIONER JAMES:** All right. Mr. Farry?

16 **CARRIER'S POSITION:**

17 **MR. FARRY:** Yes, ma'am. May it please this  
18 Commission. The facts of this case are quite  
19 simple. Claimant files a Form 50 Request for  
20 Hearing alleging an occupational disease to his  
21 lungs and skin, quote, arising out of exposure  
22 to numerous chemicals and fumes in performing  
23 his duties, then he filed a Form 51 denying any  
24 occupational disease or injury by accident.  
25 The Hearing Commissioner determined that, based



1 on the greater weight of the evidence in the  
2 record, I find Claimant failed to meet his  
3 burden of proving a compensable injury by  
4 accident or occupational injury to his lungs,  
5 skin or resulting headaches within the course  
6 and scope of his employment. The sole grounds  
7 for appeal, the Claimant comes before you today  
8 is that the Single Commissioner erred in  
9 failing to find the Claimant sustained a  
10 compensable occupational disease and or injury  
11 by accident, and that as a result Claimant is  
12 entitled to TTD benefits. So Claimant is  
13 saying the Single Commissioner erred in failing  
14 to find an occupational disease or injury by  
15 accident and by failing to find the Claimant  
16 was entitled to TTD. Claimant admitted that he  
17 had not missed any time from work in 2018, for  
18 any alleged problems believed to be caused by  
19 his employment. And that's in the Order at  
20 page eight. He was out of work in 2019 for  
21 heart problems. He's not claiming heart  
22 problems are related to his employment. He  
23 comes back to work having already now filed a  
24 claim for his alleged occupational disease and  
25 the employer says we need to send you home so



1 we can figure out what's going on here that you  
2 allege is an occupational disease. Claimant  
3 was ready to come back to work but they said,  
4 no, you've alleged you've been hurt, we've got  
5 to investigate. After investigation they  
6 brought him back, put him in a different  
7 department, he continued to work without lost  
8 time until he goes back out of work for a heart  
9 problem. But in fact, has to have hemorrhoid  
10 surgery before he can qualify for the heart  
11 problem. And then he files a short term  
12 disability claim. Exhibit four in the hearing.  
13 Last day of work May 8th, 2020. Date missed  
14 work due to medical conditions that started May  
15 11th, 2020. Is your condition work related?  
16 Claimant responded, no.

17 So first off, we would contend Claimant  
18 hadn't missed anytime from work due to any  
19 alleged occupational disease. Now, the Order  
20 by the Single Commissioner is well supported by  
21 the substantial evidence and should be affirmed  
22 in its entirety. Claimant relies upon the  
23 testimony of Dr. Robert Miller, Pulmonologist,  
24 to allege the causation between his exposure to  
25 work chemicals and alleged pulmonary problems



1 due to work. It's simply not the case. Dr.  
2 Miller was asked if Claimant suffered from RADs  
3 as a result of exposure to chemicals at work.  
4 His testimony was, quote, I believe so.  
5 However, he qualifies his response again, I am  
6 not a toxicologist. His words. That's in his  
7 deposition, page 53, lines 18 through 25. Dr.  
8 Miller admitted he could not say what Claimant  
9 was exposed to, to which caused the diagnosis  
10 of RADs, Restricted Airways Disease because,  
11 quote, again, I am not a toxicologist. That's  
12 his deposition page 76, lines nine through 13.  
13 Dr. Miller admitted he had no information as to  
14 the amount or quantity of a particular chemical  
15 Claimant was allegedly exposed to. Nor did he  
16 have any information as to the alleged duration  
17 of any of these alleged exposures. Other than  
18 what Claimant told him when he met with him.  
19 Dr. Miller admitted that he did not review any  
20 air monitoring survey report. This is his  
21 deposition page 57, line 21 through page 58,  
22 line 21. Now, this air quality report said  
23 that the levels of zinc oxide, nitric acids and  
24 phosphoric acids were permissible exposure  
25 limits. And what's important about that is



1 Claimants attorney just argued that high  
2 concentrations of these chemicals caused  
3 problems. There never were high concentration  
4 of these chemicals and this air quality survey  
5 report establish that. None of the treating  
6 physicians or the evaluating specialist opine  
7 regarding a causal connection between  
8 Claimant's medical conditions and the chemicals  
9 or possible symptoms identified on the Material  
10 Safety Data Sheets. They may have said ---

11 **COMMISSIONER JAMES:** Mr. Farry?

12 **MR. FARRY:** --- it could be consistent.

13 **COMMISSIONER JAMES:** Mr. Farry, could you ---

14 **MR. FARRY:** I'm sorry?

15 **COMMISSIONER JAMES:** --- backup for a minute. You  
16 said none and you're saying none opined and Mr.  
17 Wukela says that Dr. Miller did. Is it a  
18 question of weight in what Dr. Miller said and  
19 a weight of -- between the two experts versus  
20 none? Are you saying for this particular issue  
21 that it is none?

22 **MR. FARRY:** I think for this particular issue the  
23 opinion by Dr. Miller did not rise to the  
24 sufficient level of most probably based upon a  
25 specific chemical, based upon a specific amount



1 of exposure, based upon a duration of exposure,  
2 knowing exactly what he was exposed to. I  
3 think amounts to pure speculation by whatever  
4 opinion Dr. Miller came up with. So I would  
5 maintain that it's still none. But if it's  
6 beyond none, and it's Dr. Miller versus Dr.  
7 Feldman, the Hearing Commissioner had all the  
8 weight, observed the testimony of the Claimant  
9 testify, looked at the other factors and simply  
10 made a Finding of Fact well supported by the  
11 substantial evidence in the record. Let's look  
12 at what other evidence was before the  
13 Commission to reach her decision. None of the  
14 other physicians could exclude Claimant's  
15 serious pre-existing comorbidities as the  
16 basis, or at the very least a contributing  
17 factor for Claimant's medical condition. Dr.  
18 Sturdivant, a cardiologist, acknowledged in his  
19 testimony that atrial fibrillation symptoms  
20 include exactly what Claimant's complaining of.  
21 His exertional intolerance, his fatigue, his  
22 shortness of breath, his shortness of breath  
23 with exertion. That's in Dr. Sturdivant's  
24 deposition, page 32, line 10 through page 38,  
25 line 24 through page 39. The chronic



1 obstructive sleep apnea symptoms are fatigue.  
2 Claimant had a normal CT scan September 20th,  
3 2019. His lungs were clear and basically  
4 normal. Dr. Miller acknowledged that Claimant  
5 did not have chemical pneumonitis on his CT  
6 scans. That's his deposition, page 51 lines 21  
7 through 22. Other evidence to support the  
8 Single Commissioner's decision, Dr. Gregory  
9 Feldman, a Board Certified pulmonologists, a  
10 Board Certified internal medicine doctor, a  
11 Board Certified critical care medicine doctor,  
12 testified or stated in his report rather, to  
13 diagnose RADs, by its very nature requires a  
14 physician to exclude alternative diagnosis.  
15 His opinion Dr. Miller did not do so. The  
16 presence of multiple comorbidities in Claimant  
17 which more than adequately explain all of his  
18 symptoms were including obesity, known  
19 progressive dilated cardiomyopathy, obstructive  
20 sleep apnea, with Claimant admitting he had  
21 stopped using his CPAP machine, all of which  
22 were necessary before a diagnosis of RADs could  
23 be made. And Dr. Feldman stated that diagnosis  
24 of RADs was not supported by the evidence. In  
25 conclusion, the Order the Single Commissioner



1 is well supported by the reliable, probative  
2 and substantial evidence. Dr. Miller's  
3 testimony acknowledged he was not a  
4 toxicologist, that he did not have specific  
5 info as to the nature of the exposure, did not  
6 have specific information as to duration of  
7 exposure, did not have specific information as  
8 to the amount and time of the exposure. Dr.  
9 Miller acknowledged that he did not review any  
10 air monitoring survey report, which showed less  
11 than permissible exposure limits for zinc  
12 oxide, the nitric acids and the phosphorus  
13 acids. Then you look at Claimant's pre-  
14 existing comorbidities that we just discussed,  
15 along with the report of Dr. Feldman, I would  
16 respectfully submit that the Order by the  
17 Single Commissioner is more than well supported  
18 by the substantial evidence that's in the  
19 record and should be affirmed in its entirety.

20 **COMMISSIONER JAMES:** And I have just one question.  
21 Finding of Fact Number Seven says that the MSDS  
22 sheets were for the entire facility and then 22  
23 says Ms. Brooks testified that it was the MSDS  
24 sheet for just Claimant's specific line. So  
25 are those two findings in conflict with each



1 other? And if they are, which, which finding  
2 do you contend is the correct finding?

3 **MR. FARRY:** I believe that, and, and I stand to be  
4 corrected. I believe all the Material Safety  
5 -- Safety Data Sheets for this facility were  
6 supplied or provided to Claimant's counsel.

7 **COMMISSIONER JAMES:** All right. Thank you, sir.

8 **MR. FARRY:** Thank you.

9 **COMMISSIONER JAMES:** Any other questions?

10 (No audible response heard.)

11 **COMMISSIONER JAMES:** All right. Mr. Wukela?

12 **CLAIMANT'S REPLY:**

13 **MR. WUKELA:** Your Honor, in response to your  
14 question, I will turn you to page 38 and 39 of  
15 my brief. This is my examination of the  
16 employers representative, Ms. Karen Brooks, the  
17 Environmental Health and Safety Manager. And  
18 she testified that the MSDS sheets that were  
19 provided were those chemicals used in the  
20 shipping department. And in fact, page 36 of  
21 my brief, I asked her, all those chemicals  
22 though were used in the shipping department.  
23 This is the ---

24 **COMMISSIONER JAMES:** And, and ---

25 **MR. WUKELA:** --- employers ---



1       **COMMISSIONER JAMES:**     Right.     And you may have  
2            further ---

3       **MR. WUKELA:**     --- say that, I'm sorry.

4       **COMMISSIONER JAMES:**     --- you may have other  
5            responses that you may want to make but, so  
6            basically her testimony was that she didn't --  
7            she only provided that part but then none of  
8            the adjoining departments that were close by.

9       **MR. WUKELA:**     Correct, Commissioner.     That she -- in  
10           response to the subpoena that the employer  
11           provided all the chemicals, MSDS sheets, that  
12           were used in the shipping department, and in  
13           all areas that were in close proximity to the  
14           zinc line where the employer worked in the  
15           shipping department.     Now, she went on to  
16           testify though, that -- this is on page 39 of  
17           my brief, that as to the air quality study, she  
18           only provided their tester one chemical.     So  
19           contrary,     respectfully     to     the     Single  
20           Commissioner's     Order,     these     weren't     the  
21           chemicals from the whole plant in the MSDS  
22           sheets that were exhibits.     They were only the  
23           chemicals that were in the shipping department.  
24           Ms. Brooks testified all those chemicals were  
25           used in close proximity to the Claimant's zinc



1 line where he worked in the shipping  
2 department. And she also testified that she  
3 only provided one of those chemicals, none of  
4 the hydrochloric acid, none of the sulfuric  
5 acid, none of the real heinous chemicals did  
6 she provide to the individual who did the  
7 testing that Mr. Farry points to as the test  
8 being the evidence that demonstrates the  
9 Claimant's condition wasn't result of  
10 chemicals.

11 I do want to go on and make another point  
12 though. As to this argument the Defense makes  
13 respectfully that Dr. Miller's testimony must  
14 be disregarded because he didn't -- he's not a  
15 toxicologist and he didn't measure a specific  
16 chemical and the specific amount during a  
17 specific day or specific period of time that  
18 caused this injury. That isn't a error of law  
19 in considering the law to require that, that  
20 element of testimony, because as the Court  
21 taught us in *Fox v. Newberry* an occupational  
22 disease, once you show that the disease is  
23 caused by a hazard peculiar to the particular  
24 process, which these MSDS sheets establish,  
25 you're not focusing on a specific time of



1 contact. Rather the focus is whether that  
2 disease is peculiar to that chemical, to that  
3 process of the job. And to, and to require  
4 that element, an occupational disease case we  
5 suggest would be an error of law.

6 While lastly, the -- Commissioner, the  
7 question you asked me before about comparing Dr.  
8 Feldman and Dr. Miller. Dr. Feldman never  
9 saw the Claimant. It was an IME, he  
10 reviewed the records. It's not clear that  
11 he saw the testimony of the cardiologist  
12 because he doesn't make any reference to  
13 that. And what's more, Dr. Miller's  
14 opinion was based on a long period of  
15 treatment, including two very important  
16 tests. He talks about pre and post bach-  
17 -- bronchodilator studies, and a  
18 cardiopulmonary test in which critically,  
19 and he, he, he testifies this specifically  
20 at page 31 to 34 of his deposition.  
21 Critically, the Claimant's ventilator  
22 limit, his lung limit was reached during  
23 the cardiopulmonary stress test, whereas  
24 cardio limit was not.

25 **COMMISSIONER JAMES:** Okay. Mr. Wukela, your time



1           has run, are there any further questions?

2           (No audible response heard.)

3           **COMMISSIONER JAMES:** All right. Thank you. We're  
4           finished with the hearing, but the court  
5           reporter has some questions.

6           **(There being no further discussion, the hearing**  
7           **concluded at 3:14 p.m.)**

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**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**  
REQUEST FOR A PROPOSED DECISION AND ORDER

This document is not a Decision and Order. It is a request for a proposed order. The Commissioners reserve the right to modify and/or delete any or all portions of the submitted Decision and Order.

James Freshley v Conbraco Industries  
SCWCC: 1823614  
Commission Panel: James, Wilkerson, Beck; Chair  
Order Assigned to Commissioner: Beck  
Court Reporter – Amber Scarborough- 803-252-3445

Stephen J. Wukela  
Michael A. Farry

Claimant/Appellant  
Defendants/Respondents

**This matter was heard before the South Carolina Workers' Compensation Full Commission Appellate Panel during the last term of Review. The Commissioners considered the matter and Affirm with Amendments the decision and order of the Single Commissioner. Delete findings of fact #7. In finding of fact #24 delete "none". Provide weight analysis. Greater weight to Dr. Feldman.**

Mr. Farry please prepare a proposed order and submit to the Judicial Department within thirty (30) days of this notice. The proposed order shall be submitted in Word format to [appeals@wcc.sc.gov](mailto:appeals@wcc.sc.gov) and shared with each Party. Please make sure the Appellate Panel Decision and Order recites the specific Finds of Fact and Rulings of Law of the Single **Commissioner's Decision and Order and reflects any comments** requested by a Commissioner.

The signature page shall include a signature line for each Commissioner and the first signature should be the name of the Commissioner assigned the case as indicated above.

If you have any questions, please do not hesitate to email me at [ehollmon@wcc.sc.gov](mailto:ehollmon@wcc.sc.gov) or call at 803.737.5737

Judicial  
Transmitted via email this 2 November 2022

